



**Office of General Services
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Solicitation **(Revised February 4, 2021)**

BID OPENING DATE: January 19, 2021 February 25, 2021 TIME: 11:00 A.M. EST SOLICITATION NUMBER: 23222	TITLE: Group 10150 – Personal Protective Equipment (PPE) & Related Items (Statewide) Classification Code: 42
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CONTRACT PERIOD: 5 years with option to renew and continuous recruitment

DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Lori L. Bahan Contract Management Specialist Telephone No. (518) 486-7313 E-mail address: lori.bahan@ogs.ny.gov	David Gambacorta Team Leader Telephone No. (518) 473-9614 Email address: david.gambacorta@ogs.ny.gov
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Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):

Street	City	State	County	Zip Code
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E-mail Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
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If you are not bidding, place an "x" in the box and return this page only.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages:
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>		Documented by:

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Solicitation.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Solicitation.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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- Attachment 01 – *Pricing* (Revised 2/4/21)
- Attachment 02 – *NYS Required Certifications*
- Attachment 03 – *Encouraging Use of NYS Businesses*
- Attachment 04 – *Insurance Requirements*
- Attachment 05 – *Bidder Information Questionnaire* (Revised 2/4/21)
- Attachment 06 – *Bidder Submission Checklist* (Revised 2/4/21)
- Attachment 07 – *Bidder Questions Form*
- Attachment 08 – *Report of Contract Usage*
- Attachment 09 – *Manufacturer’s Certificate*
- Attachment 10 – *Contractor/Reseller/Distributor Information Sheet* (Revised 2/4/21)
- Attachment 11 – *Proof of Bidder Qualifications* (Revised 2/4/21)

1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services. OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k).

The purpose of this Solicitation is to establish Centralized Contracts for Personnel Protective Equipment (PPE), and related items (Statewide).

The Solicitation is a non-competitive procurement with multiple awards being made in each of the Lots identified in the *Scope* clause. The resulting Centralized Contract(s) will be awarded to responsive and responsible Bidder(s), as discussed in greater detail in the *Method of Award* clause of the Solicitation.

This is a continuous recruitment Solicitation. Bids received under this Solicitation will be reviewed beginning on the Bid Opening Date indicated in the *Key Events/Dates* clause. See the *Method of Award* clause for additional information.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid Opening Date and Time to avoid disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all Attachments.

1.2 Scope

This Solicitation is for PPE and related items as provided in the Lots below. A Bidder may bid on any or all Items within any Lot, provided that the minimum qualifications are met. A Bidder may Bid more than one Manufacturer for each Item in a Lot.

- Lot 1: Respirators (N95 & PAPR)
- Lot 2: Masks (Surgical, Clear View & Non-Surgical)
- Lot 3: Face Shields & Goggles (Medical & Non-Medical)
- Lot 4: Gloves (Vinyl & Nitrile)
- Lot 5: Gowns & Coveralls (Isolation, Surgical (Disposable & Reusable) & Coveralls)
- Lot 6: Covers (Shoe/Boot & Hair)
- Lot 7: Hand Sanitizer (Ethyl Alcohol & Isopropyl Alcohol)
- Lot 8: ~~Disinfecting~~ Wipes (Disinfecting & Isopropyl Alcohol)
- Lot 9: Fit Test Kits

Bidder is not required to bid on all Lots. Bidder is also not required to bid on all Items as described in the specifications within each Lot.

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under separate but item related awards, is approximately \$15,000,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts are non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

1.4 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release	December 3, 2020	N/A
Closing Date for Bidder Questions and MWBE/SDVOB Participation Interest	December 17, 2020	5:00 PM ET
Responses to Bidder Questions (Tentative)	January 7, 2021 February 4, 2021	N/A
Bid Opening / Due Date for Bids	January 19, 2021 February 25, 2021	11:00 AM ET
Contract Approval Date / Award Publish Date (Tentative)	March 19, 2021 April 23, 2021	N/A
Continuous Recruitment Will Begin	At the discretion of the Office of General Services	N/A

1.5 Intent to Bid

There will be no Intent to Bid for this Solicitation.

1.6 Pre-Bid Conference

There will be no Pre-Bid Conference for this Solicitation.

1.7 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information ~~may~~ will result in the Bid being deemed non-responsive to the Solicitation.

1.8 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 07 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to lori.bahan@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. See the *Bid Deviations* clause for additional information.

1.9 MWBE & SDVOB Interest in Partnering with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “Solicitation 23222 MWBE or SDVOB INTEREST_COMPANY NAME” to lori.bahan@ogs.ny.gov on or before the date and time indicated in the *Key Events/Dates* section. The e-mail content should include:

1. Company Name
2. Contact Name and Contact Information such as Phone Number, Mailing Address and E-Mail Address
3. Brief description of the company and the products and/or services that the company offers that are related to this Solicitation (for example “Company ABC manufactures chemicals”)
4. The NYS Certification Type (Minority and/or Women-Owned or SDVOB)
5. Include what locations in NYS the company provides services in.

A list of the NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such email, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

1.10 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>.

1.11 Definitions

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

“**Agency or Agencies**” shall refer to the State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

“**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.

“**Business Entity**” shall refer to any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.

“**Continuous Recruitment**” is a process whereby OGS allows for continuous recruitment of additional Contractors during the term of the Contract.

“**Manufacturer**” shall refer to 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.

