



Contract Award Notification

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|--------------------------------|---|---|
| Title | : | Group 79000 Equipment Maintenance Program (EMP) (Statewide) Classification Code(s): 77, 80, 84 |
| Award Number | : | <u>21988</u> |
| Contract Period | : | January 26, 2011 through January 23, 2021 |
| Bid Opening Date | : | April 1, 2010 |
| Date of Issue | : | February 24, 2011 (Revised January 31, 2020) Updated Information is in Red |
| Specification Reference | : | As Incorporated in the RFP |
| Contractor Information | : | Appears on Page 2 of this Award |

Address Inquiries To:

| State Agencies & Vendors | | Political Subdivisions & Others | |
|--------------------------|--------------------------------|---------------------------------|------------------------------|
| Name : | Danielle Hayes | Procurement Services | |
| Title : | Contract Management Specialist | Customer Services | |
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**Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

The primary intent of this contract is to provide State Agencies and other Authorized Users with an Equipment Maintenance Program. The Program Provider shall be responsible for oversight, administration and coordination of equipment maintenance and service on selected types of equipment ranging from simple office equipment to complex fire alarm systems. The EMP covers the full cost of maintenance and repair, and shall replace more expensive individual service contracts.

| <u>CONTRACT #</u> | <u>CONTRACTOR & ADDRESS</u> | <u>TELEPHONE #</u> | <u>FED.IDENT.# / NYS VENDOR#</u> |
|-------------------|--|---|----------------------------------|
| PS65207 | The Remi Group, LLC 6325 Ardrey Kell Road, Suite 200 Charlotte, NC 28277 | Kristen Childers Contract Manager (704) 602-0833 Fax No.: (866)518-7847 E-mail: contracts@theremigroup.com Website: www.theremigroup.com | 55-0808152 1000018238 |
| | <u>NYS CONTRACT</u> <u>DEDICATED WEBSITE</u> https://resources.theremigroup.com/nys | <u>Alternate Contacts:</u> Bobby O'Connell Account Manager (716) 200-7655 E-mail: roconnell@theremigroup.com | |
| | | Olivia Cox General Manager-Northeast Region (914) 200-8339 E-mail: Olivia.Cox@theremigroup.com | |

Cash Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
 (See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE NEW YORK STATE PROCUREMENT PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

| | |
|----------|---------------------------|
| RS,RP,RA | Recycled |
| RM | Remanufactured |
| SW | Solid Waste Impact |
| EE | Energy Efficient |
| E* | EPA Energy Star |
| ES | Environmentally Sensitive |

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must

periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

SCOPE:

The issuing agency is the New York State Office of General Services (OGS). The service will be primarily for, but not limited to, New York State agencies. Additionally, services may be utilized by political subdivisions, school districts and others authorized by law. Accordingly, references to the State and its agencies as users under this bid and specification and the ensuing contract encompass and include other users such as these entities.

OBJECTIVE:

The equipment maintenance program provides maintenance coverage on various types of agency equipment, ranging from simple office equipment to complex fire alarm systems. Typically this coverage is provided through various maintenance agreements and service contracts often entered into independently by authorized users. The equipment maintenance program provider shall be responsible for oversight, administration and coordination of the equipment maintenance and service. Examples of the types of equipment covered under this contract include, but are not limited to:

| Office | Financial | Mail | Medical/Hospital |
|-------------------------|---------------------------|-------------------------|-------------------------|
| Collating Machines | After Hour Depository | Bag Tagging Equipment | Analyzers |
| Copiers | Automated Teller Machines | Bar-coding Equipment | C-Arms |
| Dictation Equipment | Cash Dispensers | Binding Machines | CT Scanners |
| Endorsers | Check Encoders | Bursters / Cutters | Centrifuges |
| Fax Machines | Check Imprinters | Collators / Decollators | Defibrillators |
| Mail Machines | Currency Counters | Conveyors | DNA Sequencing |
| Microfiche/Microfilmers | Coin Counters | Sorters | Flow Cytometers |
| Plotters | Financial Calculators | Folders / Inserters | Incubators |
| Rotary Filing Systems | Reader Sorters | Ink Jet Addressing | Lasers |
| Material Shredders | Safe Deposit Boxes | Ink Jet Drying | MRIs |
| Time Clocks | Teller Networks | Insertor System | Mammography |
| Typewriters | Visual Auto Tellers | Labeling System | Mass Spectrometers |
| Word Processors | | | Microscopes |
| | | | Portable X-Ray |
| | | | Tissue Processors |
| | | | X-Ray/Flouro Rooms |

