



# Contract Award Notification

<b>Title</b>	:	<b>Group 05400– Environmentally Preferable Lighting</b> <b>Classification Code: 39</b>
<b>Award Number</b>	:	<b><u><a href="#">23083-GR</a></u></b>
<b>Contract Period</b>	:	<b>Aug 13, 2018 to Aug 12, 2023</b>
<b>Bid Opening Date</b>	:	<b>January 10, 2018</b>
<b>Date of Issue</b>	:	<b>Aug 13, 2018 (Revised September 21, 2021)</b>
<b>Specification Reference</b>	:	<b>As Incorporated in The Solicitation</b>
<b>Contractor Information</b>	:	<b>Appears on Page 2 of this Award</b>

## Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
<b>Name</b> : Sefora Castrello <b>Title</b> : Contract Management Specialist <b>Phone</b> : 518-473-8098 <b>E-mail</b> : Sefora.Castrello@ogs.ny.gov	<b>Procurement Services</b> <b>Customer Services</b> <b>Phone</b> : 518-474-6717 <b>E-mail</b> : <a href="mailto:customer.services@ogs.ny.gov">customer.services@ogs.ny.gov</a>

**Procurement Services values your input.  
Complete and return "Contract Performance Report" at the end of this document.**

## Description

This Award is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for the procurement of environmentally preferable lighting products. The intent is to offer Authorized Users a limited selection of environmentally preferable lighting products at competitive pricing that meet the NYS EO4 specifications for “Lighting Fixtures, Ballasts, and Lamps”. Authorized users are only allowed to purchase from the awarded items.

PR # 23083

**NOTE: See individual contract items to determine actual awardees.**

OGS Contract Number	Contractor & Address	Contact information	Federal ID # NYS Vendor ID
<b>Cancelled</b> PC68166 SDVOB	<del><b>American Veteran Enterprise Team LLC (AVET)</b> 1090 New Loudon Road STE A Cohoes, NY 12047</del>	<del>Jason L Ambrosino 518-212-7637 jasonambrosino@avetllc.com</del>	<del>Federal ID: 47-4020868 NYS VIN: 1100148721</del>
PC68168 SBE	<b>GoodMart, LLC</b> 232 Madison Avenue, 3rd Floor New York, NY 10016	Thomas Dresdner 212-792-0210 x1003 thomas@goodmart.com	Federal ID: 13-4276633 NYS VIN: 1100053339
<b>Cancelled</b> PC68169 SBE	<del><b>NectarLux, LLC d/b/a Nectar Partners</b> Syracuse Technology Garden, 235 Harrison Street Syracuse, NY 13202</del>	<del>Adam Lilien (315) 706-6257 adam@nectar-energy.com</del>	<del>Federal ID: 46-5126261 NYS VIN: 1100200450</del>
PC68170	<b>WESCO Distribution, Inc</b> 225 West Station Square Dr. Pittsburgh, PA 15219	Scott Schaffer 412-951-7755 sschaffer@wesco.com	Federal ID: 25-1723345 NYS VIN: 1000008999
PC68171	<b>W.W. Grainger, Inc.</b> 100 Grainger Parkway Lake Forest, IL 60045	Brent Zinn 313-701-5454 brent.zinn@grainger.com	Federal ID: 36-1150280 NYS VIN: 1000009167

**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 PROCUREMENT SERVICES 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, WOMEN-OWNED BUSINESSES AND SERVICE DISABLED VETERAN 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 and the letters DV indicate a Service Disabled Veteran Business.

**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.

E*	EPA Energy Star Award; Awarded product(s) are approved under the US Environmental Protection Agency's Energy Star Program.
ES	Environmentally Sensitive Award
GR	Green Contract Award; award contains environmentally friendly products or services.
RA	Recycled Award; Awarded product (s) are Recycled
RM	Remanufactured Award; Awarded product contains Remanufactured Components.
RP	Recycle preference applied; A price preference was applied in awarding the contract to a Recycled product.
RS	Recycled Specified; Specifications in solicitation limits competition to a recycled product
SW	Solid Waste Impact; Awarded product (s) are not Recycled or Remanufactured but have a positive impact on solid waste management or the environment

**NOTE TO AUTHORIZED USERS:**

When using this award, the authorized user must be familiar with and follow the terms and conditions contained in the Executed Contracts. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes.