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

“**May**” shall refer to the permissive in a contract clause or specification. “May” does not mean “required.”

“**Must**” shall refer to the imperative in a contract clause or specification. “Must” is synonymous with “required.”

“**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; Juneteenth; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

“**Personal Protective Equipment (PPE) and Related Items**” shall refer to equipment worn or used to minimize exposure to serious workplace injuries and the spread of infection or illness. **For purposes of this Solicitation, all Items, within all nine (9) Lots, shall be considered PPE and related items.**

“**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 a 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”).

“**Reseller**” is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them.

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

“**Shall**” refers to the imperative in a contract clause or specification. “Shall” is synonymous with “required.”

1.12 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – *Standard Clauses for NYS Contracts* (October 2019)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Contract Modification Procedure*

Appendix D – *Federal Emergency Management Agency (FEMA) Terms and Conditions*

Attachment 01 – *Pricing* (Revised 2/4/21)

Attachment 02 – *NYS Required Certifications*

Attachment 03 – *Encouraging Use of NYS Businesses*

Attachment 04 – *Insurance Requirements*

Attachment 05 – *Bidder Information Questionnaire* (Revised 2/4/21)

Attachment 06 – *Bidder Submission Checklist* (Revised 2/4/21)

Attachment 07 – *Bidder Questions Form*

Attachment 08 – *Report of Contract Usage*

Attachment 09 – *Manufacturer’s Certificate*

Attachment 10 – *Contractor/Reseller/Distributor Information Sheet* (Revised 2/4/21)

Attachment 11 – *Proof of Bidder Qualifications* (Revised 2/4/21)

1.13 Conflict of Terms

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation.

1.14 NYS Comptroller Approval

Pursuant to the Memorandum of Understanding (“MOU”) dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo (“Executive”), New York State Comptroller Thomas P. DiNapoli (“OSC”), the State University of New York (“SUNY”), the State University of New York Construction Fund (“SUCF”), the City University of New York (“CUNY”), and the City University of New York Construction Fund (“CUCF”), procurement documents and contracts awarded under this Solicitation shall have no force and effect and the State bears no liability unless such procurement documents and contracts awarded under this Solicitation are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

2. BIDDER QUALIFICATIONS

2.1 Minimum Qualifications

~~Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work and/or provide the required products of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required and/or provide the required products. Procurement Services reserves the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory products.~~

~~Any Bidder who fails to meet the following minimum qualifications will be disqualified but will be able to rebid during the continuous recruitment process set forth in the *Continuous Recruitment* clause of this Solicitation.~~

~~A Bidder shall meet the following qualifications set forth below:~~

- ~~1. Bidders must have been in continuous operation for at least three (3) years immediately preceding the Bid Opening Date OR be the recipient of a New York State grant for PPE and related items on or before the Bid Opening Date.

 - ~~a. Bidders shall complete this information as required in Attachment 11- *Proof of Bidder Qualifications*.~~~~
- ~~2. Bidders must provide proof of at least \$200,000 annually in sales for PPE and related items within the scope of this solicitation for the prior three years immediately preceding the Bid Opening Date OR be the recipient of a New York State grant for PPE and related items within the scope of this solicitation on or before the Bid Opening Date.

 - ~~a. Bidder shall complete this information as required in Attachment 11- *Proof of Bidder Qualifications*. OGS reserves the right to request additional documentation to verify sales information provided.~~~~
- ~~3. Bids will be accepted from either established Manufacturers or Business Entities that provide a Manufacturer's Certificate or attestation letter completed by the Manufacturer acknowledging this level of support for all item(s) being Bid. See Attachment 09 - *Manufacturer's Certificate*.~~
- ~~4. For Bidders qualifying as an Empire State Development Grant recipient, the Grant received must directly match the Item for which Bidder is bidding. Bidder must provide proof from Empire State Development that they are a Grant recipient, including a description of the item.~~

~~If the Grant recipient chooses to bid on Items of another Manufacturer, Bidder must meet the continuous service and proof of sales requirements above and provide a Manufacturer Certificate from that Manufacturer.~~

- ~~Failure by a Bidder to provide any of the above information as requested by OGS or to meet any of the above qualifications in whole or in part may result in a rejection of that Bidder's bid.~~

~~Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work and/or provide the required products of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required and/or provide the required products. Procurement Services reserves the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work and/or provide the required products under the resulting Contract as it deems necessary to ensure safe and satisfactory products.~~

~~Bidder shall complete Minimum Qualification information as required in Attachment 11- *Proof of Bidder Qualifications* (Revised 2/4/21). OGS reserves the right to request additional documentation to verify sales information provided.~~

Bids will be accepted from either established Manufacturers or Business Entities that provide a Manufacturer's Certificate or attestation letter completed by the Manufacturer acknowledging this level of support for all item(s) being Bid. See Attachment 09 – *Manufacturer's Certificate*.

Failure by a Bidder to provide any of the required information as requested by OGS in whole or in part may result in a rejection of that Bidder's bid.

Any Bidder who fails to meet the minimum qualifications in paragraphs (1) or (2) below, as applicable, will be disqualified but will be able to rebid during the continuous recruitment process set forth in the *Continuous Recruitment* clause of this Solicitation.

