



Contract Award Notification

Title	:	Group 21510 – Outdoor and Site Furniture Including Picnic Tables (Statewide) Classification Code(s): 49 & 56
Award Number	:	<u>22984</u> (Replaces Award 21688)
Contract Period	:	April 25, 2016 – April 24, 2021
Bid Opening Date	:	January 5, 2016
Date of Issue	:	April 25, 2016 (Revised June 15, 2020)
Specification Reference	:	As Incorporated Herein
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
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**Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

These contracts shall provide Authorized Users a selection of outdoor (weather resistant) furniture to be used in public parks, campgrounds and around public buildings.

Outdoor Furniture includes tables, chairs, benches, fire rings, trash receptacles, bike racks and miscellaneous products.

This Contract Award Notification contains MWBE goals of 5% MBE and 5% WBE.

PR # 22984

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>FED.IDENT.#</u>	<u>NYS VENDOR#</u>
PC67464	Global Equipment Company, Inc.	113584699	1000012358
PC67465 WBE SB	Jamestown Advanced Products	161577419	1000008402
PC67466	Keystone Ridge Designs, Inc.	251775682	1100004378
PC67467	Landscape Forms, Inc.	381897577	1000009246

For complete Contractor contact information, Products, Authorized Resellers and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:
<http://online.ogs.ny.gov/purchase/spg/awards/2151022984Can.htm>

Cash Discount, If Shown On The Contractor Information Document, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
 (See "Invoicing and Payment" in this document.)**

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

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

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

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

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

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

NOTE TO AUTHORIZED USERS:

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

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

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

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

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

DISPUTE RESOLUTION POLICY

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the contract manager, or at:

<http://nyspro.ogs.ny.gov/content/dispute-resolution-procedures>. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

ORDER OF PRECEDENCE

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #22984 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- 1) Appendix A
- 2) The Solicitation and Attachments
- 3) Appendix B
- 4) Bidder's Bid

OVERVIEW

This Contract is being used by the New York State Office of General Services – Procurement Services (OGS). The purpose is to establish multiple statewide centralized contracts for Outdoor and Site Furniture to be used by Authorized Users Statewide. This Solicitation is being conducted as a non-competitive periodic recruitment. Contractors are required to offer products in at least three (3) of six (6) product categories, as shown below.

The Contract shall include ONLY items that fall into the following six (6) Product Categories:

Outdoor Tables and Chairs and Related Accessories

Benches and Related Accessories

Fire Rings and Fire Ring Accessories

Trash Receptacles and Related Accessories

Bicycle Racks and Related Accessories

Miscellaneous – this category can include items that can be used in outdoor and campground environments including but not limited to; shade systems, signs, bollards, tree guards and planters.

No products such as playground equipment or water parks will be available under the scope of these contracts. **Installation will not be included in these resulting contracts.** Authorized Users who need these products installed must arrange for that independently, outside the scope of these contracts.

ESTIMATED QUANTITIES

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This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within this Contract are estimates. The historical dollar value of all contracts issued under the previous award is approximately \$800,000 annually.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- The Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

GLOSSARY

The terms used in this Contract shall be defined in accordance with Appendix B – *Definitions*. In addition, the following definitions shall apply.

“Business Day” Shall refer to 8 hours of operation, Monday through Friday within the hours of 7:00 am – 6:00 pm ET, excluding NYS Holidays.

“Category Discount” Refers to the discount offered to all products in the category

“Deeper Discount” refers to an additional discount beyond the Product Category Discount for each Product offered within a Product Category.

“EO4” Refers to Executive Order 4 *Establishing a State Green Procurement and Agency Sustainability Program*, which directs State Agencies, public authorities and public benefit corporations to green their procurements and to implement sustainability initiatives.

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

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

“Periodic Recruitment” is a process whereby OGS, at any time and in its best interest, reserves the right to open the procurement to additional Bidders under the same terms and conditions as the original solicitation.