The authorized user, when purchasing from OGS contracts, must 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.

**NOTICE:** THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23083 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED DECEMBER 21, 2017.

**Order of Precedence**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #22918 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A January, 2014, Standard Clauses for NYS Contracts (previously provided);
2. This Contract Award Letter and accompanying 'Award' spreadsheet;
3. Revisions and Clarifications to Bid Specifications dated:
  - November 17, 2017 (previously provided);
  - December 11, 2017 (previously provided);
  - December 19, 2017 (previously provided);
  - December 21, 2017 (previously provided);
4. Invitation for Bids #23083 including all Appendices and Attachments referenced therein (previously provided);
5. Your bid Prices for the products listed in the 'Award' spreadsheet; and
6. American Veteran Enterprise Team LLC's Bid

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## Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, *Definitions*, or as below.

**“Bid Deviation”** shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

**“Business Day”** shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

**“Consortium for Energy Efficiency Qualified Product List (CEE QPL)”** The Qualified Product List maintained by the Consortium for Energy Efficiency at <https://www.cee1.org/>. The CEE Commercial Lighting Initiative seeks to enhance energy savings by improving the ability of the marketplace to deliver more energy efficient products and practices. CEE promotes common definitions for energy efficiency in T8 replacement lamps in the form of a CEE performance specification. To support the Initiative, CEE maintains a list of qualifying products that meet the requirements of this specification.

**“Color Rendering Index (CRI)”** a measure of how accurately an artificial light source displays colors. CRI is determined by comparing the appearance of a colored object under an artificial light source to its appearance under incandescent light. The higher the CRI, the better the artificial light source is at rendering colors accurately.

**“Design Lights Consortium Qualified Product List (DLC QPL)”** The Qualified Product List maintained by the Design Lights Consortium at <https://www.designlights.org/>. The DLC QPL is a list of LED/SSL products that have been tested at a DLC approved laboratory and that comply with the specified performance and energy efficiency criteria.

**“Electronic Ballast”**: a device used to start and operate fluorescent lamps. The Electronic Ballast provides the necessary starting voltage, while limiting and regulating the lamp current during operation.

**“Energy Star Certified Products”** Products certified through the EPA’s Energy Star program at <https://www.energystar.gov/>. ENERGY STAR is an international standard for energy efficient consumer products and is a voluntary program that helps businesses and individuals save money and protect our climate through superior energy efficiency. The trusted, government-backed symbol for energy efficiency helps us all save money and protect the environment through energy-efficient products and practices.

**“ETL Listed Mark”** The ETL Listed Mark is proof of product compliance with North American safety standards. Authorities Having Jurisdiction(AHJs) and code officials across the US and Canada accept the ETL Listed Mark as proof of product compliance with published industry standards.

**“Full Cut-off”** The luminous intensity (in candelas) at or above an angle of 90 above nadir is zero, and the luminous intensity (in candelas) at or above a vertical angle of 80 above nadir does not numerically exceed 10% of the luminous flux (in lumens) of the lamp or lamps in the luminaire.

**“Government Entity”** A federal, state, municipal entity or tribal government located in the United States.

**“LED”** or Light-Emitting Diodes, are semiconductor devices that produce visible light when an electrical current passed through them. LEDs are a type of SSL.

**“LED Exit Sign”** an illuminated exit sign, operating 24 hours per day and a legally required safety feature in a facility.

**“LED High Bay Lighting”** An industrial lighting system having direct or semi-direct luminaires designed to be used high above the floor or work level. High Bay Lighting shall be capable of illuminating both

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horizontal and vertical surfaces and shall provide uniform illumination. LED lighting fixtures are typically designed for applications of 20 feet (6 meters) or more.