1. Bidder is either the recipient or participant in one of the following programs for PPE and related items on or before the Bid Opening Date:
 - a. Empire State Development (ESD) Grant; **or**
 - b. A project supported by FuzeHub's Jeff Lawrence Innovation Fund, a Program funded by ESD, Division of Science Technology and Innovation (NYSTAR),

Note: A and B above are hereafter individually and collectively referred to as "Grant" or "Grant Recipient" as applicable.

Grant Recipient must provide a copy of the notification from ESD advising that Bidder was awarded a Grant or Grant Recipient's Contract Number. This proof must also include a description of the Item(s) for which the Grant was received.

If Grant Recipient is only bidding on Items listed in Section 4 – *Specifications* for which they received their Grant, they are not required to comply with the requirements of Section 2.1(2), below. However, if Grant Recipient is bidding on Items listed in Section 4 - *Specifications* which are not part of their Grant, they must meet the requirements of Section 2.1(2), below, for those Items.

Example: Grant was for surgical masks. Grant Recipient not required to meet the requirements of Section 2.1(2). If in addition to surgical masks, Grant Recipient wants to bid gowns; Grant Recipient must meet the requirements of Section 2.1(2) for gowns.

2. Bidder has been in continuous operation for at least three (3) years immediately preceding the Bid Opening Date, **and either**:
 - a. Bidder must provide proof of at least \$200,000 annually in sales of PPE and related items within the scope of this Solicitation for the prior three (3) years immediately preceding the Bid Opening Date to any entity (governmental, non-governmental, political subdivisions, etc.). To clarify, each one-year period must total at least \$200,000 in sales, for a cumulative total of at least \$600,000 in sales; **or**
 - b. Bidder must provide proof of at least \$400,000 in sales of PPE and related items within the scope of this Solicitation for the prior one (1) year immediately preceding the Bid Opening Date to at least five (5) distinct Governmental Entities. To clarify, each Governmental Entity must total at least \$400,000 in sales, for a cumulative total of at least \$2,000,000 in sales. For example: \$400,000 in sales to Westchester County Department of Public Safety, NY; \$400,000 in sales to the State of Florida Department of Highway Safety and Motor Vehicles; \$400,000 in sales to the City of Atlanta Department of Corrections; \$400,000 in sales to NYS Department of Health; and \$400,000 in sales to NYS Department of State.

For the purposes of this Solicitation, a "Governmental Entity" is defined as a Department or Agency of the United States, or any State, or political subdivision thereof.

3. BID SUBMISSION

3.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

3.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, **both foreign and domestic**, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, **and is a domestic vendor**, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form (<https://www.osc.state.ny.us/files/vendors/2017-11/vendor-form-ac3237s-fe.pdf>) and submit the form to **the OGS Designated Contact identified in the Solicitation** in advance of Bid submission. ~~Please send this document to the Designated Contact identified in the Solicitation.~~ In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

If the Bidder is not currently registered in the Vendor File, and is a foreign vendor, the Bidder must complete the appropriate forms and submit in advance of Bid submission to the OGS Designated Contact identified in the Solicitation. Guidance on how to obtain a Vendor ID can be found at the following website: <https://web.osc.state.ny.us/agencies/guide/MyWebHelp/Content/X/3/B/1.htm>.

For more information on the Vendor File please visit the following website: <https://www.osc.state.ny.us/state-vendors>.

3.3 Format of Bid Submission

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

E-mail or facsimile Bid submissions are not acceptable.

Incomplete or missing Attachment 01 (**Revised 2/4/21**) – *Pricing* may disqualify Bidder.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

All Bid documents and literature must be provided in English.

Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the required forms and in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. New York State Office of General Services reserves the right to reject any bid submission or portion thereof determined to have been altered or modified from the original format by the Bidder. Such alterations or modifications include, but are not limited to: any change to document header(s), footer(s) and/or cell(s); unprotecting worksheet(s) or workbook(s); hiding or unhiding cell(s)/column(s)/row(s)/worksheet(s); and locking or unlocking cell(s). Bidders are cautioned to verify their Bids documents before submission.

3.4 Content

1. A complete Bid consists of two (2) complete copies of each of the following forms and any additional required documents specified in each form, in the format(s) specified: Original paper versions of documents are to be placed in a loose-leaf binder and tabbed.

#	Bid Document	File Format	Electronic (USB)	Original (Hard Copy)
a.	Pages 1 and 2 of the Solicitation with original ink, and any additional Bid Solicitation updates, if applicable.	PDF	X	X
b.	Completed Attachment 01– Pricing (Revised 2/4/21). Must be submitted as an Excel file.	Excel	X	
c.	Completed Attachment 02 – NYS Required Certifications with original ink signatures.	PDF	X	X
d.	Completed Attachment 03 – Encouraging Use of NYS Businesses.	PDF	X	
e.	Proof of compliance with Attachment 04 - Bidder's Insurance Requirements.	PDF	X	
f..	Completed Attachment 05 - Bidder Information Questionnaire (Revised 2/4/21).	Excel	X	
g.	Completed Attachment 06 – Bidder Submission Checklist (Revised 2/4/21) .	Excel	X	
h.	Completed Attachment 09 – Manufacturer's Certificate with original ink signatures.	PDF	X	X
i.	Completed Attachment 10 – Contractor/Reseller/Distributor Information Sheet (Revised 2/4/21).	Excel	X	
j.	Completed Attachment 11 – Proof of Bidder Qualifications (Revised 2/4/21).	Excel	X	
k.	Completed ST-220CA – Contractor Certification, notarized with original ink signatures.	PDF	X	X
l.	Completed MWBE 100 – MWBE Utilization Plan with original ink signature.	PDF	X	X
m.	Completed EEO 100 – Equal Employment Opportunity Staffing Plan with original ink signature.	PDF	X	X
n.	Completed SDVOB 100 – SDVOB Utilization Plan with original ink signature.	PDF	X	X

o..	Completed <i>Standard Vendor Responsibility Questionnaire</i> or certification that a Questionnaire has been completed online.	PDF	X	Not required if submitted online
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- Two (2) USB flash drives containing all documentation in Number One (1) above to be saved as separate files.

