

## **GROUP 77201 – AWARD 23150 INTELLIGENT FACILITY & SECURITY SYSTEMS AND SOLUTIONS HOW-TO-USE GUIDELINES<sup>1</sup>**

OGS is providing this document to assist both Contractors and Authorized Users (AUs) on how to correctly use the Intelligent Facility and Security Systems and Solutions Contracts. These guidelines do not relieve the Contractors and AUs from complying with the terms and conditions of the awarded contracts or with all applicable statutes, regulations, AU internal procurement guidelines, policies and procedures, as well as control agency requirements. This is a living document that may be revised by OGS at any time.

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<sup>1</sup> For definitions of the capitalized terms associated with this guidance document, please see Section 2 (“Definitions”) of *Appendix B*, the “Definitions” worksheet of *Attachment 1 – NYS Net Pricing Pages*, and *Attachment 15 – Glossary of Terms*. These documents can be found on the Award’s solicitation files page posted here: <https://ogs.ny.gov/procurement/bid-document-files-intelligent-facility-and-security-systems-and-solutions-statewide>

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## 1. AWARD STRUCTURE

This Award includes a pre-qualified pool of Contractors who have agreed to Not-To-Exceed Pricing for Equipment and Services. An additional competitive process among pre-qualified Contractors is required under certain situations. This Award has multiple offerings of Equipment and Services and was awarded by Lot and Region as described below. More detailed information will be provided in later sections of this guidance document.

**1.1 LOTS:** Contracts are awarded by Lot as follows:

LOT 1: Equipment Only

LOT 2: Systems and Solutions (Equipment, Installation, Integration, and Maintenance)

**Please note: All Equipment, Systems, and Services provided by Contractors MUST be included on their NYS Net Pricing Pages published on the OGS website.<sup>2</sup> AUs are entirely responsible for verifying this information prior to using the Intelligent Facility and Security Systems and Solutions Contracts.**

**1.2 REGIONS:** Contracts were awarded across nine different county-based regions, as shown in Table 1:

**Table 1 – Counties by Contract Region**

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

<sup>2</sup> The NYS Net Pricing Pages for This Award can be accessed by clicking on the Pricing Information links within the table of the Contractor Information document posted here:

<https://online.ogs.ny.gov/purchase/snt/awardnotes/7720123150ContractorPage.pdf>

**1.3 CONTRACTORS:** A pre-qualified pool of Contractors has been established to provide Equipment and Services under This Award. Contractors Must only offer the Equipment, Systems, and Services listed on their NYS Net Pricing Pages on the OGS website.<sup>2</sup>

**1.4 METHOD OF CONTRACTOR SELECTION:** In certain situations, a process known as a Second Tier Competition (also called a mini-bid) is required to encourage additional competition among the pool of qualified Contractors, with the goal of obtaining the most favorable Pricing and Terms. In situations where a Second Tier Competition is not required, an AU Must document the rationale behind pursuing Direct Engagement with the qualified Contractor that they select from the pool.

## **2. IN-SCOPE SYSTEMS AND PRODUCT LINES**

Table 2 below includes all Systems that are within the scope of This Award. Please see *Attachment 15 – Glossary of Terms* for the definitions of each of these offerings.<sup>3</sup>

**Table 2 - In-Scope Systems**

<b>Alarm and Signal Systems</b>
<b>Building Automation Systems (BAS)</b>
<b>Command Center Systems</b>
<b>Computer Aided Dispatch Systems</b>
<b>Electronic Article Surveillance Systems</b>
<b>Electronic Identification Systems</b>
<b>Emergency Mass Notification Systems</b>
<b>Emergency Phone/PBX Systems</b>
<b>Energy Management Systems</b>
<b>CCTV/Surveillance Camera Systems</b>
<b>Electrical Distribution and Control Systems</b>
<b>Parking Access Control System</b>
<b>Physical Access Control Systems</b>
<b>Fire Alarm Systems</b>
<b>Fire Pump Systems</b>
<b>Fire Station Alerting Systems</b>
<b>Inmate Radio Systems</b>
<b>Microprocessor-Controlled HVAC Equipment Systems</b>
<b>Permanent Facility Perimeter Fencing Systems</b>
<b>Fire Sprinkler and Fire Suppression Systems</b>
<b>Lighting Control/Occupancy Detecting Systems</b>
<b>Livescan Store and Forwarding Systems</b>
<b>Nurse Call Systems</b>
<b>Personal Alarm Systems</b>
<b>Public Address Systems</b>
<b>Public Safety Digital Display Systems</b>
<b>Time Management Systems</b>
<b>Traffic and Transportation CCTV/Surveillance and Monitoring Systems</b>
<b>Vaping Detection Systems</b>

The Systems (for Lot 2) and Product Line(s)s (for Lots 1 and 2) offered by each Contractor are listed in a spreadsheet that can be found at the following link:

[https://online.ogs.ny.gov/purchase/snt/awardnotes/7720123150\\_Matrix.xlsx](https://online.ogs.ny.gov/purchase/snt/awardnotes/7720123150_Matrix.xlsx)

<sup>3</sup> *Attachment 15 – Glossary of Terms* can be found on the Award’s solicitation files page posted here:  
<https://ogs.ny.gov/procurement/bid-document-files-intelligent-facility-and-security-systems-and-solutions-statewide>

**Examples of Appropriate Use for Wiring and Cable** - The following examples demonstrate the appropriate use of wiring and cable under this This Award:

- Removing/disposing of an in-scope System
- Core-drilling if directly connected to the provision of an in-scope System
- Installing conduit for wire for an in-scope System
- Running wire (Line Voltage Wiring and Low Voltage Wiring) as part of an in-scope System
- Connecting Equipment to the wiring for an in-scope System
- Start-up/Commissioning/Programing of the Equipment associated with an in-scope System

AUs Must not use any Equipment for Systems or Work that does not fit the scope of This Award, including but not limited to Low Voltage Wiring or Line Voltage Wiring obtained under This Award. For example, AUs Must not use either/both the wire and cable on Contract or the Electrical/Electrical Installer Job Titles to install a phone system as this is not in-scope.

Contractors Must use the Job Titles and corresponding Total Hourly Rates in their NYS Net Pricing Pages on the OGS website for all Installation, Integration, and Maintenance performed on Contract.

Contractors Must not use the Job Titles on their Contract to perform Services (Installation, Integration, or Maintenance) on Equipment not offered on their Contract.

Contractors Must not propose or offer Equipment to AUs which is not listed on their NYS Net Pricing Pages on the OGS Website.<sup>2</sup>

If an AU's project does not fall within the definitions of one of these Systems, then it Must not be acquired under this Award. Please contact OGS with any questions pertaining to the definitions of This Award's Systems.

AUs Must not issue any Purchase Orders (POs) to Contractors under This Award which either:

- 1) Include Equipment, Services, or Systems that are not listed on the Contractor's NYS Net Pricing Pages on the OGS website,<sup>2</sup>

**OR**

- 2) Involve the performance of Services (Installation, Integration, or Maintenance) on Equipment not listed on the Contractor's NYS Net Pricing Pages on the OGS Website.<sup>2</sup>

**3. METHOD OF CONTRACTOR SELECTION**

**3.1 SECOND TIER COMPETITION:** As previously noted, This Award includes a pre-qualified pool of Contractors with Not-To-Exceed Pricing, and This Award has multiple offerings of Equipment and Services. **Where practicable and feasible, the intended use of these Contracts includes a competitive process (known as a Second Tier Competition) whereby AUs seek competition among Contractors to obtain more advantageous pricing and terms as well as the most economical and efficient offerings.**

A Second Tier Competition is not required in all circumstances; however, there are certain situations where an AU is obligated to hold a Second Tier Competition in order to correctly use the Contracts. Table 3 below outlines situations in which an AU is required to hold a Second Tier Competition. Please note that AUs **Must** document all decisions regarding the Second Tier Competition in the final procurement record.

**Table 3 - Applicability of Second Tier Competition**

Situation #	Situation	Is Second Tier Competition (Mini-Bid) Required?
1	Equipment Only Purchase	Yes
2	Providing a New System* when the Authorized User either: A. Has not Standardized <sup>1</sup> on a Contractor <b>OR</b> B. Does not have a Proprietary System in a majority (more than 50%) of its Facilities, campuses, etc.	Yes
3	Providing a Proprietary System in a Facility where the AU: A. Has this same Proprietary System Installed, Integrated, and Accepted in a majority (more than 50%) of its Facilities, campus, etc.; <b>OR</b> B. Has Standardized on this Proprietary System; <b>OR</b> C. Is expanding an existing Facility where there is an Embedded Base of this Proprietary System	No
4	Providing a non-Proprietary New System in a Facility where the Authorized User has Standardized on a particular Contractor that offers All Equipment comprising the non-proprietary System on their Contract (as listed on their NYS Net Pricing Pages published on the OGS website)	No
5	Maintenance of a Proprietary System by the Contractor that offers All Equipment comprising the Proprietary System on their Contract (as listed on their NYS Net Pricing Pages published on the OGS website)	No
6	Maintenance of a non-Proprietary System where the Authorized User has Standardized on a particular Contractor that offers All Equipment comprising the non-Proprietary System on their Contract (as listed on their NYS Net Pricing Pages published on the OGS website)	No
7	Maintenance of a Non-Proprietary Embedded Base where the Contractor offers all Equipment comprising the non-Proprietary Embedded Base on their Contract (as listed on their NYS Net Pricing Pages published on the OGS website)	No
8	Maintenance of a non-Proprietary System where both: A. The Business Entity that Provided the System is either: i) Not awarded a Contract <b>OR</b>	No

Situation #	Situation	Is Second Tier Competition (Mini-Bid) Required?
	ii) Not awarded a Contract for Lot 2 <b>OR</b> iii) Awarded a Contract for Lot 2 but not awarded the particular Region where the Facility is located <b>OR</b> iv) No longer offers the Product Line(s)  <b>AND</b>  B. There is only one Contractor on Contract awarded Lot 2 and the particular Region which offers the Product Line(s) and all Equipment comprising the non-Proprietary Embedded Base on their Contract (as listed on their NYS Net Pricing Pages published on the OGS website)	
9	Maintenance of a non-Proprietary System in a Facility located in a particular Region where the Product Line(s) for All Equipment comprising the System are only offered by one Contractor awarded under Lot 2 (with All Equipment listed on their NYS Net Pricing Pages published on the OGS website)	No
10	Providing a non-Proprietary System in an existing Facility where: A. The AU is expanding the existing Facility  <b>AND</b>  B. There is an Embedded Base of this non-Proprietary System  <b>AND</b>  C. The Business Entity that Provided the non-Proprietary System that is the Embedded Base at the Facility is either: i) Not awarded a Contract <b>OR</b> ii) Not awarded a Contract for Lot 2 <b>OR</b> iii) Awarded a Contract for Lot 2 but not awarded the particular Region where the Facility is located <b>OR</b> iv) No longer offers the Product Line(s)  <b>AND</b>  D. There is only one Contractor on Contract awarded Lot 2 and the particular Region which offers the Product Line and all Equipment comprising the non-Proprietary Embedded Base on their Contract (as listed on their NYS Net Pricing Pages published on the OGS website)	No
<p>*Note 1: Provide a System, Providing a System, or Provided a System (including Providing a New System, Providing a Proprietary System, Providing a non-Proprietary System, Providing a non-Proprietary New System, Provided the non-Proprietary System, and Provided a New System) means a Contractor performs all of the following as part of an Authorized User Agreement for a project:</p> <ol style="list-style-type: none"> <li>1) Contractor furnishes all Equipment Comprising the System,</li> <li>2) Contractor performs all Installation of the Equipment they furnished,</li> <li>3) Contractor performs all Integration of the Equipment they furnished and Installed, and</li> </ol>		

Situation #	Situation	Is Second Tier Competition (Mini-Bid) Required?
4)	After the AU accepts the Equipment, System, and Solution in accordance §5.9 <i>Acceptance Testing &amp; Product/System Acceptance</i> Contractor warranties all Equipment and Services performed in accordance with Appendix B, <i>Warranties</i> and §7, <i>Maintenance</i> . This definition of Provide a System or Providing a System includes when a Contractor furnishes, Installs, Integrates, and post-acceptance warranties a Microprocessor-Controlled HVAC Equipment System even if the AU describes the project as for example “Provide a Chiller,” “Providing a Chiller,” or some other similar language.	

Even when an AU standardizes on a particular Product Line(s) and Contractor, the Contractor Must not perform Services on Equipment that the Contractor does not have listed on its NYS Net Pricing Pages published on the OGS website.

For example, even if an AU standardizes on a particular Product Line(s) and Contractor for its Building Automation System, the Contractor Must not perform Services on Equipment the Contractor does not have on their Contract (e.g., a Chiller that is not on the Contractor’s NYS Net Pricing Pages published on the OGS website).

Contractors May submit Contract Update Request to add Product Lines or Equipment that is not on their Contract (as listed on their NYS Net Pricing Pages published on the OGS website) in accordance with the provisions of Appendix C<sup>4</sup>. All Contract Updates Must be approved by OGS (Procurement Services) before being valid and effective.

An AU Must not conduct a Second Tier Competition for Maintenance where the Equipment to be Maintained is Proprietary Equipment, as this would constitute circumventing the requirements of §4.1 *Overview & Requirements* of this document. For example, an AU Must not conduct a Second Tier Competition to acquire Maintenance of ABC Company’s Chiller when only ABC Company has this Equipment on its Contract (as listed on its NYS Net Pricing Pages published on the OGS website) and is therefore the only Contractor that can perform Maintenance on this Equipment under Award 23150.

Discrepancies and Authorized User-Specific Protests pertaining to a Second Tier Competition issued under the resulting award Must be resolved by the issuing AU and not by OGS.