**“LED Plug and Play Tubes”** LED linear tubes that utilize integrated LED technology and are used to directly replace fluorescent lamps in linear fluorescent Electronic Ballast fixtures without the need to conduct any electrical modifications or rewiring of the fixture.

**“LED Recessed Troffer”** LED lighting fixtures designed for applications that fit into a modular dropped ceiling grid (i.e. 2' by 2' or 2' by 4'). Troffers are typically recessed sitting above the ceiling grid, but are also available in surface mount boxes.

**“LED Street Lighting”** LED lighting fixtures designed for applications of roadway fixtures including but not limited to residential streets, city streets and public squares, major highways and expressways, bridges, and interchanges.

**“LED Wall Packs”** LED lighting fixtures designed for outdoor installations around commercial structure.

**“Linear Fluorescent Lamp”** a low-pressure mercury-vapor gas-discharge lamp that uses fluorescence to produce visible light.

**“Lumen”** a unit of luminous flux in the International System of Units, that is equal to the amount of light given out through a solid angle by a source of one candela intensity radiating equally in all directions. Luminous flux indicates how much light is actually perceived by the human eye.

**“Manufacturer”** “An organization or Business Entity that creates, makes, processes, or fabricates a Product or something of value, which changes a raw material or commodity from one form to another or creates a new Product or commodity.

**“Market Basket”** shall refer to the list of products specifically identified by Manufacturer Name, Manufacturer’s Model Number, Manufacturer’s Product Description and estimated historical annual purchases.

**“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

**“NYS Holidays”** refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

**“NYS Vendor ID”** A unique identifier issued by the NYS Office of the State Comptroller (OSC). It is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN Number. A vendor who intends to do business with and receive payment from New York State must register with OSC’s Vendor File System to receive a NYS Vendor ID.

**“NEMA”** The National Electrical Manufacturers Association (NEMA) is the association of electrical equipment and medical imaging manufacturers located at <https://www.nema.org/pages/default.aspx>.

**“Photoluminescent Exit Sign”** a power free exit sign requiring no electrical current (AC) or battery power to work. They are illuminated via photoluminescence (“glow-in-the-dark”).

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental

entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).

“**Procurement Services**” shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPRO”) and Procurement Services Group (“PSG”).

“**Recycling Kit for Lamps and Electronic Ballasts**” a pre-packaged kit designed for recycling used lighting products, and such kit shall include but not be limited to: labeled containers, pre-printed and pre-paid shipping labels, recycling costs and certificates of reclamation.

“**RoHS Compliant**” RoHS stands for Restriction of Hazardous Substances that impacts the entire electronics industry and many electrical products as well. RoHS restrictions, laws, regulations and administrative provisions are maintained by the European Parliament. More information may be found here:

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.137.01.0010.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.137.01.0010.01.ENG)

“**SDVOB**” shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

“**SSL**” shall refer to Solid State Lighting.

“**Underwriters Laboratories Listing Service (UL Listed)**” means that UL has tested representative samples of the product and determined that it meets UL’s requirements. These requirements are based primarily on UL’s published and nationally recognized standards for safety.

## Lots and Lot Descriptions

Lot	Item
<b>1 – LED Recessed Troffers</b>	
	Item 1a – 48” long x 24” wide, 2999-3999 Lumens
	Item 1b – 48” long x 24” wide, 4000-4999 Lumens
	Item 1c – 48” long x 24” wide, greater than or equal to 5000 Lumens
	Item 1d – 24” long x 24” wide, 1999-2999 Lumens
	Item 1e – 24” long x 24” wide, 3000-3999 Lumens
	Item 1f – 24” long x 24” wide, greater than or equal to 4000 Lumens
<b>2 – LED High Bay Lighting</b>	
	Item 2a – 15,000 to 19,999 Lumens
	Item 2b – 20,000 to 24,999 Lumens
	Item 2c – greater than or equal to 25,000 Lumens
<b>3 – LED Street Lighting</b>	
	Item 3a – 3000 to 3999 Lumens
	Item 3b – 4000 to 5499 Lumens
	Item 3c – 5500 to 6999 Lumens
	Item 3d – 7000 to 8999 Lumens
	Item 3e – 9000 to 10,999 Lumens
	Item 3f – 11,000 to 12,999 Lumens
	Item 3g – greater than or equal to 13,000 Lumens
<b>4 – LED Wall Packs</b>	
	Item 4a – 999 to 1999 Lumens
	Item 4b – 2000 to 2999 Lumens
	Item 4c – 3000 to 3999 Lumens
	Item 4d – 4000 to 4999 Lumens