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

Bidders must provide all the items specified on Attachment 06 – *Bidder Submission Checklist (Revised 2/4/21)* with their Bid Proposal at the time of the Bid opening. Incomplete bids may be disqualified but will be able to rebid during the continuous recruitment process.

3.5 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

- BID ENCLOSED (preferably bold, large print, all capital letters)
- Solicitation number 23222
- Bid Opening Date and Time
- The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

3.6 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in the *Key Events/Dates* clause:

State of New York Executive Department
 Office of General Services
 Procurement Services
 Corning Tower - 38th Floor Reception Desk
 Empire State Plaza
 Albany, NY 12242

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

3.7 Important Building Access Procedures

Bidders are hereby advised that due to COVID 19, OGS Procurement Services will not be accepting hand-delivered bids (mail and other delivery services are still allowed to access the building), nor granting access to any visitors to attend the Bid Opening. See Electronic Bid Opening Results clause.

3.8 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 02 – *NYS Required Certifications*) with its Bid.

3.9 Manufacturer's Certificate

Bids will be accepted from Business Entities that provide a Manufacturers Certificate or attestation letter completed by the Manufacturer acknowledging this level of support for all item(s) being Bid. See Attachment 09 – *Manufacturer's Certificate*.

3.10 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

3.11 Electronic Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>.

3.12 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

3.13 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 60 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 60 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

3.14 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;

- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- M. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- N. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- O. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- P. Reject an obviously unbalanced Bid as determined by the State; and
- Q. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots.
- R. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

3.15 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

4. SPECIFICATIONS

United States Food and Drug Administration (FDA) approval(s) must be obtained prior to the Bid Opening Date listed in Section 1.4. An Emergency Use Authorization (EUA) issued by the FDA for certain PPE and Related Devices in response to COVID-19 is not being recognized for the purposes of this Solicitation and will not be accepted for any of the PPE and related items in the Lots below.

Bidder shall only bid the Items listed in the Lots below. A Bidder may bid on any or all Items within any Lot, provided that the minimum qualifications specified in the Solicitation are met. A Bidder may Bid more than one Manufacturer for each Item in a Lot.

4.1 Lot 1: Respirators

A. N95 Surgical Respirator

National Institute of Occupational Safety and Health (NIOSH) certified N95 mask that is currently listed on the Centers for Disease Control and Prevention (CDC) website:

https://www.cdc.gov/niosh/npptl/topics/respirators/disp_part/respsource3surgicaln95.html

Packaging: The NIOSH approval label must be found on or within the packaging of the respirator and/or on the respirator itself. The required labeling of NIOSH-Approved N95 filtering facepiece respirators includes the NIOSH name, the approval number, filter designations, lot number, and model number to be printed on the respirator.

B. N95 Industrial Respirator

National Institute of Occupational Safety and Health (NIOSH) certified N95 mask that is currently listed on the Centers for Disease Control and Prevention (CDC) website:

www.cdc.gov/niosh/nppt/topics/respirators/disp_part/N95list1.html

Note: Respirators listed with exhalation valves are excluded from this bid and resulting contracts

Packaging: The NIOSH approval label must be found on or within the packaging of the respirator and/or on the respirator itself. The required labeling of NIOSH-Approved N95 filtering facepiece respirators includes the NIOSH name, the approval number, filter designations, lot number, and model number to be printed on the respirator.

C. Powered Air-Purifying Respirator (PAPR)

Approved NIOSH 42 CFR 84 PAPR systems with particulate protection that are listed on the NIOSH Certified Equipment List (CEL):

https://www2a.cdc.gov/drds/cel/cel_results.asp?startrecord=1&Search=cel_form&maxrecords=50&schedule=21C&contaminant=41&appdatefrom=&appdateto=&powered=&scbatype=&scbause=&privatelabel=

4.2 Lot 2: Masks

Masks must be packaged to protect from sources of contamination in storage.

ASTM Levels of Protection:

- Level 1: 80mmHG resistant to penetration by synthetic blood more than 4.0 differential pressure mmH₂O/CM², greater than or equal to 95% Bacterial Filtration Efficiency (BFE), greater than or equal to 95% Submicron Particulates Filtration Efficiency (PFE) at .1 micron, Class I flame spread
- Level 2: 2020mmHG resistant to penetration by synthetic blood more than 5.0 differential pressure MMH₂O/CM², greater than or equal to 98% Bacterial Filtration Efficiency (BFE), greater than or equal to 98% Submicron Particulates Filtration Efficiency (PFE) at .1 micron, Class I flame spread
- Level 3: 160mmHG resistant to penetration by synthetic blood more than 5.0 differential pressure MMH₂O/CM², greater than or equal to 98% Bacterial Filtration Efficiency (BFE), greater than or equal to 98% Submicron Particulates Filtration Efficiency (PFE) at .1 micron, Class I flame spread