“Preferred Source Offering” shall refer to those commodities or services that have been approved in accordance with 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 commodities and services from designated organizations when the commodities or services meet the “form, function and

utility” requirements of the governmental entity. Under State Finance Law §163, purchases of commodities and services from preferred sources are given the highest priority and are exempt from the competitive Bidding requirements. The New York State preferred sources include: 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, NYS Industries for the Disabled; and the Office of Mental Health. These requirements apply to a State agency, political subdivision and public benefit corporation (including most public authorities).

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

APPENDIX A

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

APPENDIX B

Appendix B, Office of General Services General Specifications, dated May 2015, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A.

PRODUCT CATEGORIES

Services are excluded from the scope of this contract. This contract shall provide Authorized Users a selection of outdoor (weather resistant) furniture and accessories to be used in public parks, campground and around public buildings. The categories are:

1. Outdoor Tables and Chairs and Related Accessories
2. Benches and Related Accessories
3. Fire Rings and Fire Ring Accessories
4. Trash Receptacles and Related Accessories
5. Bicycle Racks and Related Accessories
6. Miscellaneous – this category can include items, other than playground or water park equipment, that can be used in outdoor and campground environments including but not limited to: shade systems, signs, bollards, tree guards and planters.

CONTRACTOR REQUIREMENTS

Contractors offer products in at least Three (3) of the Six (6) Product Categories described in ‘Product Categories’.

Contractors offer at least one (1) product in each of the Product Categories that meet the EO4 Environmentally Preferable Specifications. For a product to qualify as being compliant with these specifications, it must meet the following requirements as listed below. For products that are made up of multiple materials, each material must meet the requirements in order for the product to be compliant.

EO4 ENVIRONMENTALLY PREFERABLE SPECIFICATIONS

For a product to qualify as being compliant with these specifications, it must meet the following requirements as listed below. For products that are made up of multiple materials, each material must meet the requirements in order for the product to be compliant.

Bike Racks – Bike racks can be made of many materials including plastic, plastic composite, aluminum and steel. Each material has different sustainability criteria. Environmentally preferable products must be manufactured with the minimum recycled content as specified below. Minimum recycled content was established primarily through USEPA’s Recommended Content Levels for bike racks. For more information visit:

<http://www.epa.gov/epawaste/consERVE/tools/cpg/products/miscellaneous.htm#bike>

High Density Polyethylene (HDPE) – Must be composed of 100% post-consumer recycled content.

Steel manufactured in a basic oxygen furnace – must be composed of 25% recycled content and at least 16% post-consumer content.

Steel manufactured in an electric arc furnace – must be composed of 85% recycled content and at least 50% post-consumer content.

Aluminum – must be composed of at least 25% post-consumer recycled content.

Fire Rings – Environmentally preferable products must be manufactured with the minimum recycled content as specified below. Minimum recycled content was established primarily through USEPA's Recommended Content Levels for Park & Recreation Products. For more information visit www.epa.gov/epawaste/conserves/toos/cpg/pdf/parks.pdf

Steel manufactured in a basic oxygen furnace – must be composed of 25% recycled content and at least 16% post-consumer content.

Steel manufactured in an electric arc furnace – must be composed of 85% recycled content and at least 50% post-consumer content.

Tables, Chairs, Receptacles and Benches – Tables, chairs, receptacles and benches can be made of many materials including wood, plastic, plastic composite, aluminum, steel and concrete. Each material has different sustainability criteria. Affected entities should purchase products that meet the following criteria.