	Item 4e – greater than or equal to 5000 Lumens
<b>5 – NO AWARD</b>	
<b>6 – LED T8 Plug and Play Tubes, 4 foot</b>	
	Item 6a – 1500 to 1999 Lumens
	Item 6b – 2000 to 2499 Lumens
	Item 6c – 2500 to 2999 Lumens
	<b>Item 6d - NO AWARD</b>
<b>7 – T8 Linear Fluorescent Lamps, 4 foot</b>	
	Item 7a - GE Lighting Market Basket
	Item 7b – Philips Market Basket
	Item 7c – LEDVANCE (formerly Osram Sylvania) Market Basket
	Item 7d - Any manufacturer
<b>8 – Electronic Ballasts for T8 LFLs</b>	
	Item 8a - GE Lighting Market Basket <i>aggregate</i>
	Item 8b - Philips Market Basket <i>aggregate</i>
	Item 8c – Any manufacturer, Instant Start, 1 or 2 T8 Lamps
	Item 8d – Any Manufacturer, instant start, 3 or 4 T8 Lamps
	Item 8e – Any manufacturer, programmed start, 1 or 2 T8 lamps
	Item 8f – Any manufacturer, programmed start, 3 or 4 T8 lamps
<b>9 – NO AWARD</b>	

## SPECIFICATIONS

### Packaging

Packaging shall comply with New York State Environmental Conservation Law section 37-0205. The statute which provides in part that the sum of the concentration levels of lead, cadmium, mercury or hexavalent chromium present in any package or packaging component shall not exceed the following prior to incineration:

- 100 parts per million by weight (0.01%)

### Labeling

In accordance with the rules and regulations generated by the Federal Trade Commission (FTC) under 16 CFR Part 305, Energy and Water Use Labeling for Consumer Products Under the Energy Policy and Conservation Act (“Energy Labeling Rule”), all lamp packages will have “Energy Guide” labels that meet the requirements of the Energy Labeling Rule.

### Product Standards

- 1) All warranties shall meet the item requirements below and meet or exceed the standard warranty period of the brand/model of the lighting products-
  - a. Lamps, fixtures and tubes received by Authorized Users shall be new and free from damage and defects. Contractor shall take great care in shipping product to prevent accidental defect or damage and in the event of damage or defect, shall replace product at no additional cost to the Authorized User.
- 2) Contractor shall ship Product in their original packaging, properly label the Product (See Section 3.2 *Labeling*), and shall include the product(s) specification sheet.

### Lot 1: LED Recessed Troffers

All LED Recessed Troffers shall utilize integrated LED technology, have a minimum five-year warranty, be RoHS compliant and be either UL or ETL listed. In addition, all recessed troffers shall be either DLC listed or Energy Star certified.

### Lot 2: LED High Bay Lighting

All LED High Bay Lighting shall utilize integrated LED technology, have a minimum five-year warranty, be RoHS compliant and be either UL or ETL listed. In addition, all High Bay Lighting shall be DLC listed.

**Lot 3: LED Street Lighting**

All LED Street Lighting shall utilize integrated LED technology, have a minimum five-year warranty, be RoHS compliant, be either UL or ETL listed, and be Full Cut-Off to eliminate ambient light pollution. In addition, all street lighting shall be either DLC listed or Energy Star certified.

**Lot 4: LED Wall Packs**

All LED Wall Packs shall utilize integrated LED technology, have a minimum five-year warranty, be RoHS compliant and either UL or ETL listed. In addition, all Wall Packs shall be DLC listed or Energy Star certified.