A. Surgical Masks

- Must be FDA approved under 21 CFR 878.4040 as Class II Medical Devices
- FDA Class II 510(K) premarket approved
- Ear loops or ties
- Must comply with ASTM F2100-19 level standards
- **Any ASTM Level of Protection is acceptable**

B. Medical Clear-View Masks

- FDA Class II 510(k) premarket approved
- Anti-fog, transparent plastic barrier, block aerosols, fluids and sprays and meets **a minimum of ASTM Level 2 standards** for fluid resistance and flammability.
- EZ-Adjuster or classic tie-on

C. Non-Medical Clear View Masks

- Anti-fog, transparent plastic barrier, block aerosols, fluids and sprays
- Three-layer protection

- Disposable
- Adjustable nose piece
- Fits flush to the face
- EZ-Adjuster or classic tie-on

D. Non-Surgical/ Non-Medical Masks

- Three-layer protection
- Disposable
- Adjustable nose piece
- Fits flush to the face
- Ear loops or ties

4.3 Lot 3: Face Shields & Goggles

A. Medical Face Shields

- Regulated by FDA under 21 CFR 878.4040
- Class I Flammability Rating
- Anti-fog with clear visibility
- Large area of anti-splash

B. Non-Medical Face Shields

- Anti-fog with clear visibility
- Large area of anti-splash

C. Medical Goggles

- Anti-fog coating & ventilated
- Fully adjustable comfort strap
- Stable, sturdy construction
- Wide nasal flares

D. Non-Medical Goggles

- Industrial strength & shatter resistant
- Anti-fog coating & ventilated
 - Fully adjustable comfort strap
 - Protect your face & eyes

4.4 Lot 4: Gloves

A. Vinyl Gloves

- Disposable
- Non-sterile
- Latex free, protein free, and chemical accelerator free
- Powder-Free
- Palm Thickness: minimum 4.5 to 4.7 mil
- Finger Thickness: minimum 5.7 to 5.9 mil
- Ambidextrous with beaded/rolled cuffs
- Medical Grade Vinyl (Virgin Polyvinyl Chloride Material)
- Regulated by FDA: FDA21 CFR 880.6250 (non-powdered patient examination glove)
- CE certified
- Shall meet FDA 510K requirements
- Shall conform to ASTM 5250 Standards Specification for Polyvinyl Gloves for Medical Application
- Shall pass both ASTM F-1671 for Viral Penetration for Barrier Protection

B. Nitrile Gloves

- Disposable
- Non-sterile
- Latex free, protein free, and chemical accelerator free
- Ambidextrous with beaded cuffs
- Palm Thickness: minimum 4.5 to 4.7 mil
- Finger Thickness: minimum 5.7 to 5.9 mil
- Fingertip Textured for enhanced grip
- Shall meet FDA 510K requirements a medical device
- Shall exceed ASTM D6319 Standards Specification for Nitrile Exam Gloves for Medical Application
- Shall pass the ASTM F-1671 Standards Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Blood-Borne Pathogens & Viral Penetration

4.5 Lot 5: Gowns & CoverallsLevels of Protection:

- Level 1: Minimal risk of bodily fluid exposure
- Level 2: Low risk of bodily fluid exposure
- Level 3: Moderate risk of bodily fluid exposure
- Level 4: High risk of bodily fluid exposure

A. Disposable Isolation Gowns

- Single use Level 1 & Level 2 isolation gowns that meet Association for the Advancement of Medical Instrumentation (AAMI) PB70 standards
- Single use Level 3 & Level 4 isolation gowns meeting standard of either NFPA 1999 garments or ASTM F1671 (pass)
- ASTM F3352-19 Standard specs for Isolation Gowns Intended for use in Healthcare Facilities: Breaking strength, tear strength, seam strength
- Breaking strength > 7lbf
- Tear strength > 2.3 lbf
- Seam strength > 7lbf

According to the Association of the Advancement Instrumentation® (AAMI), an isolation gown is an “item of protective apparel used to protect health care personnel and patients from the transfer of microorganisms and body fluid in patient isolation situations”. Surgical gowns are defined by the United States (US) Food and Drug Administration (FDA) as “... devices that are intended to be worn by operating room personnel during surgical procedures to protect both the surgical patient and the operating room personnel from the transfer of microorganisms, body fluids...”.

The level of protection, or classification of barrier performance, is determined by the performance of all critical zone components, including seams. Critical zones are defined by AAMI as areas “where direct contact with blood, body fluids, and other potentially infectious materials is most likely to occur.” For surgical gowns, these zones should comprise the front area of the gown from chest to knees and the sleeves from cuff to elbow. The critical zones of isolation gowns, comprise the same areas as surgical gowns but include the entire gown, excluding cuffs, hems, and bindings. Therefore, the required protection testing should be performed in the critical zone areas of the gown.