| Security | Information Technology | Communications |
|------------------------------|---------------------------------------|-----------------------|
| Alarm Systems | Back-up Systems | Audio Visual Systems |
| Breathalyzers | Barcode Equipment | Paging Systems |
| Card Access Systems | Controller Cards | Intercoms |
| Fingerprint Systems | Interactive White Board (Smart Board) | Pager Devices |
| In-Car Video Systems | Laptops | Radios |
| Keypads | Network Infrastructure | Voice Mail Systems |
| Mechanisms | Network Security Hardware | |
| Metal Detectors | Network Storage | |
| Two-Way Radios | Personal Computers | |
| Video Surveillance Equipment | Printers | |
| Vaults & Safes | Scanners | |
| | Servers | |
| | Surge Protectors | |
| | Telephone Systems | |
| | UPS Devices | |
| | Webcams | |

The EMP covers the full cost of maintenance and repair, and shall replace more expensive individual service contracts. Equipment is added to the program on an ongoing basis as existing contracts and arrangements expire, are amended or as new equipment are acquired.

EXCLUDED EQUIPMENT:

The following items are excluded from coverage under this EMP contract: refrigeration systems, HVAC, elevators, escalators, lift equipment, machinery, vehicles, motorized equipment and manufacturing equipment.

DEFINITIONS:

“**Authorized User**” include but are not limited to New York State agencies, political subdivisions, public authorities, public benefit corporations, school districts and others authorized by law.

“**Centralized Contract**” means any contract for the purchase of commodities or services, established or approved by the Commissioner of General Services as meeting the State's requirements

“**Claim**” shall mean a demand by a person or entity to recover loss(es) that may be covered by the terms and conditions of an EMP service agreement.

“**EMP**” shall mean the New York State Equipment Maintenance Program.

“**RI&FM**” shall mean the NYS OGS Bureau of Risk, Insurance and Fleet Management.

HOW TO USE THIS CONTRACT:

The EMP is designed to replace Original Equipment Manufacturer and Third Party equipment maintenance service agreements. The EMP administrators will work with Authorized Users to eliminate unnecessary maintenance expenditures in order to gain the greatest possible return for each dollar invested in equipment maintenance. The program is designed to help improve equipment performance and minimize equipment downtime by changing the economics behind the maintenance relationship between the Authorized User and their chosen maintenance service providers. The EMP is designed to provide financial incentives to maintain equipment effectively as well as oversight to ensure equipment is maintained efficiently.

There are two approaches that Authorized Users may utilize to access vendor services for failed equipment or for maintenance.

Option 1: Direct: If the contract user desires to maintain a direct relationship with their preferred service vendor, they may call them directly when equipment is in need of maintenance/repair and coordinate the service. The procedure would be as follows:

- Equipment failure occurs.
- Authorized User calls the selected service vendor.
- Equipment is repaired.
- Authorized User makes a copy of work order and invoice and sends it to Remi via mail, email or fax.
- Remi processes invoice and pays vendor within 30 days

Option 2: Service Management System: The Remi Group's Service Management System allows end users to outsource tasks of contacting, scheduling, tracking and following up with their preferred vendors for service calls. This option is provided at no additional charge.

This system provides a central hub for all equipment service calls. Authorized Users are given a toll-free number to request service on all covered equipment. If preferred, they also have the option to request service via *Remi Online*. Remi's dispatchers then contact the Authorized User's preferred vendor, requesting service. It is then the responsibility of Remi to manage each stage of the service event and ensure that the level of service received meets or exceeds the State's expectations. Real-time, online tracking allows end users an around the clock ability to view their service call status, maintenance history reports, preventative maintenance schedules, covered equipment schedules etc. The procedure for utilizing the Service Management System would be as follows:

- Equipment repair or maintenance required.
- Authorized User calls toll free number or requests service online.
- Remi's Dispatcher contacts the selected service vendor.
- Remi issues Purchase Order directly to vendor.
- Vendor performs service.
- Remi handles all call administration and pays vendor directly within 30 days.
- Service information is available real-time on Remi Online.