**3.2 DIRECT ENGAGEMENT:** In situations where a Second Tier Competition is not required (i.e., Situations 3 through 10 in Table 3), AUs May pursue a Direct Engagement with a Contractor of their choice. This option requires the AU to document the rationale behind the Contractor selection, including a Reasonableness of Price Determination, and Must include a Technical Justification as detailed in the sections below.

<sup>4</sup> Please see Appendix C at the following link:  
<https://ogs.ny.gov/procurement/bid-23150-appendix-c>

#### **4. PROCUREMENT RECORD REQUIREMENTS**

**4.1 OVERVIEW & REQUIREMENTS:** The purpose of the procurement record is to document business decisions including how and why an AU selected a particular Contractor.

- 1) In situations where a Second Tier Competition is required, AUs Must document their decision-making process, including how they arrived at the final selection, in narrative form within the procurement record.

State Agencies that are customers of the Business Services Center (BSC) Must provide this narrative to the BSC along with all other necessary information for issuing a Purchase Order. The BSC will only confirm documentation is provided. The BSC will not review or determine the accuracy, correctness, content, or appropriateness of the Agency's business decisions or supporting documentation. The State Agency is entirely responsible for all business decisions and Must not use the BSC's review/issuance of a PO as a justification or approval of its business decisions in any audit or other review.

**OR**

- 2) In situations where an AU is not required to conduct a Second Tier Competition, AUs Must adhere to the following procedures:

A) The AU Must document all of the following in a narrative:

- (1) The project/scope of Work
- (2) Any relevant information regarding the existing Equipment or Systems in the Facility, campus, or entire AU site
- (3) The AU's determination of which situation from Table 3 the project/scope of Work conforms to

**AND**

- (4) Justification as to why the project/scope of Work does not require a Second Tier Competition

State Agencies that are customers of the BSC Must provide this narrative to the BSC along with all other necessary information for issuing a Purchase Order.

The BSC will only confirm that the required documentation has been provided. The BSC will not review or determine the accuracy, correctness, content, or appropriateness of the Agency's business decisions or supporting documentation. The State Agency is entirely responsible for all business decisions and Must not use the BSC's review/issuance of a PO as a justification or approval of its business decisions in any audit or other review.

B) The AU Must either:

- (1) Receive from the Contractor, in writing, Pricing which is below the Not-To-Exceed NYS Net Pricing, Total Hourly Rates and/or Subcontractor Percent (%) Markup listed under the Contractor's NYS Net Pricing pages

**OR**

- (2) Request from the Contractor, in writing, Pricing which is below the Not-To-Exceed NYS Net Pricing, Total Hourly Rates, and/or Subcontractor Percent (%) Markup listed under the Contractor's NYS Net Pricing pages, and if this reduced Pricing is not obtainable, document in a narrative the reasons why the Contractor cannot provide reduced pricing to the AU

State Agencies that are customers of the BSC Must provide this narrative to the BSC along with all other necessary information for issuing a Purchase Order.

The role of the BSC is only to verify that either:

- (A) The Contractor offered the Agency lower pricing than the "Not to Exceed" Pricing on the Contract (either in the initial quote or after a request from the Agency),

**OR**

- (B) If the Contractor did not offer the Agency lower than contract pricing, that the Agency obtained the Contractor's explanation of why they cannot offer lower than contract pricing and included this explanation in the written narrative.

State Agencies that are customers of the BSC Must provide this information to the BSC along with all other necessary information for issuing a Purchase Order.

The State Agency is entirely responsible for all business decisions and Must not use the BSC's review/issuance of a PO as a justification or approval of its business decisions in any audit or other review.

**AND**

- C) The AU Must:

- (1) Obtain from the Contractor comparable pricing that the Contractor offered and accepted on a similar project, to a similar customer or on a similar contract

**AND**

- (2) Include a narrative in their procurement record that:

- (A) Describes why the project, customer, or contract provided by the Contractor is similar to the project/Work/Services the Contractor is proposing to perform

**AND**

- (B) Determines that the pricing offered by the Contractor on the similar project, customer, or contract demonstrates that the pricing being proposed by the Contractor to the AU is reasonable

State Agencies that are customers of the BSC Must provide this information and the narrative to the BSC along with all other necessary information for issuing a Purchase Order.

The BSC is not reviewing or determining the accuracy, correctness, content, or appropriateness of the Agency's business decisions or supporting documentation, other than verifying pricing on the Centralized Contract. The State Agency is entirely responsible for all business decisions and Must not use the BSC's review/issuance of a PO as a justification or approval of its business decisions in any audit or other review.

**4.2 PROJECT CHECKLIST:** To facilitate the appropriate use of This Award to procure Services, OGS has developed a Project Checklist that must be completed by all AUs prior to issuing any Direct Engagement or Second Tier Competition. The Project Checklist Must be maintained as a part of the AU's Procurement Record if it obtains Services under This Award. The Project Checklist can be accessed using the following link:

**<https://online.ogs.ny.gov/purchase/snt/awardnotes/7720123150ProjectChecklist.xlsx>**

Affirmative answers to one or more of the questions in the Project Checklist does not necessarily indicate that This Award should not be used to procure Equipment or Services for the AU's project. Rather, the purpose of the Project Checklist is to ensure that AUs consider certain project parameters to ensure that they fall within the scope of This Award and address potential risks. However, AUs should note that if the project contains **only** work/services that do not fit the scope of This Award, the AU Must obtain work/services for the project through a different procurement method.

Where the project contains both Equipment and Services that **do** fall within the scope of This Award as well as Equipment and Services that **do not** fall within the scope (e.g., performing Work on Equipment which is more than 600 Volts), the AU Must **not** obtain the Equipment and services that do not fall within the scope under This Award.

Additionally, for any business unit within OGS, or for any project to be completed in a Facility under the Custody of OGS (see 19 NYCRR § 1204.3 for additional information), the AU Must submit a completed Project Checklist to the New York State Chief Real Estate Officer or, in his or her absence, the Executive Deputy Commissioner of the Office of General Services, for review and approval.

**4.3 TECHNICAL JUSTIFICATION FOR MAINTENANCE OF A NON-PROPRIETARY EMBEDDED**

**BASE:** Where the AU is obtaining Maintenance on a Non-Proprietary Embedded Base, the AU Must consider and document the following as part of its Technical Justification for its Direct Engagement with the Contractor:

- Does the Contractor have the particular Product Line(s) which constitute the Embedded Base on their Centralized Contract (listed on the OGS Website)?
- Did the Contractor Install and Integrate the System in the AU's Facility?
- Has any other vendor performed Maintenance on this System besides the current Contractor? Is the current Contractor providing any Central Station monitoring as part of the Maintenance Agreement? If yes:
  - Does this Central Station Monitoring involve specific Equipment which is part of the System in order to communicate with the Central Station?
  - Did the Contractor have to program/configure/integrate the System to communicate with the Central Station?
  - Would utilizing a Different Contractor require the removal the Existing Equipment for Central Station Monitoring and the Installation and Integration of New Equipment?
- What are the Cyber Security Risks/Liabilities of switching from the current Contractor to a different Contractor?

AUs Must include this information in the narrative required by Part 2) A) of §4.1 *Overview & Requirements* of this document.

State Agencies that are customers of the Business Services Center (BSC) Must provide this narrative to the BSC along with all other necessary information for issuing a Purchase Order.

The BSC will only confirm that the required documentation has been provided. The BSC will not review or determine the accuracy, correctness, content, or appropriateness of the Agency's business decisions or supporting documentation. The State Agency is entirely responsible for all business decisions and **Must not** use the BSC's review/issuance of a PO as a justification or approval of its business decisions in any audit or other review.

**4.4 DIRECT ENGAGEMENT REASONABLENESS OF PRICE DETERMINATION:** Where the AU is not required to conduct a Second Tier Competition and conducts a Direct Engagement with a Contractor, the AU is still responsible for demonstrating Reasonableness of Price for the Work. Contractors Must provide the AUs with acceptable comparable contracts/comparable Customers, preferably competitively awarded, and awarded within the last two (2) years.

To determine if a comparable contract/comparable customer is acceptable, the criteria below are provided for consideration.

### 1. Similar Scope of Work

- Is the Contractor proposing the same System and Product Line(s) to the AU as was offered to and accepted on the comparable contract/by the comparable customer?
- Is the Equipment being offered to the AU either the same Equipment as was offered to and accepted by the Comparable Contract/Customer, or newer versions of discontinued Equipment which perform at equal or better than the level of performance of the discontinued Equipment?
- Is the Contractor performing the same or similar Work/Services for the AU as was offered to and accepted by the Comparable Contractor/Customer? In particular:
  - Is the Contractor proposing the same Job Titles to the AU that were offered to and accepted by the Comparable Contract/Customer?
  - If the Job Titles are not the same, are they close enough to indicate similar Work?
  - If no Job Titles were used or the Job Titles are different, are the Descriptions of Duties/Work performed by the different categories of staff the same or similar to the Description of Work? (This should be evaluated based on a General Description of the Work. For example, programming a Building Automaton System and programming a Building Management System would be similar Work.)
  - If the same Job Titles are used for different Descriptions of Work/Duties, are the Descriptions similar (e.g., programming controllers, sensors, etc. for a Building Automation System vs. programming a Building Automation System)?

### 2. Similar Facilities

The Facility of the comparable contract/comparable customer must be similar to the AU's Facility. Similar Facilities are of the same class and type, as demonstrated in Table 4 below:

**Table 4 - Similar Facility Classes and Types**

<b>Class</b>	<b>Example Types</b>
Secure Facilities	Correctional Facilities, psychiatric Facilities, county jails, detention centers, youth Facilities
Office Facilities	K-12 schools, office buildings, academic Facilities
Healthcare Facilities	Hospitals, nursing homes
Residential Facilities	College/university dormitories, OPWDD/Not-for-Profit community residence homes
Special use Facilities	Sewer plants, wastewater treatment plants, power plants
Public safety Facilities	Police buildings, fire stations, armories
Sports Facilities	Stadiums, hockey rinks
Transit Facilities	Railway stations, bus terminals, airports, boat/ferry terminals
Museum Facilities	Museums, historic buildings

Contractors cannot use Classes or Types of Facilities with additional requirements (e.g., a Secure Facility) to demonstrate Reasonableness of Price for a Class or Type of Facility with less stringent requirements.

### **3. Underlying Conditions**

The underlying conditions of the Facility (e.g., status such as New Facility or Existing Facility, age, particular Code requirements, pollution/hazardous materials, etc.) are factors AUs need to review as part of their determination as to what constitutes an acceptable Comparable Contract/ Customer. Considerations include:

- How old are both Facilities?
- If the AU's Facility and the comparable contract/comparable customer Facility have different ages, were there any changes to any Building Codes that would affect the Installation/Integration/ Acceptance or Maintenance of the System?
- What, if any, were the insurance and bonding requirements of the Comparable contract/ Customer and how do they compare to both this award and the Project-Specific Insurance Requirements set by the Authorized User/Contract (i.e., higher, lower, or the same)?
- Are there any unique/special conditions to consider for AU's Project, including but not limited to Pollution/Asbestos/Lead Abatement or Special Security/Site Access Procedures?

### **4. Project Value Costing Differences**

The AU's Project and the Comparable Contract/Customer's project need to have similar Total Values, Payment Schedules/Processes, and Deliverables. To determine this, the AU Shall consider:

- What are the dollar values of the proposed AU project and the Comparable Contract/Customer project?
- Does the Comparable Contract/Customer require the payment of NYS Department of Labor (DOL) Prevailing Wage Rates and Supplemental Benefits? In particular:

- Are both projects using the same particular NYS DOL Prevailing Wage Rate Occupation and Subcategory (e.g., NYC Electrician: Audio/Sound/Teledata)?
- Is the Work in both the Authorized User Agreement and Comparable contract/Customer being performed during the same time of day (e.g., both during Normal Business Hours) or different times of day (e.g., Normal Business Hours versus After Business Hours)?

While the values do not need to be the same, the goal is to reference similar economies of scale. When the total value of the AU proposal is more than 25% greater than that of the Comparable Contract/Customer's, the Contractor must include an explanation as to why it cannot offer more favorable pricing. AUs reserve the right to require this justification for a lower differential (e.g., 15%), and the Contractor cannot simply reference the 25% threshold.

## **5. Authorized User-Specific Standard Design**

Where an Authorized User has a standard Facility design (assuming the same type and use of the Facilities), the pricing production standard for the same System in each Facility should not vary except due to either:

- 1) Differences in the Prevailing Wage Rates or Supplemental Benefits issued by the NYS DOL

**OR**

- 2) Specific factors outlined in this section, such as the need to perform Pollution/Asbestos Abatement, which are required by the AU and differentiate the two (2) Facilities

**OR**

- 3) Based on updates to the Manufacturer's or Distributor's List Price/MSRP (issued and published in the Manufacturer's/Distributor's Price List with List Price/MSRP ("List Price/MSRP File") and, by extension, in the Contractually Approved Percent (%) Discount Structures from List Price/MSRP)

## **6. Additional Pricing Verifications**

For any Direct Engagement, AUs Must:

- 1) Require the Contractor document whether the Comparable Contract/Customer agreement allowed for charging Travel Time and Site Access Time separately, or if the hourly rates on the Comparable Contract/Customer agreement included Travel Costs and Site Access Costs
- 2) Where the Comparable Contract/Customer Agreement is in whole or in part a Fixed Price/Lump Sum Agreement, Require the Contractor provide Certified Payroll or other documentation demonstrating the actual number of hours Worked

The Contractor (or Subcontractor) May redact the name of the Employees that performed Work on the Comparable Contract/Customer Agreement.

**4.5 AUTHORIZED USER REQUIREMENTS IN SECOND TIER COMPETITIONS:** Whenever an AU conducts a Second Tier Competition and includes either Mandatory minimum qualifications or technical factors to be evaluated, the AU Must document the reasons for including these requirements in the procurement record and Must demonstrate that they are reasonable or necessary.