Features:

- Breathable
- Non-Sterile
- Non-Woven
- Elastic Cuffs
- Spunbond Melt-blown Material
- Full Body Coverage

- Minimum 12" Overlap in back

B. Disposable Surgical Gowns

- Any risk level (Levels 1-4)
- Regulated by the FDA as a Class II medical device that requires a 510(k) premarket notification
- •ASTM F3352-19 Standard specs for Isolation Gowns Intended for use in Healthcare Facilities: Breaking strength, tear strength, seam strength
- •Breaking strength > 7lbf
- •Tear strength > 2.3 lbf
- •Seam strength > 7lbf

According to the Association of the Advancement Instrumentation® (AAMI), an isolation gown is an "item of protective apparel used to protect health care personnel and patients from the transfer of microorganisms and body fluid in patient isolation situations". Surgical gowns are defined by the United States (US) Food and Drug Administration (FDA) as "... devices that are intended to be worn by operating room personnel during surgical procedures to protect both the surgical patient and the operating room personnel from the transfer of microorganisms, body fluids...".

The level of protection, or classification of barrier performance, is determined by the performance of all critical zone components, including seams. Critical zones are defined by AAMI as areas "where direct contact with blood, body fluids, and other potentially infectious materials is most likely to occur." For surgical gowns, these zones should comprise the front area of the gown from chest to knees and the sleeves from cuff to elbow. The critical zones of isolation gowns, comprise the same areas as surgical gowns but include the entire gown, excluding cuffs, hems, and bindings. Therefore, the required protection testing should be performed in the critical zone areas of the gown.

C. Disposable Coveralls

- Any risk level (Levels 1-4)

Standards:

- FDA: Device Class 2
- ANSI/AAMI PB70 (American standard) (recognized by the FDA) – liquid barrier performance and classification of procedure apparel and drapes in healthcare facilities.
- ASTM F2407 standard recognized by the FDA:
 - Tensile Strength: ASTM D5034, ASTM D1682
 - Tear resistance: ASTM D5587(woven), ASTM D5587 (nonwoven), ASTM D1424
 - Seam Strength: ASTM D751 (stretch woven or knit)
 - Water vapor transmission (breathability) ASTM F1868 Part B, ASTM D6701 (nonwoven), ASTM D737-75
- ASTM F1670/F1670M-17 – Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood

Features:

- Breathable
- Single use disposable or washable
- Non-Sterile
- Non-Woven
- Elastic Cuffs
- Spunbond Melt-blown Material
- Full Body Coverage
- May cover the feet and/or head
- Zipper closure; must have flap coverage (i.e. blue tape or Velcro)
- Elastic wrists and cuffs; elastic face opening (if coveralls have a hood)

D. Reusable GownsLevels of Protection:

- Level 1: Minimal risk of bodily fluid exposure
- Level 2: Low risk of bodily fluid exposure
- Level 3: Moderate risk of bodily fluid exposure
- Level 4: High risk of bodily fluid exposure

Fabrics:

- Polyester and polyester/cotton fabrics

Standards:

- Testing AAMI PB70:
- AAMI PB70 Impact penetration: AATCC42 < or = 4.5g Level 1; < or = 1.0g Level 2 and 3
- AAMI PB70 Hydrostatic Pressure Water Resistance: L2 > 20cm; L3 > 50cm
- Tests performed on critical zone areas of the gown (see definition below)
- ASTM F3352-19 Standard specs for Isolation Gowns Intended for use in Healthcare Facilities: Breaking strength, tear strength, seam strength
- Breaking strength > 7lbf
- Tear strength > 2.3 lbf
- Seam strength > 7lbf
- Though launderings decrease tear strength, reusable gowns ~~should~~ **must** maintain this through 50 to 75 washes (differs by manufacturer)

Features:

- Specifications ~~should~~ **must** be provided for new and at end of expected life ~~(usually 50-75 washes)~~
- Laundering instructions ~~to~~ **must** be included. **Time to launder, temperatures for wash and for dry, exclusions (e.g. no bleach or chlorine products); also delineate whether to wash separately, the load size, detergent/de-stainer recommendations, recommended laundry sanitizer approved by NYS Department of Environmental Conservation (DEC).**

4.6 Lot 6: Covers**A. Shoe/Boot Covers**

- FDA: Device Class 1 – Surgical Apparel
- Features: With or without skid-resistant tread
- Possible Materials: spunbond polypropylene (low protection, no possible fluid interaction); SMS polypropylene (spunbond/meltblown/spunbond-potential fluid interaction); coated polypropylene
- Cover Height Ranges: Ankle, Calf, or Knee
- Closure Types: Elastic or Ties
- Fluid Resistance: ASTM 1671 standard
- ~~Slip Resistance: ASTM F2413 standard~~

B. Hair Covers (Bouffants)

- FDA: Device Class 1 – Surgical Apparel (Cap)
- Coverage: confines all hair and completely covers the ears, scalp skin, sideburns, and nape of the neck
- Possible materials: spunbound polypropylene (low protection, no possible fluid interaction); SMS polypropylene (spunbond/meltblown/spunbond- potential fluid interaction- caps)
- Closure Type: Elastic
- Fluid Resistance: ASTM 1671 standard

4.7 Lot 7: Hand SanitizerLabel Requirements:

Must be in accordance with the FDA: <https://www.fda.gov/drugs/drug-information-consumers/otc-drug-facts-label>.

Disqualification:

Products offered below must not be listed on the FDA's chart of hand sanitizers consumers should not use: <https://www.fda.gov/drugs/drug-safety-and-availability/fda-updates-hand-sanitizers-consumers-should-not-use#products>. Products on this list have been tested by the FDA and found to contain methanol or 1-propanol (toxic, danger includes death); purportedly made at the same facility as products that have been tested by the FDA and found to contain methanol or 1-propanol; are labeled to contain methanol; have been tested and found to have microbial contamination; are recalled by the manufacturer or distributor; and/or is subpotent, meaning it has less than the required amount of ethyl alcohol, isopropyl alcohol, or benzalkonium chloride.