START UP OF NEW ACCOUNTS:

When setting up a new account, please call the following toll free number: 877-878-2305, or Email: NYEMP@theremigroup.com. Identify yourself as an authorized entity eligible to use the New York State contract. The Remi Group may ask you to verify your eligibility. The Remi Group contract administrator will be available to help establish an account.

Start up of new accounts shall be made in accordance with the following instructions:

1. Provide Remi with copies of your current vendor equipment maintenance contracts, including pricing, and the terms and conditions. If you do not have current vendor contracts, you can send a list of the equipment you would like quoted, listing the manufacturer, model number, serial number, and location. This allows Remi to match your existing coverage levels and provide you with an accurate quote.
Copies of the vendor equipment maintenance service agreement documentation should be mailed to:
The Remi Group
6325 Ardrey Kell Road, Suite 200
Charlotte, NC 28277
Or
scanned and sent to: NYEMP@theremigroup.com
2. Remi will analyze your current contracts, determine eligibility and create a proposal/quote for your review.
3. Remi will present the proposal specifying the cost savings and coverage level details.
4. Review the proposal and decide whether to move forward with an EMP service agreement with Remi.

Once a proposal is accepted, The Remi Group will create a final Equipment Schedule reflecting this agreement. The Remi Group will consult with each Authorized User to educate all parties involved in how to place a service call. Each Authorized User will then select their preferred method of requesting service (i.e. dispatch model or call vendor direct model). The Remi Group will provide additional training on the selected service method as requested. Each

Authorized User will be assigned a unique EMP service agreement number. A pre-established vendor letter will be sent to each service vendor, advising them of their contract non-renewal. As necessary, meetings are held with key vendors explaining the program. Training sessions on the use of Remi Online will be provided to designated personnel to prepare them for routine program operations, reporting and overall program management. Training will be provided via web-casts.

When equipment failure occurs the Authorized User then calls either their vendor of choice or the Remi Group's vendor dispatch center. The equipment maintenance vendor completes the repair action and provides a service report to the Authorized User and the Authorized User then forwards a copy of the service report to the Remi Group. The equipment maintenance vendor submits an invoice directly to the Remi Group who is responsible for remitting payment directly to the equipment maintenance vendor.

When making the initial contact with Remi for new accounts, it is imperative that the authorized user advise Remi that the account is set up under all of the terms and conditions of this New York State contract and a request be made that Remi provide their contract number on all invoices.

THE FOLLOWING SERVICES ARE INCLUDED UNDER THIS CONTRACT:

REMI ONLINE REPORTING TOOLS:

Through *Remi Online*, Authorized Users have the ability to track the performance of individual pieces of equipment, identify poorly performing equipment, ensure scheduled preventative maintenance completion, delve into individual maintenance events, or review overall program results. The Remi Group may be able to create certain customized reports to accommodate unique reporting requirements. Authorized User's with special reporting needs are directed to contact the Remi Group account director to request assistance with the development of special reports. The online reporting system gives Authorized Users the option of either logging onto the Remi website to view results or the Authorized User may elect to receive desired reports automatically via email. Data from Remi Online may also be downloaded in a variety of formats.

DATA CAPTURE:

The Remi Group, LLC is required under this contract to capture and store data according to the specifications of the RFP. The Remi Group will offer Authorized Users an interface to this data via Remi Online. The Authorized User will retain ownership of all data entered into the database and reporting system. This interface shall be provided for the life of the contract and at no additional charge.

CUSTOMIZED COVERAGE: Under the EMP the Authorized User controls the level of coverage desired for each piece of scheduled equipment and retains the flexibility to purchase the exact level of protection desired on a case-by-case basis. For example, it is possible to choose around-the-clock labor coverage, including unlimited overtime, for a mission critical system while limiting coverage to 9 to 5 on other less critical systems. The Authorized User may include scheduled preventative maintenance inspections at the OEM's recommended frequency (i.e. four per year) or more frequently if deemed necessary. Authorized Users have the ability to customize the program to meet their evolving needs.

MAINTENANCE CONTRACT EVALUATION: The Remi Group will assist the Authorized User in the evaluation of currently in-force vendor service agreements to ensure that equipment service levels, hours of coverage, coverage limitations, and total cost is consistent with industry best practices. The Remi Group will recommend service options for each piece of equipment ranging from renegotiation of the current contract, placement under a maintenance coverage plan, or management on a "time and material" billing basis. The goal of this process will be to ensure service quality and equipment uptime, while achieving the best return for each dollar invested in the maintenance of the State's equipment.