Mandatory minimum qualifications and technical factors Must not be Written only for the purpose of limiting competition, but instead Must be Written to obtain the most economical alternative and to promote the best interests of the AU and the State.

Within the Second Tier Competition document, AUs Must include, at a minimum, the method of award<sup>5</sup> for any Second Tier Competition and Must have an Evaluation Tool finalized and date-stamped prior to the receipt of Contractor proposals.

When the basis for awarding a Second Tier Competition is Best Value, the AU May include a Quantitative Factor<sup>6</sup> for SBE, MBWBE, and SDVOB Contractors in a manner consistent with State Finance Law §163 and any relevant Rules or Regulations.

**4.6 CONFORMANCE TO HVAC EQUIPMENT REQUIREMENTS:** AUs Must verify that HVAC Equipment meets the criteria of Microprocessor-Controlled HVAC Equipment prior to using This Award for its purchase, Installation, Integration, and/or Maintenance, and Must document how the Equipment conforms to each criterion in the Procurement Record (see the *General Guidance* section below for additional information).

**4.7 PROHIBITED ACTIONS RELATED TO DESIGN & SECOND TIER COMPETITION:** Where an AU is required under This Award to conduct a Second Tier Competition, an AU Must not have one Contractor (or a Subcontractor of a Contractor) under This Award prepare all design documents, specifications, etc. and use these to conduct a Second Tier Competition.

For those AUs that determine they have Design Build/Design Build Authorization, please see §6.7 *Design Build/Design Build Authorization* for additional guidance.

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<sup>5</sup> Please see NYS State Finance Law §163 and the NYS Procurement Council Guidelines for more information on method of award.

<sup>6</sup> Please see NYS State Finance Law §163 for additional information regarding Quantitative Factors.

## **5. GENERAL GUIDANCE**

**5.1 SITE VISITS:** At the discretion of the AU and prior to the receipt of quotes/proposals, Contractors **may be required 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 the Equipment or Services required. Contractors are required to carefully examine specifications provided by the AU and to familiarize themselves thoroughly with any conditions and requirements that May in any manner affect the Work to be performed under the Contract. During the site visit, the AU will indicate placement of all Equipment. In addition, Contractors should specify if any modifications or additions to the site are required to insure proper operation of the Equipment. If changes are required, they Must be included in the Contractor's quote/response to the AU.

No allowances of any kind (e.g., acceptance of increased cost, exceptions with respect to the responsiveness of bid, etc.) will be made due to lack of knowledge of these conditions. Ignorance of the requirements will not relieve the Contractors of their liability and obligations under the Authorized User Agreement.

**5.2 NYS STATEWIDE FINANCIAL SYSTEM:** When entering transactions into the NYS Statewide Financial System (SFS), New York State Agencies should:

- Verify if the "Service Contract" is for "Maintenance" (see §7: *Maintenance* of Solicitation 23150 and the *Maintenance* section of this guidance document) or "Installation/Integration" (see the *Distinguishing Between Installation/Integration versus Construction* section of this guidance document)

**AND**

- Note any Progress/Milestone Payments or Retainage included (see §6.14: *Invoice and Payment* of Solicitation 23150)

**5.3 DEALERS: All Dealers Must be pre-approved by OGS for a particular Contractor and listed on the OGS website for the particular Contractor prior to use.** Dealers are Business Entities, added by a Contractor awarded a Contract for Lot 1 (Equipment), that are able to sell the Equipment on the awarded Contract. Dealers **Must not:**

- Perform Services under any of these Contracts

**OR**

- Sell/offer Equipment which is not on the approved Price List of the Contractor published on the OGS website<sup>2</sup>

**OR**

- Charge above the NYS Net Pricing for Equipment

Contract holders under Award 23150 cannot act as a Dealers for another Contract holder under Award 23150.

**5.4 SUBCONTRACTORS:** All Subcontractors Must be approved by the AU prior to the execution of the Authorized User Agreement. The AU is solely responsible for verifying and documenting that Subcontractors meet all applicable requirements and are used in accordance with the Scope and Terms and Conditions of This Award.

As part of the approval process for Subcontractors, AUs Must perform the following:

- 1) The AU Must verify that the Subcontractor holds active licenses in good standing where required by Law, Code, Rules, or Regulation
- 2) In accordance with [Section 69-M of the General Business Law](#) and [19 NYCRR §195.2](#),<sup>7</sup> the AU Must verify if the Subcontractor (Actual Business Entity name or d/b/a name) Must and does hold an active NYS Fire Alarm Security System Installer License in good standing by:
  - A) Reviewing the scope of the Work being performed and determining if the Equipment or System requires an NYS Fire Alarm Security System Installer License to Install, Integrate, or Maintain

**AND**

- B) If “yes” to item (2)(A), determining if the Subcontractor is performing any Low Voltage Wiring, Equipment Installation, Integration, or Maintenance on any Equipment or System where the NYS Fire Alarm Security System Installer License is required,

**AND**

- C) If “yes” to item (2)(B), reviewing the NYS Department of State, Division of Licensing, Index of Licenses and Registrations<sup>8</sup> website to verify if either:

- (1) The Subcontractor holds a “STATEWIDE” NYS Fire Alarm Security System Installer License

**OR**

- (2) If the AU is located in a municipality with a Master Electrician’s License, that the Subcontractor holds a “LOCAL” NYS Fire Alarm Security System Installer License (Master Electrician Waiver)

NOTE: If the answer to both Items (2)(C)(1) and (2)(C)(2) is “no,” the AU Must reject the Subcontractor.

- 3) The AU Must determine and verify that the Subcontractor is using (and is not charging more than) the Total Hourly Rates on the Contractor’s NYS Net Pricing Pages on the OGS website
- 4) The AU Must verify that the Subcontractor is not performing Installation, Integration, or Maintenance on Equipment, Product Lines, or Systems that are not listed on the Contractor’s NYS Net Pricing Pages published on the OGS website<sup>9</sup>

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<sup>7</sup> [Section 69-M of the General Business Law](#) and [19 NYCRR §195.2](#) are published on NYS Department of State’s website and can be accessed by copying and pasting the following link into an internet browser address bar: <https://www.dos.ny.gov/licensing/pdfs/SECURITY.pdf>

<sup>8</sup> The NYS Department of State, Division of Licensing, Index of Licenses and Registrations website search page can be accessed by copying and pasting the following link into an internet browser address bar: [https://appext20.dos.ny.gov/lcns\\_public/chk\\_load](https://appext20.dos.ny.gov/lcns_public/chk_load)

<sup>9</sup> The NYS Net Pricing Pages for This Award can be accessed by clicking on the Pricing Information links within the table of the Contractor Information document posted here: <https://online.ogs.ny.gov/purchase/snt/awardnotes/7720123150can.htm>.

- 5) The AU Must verify that the Subcontractor does not hold a Contract under Award 23150 (i.e., that the Subcontractor is not also included as a primary Contractor within the pre-qualified pool established under Award 23150)
- 6) The AU Must determine that the Work being performed by the Subcontractor falls within the scope of This Award

**AND**

- 7) The AU Must ensure that the Subcontractor's quote/proposal does **not** contain any Equipment

Additionally, if the AU is a State Agency or State Authority, the AU Must determine if the total dollar value of the Services to be performed by the Subcontractor exceeds \$100,000.00, in which case the State Agency or State Authority Must perform a vendor responsibility review of the Subcontractor and ensure that the Subcontractor is Responsible<sup>10</sup> prior to issuing the Authorized User Agreement.

**5.5 DISTINGUISHING BETWEEN INSTALLATION/INTEGRATION VERSUS CONSTRUCTION:** The goal of this section is to clarify the difference between Installation/Integration and construction. The intent of This Award is to allow for the provision of comprehensive, Turnkey Solutions that fit the scope of the Award. However, while Installation and Integration Work can be acquired through the Contracts to the extent that these activities fit within a both the Contract and the Project's scope, these Contracts are not vehicles to procure Services/activities that would primarily be considered "construction Work."

Any Installation/Integration Must be directly related to the System and Solution. In order to clearly delineate between an "Installation/Integration" and "construction," AUs should consider the following questions:

- Does the Work involve hands-on physical Work on the Equipment in the System?
- Does the Work involve direct electronic actions upon a System (e.g., programming)?
- Would separating this Work from the remainder of the System/Solution affect the warranty, functioning, operations, cyber/network integrity, or interoperability, etc. of the System/Equipment?
- Would separating the Work still allow for the provision of the System as per code?
- Is the Work incidental but directly necessary for the System, or is it just convenient to perform the Work at the same time?
- If a "structural" change, is it:
  - Only being performed because it is necessary for the implementation of the System?
  - Not a material alteration to the building but instead an incidental adjustment?
  - Not a major renovation?

Table 5 includes examples of work that would be considered Installation/Integration as opposed to construction work. When working with a Contractor, **AUs Must be aware that any work that is not directly related to the provision of a System and Solution is intended to be excluded from This**

<sup>10</sup> The vendor responsibility section of OSC's website can be accessed by copying the following link and pasting it into an internet browser address bar: [https://www.osc.state.ny.us/vendrep/info\\_vresp\\_agency.htm](https://www.osc.state.ny.us/vendrep/info_vresp_agency.htm)

**Award** because it is considered “construction work.” For design and construction work, AUs should follow the applicable laws governing their procurement of design and construction (e.g., Public Buildings Law, Public Authorities Law, State Finance Law, General Municipal Law, etc.).

**Table 4 - Examples of Installation/Integration Work vs. Construction Work**

<b>Installation/Integration</b>	<b>Construction</b>
Core drilling for cabling/wiring that is being used directly in the Installation and/or Integration of an Intelligent Facility and Security System and Solution (e.g., drilling hole for wiring of a security camera)	Core drilling for general purpose facility wiring
Wiring any of the Systems which fit the Scope of This Award	Performing General Facility Wiring
Incidental ductwork and/or piping connection from a Microprocessor-Controlled HVAC Equipment System to the Facility’s central/main ductwork/piping (connection from new or replacement HVAC Equipment such as a Chiller to ductwork/piping already in place)	Running of main facility ductwork, piping, etc.
Performing minor Asbestos Abatement in order to Install and Integrate a New Fire Sprinkler System	Performing Facility-Wide Asbestos Abatement
Temporarily removing a small (e.g., 3 square feet) piece of sheetrock so as to access and repair the wiring of a Fire Alarm System	Removing and installing new sheetrock for an entire floor of a Facility
Installing steel fence posts and fencing as part of a Permanent Facility Perimeter Fencing System <sup>3</sup>	Installing, maintaining, etc. wire mesh, detention equipment, detention accessories, steel detention screens, steel security screens, secure therapy cubicles, fence posts, and fencing that are not part of a Permanent Facility Perimeter Fencing System
Excavating a trench to run low voltage wiring between two different buildings in order to Integrate the CCTV Surveillance Systems in each Building	Obtaining general excavation work, digging, etc.

Ultimately, each type of work will need to be reviewed on a case-by-case basis to delineate between Installation/Integration and construction. Depending on the System and Project, all, some, or none of the work may be allowable under these Contracts. The key point is that, at a minimum, the same test questions and evaluation method should be applied uniformly by AUs in accordance with the guidance provided in this section. AUs reserve the right to ask additional questions beyond those listed in this document to make an accurate determination as to whether or not proposed work would be considered Installation/Integration or construction.

**AUs are responsible for ensuring their compliance with the scope and intent of This Award regarding only procuring Installation/Integration Services, and not construction work, as defined in This Award.**

State Agencies should also review *Section IV.8 Capital Projects* of the NYS Office of the State Comptroller (OSC) Guide to Financial Operations for additional guidance on delineating further between

Installation/Integration and construction work and to ensure that they use the appropriate codes for funding.<sup>11</sup>

**5.6 FRONT-END DOCUMENTS:** For Installation/Integration projects, AUs May have one or more documents that outline project information including the scope, schedule, conditions, payment structure, requirements, and other details. The documented information May include, but is not limited to:

- Progress/milestones for project completion/payment
- Staging/mobilization requirements
- Retainage
- Performance/payment bonds for both the Contractor and (if applicable) Subcontractor(s)
- Coordination with other Contractors/AU staff
- As-built requirements

OGS collectively refers to these records as “Front-End Documents.” The AU should provide all Front-End Documents as part of the initial request for a proposal (via either a Second Tier Solicitation or Direct Engagement) to ensure that the Contractor has sufficient information regarding the project and can prepare an optimal response. Contractors Must not charge more than the Not-to-Exceed Pricing on their Contract to comply with the requirements of the Front-End Documents.

In accordance with §6.45.2 *Modification of Contract Terms*, Contractors and AUs are permitted to agree to the terms and conditions outlined in the aforementioned Front-End Documents **provided they do not diminish or impair the terms and conditions of any Contract resulting from Solicitation 23150.** When issuing a final purchase order/Authorized User Agreement, an AU May either:

- Incorporate Front-End Documents into an Authorized User Agreement, **OR**
- Affix Front-End Documents to the purchase order

Once incorporated into the Authorized User Agreement or affixed to the purchase order, these Front-End Documents become part of the Agreement between the Contractor and the AU and are thus binding on the Contractor.

**5.7 HVAC EQUIPMENT REQUIREMENTS:** AUs Must verify that HVAC Equipment, including but not limited to the following:

- Chillers
- Rooftop units (RTUs)
- Boilers
- Air handlers/air handling units (AHUs)
- Fan coils
- Unit ventilators
- Heat pumps
- Remote input/output (I/O) modules

Meet the criteria of being Microprocessor-Controlled HVAC Equipment prior to using This Award for its purchase, Installation, Integration, and/or Maintenance.