A. Ethyl Alcohol Hand Sanitizer

- Must contain at least 60% but no more than 70% ethanol

B. Isopropyl Alcohol

- Must contain at least 70% but no more than 80% isopropanol

4.8 Lot 8: Disinfecting Wipes

A. Disinfecting Wipes:

- Disposable, single-use wipes, pre-saturated with disinfectant solution, found on the list of NYS DEC List of Products to Disinfect COVID-19: <https://www.dec.ny.gov/chemical/298.html>

B. Isopropyl Alcohol Wipes:

- Disposable, single-use wipes, pre-saturated with at least 70% but no more than 80% isopropyl alcohol.

4.9 Lot 9: Fit Test Kits

A. Qualitative Fit Test (QLFT):

- Kits offered must include all components necessary to complete a fit test for N95 respirator or PAPR
- Bidders are encouraged to provide pricing for replacement components of kits offered
- Bidders must include manufacturer's instructions for rapid disinfection of all parts that are considered reusable by the manufacturer
- Meets the performance criteria for fit testing respirators under OSHA 29 CFR 1910.134, Appendix A
- Three OSHA-accepted test agents for this bid include:
 - Isoamyl acetate (banana smell – only for testing respirators with organic vapor cartridges)
 - Saccharin (sweet taste – can test respirators with a particulate filter of any class)
 - Bitrex (bitter taste – can also test respirators with a particulate filter of any class)

5. METHOD OF AWARD

5.1 Method of Award

Award shall be made to all responsive and responsible Bidders who meet minimum qualifications and whose pricing indicates that Products offered will be delivered at a reasonable price as determined by OGS Procurement Services. "Reasonable prices" may be determined by reviewing net prices offered to GSA, prices on any previously awarded NYS Contract, pricing offered by other Bidders for this Solicitation, contracts with other state or government entities, or such other information as determined by OGS. Bidder

shall demonstrate reasonableness of pricing. New York State reserves the right to reject any Bidder that does not demonstrate reasonable pricing for this Solicitation.

There are nine (9) Lots. Bidders are not required to bid on all Lots. Bidders are also not required to bid on all items as described in the specifications within each Lot.

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1. Failure to submit Attachment 1 may result in rejection of Bid.

The State reserves the right to require documentation to support the reasonableness of the prices offered. At the time of the Bid opening, Bidder must provide a link to a valid website of at least one governmental and/or municipal contract (GSA, NYS, other State, etc.), or other public procurement organization contract (NASPO, NJPA, etc.) that shows the prices being charged. If this information is unavailable, the Bidder shall supply invoices of sales to large entities or corporations with repeat business detailing the prices being charged.

New York State reserves the right to exclude from award any pricelists or individual Products that do not fall within the scope of this Solicitation or are not deemed to be offered at Prices advantageous to the State.

Receipt of Bid documents does not indicate that OGS has pre-determined a company's qualifications to receive a Contract award. Such determination shall be based on the evaluation of a Bid submission compared to the specific requirements and qualifications contained in these Bid documents.

The State reserves the right to award items that are in greatest demand first.

5.2 Notification of Award

The successful Bidders shall be advised by OGS in accordance with Appendix B, §22 Contract Creation/Execution. Tentative award of the Contract shall consist of written notice to that effect by OGS to the successful Bidders. In the case where a Bidder is awarded more than one Lot, a single Contract will be issued which includes terms for all awarded Lots.

Non-awardees will also be notified that their Bid was not selected for award.

5.3 Debriefings

Debriefings shall be provided to the Bidder in accordance with, Appendix B, Section 20, *Debriefings*.

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

A. The Contract shall be in effect for a term of five (5) years from the date of OSC Approval. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, Contract Creation/Execution).

B. Extensions. At the State's option, the Contract may be extended for five (5) years, subject to the approval of OSC, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Contract Term – Extension.

C. The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users

whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

6.2 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract 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 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Continuous Recruitment

This Solicitation allows for continuous recruitment of additional Contractors during the term of the Contract. Vendors that miss the Bid Opening date, and Bidders who did not receive an Award, may submit a bid when the Continuous Recruitment period opens, which will be no earlier than the date of the final Contract Awards having been issued, or at the discretion of the Office of General Services. The opening of the Continuous Recruitment Period date will be advertised in the New York State Contract Reporter.

6.4 Price

Pricing will be bid by Lot and Item.

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1.

Pricing shall be all-inclusive, including but not limited to labor, bundling, delivery charges, fuel surcharges, utility rate surcharges, dock fees, license fees, procurement or transportation surcharges, tariffs, customs duties and charges, or other surcharges applied.

New York State anticipates that the State shall be treated as a single entity and that prices reflect volume aggregated discounts commensurate with the statewide volume. Bidders are encouraged to offer their best possible pricing; additionally, Authorized Users may negotiate better pricing with Contractor at any time throughout the Contract period.

Should additional Products be required by the Authorized User to accommodate an exigent circumstance for a delivery at a non-standard delivery time, the Contractor shall provide additional Products at the Contract rates without additional sorting charge, special order charge, transportation charge, or other additional charges.