VENDOR MAINTERNANCE OVERSIGHT: The Remi Group will be responsible for providing strict oversight of each covered maintenance event to ensure that the service work performed by the Authorized User's chosen vendor is effective and appropriately invoiced. The Remi Group will also be responsible for guaranteeing that the service work is performed in compliance with industry standards and meets the manufacturer's specifications for the device. The Remi Group will review the service report and associated vendor invoice to ensure the charges are appropriate to the activity

completed and that the Authorized User receives credit for all warranty work, and that there are no unnecessary charges designed to increase the chosen vendor's profit margins.

TOTAL LIFECYCLE MANAGEMENT: The Remi Group will assist Authorized Users in monitoring all aspects of their equipment performance. This includes equipment breakdowns, scheduling maintenance, negotiating with vendors, managing the Authorized User's equipment assets and tracking equipment through its entire lifecycle. The goal of such management will be to extend the useful life of the Authorized User's equipment, ultimately reducing the overall equipment acquisition budget. The Remi Group will also be available for consultation with Authorized Users prior to the purchase of new equipment and will be required to use data gathered from their monitoring practices to offer advice on the projected lifecycle cost in comparison to the initial acquisition cost of the equipment being considered.

LOSS CONTROL SERVICES: The Remi Group Engineering Team is required to provide 24 hour service for consultation, guidance and support on all maintenance/program questions. The Remi Group will monitor covered equipment maintenance cost trends, failure rates and specific vendor performance to identify cost saving opportunities. When necessary, the Remi Group will locate alternative service vendors and alternative sources for manufacturer approved parts. The Remi Group will consult with Authorized Users to advice on those steps that may be implemented to reduce unnecessary maintenance expenditures.

PROGRAM TRAINING: The Remi Group offers training programs that can be scheduled as needed for all end users. The Remi Group's training program includes: program operation, Remi Online training, management reporting and loss control.

METHOD OF PAYMENT:

Invoices for payment of service agreements shall be submitted to the using entity, electronically or via company invoice, at the beginning of each specific agreement's quarter for services to be completed during that quarter. Separate quarterly invoices must be generated for each authorized user's service agreement with an original invoice submitted to the designated authorized user.

Invoices must charge one quarter of the authorized user's base yearly service agreement fee amount, which shall remain constant during the span of the one-year service agreement. Any endorsements (additions, deletions, or changes) to the service agreement shall be prorated for the partial yearly amount and charged at the full, prorated amount during the quarter in which the endorsement occurs. The total of all endorsements shall be incorporated into the base service agreement fee amount upon renewal of the service agreement.

This invoice will contain the Contract ID number (*i.e.*, PS21988), Federal Identification Number, the name of the Authorized User, its service agreement number, the invoice date and the date range of the quarter being billed, the quarterly service agreement fee amount, and all endorsements with dates and descriptions; and will contain either in its body or as an attachment, a copy of the report itemizing work completed during that quarter. The quarterly service agreement fee amount must be listed separately from the endorsements being billed for the quarter.

Submitted invoices will be processed in accordance with established procedures of the authorized user and the Office of the State Comptroller (OSC). A complete report of all contract usage will be sent to the Procurement Services quarterly.

Or

The Remi Group may opt to participate in The New York State Procurement Card program and accept payment via Corporate Purchasing Card.

Payment of purchases made by authorized entities other than State Agencies under this agreement shall be the sole responsibility of such entities and the Contractor shall bill such entities directly. Sales reports submitted by the Remi Group must reflect all such direct billings made under the contract.

In the event a participating non-State Agency fails to make payment to the Contractor for services rendered and accepted within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Office of General Services and the non-State Agency representative, suspend additional delivery of service to the particular non-State Agency whose payment is late, until such time as reasonable arrangements have been made and assurances given by the said non-State Agency for current and future contract payments.

CONTRACT PERIOD:

Contract award shall commence after approval by the New York State Comptroller, effective upon mailing by OGS (see Appendix B, Clause 38) and shall be in effect for five (5) years, with an option to renew the contract for an additional five (5) year term. The State may further extend the contract for up to one (1) additional year, or until a new contract is entered into, upon mutual written consent of the State and the contractor. To be effective and binding, all renewals and extensions must be approved by the Office of the State Comptroller (OSC). No purchase order or contractual document for equipment maintenance issued against this EMP contract shall exceed a term of one year from the date of issuance, but such term may survive expiration of this EMP contract, the terms and conditions of which will apply throughout the extended term.

SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

CONTRACT PRICING:

The Contractor's **discount percentages shall remain the same for the entire Contract term**, including any extensions or renewal terms. Contract pricing (rates) shall be considered firm for the life of the Contract.

The equipment maintenance service program pricing offers the following discounts from current equipment vendor's maintenance contract costs:

- **27% for all Financial, Mail, Medical/Hospital, Security, and Communications Equipment; or Information Technology Equipment added prior to January 24, 2016**
- **28% for all Office Equipment (previously 27%) added after December 14, 2017**
- **30% for all Information Technology Equipment between January 24, 2016 and December 14, 2017**
- **31% for all new Information Technology Equipment added after December 14, 2017**

Authorized users should review the table under the Scope Clause on Page 3 for examples of the types of equipment that fall under each of the equipment categories above.

CANCELLATION FOR CONVENIENCE:

The State of New York retains the right to cancel this contract, in whole or in part without reason, provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective Authorized Users.

CONTRACT MIGRATION:

Authorized Users holding previously established and independently awarded contracts with the Remi Group are able to migrate to this contract award.

CONTRACTORS INSURANCE REQUIREMENTS:

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), **written proof of insurance coverage and additional insured documentation, as specified herein. "Written proof" consists of certificates of insurance and/or endorsements to policies issued by an officer of an insurance company licensed or authorized to do business in New York, government self-retention funds or other self-insurance companies evidencing that the Contractor has the requisite insurance coverages. All non-standard exclusions or limitations applicable to the contract must be disclosed on the Certificate of Insurance, and must be approved by OGS. Acceptance and/or approval by OGS of the written proof of insurance does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the contract.**

All insurance required by the contract shall be obtained at the sole cost and expense of the Contractor; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; and shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to Team 2: Non-Technology Services, NYS Office of General Services, Procurement Services,

Corning Tower, 37th Floor, Empire State Plaza, Albany, New York 12242. In the event that the cancellation is due to non-payment of premium, ten (10) days prior written notice shall be provided.

Policies providing commercial general liability, excess or umbrella liability and pollution legal liability insurance shall be specifically endorsed to name The People of the State of New York, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85).

The contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

The requisite insurance may be provided through a policy or policies of insurance, which may be primary and/or excess, including umbrella policies, but must be placed with an Insurer rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply to OGS updated replacement Certificates of Insurance, and amendatory endorsements.

Contractor shall secure and keep in force during the term of the contract, and Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this contract the following insurance with the same limits and provisions provided herein.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

- a) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.
- b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- c) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against OGS arising from Contractor's work.
 1. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this contract; and that continuous coverage will be

- maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this contract is completed.
2. If the contract includes disposal of materials from the job site, the contractor must furnish to OGS, evidence of pollution legal liability insurance in the amount of \$2,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this contract.
 - i) If autos are used for transporting hazardous materials, the contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.
 - d) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.
 1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
 2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this contract is completed.
 - e) Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS' immediate termination of any contract resulting from this RFP, subject only to a five (5) business day cure period. Any termination by OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

- f) **WORKERS' COMPENSATION / DISABILITY INSURANCE:**
 Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.
PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:
ACORD forms are NOT acceptable proof of workers' compensation coverage.
 In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:
 - A) Be legally exempt from obtaining workers' compensation insurance coverage;
or
 - B) Obtain such coverage from insurance carriers;
or
 - C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Office of General Services** at the time of bid submission or shortly after the opening of bids:

- A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us);

or

- B) *Certificate of Workers' Compensation Insurance:*

1) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, **contractor must request its carrier** to send this form to the New York State Office of General Services;

or

2) **Form U-26.3** if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services;

or

- C) *Certificate of Workers' Compensation Self-Insurance - Form SI-12*, available from the New York State Workers' Compensation Board's Self-Insurance Office;

or

- D) *Certificate of Participation in Workers' Compensation Group Self-Insurance Form GSI-105.2*, available from the contractor's Group Self-Insurance Administrator.

PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, contractors shall:

- A) Be legally exempt from obtaining disability benefits coverage;
or
B) Obtain such coverage from insurance carriers;
or
C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Office of General Services** at the time of bid submission or shortly after the opening of bids:

- A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us);

or

- B) **Form DB-120.1**, *Certificate of Disability Benefits Insurance*. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services;

or

- C) **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*. The contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All forms must name the Office of General Services – State of NY Executive Department, Office of General Services, Mayor Erastus Corning 2nd Tower, The Governor Nelson A Rockefeller, Empire State Plaza, 38th Floor, Albany NY 12242, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

ADMINISTRATIVE AND REPORTING REQUIREMENTS:

- A. Contract Meetings:

The Contractor shall be responsible for the completion of a variety of administrative and reporting requirements at no additional cost.

B. Reporting Requirements – Authorized Users:

The Contractor is obligated to meet with the Authorized User for an initial meeting, and also obligated to meet with the Authorized User on a monthly basis to discuss the following (as well as provide a written monthly report itemizing services performed during that month):

- 1) Review job progress; quality of work; and approval and delivery of contract service.
- 2) Identify and resolve problems, which impede planned progress.
- 3) Coordinate the efforts of all concerned to ensure compliance with all terms and conditions of the contract.
- 4) Maintain a sound working relationship between the Contractor and the other state agencies, and a mutual understanding of the contract.
- 5) Review the service performance so the contract progresses on schedule to on-time completion.

Remi Online Reporting Tools:

Through *Remi Online*, Authorized Users have the ability to track the performance of individual pieces of equipment, identify poorly performing equipment, ensure scheduled preventative maintenance completion, delve into individual maintenance events, or review overall program results. The Remi Group may be able to create certain customized reports to accommodate unique reporting requirements. Authorized User's with special reporting needs are directed to contact the Remi Group account director to request assistance with the development of special reports. The online reporting system gives Authorized Users the option of either logging onto the Remi website to view results or the Authorized User may elect to receive desired reports automatically via email. Data from Remi Online may also be downloaded in a variety of formats.

The contractor shall maintain accurate data and produce reports, in a timely manner, with the following types of information and in a format easily sortable by levels, such as:

- Department
 - Group
 - City
 - Location
 - Cost Center
 - State vs. Non-State Entity
- The following data elements must be included in the database:
 - Authorized user name, address, and service agreement number and effective dates
 - Equipment tag or item number
 - Equipment manufacturer, model, serial number, and description
 - Vendor name and contact information
 - Date equipment was added to or deleted from EMP
 - Vendor contract dollar amount per item
 - Annual and prorated EMP dollar amount per item
 - Specific included and excluded coverage (including preventative maintenance, supplies (toners), etc)
 - Transaction details, such as:
 - Invoice number, date, and amount
 - Reason for service call and repair description
 - Invoice status, amount paid, and check number
 - Detailed explanation of denial or partial pay
 - Quarter (1st, 2nd, 3rd or 4th) and covered period (ex: April 1st – June 30th)
 - Reports must include the following:
 - **Schedule of Covered Equipment: This report will itemize every piece of equipment covered under the EMP.**
 - Report must include start and end dates; annual and prorated amount; included and excluded coverages (e.g., consumables).
 - Must be able to be sortable by model or manufacturer.
 - Report must be downloadable for saving in PDF or Excel format, as well as viewable and printable in the browser.
 - Report must include subtotals by location and report totals.

- **Repair History Report:** This report will itemize every piece of equipment that has had an invoice submitted for reimbursement within a specified period of time.
 - Report must include invoice detail, status, and the amount paid, where applicable.
 - Must be able to be sortable by location, vendor, or equipment item.
 - Report must be downloadable for saving in PDF or Excel format, as well as viewable and printable in the browser.

Remi Online Reporting Tools:

- **Quote Schedule:** This report will itemize each piece of equipment that has been quoted, but not yet added to the EMP.
- **Equipment Location Summary:** This report will display the total number of equipment items with annual amounts by location.
- **Preventive Maintenance Summary:** This report will itemize every piece of equipment on the program with the number of Preventive Maintenance (PM) services allowed, used, and remaining.
- **Toner Usage Summary:** This report will itemize every piece of equipment on the program with the number of toners allowed, used, and remaining.
- **Poor Performing Equipment:** This report will list equipment with a high frequency of breakdown or high total repair charges for corrective maintenance.
 - Sortable by equipment items, types, or models.
- **Modality Performance:** This report displays the total number of repairs and total repair amount for each type of equipment, manufacturer and model.
- **Equipment Reimbursement Summary:** This report is a summary of the Repair History report.
 - Shows equipment item that has had a submitted invoice, the total number of corrective or preventive repairs, and the average repair amount.
- **Vendor Usage:** This report is a maintenance summary showing the number of invoices received and the total repair expenditures by vendor.
 - Must include a database of New York State certified MWBEs and be able to review their participation.
- **Reimbursement Summary:** This report lists the total number of invoices that have been processed and total amounts paid in full, partial payments, denied payment and voided invoices.
- **Invoice Processing:** This report will display paid invoices, outstanding invoices and invoices denied for payment.
- **Invoice Lookup:** This tool will allow the contract user to get detailed information on a particular invoice or group of invoices within a specific date range, at a specific location, or from a specific vendor.
- **Quick Search:** This tool will allow the contract user to get detailed information about one specific equipment item.
- **Custom Reports:** This tool will give individual contract users the capability of designing reports specific to a user's particular requirements on as needed and case by case basis.

C. Reporting Requirements - OGS:

Contractor shall electronically provide the State with verified quarterly reports in the format required by the State showing the dollar volume of any and all services provided from the Contract following the end of each quarterly period, no later than the 30th of the month following the close of each quarter. Said report shall include a break out of participation by individual Authorized Users, including State and non-State governmental entities and others authorized by law. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported separately.

The report is to be submitted to the Office of General Services, Procurement Services, Tower Bldg., 37th Floor, Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Contract Number, sales period, levels of service provided and Contractor's name.

- 1) Additional related sales information and/or details of Authorized User purchases may be required and shall be supplied upon request.
- 2) Contractor shall list the associated dollar values actually ordered during each quarterly Contract period.
- 3) Provide quarterly a summary report showing utilization by:
 - a) Agency/entity name, address
 - b) Property count (Total sum of equipment by Authorized User)
 - c) Location count (Total sum of locations of equipment by Authorized User)
 - d) Total dollar expenditure by individual New York State agency, political subdivisions, public authorities, public benefit corporations, school districts and others authorized by law; and
 - e) Overall percentage (%) of discount for sum of all equipment covered (by Authorized User)
- 4) Failure to submit the required report may be cause for disqualification of Contractor on the service Contract and for future Contracts.

The first reporting period for the contract shall end on March 31, 2011 and shall be quarterly thereafter.

STANDARD CLAUSES FOR ALL NYS CONTRACTS:

During the performance of the Contract, the Contractor agrees to the terms outlined in this Contract and Appendix A & B attached hereto and hereby incorporated by reference and made part hereto as fully as if it were set forth at length herein.

PERFORMANCE SURVEYS:

The Contractor may be required to distribute performance surveys to Authorized User as requested by the Office of General Services. The Contract Performance Report form is attached herein. Authorized Users shall complete the survey and return the completed form to the Office of General Services. The performance survey shall be used to assess and evaluate the Contractor's performance in accordance with the terms and conditions of the Contractor's award of this IFB. Performance concerns, if any, shall be addressed by the Authorized User and/or the Office of General Services and survey results may be considered in determining Contractor responsibility and continuation of Contractor's award.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

New York State political subdivisions and others authorized by New York State law may participate in Contracts in this award. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), services to be provided may include locations adjacent to New York State.

Upon request, all eligible Non-State agencies shall furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. A list of categories of eligible entities is available on the OGS web site (www.ogs.ny.gov). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3) (iv) of the State Finance Law, as per section 39c of Appendix B.

NEW YORK STATE PROCUREMENT CARD:

See "Procurement Card" in Appendix B, OGS General Specifications.

EMERGENCY PURCHASING:

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this Contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

PROCUREMENT SERVICES DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to Procurement Services bid solicitations or contract awards. Procurement Services encourages vendors to seek resolution of disputes through consultation with Procurement Services staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of Procurement Services' Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.ny.gov).

PROCUREMENT LOBBYING TERMINATION:

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the contractor in accordance with the written notification terms of this contract.