<sup>11</sup> The Capital Projects section of the NYS OSC Guide to Financial Operations can be accessed by copying the following link and pasting it into an internet browser address bar:  
[https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#1V/8/A.htm%3FTocPath%3DIV.%2520Accounting%2520Codes%2520%25E2%2580%2593%2520Uses%2520and%2520Descriptions%7C8.%2520Capital%2520Projects%2520%7C\\_\\_\\_\\_\\_1](https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#1V/8/A.htm%3FTocPath%3DIV.%2520Accounting%2520Codes%2520%25E2%2580%2593%2520Uses%2520and%2520Descriptions%7C8.%2520Capital%2520Projects%2520%7C_____1)

To use This Award, AUs Must verify that the selected HVAC Equipment meets all of the following criteria:

- 1) It Must be controlled by a microprocessor that was factory-mounted/factor-installed into or onto the Equipment (e.g., the Chiller has its controls already mounted on it at the factory before it is delivered to the AU)
- 2) It Must require technical skill to program, Integrate, Start-up, and Commission
- 3) It Must conform to the definition of Information Technology (IT) as defined in This Award<sup>12</sup>

**AND**

- 4) It Must be Integrated with a Building Automation System (BAS) or Energy Management System (EMS) such that:
  - A) The functionality of the Integrated System conforms to the definition of Information Technology set forth for This Award<sup>12</sup>

**AND**

- B) The Integrated System is configured, programmed, Integrated, Started-up, Commissioned, etc. to allow the BAS or EMS to communicate with the Microprocessor-Controlled HVAC Equipment

As part of the Procurement Record, the AU Must document how the HVAC Equipment meets each of the criteria listed above. If one or more of the HVAC Equipment criteria above is not met, the AU **Must not** obtain HVAC Equipment and Services under This Award.

**Please Note:** If a Contractor only proposes to use a Steamfitter to perform all Work/Service on any of the abovementioned types of Equipment, the Equipment does not meet the definition of Microprocessor-Controlled HVAC Equipment and does not fall within the Scope of Award 23150. Therefore, the AU Must not acquire this Equipment or any Installation, Integration, or Maintenance of this Equipment under Award 23150.

**5.8 DATA CATEGORIZATION:** Prior to either a Second Tier Competition or Direct Engagement to obtain a System and Solution, Integration, or Maintenance Work, the AU Must perform a data categorization assessment and identify the risk level of the Project (i.e., low, moderate, or high).

**5.9 ACCEPTANCE TESTING & PRODUCT/SYSTEM ACCEPTANCE:** Appendix B, *Product Acceptance*, is deleted in its entirety and replaced by the following language:

The State defines System Acceptance as the Problem Free operation of a Product/System/Solution after it is Fully Operational for a consecutive 30 calendar day period commencing with the first Business Day after the Equipment/System/Solution is Fully Operational. At that point, the Authorized User Shall test it for 30 consecutive calendar days. Should the Equipment/System/Solution fail to operate Problem Free during the 30 consecutive calendar day Acceptance Testing Period, the Contractor Must correct the problem at no cost to the Authorized User. A new 30 consecutive calendar day Acceptance Testing Period will then begin for the Product/System/Solution commencing the first Business Day after the problem is corrected. Problem Free operation applies to ALL components of the Equipment/System/Solution provided by the Contractor but does not include problems caused by the failure of any Authorized User-provided premise infrastructure, failure of any

<sup>12</sup> See *Attachment 15 – Glossary of Terms* for Award 23150, in particular for the definitions of “Microprocessor-Controlled HVAC Equipment Systems and Information Technology

Authorized User-provided interface/Systems or erroneous software/System programming by the Authorized User.

An AU has the discretion to increase the 30 consecutive calendar day Acceptance Testing Period. At the conclusion of the Acceptance Testing Period, the AU May Accept the System and notify the Contractor in Writing. Upon receipt of the notification of Acceptance by an AU, the following will occur:

- 1) The Title (or License grant for software) and risk of loss Shall pass from the Contractor to the AU
- 2) The Product/System/Solution warranty period in Appendix B, *Warranties* Shall commence

**AND**

- 3) The Contractor Shall invoice the AU for payment or, if using progress/milestone payments, final payment

AUs reserve the right to require additional performance and Acceptance Testing standards as part of the Authorized User Agreement.

Where the AU determines to reject (non-accept) Equipment/Systems/Solutions for not performing Problem Free during the System Acceptance Testing Period and to cancel the Authorized User Agreement in whole or in part, the Equipment/System/Solution Must be removed by the Contractor from the premises of the AU within ten (10) calendar days of notification of non-acceptance by the AU. Rejected items not removed by the Contractor within the ten (10) calendar day period Shall be regarded as abandoned by the Contractor and the AU Shall have the right to dispose of the Product as its own property. The Contractor Shall promptly reimburse the AU for any costs incurred for the storage/removal/disposition of the Product after the ten (10) calendar day period. Such cancellation Shall not give rise to any cause of action against the AU for damages, loss of profits, expenses, or other remuneration of any kind.

Where an AU only purchases Equipment from a Contractor and has another entity(s) perform all Installation, Integration, and Maintenance Work, System Acceptance Testing Shall be 30 consecutive calendar days from the date of delivery.

All repair/replacement of Equipment/Systems/Solutions performed as Maintenance Shall be subject to this section.

**5.10 FEDERAL FUNDS:** For an Authorized User using Federal funds, the Contractor Must cooperate in adding to the Authorized User's Agreement any Federal funding contract clauses necessary for the Authorized User's Project. An Authorized User Must identify to the Contractor, as a condition of using this Contract and during the Second Tier Solicitation/Direct Engagement process, whether Federal funds will be utilized for the Project.

Authorized Users Must review and ensure they are in compliance with the requirements for the use of Federal Funds, including, but not limited to, any procurement-related requirements.

**5.11 FEDERAL FUNDING TERMS AND CONDITIONS FOR PROCUREMENTS:** Prior to issuing a Second Tier Competition or entering into a Direct Engagement, AUs should review the following general information bulletin:

<https://ogs.ny.gov/news/cl-876>

The AU May incorporate the provisions outlined in the bulletin into their Second Tier Competition or Direct Engagement and the resulting Authorized User Agreement.

**5.12 DISTRIBUTORS:** Certain Contractors under This Award obtain Equipment listed on their NYS Net Pricing from Distributors. A Distributor Must not sell or provide Equipment directly to Authorized Users but instead Must sell Equipment directly to the Contractor. The Authorized User Must purchase the Equipment directly from the Contractor.

**MWBE & SDVOB DISTRIBUTORS:** To aid AUs and Contractors, OGS has published additional tabs in the Product Line & Systems Matrix that indicate:<sup>13</sup>

- The Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), and/or Service-Disabled Veteran-Owned Business (SDVOB) Distributors which have been approved as part of the prime Contractor's MWBE and/or SDVOB Utilization Plans
- The Product Lines that those approved MBE, WBE, and SDVOB Distributors have guaranteed to the Prime Contractor. Only the Product Lines specifically indicated for that Contractor on the Distributor Utilization tabs meet the conditions for obtaining MWBE or SDVOB Utilization credits under Award 23150

State Agencies, State Authorities, and (if applicable) AUs awarded grants with MWBE & SDVOB Utilization goals or requirements May obtain MWBE or SDVOB Utilization credits if the three following criteria are met:

- 1) All Equipment Must be sold directly by the Contractor to the State Agency, State Authority, or other AU
- 2) The Contractor Must source the Equipment directly from the Distributor

**AND**

- 3) The Contractor Must indicate on their proposal that any Equipment to be sourced through an MWBE or SDVOB Distributor will be identifiable to the AU for tracking/reporting purposes

**5.13 SOURCING OF EQUIPMENT:** For each Product Line(s) offered on Contract where the Contractor is not the Manufacturer of the Product Line(s), the Contractor Must directly source (obtain) all Equipment contained in this Product Line(s) from either:

- 1) The Manufacturer of the Product Line(s) who executed either *Attachment 11 – Lot 1 Manufacturer's Certificate* (for Contractors awarded Lot 1), or *Attachment 13 – Lot 2 Manufacturer's Guarantee* (for Contractors awarded Lot 2)

**AND/OR**

- 2) The Distributor(s) that Executed either *Attachment 12 – Lot 1 Distributor's Certificate* (for Contractors awarded Lot 1), or *Attachment 14 - Lot 2 Distributor's Guarantee* (for Contractors awarded Lot 2) that lists the Product Line(s)

<sup>13</sup> The matrix can be found at [https://online.ogs.ny.gov/purchase/snt/awardnotes/7720123150\\_Matrix.xlsx](https://online.ogs.ny.gov/purchase/snt/awardnotes/7720123150_Matrix.xlsx).

**5.14 VISITOR MANAGEMENT SYSTEMS:** A “Visitor Management System” may only be acquired and Installed, Integrated, or Maintained by an AU under Award 23150 if it is the same as an Electronic Identification System.

To determine if a Visitor Management System is the same as an Electronic Identification System, AUs Must verify the following:

- 1) The Visitor Management System Must be composed of ID Card scanners, ID Card printers (e.g., thermal printers), ID Card readers, etc.
- 2) The Visitor Management System Must either:
  - (A) Be Integrated with the Physical Access Control System such that The Visitor Management System automatically and electronically transfer, receive, communicate, etc. data as one Information Technology

**AND**

- (B) Generate identification documents that allow the Facility Affixed Access Control System to grant by having the Facility automatically and electronically analyze the data

**OR**

- (C) Be used to assist in tracking the location of patients within a healthcare Facility or in the event of an evacuation due to a natural disaster so as to ensure the patient’s health and safety.

AUs Must include these determinations in their procurement record.

**5.15 DETENTION EQUIPMENT:**

The definition of Technology<sup>14</sup> in NYS Finance Law is not met by detention equipment, such as the control consoles and most gates, that:

- 1) Are only motor controlled
- 2) Do not contain microprocessor controls that are factory-installed

**AND**

- 3) Do not receive, store, transmit, etc. data

Therefore, this type of equipment cannot be procured under Award 23150. AUs Must not procure Services (Installation, Integration, and Maintenance, etc.) of such detention equipment on Contracts under This Award.

**5.16 FENCING & PERMANENT FACILITY PERIMETER FENCING SYSTEMS:**

AUs May only acquire fencing (including fence posts) that is part of a Permanent Facility Perimeter Fencing System and the related Services on Centralized Contracts under Award 23150. To determine if fencing is part of a Permanent Facility Perimeter Fencing System, AUs Must verify the following:

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<sup>14</sup> See State Finance Law §160 *Definitions* for the definition of Technology at the following link: <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>:

- 1) The fencing includes Integrated electronic monitoring devices that are permanently installed and detect intrusion, motion, etc.
- 2) The electronic monitoring Equipment Installed on the fencing and fence poles is integrated with and transmits/communicates data to:
  - A) The Physical Access Control System

**AND/OR**

- B) The CCTV/Surveillance Camera System
- 3) The fencing and Installed Integrated Electronic equipment are being used to create a permanent, secure perimeter/boundary to prevent unauthorized access or leaving of a Facility

**AND**

- 4) The Contractor's NYS Net Pricing Pages published on the OGS website includes the following:
  - A) Fencing Equipment
  - B) An appropriate Product Line(s) (e.g., Senstar)

Standalone fencing that does not contain any electronic monitoring components (e.g., standalone chain link fence) does not fall within the scope of Award 23150 and Must not be purchased, Installed, Integrated, and/or Maintained under This Award.

AUs Must include this information and their determinations in their Procurement Record.

**5.17 ALLOWABLE GATE OPERATOR AND GATE EQUIPMENT FOR SECURE FACILITIES AND PUBLIC SAFETY FACILITIES:** Where an AU is adding a gate operator and gate Equipment as part of the Physical Access Control System at a Secure Facility or Public Safety Facility, the gate operator and gate Equipment Must meet all of the following:

- 1) The gate operator and gate Equipment Must be manufactured by the same Manufacturer
- 2) The gate operator Equipment Must:
  - A) Be certified by Underwriter's Laboratory (UL) as meeting UL Standard 325<sup>15</sup>
  - B) Contain and be controlled by a microprocessor that is factory-installed
  - C) Require technical, professional, and scientific skill to Program, Integrate, Start-Up, Commission, etc.
  - D) Be part of the Physical Access Control System

**AND**

- 3) If being used as part of a Parking Access Control System to allow the entrance and exit of vehicles in addition to being part of the Physical Access Control System, the gate operator Equipment Must:

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<sup>15</sup>Please see the following link for details: <https://standardscatalog.ul.com/ProductDetail.aspx?productId=UL325>.