- 1) Wood-based products – all wood containing environmentally preferable products must utilize only certified wood that meets the following criteria. Wood-based materials shall be originally sourced from forestlands participating in an acceptable system or program which certified sustainable forest management, as determined by the Commissioner of the Department of Environmental Conservation, or his/her designee. Acceptable systems or programs must include the following:
 - (1) Adherence to management practices which conserve biological diversity, maintain productive capacity of forest ecosystems, maintain forest ecosystem health and vitality, conserve and maintain soil and water resources, and maintain forest contribution to global carbon cycles;
 - (2) Independent third party auditing that monitors, measures and reports compliance with system or program principles and guidelines; and
 - (3) Documentation verifying that the wood-based products used have been obtained from lands enrolled under or participating in an acceptable certification system or program.
- 2) Non-Wood-based products – Environmentally preferable non-wood or plastic composite products must be manufactured with the minimum recycled content as specified below. Minimum recycled content was established primarily through USEPA's Recommended Content Levels for Park & Recreation Products. For more information visit – www.epa.gov/epawaste/conserves/tools/cpg/pdf/parks.pdf

ThermoPlastic – the plastic portion of the product must be composed of 100% recycled content and at least 90% post-consumer plastic.

Thermoset Plastic – the plastic portion of the product must be composed of at least 50% post-industrial or post-consumer recycled content.

Plastic composite (using thermoplastic) – the plastic portion of the product must be composed of 100% recycled content and at least 50% post-consumer content.

Plastic composite (using thermoset plastic) – the plastic portion of the product must be composed of at least 50% post-industrial or post-consumer recycled content.

Aluminum - must be composed of at least 25% post-consumer recycled content.

Steel manufactured in a basic oxygen furnace - must be composed of 25% recycled content and at least 16% post-

consumer content.

Steel manufactured in an electric arc furnace - must be composed of 85% recycled content and at least 50% post-consumer content.

Concrete - must be composed of a minimum of 15% recycled content.

Disposal of CCA-Treated Wood Products:

When new outdoor furniture replaces a product composed of chromate copper arsenate (CCA)-treated wood, the product to be replaced must be disposed of properly. In New York State, CCA-treated wood may be disposed of in construction & demolition (C&D) debris landfills and municipal solid waste landfills which are authorized to accept C&D debris. CCA-treated wood should never be burned or shredded for mulch. For more information, visit: www.dec.ny.gov/chemical/8790.html.

Background and Definitions for Wood Containing Products:

Plastic Composite: Material composed of plastic resin and at least one other material including but not limited to wood, sawdust and fiberglass.

Thermoplastic – Plastics made of resins that soften when reheated. These plastics include but are not limited to high density polyethylene (HDPE), Low density polyethylene (LDPE) and polyethylene terephthalate (PET).

Thermoset Plastic – Plastics made of resins that once cured will not soften when reheated.

Thermoset resins include but are not limited to epoxies and acrylics.

Standard Setting & Certification Programs:

The Forest Stewardship Council (FSC) has developed a set of Principles and Criteria for forest management that is applicable to all FSC-certified forests throughout the world. There are 10 Principles and 57 Criteria that address legal issues, indigenous rights, labor rights, multiple benefits, and environmental impacts surrounding forest management. For more information: www.fscus.org/.

The Sustainable Forestry Initiative (SFI) is a chain-of-custody certification that tracks fiber content from certified lands and responsible fiber sourcing through production and manufacturing to the end product. To be certified, companies must be audited to SFI Requirements. Through SFI chain-of-custody certification, a company can identify how much certified, responsible sourcing and/or recycled content is in a product. Chain-of-custody is verified by an independent third-party certification audit. For more information: www.sfiprogram.org/

The American Tree Farm System (ATFS) offers forest certification for family forest landowners that conform to the American Forest Foundation's Standards of Sustainability for Forest Certification. The American Forest Foundation, a 501c.3 not-for-profit, organization located in Washington, D.C. has sole responsibility for setting the AFF Standards. Through a voluntary process, family forests undergo third-party certification audits by independent, ANSI-ASW National Accreditation Board (ANAB) accredited certification bodies. For more information: www.treefarmssystem.org/

Forests certified through the Canadian Standards Association (CSA) Sustainable Forest Management System (SFM) certification standard provide independent third party assurance of meeting biological, environmental and social criteria. Once implemented the CSA SFM system provides customers with a measure of the portion of the product that has been sourced from a certified forest, and an assurance that the uncertified portion is from legal and non-controversial sources. Recertification audits are required every 3 years along with annual surveillance audits. For more information: www.csasfmforests.ca/home.htm.