**Lot 5: LED Exit Signs and Photoluminescent Exit Signs**

- 1) Items 5a and 5b - All LED Exit Signs shall utilize integrated Led technology, have a minimum five-year warranty, be RoHS compliant, be UL or ETL Listed, be on the current list of NEMA Premium Exit Signs located at: <http://www.nema.org/Technical/Pages/NEMA-Premium.aspx> and shall consume no more than 5 watts of power. All LED Exit Signs shall include lithium ion battery backup power. For item 5b, emergency lighting shall be provided with two luminaires.
- 2) Item 5c – Photoluminescent Exit Signs shall utilize safety/commercial grade phosphor for illumination and shall not consume electrical power. All Photoluminescent Exit Signs shall meet UL standard 924 and in addition shall remain visible for a minimum of eight hours after being exposed to light. Photoluminescent Exit Signs shall not contain hazardous or radioactive materials. Self-luminescent signs that contain hazardous or radioactive materials such as tritium are not permitted under this item.
- 3) For all items in Lot 5, the Exit Signs shall utilize red lettering and shall provide both single and double sided display options.

**Lot 6: LED T8 Plug and Play Tubes, 4 foot long**

All LED T8 Plug and Play Tubes shall be 4 foot in length, T8 diameter, utilize integrated LED technology, have a minimum five-year warranty, be RoHS compliant, be either UL or ETL listed, have a color temperature between 3000 and 5000K and shall be DLC Listed and shall not require any rewiring to either the fixture or the Ballast. All installed Plug and Play tubes must keep the Underwriters Laboratories Listing Service (UL Listed) or ETL Listed Mark intact on the originally installed lighting fixture. In addition, a comprehensive listing of Electronic Ballast compatibility shall be provided for all awarded products.

**Lot 7: T8 Linear Fluorescent Lamps**

All T8 linear fluorescent lamps shall be RoHS compliant, be either UL or ETL Listed and shall be on the CEE Qualified Product List located at: <https://library.cee1.org/content/commercial-lighting-qualifying-products-lists>. In addition, all lamps shall have a maximum mercury content of 3.5mg, a minimum rated life of 30,000 hours when tested on instant start Electronic Ballasts with 3 hour starts and shall have an initial light output between 2,500 and 3,200 Lumens.

In addition, individual items shall also meet the following requirements:

- 1) Item 7a (GE Lighting) – All lamps shall be the model number specified in Attachment 1 for Item 7a and shall be manufactured by GE Lighting. These products shall meet or exceed the above section 3.10 requirements and therefore no product substitutions shall be allowed.
- 2) Item 7b (Philips) - All lamps shall be the model number specified in Attachment 1 for Item 7b and shall be manufactured by Philips Lighting. These products shall meet or exceed the above section 3.10 requirements and therefore no product substitutions shall be allowed.
- 3) Item 7c (LEDVANCE (formerly Osram Sylvania)) - All lamps shall be the model number specified in Attachment 1 for Item 7c and shall be manufactured by LEDVANCE (formerly Osram Sylvania). These products shall meet or exceed the above section 3.10 requirements and therefore no product substitutions shall be allowed...
- 4) Item 7d (Any Manufacturers) - Bidder may offer T8 4 foot long Linear Fluorescent Lamps that meet the above section 3.10 requirements of this item from any manufacturer.



**Lot 8: Electronic Ballasts for T8 Linear Fluorescent Lamps**

All Electronic Ballasts shall be RoHS compliant, either UL or ETL Listed and shall be on the current list of NEMA Premium Efficiency Ballasts located at: <http://www.nema.org/Technical/Pages/NEMA-Premium.aspx>.