- A) Make a judgment as to the appropriateness of granting access to an individual
- B) Use ID cards, badges, license plate recognition, RFID tags, etc. to grant entry/exit to/from a Facility

**5.18 CRANE RENTAL:** As part of the Installation, Integration, and/or Maintenance of Equipment that falls within the scope of This Award, Contractors awarded under Lot 2 May use crane rentals to rig, hoist, etc. Equipment. An AU Must comply with the following procedure in order to obtain a crane rental, in addition to all other applicable requirements of this Contract and any other Building Code, ordinance, local procurement law, rule, or regulation, etc.:

- 1) The AU Must determine and document that the Equipment to be rigged, hoisted, etc. falls within the scope of Award 23150
- 2) For Equipment that falls within the scope of Award 23150, in accordance with §3, *Method of Contractor Selection* of this document, the AU Must determine whether it is required to conduct a Second Tier Competition or if it May Work Directly with a Contractor
- 3) As part of either a Second Tier Competition or Direct Engagement, the AU Must state in the initial solicitation document that it requires rigging, hosting, etc. of Equipment as part of the resulting Authorized User Agreement, including all of the following:
  - A) The proposed date, time, location, etc. of where the crane rental will be utilized
  - B) The type of Equipment to be removed, rigged, hoisted, etc.
  - C) Information regarding the Authority Having Jurisdiction Fees, permits, etc.
  - D) Any other information related to the crane rental
- 4) In addition to the pricing of the Equipment and Services (Installation, Integration or Maintenance), the Contractor Must provide all of the following itemized pricing information to the AU for the crane rental and related services and fees:
  - A) For the crane rental:
    - (1) Project rental equipment description (size, type, etc.) for each item of crane rental
    - (2) NYS Hourly Rental Net Pricing of each crane rental
    - (3) The Authorized User Percent (%) Discount for each item of crane rental
    - (4) The Authorized User NYS Hourly Rental Net Pricing for each item of crane rental
    - (5) Number of hours each crane rental item will be utilized
    - (6) Total Equipment cost for each item of Equipment (by Equipment Model #), which Must be computed by multiplying the Authorized User NYS Net Price by the number (#) of each item of Equipment to be purchased, repaired, replaced, or otherwise maintained
    - (7) The total Equipment cost, which Must be computed by adding the sum of the Total Equipment cost for each item of Equipment (by Equipment Model #)

- B) For related services provided by the Operating Engineer, Ironworker, and Teamster Job Titles, as applicable:
- (1) The Job Title to be Used
  - (2) Description of Duties of the Job Titles from the Centralized Contract
  - (3) Prevailing Wage Occupation Subcategory
  - (4) The Prevailing Wage Rate
  - (5) The Supplemental Benefit
  - (6) The Contractually-Approved Percent (%) Markup Over the Prevailing Wage Rate and Supplemental Benefit for the Job Title
  - (7) The Total Hourly Rate for the Job Title
  - (8) The Authorized User Percent (%) Markup
  - (9) The Authorized User Total Hourly Rates
  - (10) The number of hours Worked/Service, or proposed to be Worked/Service, for each Job Title
  - (11) The total cost per Job Title, which Must be computed by multiplying each of the Authorized User Total Hourly Rates by the corresponding number of hours Worked/Service or proposed to be Worked/Service for each Job Title
  - (12) The total cost of Service, that Must be computed by adding the sum of all the total costs for each Job Title
- C) Where the Contractor and/or Subcontractor Must obtain a permit or other code compliance documentation from the AHJ, these Authority Having Jurisdiction Fees Must be separately proposed and invoiced and in accordance with §8.13 of this document
- D) For Work that requires a subcontractor, the Contractor and any Subcontractor Must comply with the provisions of §8.12 *Subcontractor Authorized User Total Hourly Rates and Subcontractor Percent (%) Markup* related to Subcontractor quotes and Subcontractor Markups
- 5) Prior to award and issuance of an Authorized user Agreement, the AU Must:
- A) Verify that all Equipment, Services (Installation, Integration, and Maintenance), crane rental, etc. are listed in the Contractor's NYS Net Pricing Pages on the OGS website (which includes, but is not limited to, the Operation Engineer, Ironworker, and Teamster Job Titles, where applicable)
  - B) For Direct Engagements, perform all other required reviews, make any necessary determinations, and document these in their procurement record
- 6) The AU Must verify that the Contractor has not proposed or charged an Authorized User Crane Overtime Rental Net Price for crane rental, except where an AU either:

- A) Changes the scope of work in the Authorized User Agreement with less than five (5) days' notice to the Contractor, which results in the crane rental being used for more hours than originally specified in the Authorized User Agreement

**OR**

- B) Requests a Contractor to whom it has not issued an Authorized User Agreement to perform Services with less than ten (10) days' notice resulting in more than 8 hours of crane rental per day worked

Please note that this does not affect the payment of the Prevailing Wage Rates and Supplemental Benefits.

**AND**

- 7) AUs Must not agree to any additional charges, as the NYS Hourly Rental Net Price includes all of the following costs:
  - A) Bringing the rental equipment to the site where the work is performed and returning the crane rental equipment to the Subcontractor once the work is complete
  - B) Storing the crane rental equipment
  - C) Fuel and fuel tax
  - D) Any vehicle inspection, maintenance, repair, replacement of parts or tires, recall, etc.
  - E) All applicable insurance
  - F) Vehicle depreciation
  - G) All other taxes including, but not limited to tools, mileage, excise/sales, etc.
  - H) Scheduling, routing, and other back-office administration of the Subcontractor providing the crane rental equipment
  - I) Overhead such as licensing, registration, etc.
  - J) Profit
  - K) Any other cost associated with renting the crane rental equipment, except for:
    - (1) The Labor covered by the Crane Operator, Ironworker, and Teamster Job Title (where applicable) along with the corresponding Authorized User Total Hourly Rates, etc.
    - (2) Where applicable, The Subcontractor Percent (%) Markup over the Authorized User NYS Hourly Rental Net Price (or where allowed the Authorized User NYS Hourly Overtime Rental Net Price and Crane Operator, Ironworker, and Teamster Authorized User Total Hourly Rate
    - (3) Any Authority Having Jurisdiction Fees

The Contractor **Must not** propose overtime rates for crane rental. (This does not affect the payment of the Prevailing Wage Rates and Supplemental Benefits).

The AU is entirely responsible for complying with the provision of this section and for ensuring they have received all required approvals, permits, etc.

Regardless of whether the AU conducts a Second Tier Competition or Works Directly with a Contractor, the AU Must not acquire crane rentals and any related services as a standalone offering but as part of providing Equipment, Systems, and Solutions that fall within the scope of This Award.

**5.19 PROHIBITED REQUIREMENTS:** The Contractor is not responsible for the Equipment that an AU obtains under a different contract, or for Services performed by another Contractor or the employees of the AU, when an AU elects to either:

- 1) Only have a Contractor furnish some or all Equipment and not perform any Services for a particular project

**OR**

- 2) Only have a Contractor perform Integration as part of a project to Provide a System (See §3.1 Second Tier Competition of this document for the definition of “Provide a System”)

**OR**

- 3) Only have a Contractor furnish some or all Equipment and perform Integration as part of a project to Provide a System (See §3.1 Second Tier Competition of this document for the definition of “Provide a System”)

**OR**

- 4) Only have a Contractor perform some or all scheduled repairs or replacements and/or Remedial Maintenance Services as part of a project or to perform Maintenance of Equipment or a System (provided that all Equipment is listed on the Contractor’s OGS Approved Pricing Pages)

**OR**

- 5) Only have a Contractor:

- A) Furnish some or all Equipment

**AND**

- B) Perform some or all scheduled repairs or replacements and/or Remedial Maintenance Services as part of a project or to perform Maintenance of Equipment or a System (provided that all Equipment is listed on the Contractor’s OGS Approved Pricing Pages)

An AU Must not, as part of an Authorized User Agreement, require a Contractor to assume responsibility for any Equipment the AU obtained from a different contractor or the Services performed by another Contractor or the employees of the AU.

## **6. PERMITTING, CODE COMPLIANCE, AND PROFESSIONAL LICENSING**

**6.1 UNIFORM CODE COMPLIANCE:** Some Work under This Award may be subject to the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”).

*State Agencies and State Authorities:* If the AU is a State Agency or State Authority, the AU will work with a Uniform Code Permitting Agency as designated by the NYS Department of State in accordance with [19 NYCRR § 1204.3e](#) and [19 NYCRR § 1204.16](#).<sup>16</sup> The Permitting Agency shall provide all Uniform Code Services, including the issuance of all Permits and Certificates, inspections, and reporting. For each project, the AU is responsible for fulfilling the following steps:

- Informing the Permitting Agency of the proposed project and determining if:
  - The work is considered either Installation/Integration or Maintenance
  - The work is subject to Permitting Agency oversight (e.g., Maintenance projects generally do not require Permitting Agency oversight; Livescan Store and Forwarding Systems May not require a Permit and therefor may not need to be reviewed by a Permitting Agency; etc.)
- Determining which entity (i.e., AU or Permitting Agency) should have custody of all approved plans and specifications
- Identifying legal authority for System Installation/Integration (e.g., Installation Work is regulated by statute and not all AUs are authorized to perform such work)
- Ensuring payment in accordance with all applicable NYS Department of Labor Prevailing Wage Rates and Supplemental Benefits under Article 8 of the NYS Labor Law
- Obtaining a Permit from the Permitting Authority prior to commencing Work
  - If the project is taking place in a Facility that falls under the Custody of OGS, the AU should also obtain project approval from the Building Manager
    - If an AU is only obtaining Equipment from a Contractor under This Award (i.e., the AU is not obtaining Work/Services under This Award), the AU Must submit either a Tenant Alteration Request (TAR) or a Work Order and obtain approval before proceeding<sup>17</sup>
- Obtaining a Code Compliance Certificate once Work has been completed
- Ensuring that plans and specifications are certified and stamped by a NYS Registered Architect or Licensed Professional Engineer

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<sup>16</sup> Under 19 NYCRR § 1204.3(e), the following state entities may act as a Permitting Agency: the Department of Environmental Conservation; the Department of State; the Office of General Services; the Office of Mental Health; the Office of Mental Retardation and Developmental Disabilities; the Office of Parks, Recreation and Historic Preservation; the Facilities Development Corporation; the Urban Development Corporation; the State University of New York; the State University Construction Fund; the Dormitory Authority of the State of New York; the New York Power Authority; the New York State Thruway Authority; and any other state agency so designated by the Secretary.

<sup>17</sup> Additional information on TARs and Work Orders can be found using the following link: <https://ogs.ny.gov/real-estate/tenant-representatives>.

In addition, if the AU wishes to obtain a Design Build Solution, it Must review the Design Build Automation section of this document and determine if it has Design Build Automation and that all requirements have been met.

***Other AUs (Not State Agencies or State Authorities):*** If the AU is not a State Agency or Authority, the AU will work with the Authority Having Jurisdiction (“AHJ”) on matters related to Uniform Code permitting and compliance, including the issuance of a Permit for any Installation/Integration that requires one, per NYS Building Codes. The AHJ can be identified in 19 NYCRR § 1202.2, 19 NYCRR § 1203.2, and 19 NYCRR § 1203.3 and shall provide all Uniform Code Services, including the issuances of all Permits and Certificates, inspections, and reporting. For each project, the AU is responsible for fulfilling the following steps:

- Informing the AHJ of the proposed project and determining if:
  - The work is considered either Installation/Integration or Maintenance
  - The work is subject to AHJ oversight (e.g., Maintenance projects generally do not require AHJ oversight; Livescan Store and Forwarding Systems May not require a Permit and therefor may not need to be reviewed by an AHJ; etc.)
- Determining which entity (i.e., AU or AHJ) should have custody of all approved plans and specifications
- Identifying legal authority for System Installation/Integration (e.g., Installation Work is regulated by statute and not all AUs are authorized to perform such work)
- Ensuring payment in accordance with all applicable NYS Department of Labor Prevailing Wage Rates and Supplemental Benefits under Article 8 of the NYS Labor Law
- Obtaining a Permit from the AHJ prior to commencing Work
  - If the project is taking place in a Facility that falls under the Custody of OGS, the AU Must also obtain project approval from the Facility Manager
    - If an AU is only obtaining Equipment from a Contractor under This Award (i.e., the AU is not obtaining Work/Services under This Award), the AU Must submit either a Tenant Alteration Request (TAR) or a Work Order and obtain approval before proceeding<sup>17</sup>
- Obtaining a Code Compliance Certificate once work has been completed
- Ensuring that plans and specifications are certified and stamped by a NYS Registered Architect or Licensed Professional Engineer

***OGS Facility Process:*** Any AU located in Facilities under the Custody of OGS that meet the following criteria Must submit either a Tenant Alteration Request (TAR) or a Work Order<sup>17</sup> and not proceed until receiving approval:

A) Only obtaining Equipment from a Contractor under This Award

**AND**

B) Obtaining work/services outside of This Award

**6.2 DESIGN BUILD/DESIGN BUILD AUTHORIZATION:** If an AU wishes to obtain a Design Build Solution, it Must determine if it has Design Build Authorization. This determination and all supporting documentation Must be included in the AU's Procurement Record.

In the Event that an AU determines it has Design Build Authorization, it Must comply with the following procedures to obtain a Design Build Solution:

- 1) The AU Must have in its employ or under contract a Registered Architect or Professional Engineer with professional competence appropriate to the project
  - This Registered Architect or Professional Engineer Must (i) advise the AU regarding the use of Design Build for the project and (ii) assist the AU with the preparation of either a Second Tier Competition or Direct Engagement and the evaluation of such proposals
- 2) The AU Must ensure the preparation of a preliminary Scope of Work and specifications/design document by the Registered Architect or Professional Engineer employed by or under contract with the AU for this project
- 3) The AU Must determine if it is required to conduct a Second Tier Competition or May Work Directly With a Contractor
  - A) Where the AU Must conduct a Second Tier Solicitation, the AU Must:
    - (1) Conduct either:
      - (a) A Qualification-Based Selection among the Contractors offering the System or Product Line(s)
      - OR**
      - (b) A Best Value Selection among the Contractors offering the System or Product Lines
      - OR**
      - (c) A Two-Step Selection process that includes:
        - (i) Issuing a Minimum Qualification Document to Contractors offering the System or Product Lines
        - AND**
        - (ii) Conducting a Best Value Selection among the Contractors who pass a Mandatory minimum qualification review
    - (2) Include a method of award<sup>5</sup> for any of the aforementioned selection methods, as well as finalizing and date stamping an evaluation tool prior to the receipt of proposals from Contractors
    - AND**
    - (3) Not select a Contractor for a Design Build Solution on the basis of lowest price

- B) Where the AU is not required to conduct a Second Tier Competition but instead May Work Directly With a Contractor, the AU Must require the Contractor to provide a Design Build Solution
- 4) In accordance with NYS State Finance Law § 163, the AU May include the following factors in any Qualification-Based Selection or Best Value Selection:
- A) The quality of the Contractor's performance on previous projects
  - B) The timeliness of the Contractor's performance on previous projects
  - C) The level of customer satisfaction with the Contractor's performance on previous projects
  - D) The Contractor's record of performing previous projects on budget and ability to minimize cost overruns
  - E) The Contractor's ability to limit change orders
  - F) The Contractor's ability to prepare appropriate project plans
  - G) The Contractor's technical capacities
  - H) The individual qualifications of the Contractor's key personnel
  - I) The Contractor's ability to assess and manage risk and minimize risk impact
  - J) The Contractor's financial capability
  - K) The Contractor's ability to comply with applicable requirements, including the provisions of Articles 145, 147 and 148 of the Education Law
  - L) The Contractor's past record of compliance with federal, state and local laws, rules, and licensing requirements, where applicable
  - M) The Contractor's past record of compliance with existing Statutes and executive orders, including but not limited to compliance with the Labor Law and other applicable labor and prevailing wage laws, Article 15-A of the Executive Law, and any other applicable laws concerning MWBE participation
  - N) The Contractor's record of complying with existing labor standards, maintaining harmonious labor relations, and protecting the health and safety of workers and payment of wages above any locally-defined living wage
  - O) A Quantitative Factor<sup>6</sup> for NYS SBEs, MWBEs, and SDVOBs
- 5) The AU Must ensure that Any Subcontractor Performing Professional Design Services for a Design Build Solution meets all of the following five criteria:
- A) Is licensed or registered as required by NYS law, codes, rules, or regulations to practice the profession,
  - B) Possesses all Professional Liability/Errors & Omissions insurance required by *Attachment 4 – Contract Insurance Requirements*,

- C) Meets all AU criteria,
- D) Is not under contract to the AU to provide Professional Design Services, and
- E) Will not perform any Professional Design Services for Equipment/Systems which do not fall within the scope of This Award

**Please note:** A Contractor retaining an “expediter” firm as a subcontractor in New York City is considered a Design Build Solution, and the AU Must comply with the provisions of this section.