OGS, at its discretion, has the right to request a Contractor to update its Price List.

OGS, at its discretion, has the right to remove Products from Price Lists.

6.5 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product 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, after consultation with the Contractor, may be reduced to a lower price on a prospective

basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.6 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

6.7 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

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

6.8 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

6.9 Minimum Order

There is no Minimum Order required for this Contract.

6.10 Procurement Instructions for Authorized Users

The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

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

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.

6.11 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:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure

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/nys-vendors>.

6.12 Product Delivery

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

Authorized Users may require the following delivery instructions and/or information, including but not limited to:

- A delivery schedule
- Firm delivery date
- Point of contact for delivery
- Shipping method – Name of shipper, common carrier, etc.
- Packaging/number of pallets and number of items per pallet
- Estimated amount of storage space needed for delivery (e.g., number of pallets, cases, square feet and cubic feet, etc.)
- Confirmation that all paperwork including bills of lading shall be affixed to the pallet or carton and visible. All paperwork must contain the vendor name on the PO, and the PO number or a copy of the PO should be attached to each pallet
- Palletization: When palletization is required, all items must be delivered on pallets and each item kept separate, where necessary, to meet the requirements of the Authorized User. Pallets must be two-way and sturdy enough to adequately support the load placed on them without breaking and delivered lying flat and stacked.

6.13 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. There shall be no restocking fee charged.

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.

6.14 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

6.15 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 05 – *Bidder Information Questionnaire (Revised 2/4/21)*. 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.

6.16 Price Updates

Commencing with the first anniversary date of the Bid opening, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes and the addition/deletion of Products. Price Updates shall be submitted by Contractors in accordance with Appendix C – *Contract Modification Procedure*.

Requests for price adjustments and new items shall be submitted no later than 30 calendar days prior to the anniversary date of the Bid opening, and annually thereafter. Requests from Contractor(s) for price adjustments at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing in a manner and format as designated by OGS including, but not limited to Identification of price increases, price decreases, additions, deletions (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) . No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proofs of Insurance or any other documentation that is required under the resulting contract.

Contractors shall be permitted to reduce their pricing any time during the contract term.

In connection with any Contract pricelist update, OGS reserves the right to:

- Request additional information, including but not limited to reasonableness of price;
- Reject Contract updates;
- Remove Products from Contract updates; and
- Request additional discounts for new or existing Products

OGS reserves the right to add a product category within any Lot, at any time, if it is deemed to be in the best interest of the State.

6.17 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 eMarketplace 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 may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <https://web.osc.state.ny.us/agencies/guide/MyWebHelp/Default.htm>.

6.18 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

6.19 N.Y. State Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After

review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 02 – *NYS Required Certifications*, which Bidder must submit with its bid.

6.20 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 04 – *Insurance Requirements*.

6.21 Report of Contract Usage

Contractor shall submit Attachment 08 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 **business** days after the close of each calendar quarter. 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 quarterly 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 08 – *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.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to Appendix B – *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

6.22 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. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS 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 and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for 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. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of 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 and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall 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. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan. 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.

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.newycontracts.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 Enterprises. 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 an 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 changes to the agreed participation by New York State 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. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE
 - D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
 - E. 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.
 - F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an 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.
 - G. 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.
 - H. 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 shall contact the Designated Contacts listed on page 1 of this document 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) business 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.

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, copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development (“ESD”) 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.
6. 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, 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 - Vendor training**” and “**Contract Compliance Reporting - Vendor Training**” to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>.
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated, if necessary, by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “**- MWBE Contact**” after 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, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- 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 OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD’s Division of Minority and Women’s Business Development at (855) 373-4692.

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

6.23 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

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://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov 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 at OGS 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 lori.bahan@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:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
3. 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.

4. 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.
5. 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 at <https://ogs.ny.gov/veterans/> 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: ogssdvobreports@ogs.ny.gov

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/>

6.24 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*.

6.25 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

6.26 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in

6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

6.27 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.

6.28 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.

6.29 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 <https://www.osc.state.ny.us/state-vendors> or to enroll, go directly to the VendRep System online at <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

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 <https://www.osc.state.ny.us/online-services/get-help-businesses-and-governments>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at <https://www.osc.state.ny.us/state-vendors/vendrep/vendor-responsibility-forms>.

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.

6.30 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/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_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 <https://www.tax.ny.gov/> for additional information.

6.31 "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.

6.32 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 the *Price* clause 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://online.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.

6.33 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.

6.34 Resellers for Order Fulfillment

A. Definitions

“Reseller” is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Resellers must be able to quote pricing statewide and independently for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for products.

B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. 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 particular 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 Attachment 10 – *Contractor/Reseller/Distributor Information Sheet (Revised 2/4/21)* the time that Reseller approval is requested; and,
4. Immediate advance 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.

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 10 – *Contractor/Reseller/Distributor Information Sheet (Revised 2/4/21)*. 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.

6.35 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 Contract Terms*.

6.36 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

6.37 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

6.38 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

6.39 Samples and Testing

OGS and/or Authorized Users reserve the right to request a Certificate of Compliance certifying Contractor's product offering meets or exceeds the requirements as listed in the item specifications.

OGS and/or Authorized Users reserve the right to request samples and test any product available under the resulting Contract in order to determine whether the item is acceptable and meets specifications. Samples and testing shall be provided at no cost to the State.