Individual items shall also meet the following requirements:

- 1) Item 8a (GE Lighting) – All Electronic Ballasts shall be the model number specified and shall be manufactured by GE Lighting. No product substitutions are allowed.
- 2) Item 8b (Philips) - All Electronic Ballasts shall be the model number specified and shall be manufactured by Philips. No product substitutions are allowed.
- 3) Item 8c (Any Manufacturers Electronic Ballasts, Instant Start, 1 or 2 T8 Lamps per fixture) – Bidder may offer 120/277 volt T8 Electronic Ballasts that have either a normal or low ballast factor from any manufacturer provided they meet the requirements of this section, are instant start and will accommodate one (1) or two (2) lamps.
- 4) Item 8d (Any Manufacturers Electronic Ballasts, Instant Start, 3 or 4 T8 Lamps per fixture) – Bidder may offer 120/277 volt T8 Electronic Ballasts that have either a normal or low ballast factor from any manufacturer provided they meet the requirements of this section, are instant start and will accommodate three (3) or four (4) lamps.
- 5) Item 8e (Any Manufacturers Electronic Ballasts, Programmed Start, 1 or 2 T8 Lamps per fixture) – Bidder may offer 120/277 volt T8 electronic ballasts that have either a normal or low ballast factor from any manufacturer provided they meet the requirements of this section, are programmed start and will accommodate one (1) or two (2) lamps.
- 6) Item 8f (Any Manufacturers Electronic Ballasts, Programmed Start, 3 or 4 T8 Lamps per fixture) – Bidder may offer 120/277 volt T8 electronic ballasts that have either a normal or low ballast factor from any manufacturer provided they meet the requirements of this section, are programmed start and will accommodate up to three (3) or four (4) lamps.

**Lot 9: Recycling Kits for Lamps and Ballasts**

A pre-packaged kit designed for recycling used lighting products, and such kit shall include but not be limited to the following: labeled containers, pre-printed and pre-paid shipping labels, recycling costs and certificates of reclamation. The supplier's recycling facilities shall have all necessary regulatory permits and equipment to recycle lighting and electrical waste in accordance with local, state and federal laws. A certificate of recycling shall be provided to the Authorized User for all recycled products.

**TERMS AND CONDITIONS****1 Contract Term and Extensions**

A. Base Term. The Contract shall be in effect for a term of 5 years. The Contract term shall commence after all necessary approvals have been obtained and shall become effective and binding upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

B. Extensions: If mutually agreed between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to 12 months. The Contract extension may be exercised in monthly increments, such as an additional three months, six months or twelve-month period.

**2 Short Term Extension**

In the event a 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 three (3) months upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such extension), prices, and delivery requirements. Any extension terminates upon Award of a replacement contract.

**3 Appendix A**

Appendix A, *Standard Clauses For New York State Contracts*, dated January 2014, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

**4 Appendix B**

Appendix B, *General Specifications*, dated April 2016, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A.

**5 Appendix C**

Appendix C, *Contract Modification Procedure*, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

**6 Procurement Instructions**

This Contract is issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly §162, regarding Products provided by Preferred Source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

Authorized Users shall review OGS price lists posted on the OGS website listed by Contractor, Lot, and Item to determine best pricing. Authorized Users shall utilize the Product of the Contractor offering the lowest price that meets the Authorized User's form, function, and utility requirements, documenting in the procurement record the determination of the criteria used for the selection. Authorized Users should review the contract for any additional discounts offered by the contractor.

Authorized Users are encouraged to use the Contractor offering the lowest price, but if that Contractor is not selected, then the agency must prepare documentation for the procurement record explaining the reason and the action taken (i.e., the low Contractor could not provide the Product in the time frame required, Contractor did not have the needed equipment, etc.).

**7 Price**

Price includes all customs, tariffs, delivery charges and is net, F.O.B. destination any point in New York State, for orders, as designated by the ordering agency. (See Section 15 *Product Delivery*)

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause (see section 32 *Extension of Use*). Contractor's pricing will be posted to the OGS website.

Contractors shall hold pricing firm for one year from the start date of the Contract. After the first year of the contract, prices will be adjusted in accordance with Section 9 *Price Adjustments*. Prices may be lowered by the Contractor at any time. OGS, at its discretion, may request price changes at any time, if it is in the best interest of the State.