**6.3 CERTIFIED TECHNICIAN REQUIREMENT:** Contractors Must use Certified Technicians to perform all Services, as applicable. If obtaining Installation, Integration, or Maintenance, AUs May require the Contractor to provide a list of Certified Technicians who will be performing Work, along with each individual technician’s qualifications. These qualifications should include, but are not limited to:

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

AUs conducting Second Tier Competitions May use this information for ranking purposes when the basis of award will be either Best Value or Qualification-Based Selection.

**6.4 NYS FIRE ALARM SECURITY SYSTEM INSTALLER LICENSE:** [Section 69-M of the General Business Law](#) and 19 NYCRR §195.27 provide that any person (as defined in the same) engaging in the business of Installing, Servicing or Maintaining Security or Fire Alarm Systems Must be licensed to do so.

Additionally, any proposed Subcontractor that will be engaging in the business of Installing, Servicing or Maintaining Security or Fire Alarm Systems Must also be licensed to do so. AUs Must document that the Subcontractor is licensed and maintain this documentation as part of their Procurement Record.

**6.5 ADDITIONAL LANGUAGE INCORPORATED INTO ALL CONTRACTS AWARDED UNDER LOT 2:** The Contractor Must not perform Installation/Integration in Facilities without consulting with the relevant Permitting Agency/Authority Having Jurisdiction to determine if a building Permit is required.

Any Contractor that performs Installation/Integration without such consultation May be denied payment in whole or in part. AUs Must not, as part of any Authorized User Agreement, agree to alter, amend, waive, diminish, or impair these provisions. In addition, the Contractor Must confirm that any Installations or Integrations are authorized by the Facility owner, and not just a Facility occupant.

**7. MAINTENANCE**

**7.1 GENERAL:** All Contractors awarded under Lot 2 have established Not-to-Exceed Pricing for Maintenance in their Contract, and this includes two distinct types of Maintenance: Preventative Maintenance and Remedial Maintenance (see *Attachment 15 – Glossary of Terms* for definitions). Table 6 includes some examples of each type of Maintenance.

**Table 5 - Examples of Preventative and Remedial Maintenance**

Preventative Maintenance	Remedial Maintenance
<ul style="list-style-type: none"> <li>• Testing</li> <li>• Inspecting</li> <li>• Cleaning</li> <li>• Re-calibration</li> <li>• Software updates/patches</li> <li>• Scheduled repairs/replacements</li> </ul>	<ul style="list-style-type: none"> <li>• Unanticipated/unscheduled repairs of previously Installed/Integrated/Accepted Equipment/Systems due to Malfunction</li> <li>• Unanticipated/unscheduled replacement of previously Installed/Integrated/Accepted Equipment/Systems due to Malfunction</li> </ul>

Maintenance May be acquired in one of four ways:

- 1) On a Time and Material (T&M) basis only
- 2) On a combination of monthly basis (including monthly in arrears) for the Materials and a time basis for the Labor
- 3) On a monthly basis (including monthly in arrears) for both the Materials and Labor
- 4) On a prepaid annual basis

Contractors are obligated to meet several requirements with respect to Maintenance, including:

- A) All Equipment the Contractor maintains Must be listed on the Contractor’s NYS Net Pricing Pages published on the OGS Website<sup>2</sup>
- B) The Contractor Must not use the Services on their Contract to maintain Equipment which is not on their Centralized Contract NYS Net Pricing Pages published on the OGS Website<sup>2</sup>
- C) The Contractor Must not charge more than the Not-To-Exceed Pricing for Equipment and Services on their Contract<sup>2</sup>
- D) For all Maintenance Agreements, the Contractor Must provide the following to the AU as part of their response to the Second Tier Competition or Direct Engagement:
  - (1) Job Titles to be utilized
  - (2) Description of Duties of the Job Titles from the Centralized Contract
  - (3) Prevailing Wage Occupation Subcategory
  - (4) For Job Titles Included in an NYS DOL Prevailing Wage Rate Schedule:
    - (A) Prevailing Wage Rates
    - (B) Supplemental Benefits

NOTE: Use the Overtime Hourly Pay Rates, After Business Hours Hourly Pay Rates, Saturday Hourly Pay Rates, and Sunday and State Holiday Hourly Pay Rates where applicable

- (5) Total Hourly Rates on Contract
- (6) Either:
  - (A) The Authorized User Percent (%) Markup for Job Titles Included in an NYS DOL Prevailing Wage Rate Schedule
- OR**
- (B) The Authorized User Percent (%) Discount for Job Titles Not Included in an NYS DOL Prevailing Wage Rate Schedule
- (7) Authorized User Total Hourly Rates to be charged
- (8) Number of hours Worked/Serviced or proposed to be Worked/Serviced for each Job Title
- (9) The total cost per Job Title, which Must be computed by multiplying each of the Authorized User Total Hourly Rates by the corresponding number of hours Worked/Serviced or proposed to be Worked/Serviced for each Job Title
- (10) The total cost of Service, that Must be computed by adding the sum of all the total costs for each Job Title
- (11) NYS Net Pricing of Equipment on Contract (for each different Equipment/Model #)
- (12) The Authorized User Percent (%) Discount for each item of Equipment
- (13) The Authorized User NYS Net Price for each Equipment to be charged
- (14) Number of each item of Equipment to be purchased, repaired, replaced, or otherwise maintained
- (15) Total Equipment cost for each item of Equipment (by Equipment Model #), which Must be computed by multiplying the Authorized User NYS Net Price by the (#) of each item of Equipment to be purchased, repaired, replaced, or otherwise maintained
- (16) The total Equipment cost, which Must be computed by adding the sum of the Total Equipment cost for each item of Equipment (by Equipment Model #)
- (17) Frequency of Maintenance activity (e.g., semi-annually, monthly, weekly, etc.)
- (18) Number of locations, if applicable (i.e., if the scope of Work includes multiple sites)

The Contractor Must provide the AU with all of the aforementioned information for **both** Preventative and Remedial Maintenance, even if the AU only requires the Contractor to provide Preventative Maintenance and/or Remedial Maintenance on a Time and Materials Basis.

Where the AU enters into a multi-year Maintenance Agreement, the Contractor Must not propose any increase in the Pricing to the AU. The AU Must insert the following statement into the Authorized User Agreement:

“Pricing for (insert year # and time period) will be computed in accordance with the provisions of PT (Insert Contractor’s Contract #).”

During the first year of the Maintenance Agreement, or any subsequent year, the Contractor May only request updates to the Authorized User Agreement Pricing in accordance with Solicitation 23150 and the “Authorized User Agreement Pricing Updates” section of this document.

If an AU elects to purchase any System or Equipment, along with the Installation and Integration for the System or Equipment, from a Contractor using the Contractor’s Contract under This Award, all required

Remedial Maintenance and scheduled repairs and replacements Must be provided by the Contractor under the warranty provisions during the first year subsequent to Acceptance of the Equipment/System (see § 6.45 *Appendix B Revisions*).

The AU Shall not be required to purchase Maintenance for use of Equipment/Systems, and May discontinue Maintenance at the end of any current Maintenance Agreement term by giving the Contractor written notice of the discontinuation at least 30 calendar days prior to the expiration date/end date of the Maintenance Agreement term end. In addition, AUs May request a reinstatement of a previously cancelled Maintenance Agreement at any time. However, the Contractor reserves the right to conduct a reinstatement inspection and may refuse to maintain the System or any Equipment in whole or in part.

Some additional information that AUs should note regarding warranties is outlined below.

- During the warranty period, Preventative Maintenance (excluding scheduled repairs/replacement of Equipment) Shall be acquired by the AU through a Maintenance Agreement
- Following the warranty period, AUs will have the option to continue Preventative and Remedial Maintenance under a Maintenance Agreement unless the AU, upon notice to the Contractor, discontinues coverage
- Where the AU elects to enter into a Maintenance Agreement after the warranty period, Maintenance Must be provided for all acquired Equipment, including moves, additions, and changes that take place after System Acceptance
- If the AU declines to continue Preventative and Remedial Maintenance following the warranty period, then the Contractor is no longer responsible for any Maintenance on this particular AU's Equipment/System
- During the Warranty Period required by Appendix B, for Warranties where a Contractor has provided Equipment, Installation, Integration, and (if applicable) any repairs/replacements for an AU, the provisions of the Remedial Maintenance Response Requirements section of this document Shall be deemed part of the Warranty and Shall incur no additional cost to the AU

**7.2 LEGACY MAINTENANCE/SUPPORT:** If a Contractor offers Legacy Maintenance/support options, they Must be included in *Attachment 1 – NYS Net Pricing Pages* posted on the OGS website. The Contractor May offer legacy Maintenance/support Services on obsolete Equipment, or Equipment that is at the end of its useful life, that is not being offered for Purchase, Installation, and Integration under its Contract, provided that the Equipment fits within the scope of the Contract. A description of each type of Legacy Maintenance/support option shall be provided in Contractor's *Attachment 1 – NYS Net Pricing Pages*.

**Note: Any item of Equipment that Contractor proposes to perform Maintenance on, including Obsolete Equipment or Equipment that has reached the end of its useful life Must be listed on the Contractor's NYS Net Pricing Pages on the OGS Website.**

**7.3 SPARE INVENTORY OF CRITICAL EQUIPMENT:** An AU May require a Contractor to keep a spare Equipment inventory of Critical Equipment at the AU's Maintenance Location at no additional cost to the AU. The AU assumes no responsibility or liability for loss of any Equipment inventory where the AU provides the Contractor with storage space on the premises of the AU. The Contractor Shall agree to administer such inventory at their own risk regardless of where it is stored and at no extra cost to the AU.

**7.4 REMEDIAL MAINTENANCE RESPONSE REQUIREMENTS:** Whenever an AU enters into any Maintenance Agreement with a Contractor under This Award, the Contractor automatically becomes

responsible for the performance of Remedial Maintenance. AUs Must not waive the Remedial Maintenance and Remedial Maintenance Response Requirements listed in this section.

Whether the AU elects to subscribe to monthly Maintenance, prepaid annual Maintenance, or Maintenance on a T&M basis, Remedial Maintenance Must be performed after the AU notifies the Contractor that the Equipment/System is inoperable or unsuitable for operation. The Contractor will be responsible for ensuring that Service for each Remedial Maintenance request is provided in accordance with the following:

- 1) **Priority Emergency Service** – A “Priority Emergency” is a situation involving a major Malfunction of the Intelligent Facility and Security System Equipment or System, involving the inability of ten percent (10%) or more of the Equipment or ten percent (10%) or more of the System to operate Problem Free. The Contractor Must Respond to Priority Emergencies within two (2) continuous hours following notification of a major Malfunction by the AU. AUs reserve the right to require a more stringent definition of a Priority Emergency at time of purchase.
- 2) **Emergency Service** – An “Emergency” is a situation involving a “critical” System Malfunction in the opinion of the AU. The Contractor Must Respond in Emergencies within four (4) continuous hours after the AU notifies the Contractor of the Emergency.
- 3) **Non-Emergency Service** – A “Non-Emergency” is a situation involving a System Malfunction of a scope less than that described for an Emergency. The Contractor Must Respond to Non-Emergencies within six (6) continuous hours after the AU notifies the Contractor of the Malfunction.

The Response requirements **include Travel Time and Site Access Time**. Remedial Maintenance Must be available 24 hours per day, 7 days per week, including New York State legal holidays. Contractors Must provide a local telephone number for the AU at no additional cost to the AU. Contractors Must also provide a long-distance telephone number at no additional cost if the AU will need to make a long-distance phone call which would otherwise result in the AU incurring toll charges.

In the event that the Contractor does not meet the aforementioned Remedial Maintenance Response requirements, the AU Shall be entitled to a credit of ten percent (10%) of the monthly System Maintenance cost but not less than one hundred dollars (\$100.00) for every hour beyond the aforementioned Remedial Maintenance Response requirements. During the first year of warranty or T&M Maintenance conditions, any such credit Shall be levied against any Preventative Maintenance charges incurred by the AU with the Contractor, and thereafter against any future purchase, including but not limited to any Maintenance Agreement.

If the Contractor does not perform Maintenance in accordance with the Maintenance Agreement, the AU reserves the right to contract with another Maintenance provider. The difference in cost, if any, between the two will be borne by the Contractor issued the original Maintenance Agreement.