CONTRACT PERIOD AND RENEWAL

The Contract shall be in effect for a term of five (5) years. The Contract shall commence after all necessary approvals by both parties and shall become effective upon mailing or electronic communication of the final executed documents (see Appendix B, *Contract Creation/Execution*).

Contracts awarded under any additional periodic recruitment periods or those Contracts awarded in phases, will have a lesser initial Contract term such that the Contracts from all periodic recruitments and all phases of awards end on the same date, regardless of start date.

If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for a period of up to one (1) additional year.

PERFORMANCE AND BID BONDS

There are no bonds for this Contract. In accordance with Appendix B, *Performance/Bid Bond*, 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 shall be required at any time during the Contract term.

PROCUREMENT INSTRUCTIONS

The Contracts will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website or the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.

Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities/services of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities/services meet the form, function and utility of the Authorized User.

Where commodities/services are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.

When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:

statement of need and associated requirements; obtaining all necessary prior approvals; a summary of the Contract alternatives considered for the purchase; and the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements.

Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.

Note: Contractor must disclose any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions must receive pre-approval by the Authorized User. Additional terms or conditions that were not pre-approved by the Authorized User or which conflict with the Contract terms and conditions are void and unenforceable at the sole discretion of the State.

SHORT TERM EXTENSION

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In the event a replacement contract has not been issued, listed herein, may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such extension), prices, and delivery requirements. Any extension terminates upon award of a replacement contract.

PRICE

Price includes all customs, duties and charges and is net, F.O.B. destination any point in New York State, for orders, as designated by the ordering agency.

In addition, upon mutual agreement, delivery locations may be expanded per the “Extension of Use” clause.

Contractor must offer a percentage Product Category Discount, off of their regularly published commercial catalog pricing in effect at the time of Bid opening, for each Product Category and must offer a NYS Net Contract Price for each product that is the same or better than pricing provided in a comparable contract to governmental entities that is held by the Contractor (GSA, WSCA, VA, other state or locality). Contractor will provide this information in Attachment 1 – Pricing on the appropriate Product Category price list. Price reasonableness will be determined by comparing the proposed NYS Net Contract Price with the Comparable Governmental Contract Price for each Product. If the Contractor is unable to provide a NYS Contract Price that is the same or better than current contract pricing given to other governmental entities. Contractor must provide a brief explanation in Attachment 5, Solicitation Questions. It is within OGS’s discretion to determine whether the pricing and explanation provided by Contractor are reasonable. OGS reserves the right to request further information to make a determination of price reasonableness, such as copies of other governmental contracts.

Contractor shall hold pricing for one year from the start date of the contract. Contract prices may be changed on the first anniversary of the contract start date and annually thereafter. OGS, at their discretion, may request price changes at any time, if it is in the best interest of the State. Contractors, may offer better or more advantageous pricing to Authorized Users at any point during the term of the contract.

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

ADDITIONAL DISCOUNTS

Deeper Discounts

A Contractor may offer a Deeper Discount for an individual product. This Deeper Discount is set forth in column “H” Deeper Discount in their Price List posted on the OGS Website. This additional discount is included in the NYS Net Price.

Volume Discounts

Contractor may offer volume discount(s) in the form of a percent, **at the transaction level** using the following thresholds (Refer to each Contractor’s Information Page).