Discounts are firm for the entire period of the Contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time. See Section 9 *Price Adjustments*.

**8 Section Intentionally Left Blank**

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**9 Price Adjustments**

On each contract anniversary date a price adjustment for awarded products shall be calculated and applied by the Procurement Services Contract Manager. Price adjustments shall be based upon fluctuations in the latest published copy of the Consumer Price Index (CPI) for all urban consumers (CPI-U) as published 90

days prior to the bid opening date of this IFB and 90 days prior to the current anniversary date of the contract.

The index is available through the Internet on the Bureau of Labor Statistics web site at <http://stats.bls.gov/>. Go to "Data Tools" then navigate to All Urban Consumers (Current Series) and click "Top Picks", then click on "U.S. All items, 1982-84=100" and then click on "Retrieve data".

Calculation of the CPI Adjustment using the data involve changing the base price by the percent change in the level of the CPI between the reference period and a subsequent time period. This is calculated by first determining the index point change between the two periods and then the percent change. The price adjustment shall be calculated as follows.

Take the CPI for the 3<sup>rd</sup> month prior to the month of the bid opening date and subtract this figure from the CPI value for the 3<sup>rd</sup> month prior to the anniversary date of the Contract. (e.g., if the anniversary date is in the month of December, use the month of September).

That sum is then divided by the Consumer Price Index value for the original 3<sup>rd</sup> month prior to the bid opening date of the IFB. This result is then multiplied by 100 to equal the percent change that is the price adjustment value. The price adjustment value shall be applied to the initially awarded Contract pricing, effective on the latter of the anniversary date or upon notification by OGS.

Price increases shall not exceed 3%, in the event the CPI reflects a negative adjustment, the product prices shall remain the same.

The following example illustrates the computation of percent change:

CPI for the 3 <sup>rd</sup> month prior to the anniversary date	233.0
Less CPI three months prior to bid opening	230.0
Equals index point change	3.0
Divided by CPI for 3 <sup>rd</sup> month prior to bid opening	230.0
Equals	0.0130
Result multiplied by 100	0.0130 x 100
Equals percent change (price adjustment value)	1.30

**10 Product Substitutions**

In the event that an item is discontinued, the Contractor agrees to replace it with a similar item from the same manufacturer having equal or greater technical specifications than the discontinued item and to provide the same or better pricing for the new item.

**11 Best Pricing Offer**

During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

**12 Ordering**

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically

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via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, products ordered, product quantity, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

### **13 Minimum Order**

The minimum order for this procurement shall be \$50. Contractor shall fulfill all orders at or above this amount. Contractor may fulfill orders less than the minimum order.

### **14 Invoicing and Payment**

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

1. Contractor Name
2. Contractor Billing Address
3. Contractor Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number
7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Product Descriptions
15. Unit Price
16. Quantity
17. Unit of Measure
18. Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>

### **15 Product Delivery**

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*.

### **16 Product Returns and Exchanges**

In addition to the provisions of Appendix B, *Title and Risk of Loss*, *Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated

Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

### **17 Contract Administration**

The Bidder shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

### **18 NYS Financial System (SFS)**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized e-Marketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

### **19 Insurance**

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

### **20 Report of Contract Usage**

Contractor shall submit sales reports bi-annually in January and July using Attachment 8 – *Report of Contract Usage*. The reports shall cover the prior six month period and shall include total sales to the Authorized Users of this Contract by the Contractor, and all authorized resellers, dealers and distributors, if any. The report shall be submitted no later than 15 days after the close of the six month period. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the bi-annual report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBEs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

## 21 MWBE Requirements and Procedures

Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

### I. Policy Statement

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

### II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“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.
- 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

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equal employment opportunities for minority group members and women (“EEO”) and 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-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract.

### III. Equal Employment Opportunity (EEO)

- A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

- B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
  - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

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2. Separate forms shall be completed by Contractor and any subcontractor.
  3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-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>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, following Contract execution, 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 (see clause VII below).