During the Product Warranty Period required by Appendix B, *Warranties* where a Contractor has provided Equipment, Installation, Integration, and (if applicable) any repairs/replacements for an AU, the provisions of this section Shall be deemed part of the Warranty at no cost to the AU.

**7.5 MAINTENANCE SERVICE SHEETS:** The Contractor Must furnish the AU with Maintenance Service sheets for both Preventative Maintenance and Remedial Maintenance that document all Maintenance activities and requests. The minimum information that Must be documented on each Maintenance Service sheet is outlined below.

- Preventative Maintenance sheets:
  - A) Date and time of arrival and departure

- B) Equipment/Systems tested, inspected, cleaned, etc.
  - C) Any scheduled repairs or replacements performed
  - D) Any deficiencies, Malfunctions, etc. identified
  - E) Date and time that all testing, inspection, cleaning, scheduled repairs and replacements, etc. activities were completed
  - F) Charges for Services and Equipment, if applicable (in accordance with the Authorized User Total Hourly Rate and Authorized User NYS Net Pricing)
- Remedial Maintenance sheets:
    - A) Date and time notified
    - B) Date and time of arrival and departure
    - C) Description of Malfunction reported
    - D) Diagnosis of Malfunction/failure and Work performed
    - E) Date and time Malfunction/failure was corrected
    - F) Charges for Services and Equipment, if applicable (in accordance with the Authorized User Total Hourly Rate and Authorized User NYS Net Pricing)
    - G) Name of technician(s) performing Maintenance on Equipment/System

A Maintenance Service sheet Must be supplied to the AU upon completion of Maintenance whenever it is performed on Equipment or the System.

## **8. PRICING AND PAYMENTS**

**8.1 CONTRACTOR PRICING COMPLIANCE:** Contractors Must itemize their proposals to reflect the same or better pricing than what appears on the OGS website,<sup>2</sup> and AUs Must review and verify the proposed pricing provided by the Contractor in order to confirm that it is complete and compliant with the requirements outlined in This Award. All pricing for Equipment and Services Must be on the Contractor's Net Pricing Pages listed on the OGS website. Contractors **Must not** charge more than the Not-To-Exceed Pricing listed on the OGS website.

**8.2 AUTHORIZED USER PRICING COMPLIANCE:** AUs Must reject any Authorized User Agreement that contains Equipment, Systems, or Services that are not listed on the Contractor's NYS Net Pricing Pages published on the OGS Website.<sup>2</sup>

**8.3 PREVAILING WAGE:** This Award is subject to the Prevailing Wage Rate provisions of New York State Labor Law. Please See Appendix B, *Prevailing Wage Rates – Public Works and Building Services Contracts* for details. Any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any Occupational Safety and Health Administration (OSHA) violation deemed “serious or willful” may be grounds for a determination of vendor non-responsibility, a rejection of a Contractor's response to an AU (e.g., a second-tier competition response), and the suspension or termination of a Contract.

Contractors are reminded that the Percent (%) Markup that they bid/are awarded Must not be increased during the Term of the Contract. The Authorized User Total Hourly Rate for each AU engagement will be established in response to an Authorized User Agreement and will incorporate/reference the Prevailing Rate Case Number (PRC#) obtained by each requesting AU.

NYS DOL has made a determination that onsite Installation, Integration, and Maintenance of Equipment/Systems which are hardwired/affixed to Facilities has been classified as “Public Work.” This Work requires the payment of Prevailing Wage Rates and Supplemental Benefits. This also applies to all Work performed in New York City and is subject to the New York City Comptroller's determinations.

*Systems Exempt from Prevailing Wage Rates:* Currently, Livescan Store and Forwarding Systems are not hardwired/affixed to buildings. As such, the Job Titles for the Systems are not included in any NYS DOL Prevailing Wage Rate Schedule. If any other System is determined by NYS DOL not to be hardwired/affixed to buildings, and therefore that the Job Titles are not included in an NYS DOL Prevailing Wage Rate Schedule, then OGS will allow the Contractor to propose new job titles and total hourly rates for the applicable Systems. If NYS DOL determines that any other System is not hardwired/affixed, OGS will publish this determination in an updated version of this document.

*Job Titles Exempt from Prevailing Wage Rates:* At present, the Job Titles listed below do not involve onsite physical (e.g., hands-on) actions upon Equipment/Systems which are hardwired/affixed to Facilities; consequently, the Prevailing Wage Rates do not apply to the following:

- Project/Program Managers
- Livescan Store and Forward Technicians
- Designers
- CAD Specialists
- Offsite Integration and Maintenance Technicians
- Trainers
- Advanced Trainers

AUs Must obtain a separate Prevailing Rate Case Number (PRC#) for each purchase from This Award where Prevailing Wage Rates apply.<sup>18</sup> The PRC# provided in Solicitation 23150 is for information and evaluation purposes of the Centralized Contract only. When an AU submits the request for the applicable Prevailing Wages, the NYS DOL will send the AU an email with a link to the PRC information for the particular service agreement requested.

When the PRC# and Original Rate Schedule obtained by the AU, or the Written determination made by the Local NYS DOL Bureau of Public Works Office,<sup>19</sup> require an adjustment that conflicts with the NYS Net Pricing Pages (e.g., Shift Differential, Overtime/Premium Pay, Job Title Classification, etc.), the adjustment is binding upon the AU and the Contractor. The determination for adjustment shall supersede the information contained in the NYS Net Pricing Pages, provided that both of the following conditions are met:

- 1) The Contractor Must not perform work that does not fall within the scope of the Contract

**AND**

- 2) The Contractor Must not charge a higher Percent (%) Markup than the Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefits

The Job Titles, Descriptions of Duties, Prevailing Wage Rates, Supplemental Benefits, etc. are all starting points to allow for the award of Contracts and the establishment of Contractually-Approved Percent (%) Discount Structures Over the Prevailing Wage Rates and Supplemental Benefits by OGS. Whenever an AU requests their project/work-specific PRC Code, the AU Must review the PRC Code and the Original Rate Schedule issued to them, and/or consult with the applicable Local NYS DOL Bureau of Public Works Office, to verify that the following three requirements are met:

- 1) The Contractor is proposing the correct Prevailing Wage Rates and Supplemental Benefits for the Work to be performed on the project
- 2) The Job Title, Description of Duties, etc. proposed by the Contractor are appropriate and correct for the particular Work to be performed

**AND**

- 3) Any Overtime, Shift Differential, Saturday, Sunday, and State Holiday Pay rules applicable to the project/Work are correctly applied

Based on the aforementioned review, any Written determination issued by the Local NYS DOL Bureau of Public Works Office and any information in the PRC Code and Original Rate Schedule Shall be binding upon the AU and the Contractor. This determination will supersede the information contained in the Contractor's published NYS Net Pricing Pages, provided that no work Shall be performed which does not fit the scope of the Contract and the Contractor cannot charge a higher Percent (%) Markup than the Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefits.

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<sup>18</sup> For access to the NYS DOL PRC# request page, please copy and paste the following link into an internet browser address bar (as clicking the direct link does not open the page):  
<https://applications.labor.ny.gov/wpp/showPublicNewProject.do?method=showIt>

<sup>19</sup> Contact information for each Local NYS DOL Bureau of Public Work Office, along with a listing of the counties served by each office, can be accessed using the following link:  
<https://labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>

Please note that AUs are solely responsible for complying with the requirements of this section.

**8.4 PROCESS FOR A CONTRACTOR TO OBTAIN A WRITTEN DETERMINATION FROM NYS DOL:**

For a specific project, if a Contractor thinks that a Job Title and the associated Description of Duties and Prevailing Wage Occupational Subcategory in their NYS Net Pricing Pages on the OGS Website is not the correct classification for the performance of Services, the Contractor Must comply with the following procedure:

- 1) The Contractor Must submit a Written request to the local NYS DOL Bureau of Public Work<sup>20</sup>
- 2) The Written request Must contain, at a minimum, all of the following:
  - A) The scope of Work for the Project that the AU has requested the Contractor to perform
  - B) The specific portion of the scope of Work that the Contractor thinks **is not** appropriately classified
  - C) The Job Title that the Contract specifies the Contractor Must use to perform this Work. As part of this item, the Contractor Must provide all of the following information to the local NYS DOL Bureau of Public Works Office:
    - (1) The Job Title on the Contractor's NYS Net Pricing Pages on the OGS website
    - (2) The Description of Duties associated with the Job Title in the Contractor's NYS Net Pricing pages on the OGS Website
    - (3) The Prevailing Wage Occupational Subcategory associated with the Job Title and Description of Duties in the Contractor's NYS Net Pricing pages on the OGS Website
    - (4) *Attachment 15 – Glossary of Terms*
    - (5) *Attachment 1 – NYS Net Pricing Pages, Definitions*
  - D) The reason(s) the Contractor thinks that the work should be reclassified
  - E) The collective bargaining agreement(s) that the Contractor is using to support their request
  - F) The Job Title on the Contract that the Contractor thinks **is** the appropriate classification. The Contractor Must provide all of the following information to the local NYS DOL, Bureau of Public Works Office:
    - (1) The Job Title on the Contractor's NYS Net Pricing Pages on the OGS website
    - (2) The Description of Duties associated with the Job Title in the Contractor's NYS Net Pricing pages on the OGS Website
    - (3) Prevailing Wage Occupational Subcategory associated with the Job Title and Description of Duties in the Contractor's NYS Net Pricing pages on the OGS Website
    - (4) *Attachment 15 – Glossary of Terms*
    - (5) *Attachment 1 – NYS Net Pricing Pages, Definitions*

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<sup>20</sup> Contact information for NYS DOL Bureau of Public Work District offices can be found using the following link: <https://labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>.

- 3) Except where the local NYS DOL Bureau of Public Work Office issues a Written determination that requires a different Prevailing Wage Occupational Subcategory than the Job Title that the Contract specifies the Contractor Must use to perform this Work, the Contractor Must:
  - A) Pay its Employees at or above the Prevailing Wage Rate and Supplemental Benefits for this particular Job Title, Description of Duties, and Prevailing Wage Occupational Subcategory

**AND**

  - B) Where a Subcontractor is performing Work that falls within the Description of Duties for the same Job Title, cause and require its Subcontractor to pay its employees at or above the Prevailing Wage Rate and Supplemental Benefits for the Job Title, Description of Duties, and Prevailing Wage Occupational Subcategory that the Contract specifies the Contractor Must use to perform the particular type of Work
- 4) Where the Local NYS DOL Bureau of Public Work determines in writing (i.e., makes a Written determination) to re-classify the Work under a different Prevailing Wage Occupational Subcategory, the Contractor Must immediately notify the AU by providing all of the relevant documentation
- 5) If the Contractor notifies an AU of a reclassification as part of a Second Tier Competition, the AU Must either:
  - A) Issue an Addendum revising the Second Tier Competition, if prior to the Due Date of proposals

**OR**

  - B) Cancel the Second Tier Competition and re-bid the Work to reflect the Written determination of the local NYS DOL Bureau of Public Work Office, if subsequent to the Due Date of proposals

**8.5 ACTUAL TIME WORKED:** Contractors are not permitted to charge AUs for Travel Time or Site Access Time. Travel Costs and Site Access Costs are included in the Total Hourly Rates.

AUs are only permitted to charge Contractors for Actual Time Worked. AUs Must not use Actual Time Worked to deny or alter paying a Fixed Price/Lump Sum Agreement.

However, for any Direct Engagement where the Contractor is proposing a Fixed Price/Lump Sum, an AU May include a provision in their Authorized User Agreement stating that in no case May the Service/Labor quoted to the AU/included in the Authorized User Agreement be greater than (insert %) of actual Labor hours Worked by the Contractor, as evidenced by the Contractor's Certified Payroll.

**8.6 AUTHORIZED USER AGREEMENT PRICING UPDATES:** After the AU enters into an Authorized User Agreement, as defined in *Attachment 15 - Glossary of Terms*, the AU's NYS Net Pricing or Authorized User Total Hourly Rates Shall be increased only in accordance with the guidance set forth in this section. Please note that the guidance differs according to whether or not the Job Titles are included in a DOL Prevailing Wage Rate Schedule.

*Authorized User NYS Net Pricing:* Before a Contractor May propose a request to update the Authorized User NYS Net Pricing (and before the AU May approve such a request), OGS Must first have approved and published updated NYS Net Pricing Pages on the OGS Website in accordance with §6.5 of This Award and *Appendix C – Contract Modification Form and Procedures*. Additionally, the updated pages Must include updated NYS Net Pricing for the particular Equipment under the Authorized User Agreement

Once OGS approves and publishes the Contractor’s updated NYS Net Pricing Pages that include updated NYS Net Pricing for the particular Equipment under the Authorized User Agreement, the Contractor Must propose to the AU revised Authorized User NYS Net Pricing computed by multiplying the updated NYS Net Pricing by the Authorized User Percent (%) Discount

**Example** - The following provides an example of an update to AU NYS Net Pricing:

Original Maintenance Agreement Price					
Equipment/ Model #	List Price/ MSRP	Percent (%) Discount	NYS Net Pricing	Authorized User Percent (%) Discount	Authorized User NYS Net Pricing
Model17	\$2,500.00	20.00%	\$2,000.00	25.00%	\$1,500.00

Updated Maintenance Agreement Price					
Equipment/ Model #	List Price/ MSRP	Percent (%) Discount	NYS Net Pricing	Authorized User Percent (%) Discount	Authorized User NYS Net Pricing
Model17	\$3,000.00	20.00%	\$2,400.00	25.00%	\$1,900.00

In this situation, since the Manufacturer Suggested Retail Price (MSRP) increased by 20.00%, the NYS Net Pricing increased by 20.00%. The AU is receiving an additional 25.00% off of the NYS Net Pricing (meaning that 25.00% off the NYS Net Pricing is the Authorized User Percent (%) Discount, which is a Contractually-Approved Percent (%) Discount Structure From the List Price/MSRP) that **Must not** be reduced for the life of the Authorized User Agreement. Therefore, the Contractor **May** only increase the Authorized User NYS Net Pricing by the same 20.00% increase that the NYS Net Pricing was increased (as approved by OGS and published on the OGS website).