EXTENSION OF USE:

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

DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES:

I. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. OGS reasonably believes the value of this Contract Extension Agreement is in excess of \$25,000.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include contracting opportunities for New York State Certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of Non-Responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section 4, clause VII of this Contract Extension Agreement or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. OGS hereby establishes an overall goal of **10%** for MWBE participation, **5%** for Minority-Owned Business Enterprises (“MBE”) participation and **5%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs) during the term of this Contract Extension Agreement. The total Contract Extension Agreement goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract Extension Agreement.
- B. For purposes of providing meaningful participation by MWBEs during the extended term of this Contract, and achieving the goals established for this Contract Extension in Section 4(II-A) hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority and Women Owned Business Enterprises. Additionally, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract Extension Agreement (see clause V below) and ensure that the MWBEs utilized under the Contract Extension Agreement perform commercially useful functions (see clause II.D below).
- D. Commercially Useful Function Requirement

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and

supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

1. the amount of work subcontracted;
2. industry practices;
3. whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
4. the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
5. any other relevant factors.

III. MWBE Utilization Plan

- A. Contractor certifies that it has submitted a completed MWBE Utilization Plan on Form MWBE 100 with the signed Contract Extension Agreement, and will follow such Plan for the performance of MWBEs on the Contract Extension Agreement pursuant to the prescribed MWBE goals set forth in clause II-A of this Section. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the extended portion of the State Contract, a description of the Commercially Useful Function the Contractor intends the MWBE to perform to meet the goals on the extended State Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE and performance dates of each component of the extended State Contract that the Contractor intends to be performed by a MWBE. Any modifications or changes to the agreed participation by MWBEs after the Contract Extension is approved and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- B. Contractor further certifies that the MWBEs included in its Utilization Plan will perform commercially useful functions under the Contract Extension Agreement. Contractor understands that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Contractor further understands and agrees that MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of this Contract Extension Agreement.
- C. OGS will review the submitted MWBE Utilization Plan and advise the Contractor of OGS' acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued, Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Contractor and direct the Contractor to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for denial of the Contract Extension.
- E. OGS may disqualify a Contractor from a Contract Extension on the grounds of being non-responsive under the following circumstances:
 1. If a Contractor fails to submit a MWBE Utilization Plan;
 2. If a Contractor fails to submit a written remedy to a notice of deficiency;
 3. If a Contractor fails to submit a request for waiver; or
 4. If OGS determines that the Contractor has failed to document good faith efforts.
- F. Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract Extension Agreement. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

IV. Request for Waiver

- A. If the Contractor, after making good faith efforts, as set forth in clause V below, is unable to comply with MWBE goals, the Contractor may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses III(C)-(E) above will apply.
- B. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract Extension Agreement. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract Extension Agreement to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract Extension Agreement.
- C. Prior to submission of a request for a partial or total waiver, Contractor shall speak to the OGS Office for Minority and Women Owned Business Enterprises for guidance.

V. Required Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of required good faith efforts shall include the following:

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

VI. Monthly MWBE Contractor Compliance Report

- A. Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract Extension Agreement for the preceding month's activity, documenting progress made towards achievement of the Contract Extension Agreement MWBE goals. OGS requests that all Contractors use the New York State Contract System (NYSCS) to report subcontractor and supplier payments made by Contractor to MWBEs performing commercially useful functions under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State Agency Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an e-mail or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a

zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

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

VII. Breach of Contract and Liquidated Damages

- A. In accordance with Executive Law Section 316-a and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract Extension Agreement, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the Contract Extension Agreement MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract Extension Agreement.
- C. In the event a determination has been made, after Contractor has been afforded the process that it is due, which requires the payment of liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if the Director renders a decision in favor of OGS.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

State of New York
 Office of General Services
PROCUREMENT SERVICES
 Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.: _____ Contractor: _____

Describe Product* Provided (Include Item No., if available): _____

*Note: "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

| | Excellent | Good | Acceptable | Unacceptable |
|---------------------------------------|-----------|------|------------|--------------|
| Product meets your needs | | | | |
| Product meets contract specifications | | | | |
| Pricing | | | | |

CONTRACTOR

| | Excellent | Good | Acceptable | Unacceptable |
|-----------------------------------|-----------|------|------------|--------------|
| Timeliness of delivery | | | | |
| Completeness of order (fill rate) | | | | |
| Responsiveness to inquiries | | | | |
| Employee courtesy | | | | |
| Problem resolution | | | | |

Comments: _____

 _____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & returned to:

OGS Procurement Services
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242
 customer.service@ogs.ny.gov
 * * * * *