#### V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Bidder intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges 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. Any modifications or



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changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

- C. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued; Bidder 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 Bidder and direct the Bidder 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 disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit a MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- G. Bidder/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. 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.

#### VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver 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 V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. 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 to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of

deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

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**VII. Required Good Faith Efforts**

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. 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.
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.

Other information deemed relevant to the request.

**VIII. Monthly MWBE Contractor Compliance Report**

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract 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 work 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 or 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 email 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 that 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>

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- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "Vendor 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 his or her 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, for the preceding month's activity to: OGS MWBE Office, 29<sup>th</sup> 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 clause IX below.

#### **IX. 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, 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 contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the 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 the OGS.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/mwbe/forms>

#### **22 SDVOB Participation Opportunities**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

A. OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [https://www.ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](https://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts within the OGS Division of Service-Disabled Veterans' Business Development (the "Division"). Additionally, following Contract execution, Contractor is encouraged to contact the Division at 518-474-2015 to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.

B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.

C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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 Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:

- (a) If a Bidder fails to submit an SDVOB Utilization Plan;
- (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- (c) If a Bidder fails to submit a request for waiver; or
- (d) If OGS determines that the Bidder has failed to document good faith efforts.

F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. 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-responsibility.

### III. Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts in the Division for guidance

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. 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 to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to [Jennifer.Prusinowski@ogs.ny.gov](mailto:Jennifer.Prusinowski@ogs.ny.gov).

### IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

A. Copies of solicitations to SDVOBs and any responses thereto.

B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.

D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

E. Other information deemed relevant to the waiver request.

#### V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the OGS website and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to the OGS contract manager assigned to the contract.

#### VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ALL FORMS ARE AVAILABLE UNDER AT: <https://ogs.ny.gov/veterans/division-service-disabled-veterans-business-development-compliance-and-reporting#state-agency-reporting-forms>

### **23 Use of Recycled or Remanufactured Materials**

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

### **24 Environmental Attributes and NYS Executive Order Number 4**

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

The specifications used for this Invitation for Bids are consistent with the requirements contained in the Executive Order No. 4 specification for 'Lighting Fixtures, Ballasts and Lamps' found at <https://ogs.ny.gov/greenny/lighting-fixtures-ballasts-and-lamps>. As a result, the products awarded for this IFB will be in compliance with the EO4 specification.

### **25 Consumer Products Containing Mercury**

The Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

### **26 Overlapping Contract Products**

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative

that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

### 27 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

### 28 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction Contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website at [http://osc.state.ny.us/vendrep/info\\_vrsystem.htm](http://osc.state.ny.us/vendrep/info_vrsystem.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the



Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### **29 NYS Tax Law Section 5-a**

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). The ST-220-TD can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <http://www.tax.ny.gov/> for additional information.

### **30 "OGS or Less" Guidelines**

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor, provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

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### 31 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. 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 Appendix B, *Participation in Centralized Contracts*. 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), the terms of Section 7 *Price* shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must 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 <https://www.ogs.ny.gov/purchase/snt/othersuse.asp>. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at **518-474-6717**.

### 32 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant 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.

### 33 Resellers

#### A. Definition

"Reseller" shall refer to alternate distribution sources (distributors or dealers) for a manufacturer that are authorized and designated by said manufacturer, subject to approval by New York State.

#### B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. Resellers are approved upon tentative award and bi-annually thereafter. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a specific procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations, **Attachment 12\_Contractor\_Reseller\_Distributor\_Information\_July2017** at the time that Reseller approval is requested; and,
4. Immediate advanced notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

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C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in **Attachment 12\_Contractor\_Reseller\_Distributor\_Information\_July2017**. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.

E. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

### 34 Centralized Contract Modifications

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedure*. The Contractor shall submit all requests in the form and format contained in Appendix C, *Contract Modification Procedure*. The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of*

**State of New York Office of General Services  
NEW YORK STATE PROCUREMENT  
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 & return by FAX to (518) 474-2437 or mail to:**

OGS PROCUREMENT SERVICES  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242