The AU May approve the Authorized User Agreement pricing update once the AU has determined that the Contractor:

- 1) Is only proposing to increase the Authorized User NYS Net Pricing by the same percentage as the NYS Net Pricing was increased on the Centralized Contract

**AND**

- 2) Is not proposing to reduce the Authorized User Percent (%) Discount

The AU Must maintain this documentation and approval in their Procurement Record. State Agencies that are customers of the BSC Must provide this information to the BSC when requesting revisions to the Purchase Order(s).

Authorized User Total Hourly Rates for Job Titles Included in a DOL Prevailing Wage Rate Schedule: For this type of update, one of the following situations Must occur before the Contractor May propose (and before the AU May approve) a request to update the Authorized User Total Hourly Rates for Job Titles Included in an NYS DOL Prevailing Wage Rate Schedule. Either:

- OGS Must first have approved and published updated NYS Net Pricing Pages on the OGS Website in accordance with Section 6.5 of This Award, and the updated NYS Net Pricing Pages Must include updated Prevailing Wage Rates, Supplemental Benefits, and Total Hourly Rates NYS Net Pricing for the particular Job Titles under the Authorized User Agreement

**OR**

- NYS DOL Must have published an update to the Original Rate Schedule for the particular Authorized User Agreement

Additionally, the Contractor Must propose to the AU revised Authorized User Total Hourly Rates computed by multiplying the updated Prevailing Wage Rates and Supplemental Benefits by the Authorized User Percent (%) Markup.

**Example** - The following provides an example of an update to Authorized User Total Hourly Rates for Job Titles Included in a DOL Prevailing Wage Rate Schedule:

Original Maintenance Agreement Pricing						
Job Title	Prevailing Wage Rate	Supplemental Benefit	Percent (%) Markup	Total Hourly Rate	Authorized User Percent (%) Markup	Authorized User Total Hourly Rate
Electrical Installer	\$35.00	\$25.00	100.00%	\$120.00	75.00%	\$105.00

Updated Maintenance Agreement Price						
Job Title	Prevailing Wage Rate	Supplemental Benefit	Percent (%) Markup	Total Hourly Rate	Authorized User Percent (%) Markup	Authorized User Total Hourly Rate
Electrical Installer	\$40.00	\$30.00	100.00%	\$140.00	75.00%	\$122.50

In this situation, since the Prevailing Wage Rate and Supplemental Benefit increased by 16.67%, the Total Hourly Rate increased by 16.67%. The AU is receiving an Authorized User Percent (%) Markup of 75.00%, which is a Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefits that Must not be reduced for the Term of the Authorized User Agreement. Therefore, the Contractor May only increase the Authorized User Total Hourly Rate by the same 16.67% increase of the Total Hourly Rates published by OGS on the OGS website.

The AU May approve the Authorized User Agreement pricing update once the AU determines that the Contractor:

- 1) Is only proposing to increase the Authorized User Total Hourly Rate for Job Titles Included in an NYS DOL Prevailing Wage Rate Schedule the same percentage as the Total Hourly Rate was increased on the Centralized Contract

**AND**

- 2) Is not proposing to increase the Authorized User Percent (%) Markup

The AU Must maintain this documentation and approval in their Procurement Record. State Agencies that are customers of the BSC Must provide this information to the BSC when requesting revisions to the Purchase Order(s).

Authorized User Total Hourly Rates for Job Titles Not Included in a DOL Prevailing Wage Rate Schedule:  
Before a Contractor May propose (and before an AU May approve) any update to the Authorized User Total Hourly Rates for Job Titles Not Included in an NYS DOL Prevailing Wage Rate Schedule, OGS

Must first have approved and published updated NYS Net Pricing Pages on the OGS Website in accordance with Section 6.8 of This Award and *Appendix C – Contract Update Form and Procedures*. Such updated NYS Net Pricing Pages Must include updated Total Hourly Rates for the particular Job Titles under the Authorized User Agreement.

The Contractor Must propose to the AU revised Authorized User Total Hourly Rates computed by multiplying the updated Total Hourly Rates by the Authorized User Percent (%) Discount.

**Example** - The following provides an example of an update to Authorized User Total Hourly Rates for Job Titles Not Included in a DOL Prevailing Wage Rate Schedule:

Original Maintenance Agreement Pricing			
Job Title	Total Hourly Rate	Authorized User Percent (%) Discount	Authorized User Total Hourly Rate
Project Manager	\$150.00	10.00%	\$135.00

Updated Maintenance Agreement Price			
Job Title	Total Hourly Rate	Authorized User Percent (%) Discount	Authorized User Total Hourly Rate
Project Manager	\$152.10	10.00%	\$136.89

In this situation, since the Core Consumer Price Index (Core CPI) increased by 1.4%, the Total Hourly Rate increased by 1.4%. The AU is receiving an additional Percent (%) Discount of 10.00%, which is a Contractually-Approved Percent (%) Discount from the List Price/MSRP that **Must not** be reduced for the Term of the Authorized User Agreement. Therefore, Contractor **May** only increase the Authorized User Total Hourly Rate by the same 1.4% increase as the Total Hourly Rates published on the OGS website. Any other proposed increase is not permitted during the term of the Maintenance Agreement.

The AU May approve the Authorized User Agreement pricing update once the AU determines that the Contractor:

- 1) Is only proposing to increase the Authorized User Total Hourly Rate for Job Titles Not Included in an NYS DOL Prevailing Wage Rate Schedule by the same percentage that the NYS Net Pricing was increased on the Centralized Contract

**AND**

- 2) Is not proposing to reduce the Authorized User Percent (%) Discount

The AU Must maintain this documentation and approval in their Procurement Record. State Agencies that are customers of the BSC Must provide this information to the BSC when requesting revisions to the Purchase Order(s).

*Addition of Equipment to an Authorized User Agreement:* Where the Contractor and AU agree to the addition of Equipment to an Authorized User Agreement, this Equipment Must first be approved by OGS and published on the Contractor’s NYS Net Pricing Pages on the OGS Website. Where the Equipment is part of a Product Line(s) or Product Line Subcategory where the Contractor and AU have agreed to an Authorized User Percent (%) Discount, the Contractor Must add/offer this Equipment at the same (or better) Authorized User Percent (%) Discount as the other Equipment in the particular Product Line(s) or Product Line Subcategory.

**8.7 AUTHORIZED USER AGREEMENT PRICING AFTER EXPIRATION OF THE CENTRALIZED**

**CONTRACT:** During the period after the expiration of the Centralized Contract but while an Authorized User Agreement is still effective, no Equipment pricing updates or increases Shall be permitted, and the only permitted increase for Services is for adjustments to Authorized User Total Hourly Rates for Job Titles Included in NYS DOL Prevailing Wage Rate Schedules. The Authorized User Percent (%) Markup Must not be increased for the remainder of the Authorized User Agreement. During this period, the AU is solely responsible for ensuring compliance with this requirement.

**8.8 DEFERRED PAYMENTS AND INSTALLMENT OPTIONS:** Contractors Must not offer AUs deferred/installment payment options unless the following eight (8) parameters have been approved by OGS and are included in the Contractors' NYS Net Pricing pages on the OGS website:

- 1) The NYS Net Pricing for the Equipment
- 2) The price per month
- 3) The fixed percentage/rate of interest per month
- 4) The price of the interest per month
- 5) The sum of the price per month and the interest price per month
- 6) The number of months for which interest will be charged
- 7) The total price of the Equipment (determined by multiplying the sum price by the number of months)
- 8) The difference between the Total Price of the Equipment and the NYS Net Pricing

Additionally, all Deferred/Installment Payment options are subject to both of the following stipulations:

- 1) Title Shall transfer to the AU after the Acceptance period (*see § 6.45 Appendix B Revisions*)

**AND**

- 2) The Warranty Period and all accompanying provisions, as required by the Appendix B, *Warranties* section, Shall also commence with the transferring of title

**AUs Must not acquire Installation, Integration, or Maintenance using Deferred Payments or Installment Payments.**

**State Agencies Must refer to *Section XI.11.G Equipment Acquisition* of the NYS OSC Guide to Financial Operations for additional information.<sup>21</sup>**

**8.9 PROJECT LABOR AGREEMENT:** Whenever an AU requires a Contractor and/or a Contractor's proposed Subcontractor to agree to a Project Labor Agreement as a condition of being issued an Authorized User Agreement, the Contractor and/or Subcontractor Must agree to the Project Labor Agreement.

**8.10 PURCHASE ORDERS (POs):** All AUs Must utilize the following procedures to properly issue POs/Authorized User Agreements associated with Contracts under This Award.

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<sup>21</sup> The Equipment Acquisition section of the NYS OSC Guide to Financial Operations can be access by copying the following link and pasting it into the internet browser address bar:  
[https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XI/11/G.htm%3FTocPath%3DXI.%20Procurement%20and%20Contract%20Management%7C11.%20Miscellaneous%7C\\_\\_\\_\\_6](https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XI/11/G.htm%3FTocPath%3DXI.%20Procurement%20and%20Contract%20Management%7C11.%20Miscellaneous%7C____6)

**Online State Agencies: SFS requires AUs to enter an inspection period for any PO associated with This Award.** When issuing a PO for This Award, Online State Agencies Must enter the Acceptance Testing Period (which is a minimum of 30 consecutive calendar days) as the inspection period.

In addition, for any project for which the Online State Agency decides to use progress/milestone payments and requires the Contractor to carry out the following steps sequentially:

- 1) Deliver the Equipment to the Online State Agency's Facility
- 2) Invoice the Online State Agency for the delivered Equipment

**AND**

- 3) Then Install and Integrate the Equipment

OGS recommends that Online State Agencies include **separate lines on their PO** for Equipment and Installation/Integration (i.e., one line for the funding associated with the Equipment and a second line for the funding associated with Installation/Integration), and that they enter the Acceptance Testing Period (of 30 consecutive calendar days or longer) as the inspection period on the Installation/Integration line.

**Non-State AUs and Bulk-Load State Agencies:** Non-State AUs and Bulk-Load State Agencies should issue POs/Authorized User Agreements in accordance with their policies and procedures, including an Equipment/System Acceptance Testing Period of 30 consecutive calendar days.

**8.11 SUBCONTRACTOR AUTHORIZED USER TOTAL HOURLY RATES AND SUBCONTRACTOR PERCENT (%) MARKUP:** Whenever a Contractor proposes to use a Subcontractor, the Contractor Must comply with the following and Must also ensure that the Subcontractor also complies with the following:

- 1) The Subcontractor quote/proposal submitted to the Contractor Must contain the following information:
  - A) The Job Title to be Utilized (e.g., Electrician/Electrical Installer) listed on the Contractor's Contract on the OGS website
  - B) The Total Hourly Rate to be charged by the Subcontractor that Must be equal to or lower than the Not to Exceed Total Hourly Rate on the Contractor's Contract
  - C) The number of hours proposed to be worked by the Subcontractor's employees
  - D) If the Subcontractor is performing Maintenance, the Subcontractor Must provide all other required information for Maintenance Services as specified in §7, *Maintenance* of this document, but only for the actual Maintenance Services they will perform
  - E) The total Subcontractor quote/proposal cost (calculated by multiplying the Total Hourly Rate proposed by the Subcontractor by the number of hours to be worked)
  - F) Whether the Subcontractor is Performing Work on a Fixed Price/Lump Sum Basis or on a Time basis (as part of a Time & Material proposal)
- 2) The Subcontractor quote/proposal Must not contain any Equipment and Must not contain the Contractor's Subcontractor Percent (%) Markup
- 3) The Contractor Must provide the Subcontractor's quote/proposal to the AU

- 4) If the Contractor is proposing to charge a Subcontractor Percent (%) Markup, this Subcontractor Percent (%) Markup Must only be listed in the Contractor's quote/proposal submitted to the AU

**Note:** When applying for payment involving Work performed by a Subcontractor, the Contractor Must include a copy of the Subcontractors' invoice to the AU and clearly list the Subcontractor Percent (%) Markup.

**8.12 AUTHORITY HAVING JURISDICTION FEES:** All Authority Having Jurisdiction Fees Must be passed through the Contractor to the AU, at cost.

Contractors Must not charge any Percent (%) Markups over the Authority Having Jurisdiction Fees.

Contractors Must include both of the following documents in the proposal for the Second Tier Solicitation/Direct Engagement as well as the invoice for the Authorized User Agreement:

- 1) A copy of the Authority Having Jurisdiction Invoice

**AND**

- 2) The Authority Having Jurisdiction Fee Schedule for services to be performed by the Authority Having Jurisdiction after issuance of the Authorized User Agreement

The invoice for the Authorized User Agreement Must also list all Authority Having Jurisdiction Fees, which Must be identical to the fees included in the invoice that the Authority Having Jurisdiction provided to the Contractor.

**8.13 ROUNDING RULES FOR AUTHORIZED USER AGREEMENTS:** All Not-To-Exceed Pricing in Contracts under Award 23150 is rounded to the nearest whole cent (i.e., two decimal places) using the standard rounding rules.

As part of any Second Tier Competition or Direct Engagement, and any subsequent Authorized User Agreement, all pricing (including, but not limited to Authorized user Percent (%) Discounts, Authorized User Percent (%) Markups, Authorized User NYS Net Pricing, and Authorized user Total Hourly Rates) Must be rounded off to the nearest whole cent (i.e, two decimal places) using the standard rounding method. As part of this activity, AUs Must verify that the Contractor is not proposing to decrease any Contractually-Approved Percent (%) Discount Structure From List Price MSRP, or proposing to increase any Contractually-Approved Percent (%) Markup Over the Prevailing Wage Rate and Supplemental Benefit.