- \$500.00 - \$1,000.00
- \$1,000.01 - \$2,500.00
- \$2,500.01 - \$5,000.00
- \$5,000.01 and above

Prompt Payment Discounts

Contractor may offer a prompt payment discount **at the transaction level. (Refer to the Contractor’s Information Page for more information.)**

NYS Procurement Card Discount

Contractor may offer a discount when using the NYS Procurement Card **at the transaction level. (Refer to the Contractor’s Information Page for more information.)**

Pick-Up Discount

Contractor may offer a discount for pick-up orders **at the transaction level. (Refer to the Contractor's Information Page for more information).**

PRICE UPDATES

Contractor may update their pricelist as follows:

Commencing with the first anniversary start date of the Contract, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes and the addition/deletion of Products *or at any time at the discretion of OGS Procurement Services.*

Requests for price adjustments and new items shall be submitted 30 days prior to the anniversary start date of the Contract and annually thereafter. **Requests from Contractor(s) for price increases at any other time will not be granted.** The Contractor shall provide OGS with one (1) electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof 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.

The discount offered on any new Products added to pricelists shall be no lower than the minimum established product category discount. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved pricelist updates shall apply prospectively upon approval by OGS. Total price increases for pricelist updates in a single year of the Contract shall not exceed the escalation cap as set forth in Escalation Cap subdivision, below. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

Contractor's Submission of Contract Updates

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

Request additional information;
Reject Contract updates;
Remove Products from Contracts;
Remove Products from Contract updates; and
Request additional discounts for new or existing Products.

Escalation Cap

In a single year of the Contract, the maximum price increase for each individual item on contract shall not exceed the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0,CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at www.bls.gov.

The following example illustrates the computation of percent change:

CPI for current period 230.000

Less CPI for previous period	225.000	
Equals index point change	5.000	
Divided by previous period CPI		225.000
Equals	0.022	
Result multiplied by 100	0.022 x 100	
Equals percent change		2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only.

Cover Letters

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or WSCA Contract pricing update, to add/delete Products, etc.).

CENTRALIZED CONTRACT MODIFICATIONS

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.

Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, 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.

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.

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

PERIODIC RECRUITMENT

This contract allows for periodic recruitment for additional contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State and will only be utilized if deemed necessary to meet the State's ongoing requirements. The State will formally announce the additional recruitment in the NYS Contract Reporter. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive under periodic recruitment, a vendor cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with Appendix B, Section 24, *Contract Creation/Execution* and will terminate on the then current end date of the Solicitation or at the end of any approved extension or renewal period.

Vendors shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all

bid requirements. If a bid is rejected under periodic recruitment, a Bidder cannot reapply for a future contract until the next periodic recruitment period.

CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B, *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

MINIMUM ORDER

There is no mandatory minimum order for this Contract.

NEW YORK STATE PROCUREMENT CARD

See "Procurement Card" in Appendix B, *OGS General Specifications*. Contractors indicated if they will accept the NYS Purchasing Card for orders not to exceed \$15,000 and are included on each Contractor's Information page. For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

ORDERS

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. Orders submitted during business hours shall be deemed received by Contractor on the date submitted. If available, Authorized Users may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted after business hours shall be deemed received by Contractor on the next business day. See Section 1.7 - *Glossary*, "Business Day."

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 as mutually agreed. Order confirmation shall be itemized, and include purchase price, date of purchase, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities.

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by Information Technology Systems (ITS) and OGS and the results of such testing must be satisfactory to ITS and OGS before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

NEW YORK STATE 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 9.0 Bundle 18, operating on PeopleTools version 8.49.33. 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 goods and services in SFS. This application provides catalog capabilities. Vendors 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. There are no fees required for a Vendor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

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

INVOICING AND PAYMENT

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

The standard format for invoicing shall be single invoices; meaning the Contractor shall provide the Authorized User with an invoice for each order at the time of delivery. Invoices must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the correct price on the original date of order. At a minimum, the following fields must be included on all invoices:

- Vendor Name
- Vendor Billing Address
- Vendor Federal ID Number
- NYS Vendor ID Number
- Authorized User Account Number
- NYS Contract Number (PCXXXXX)
- Authorized User's 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.

Payment of purchases made by Authorized Entities other than State Agencies under this agreement shall be the sole responsibility of such entities and the Contractor shall bill such entities directly on vouchers authorized by the said entities.

PRODUCT DELIVERY

Contractor will be expected to process and ship orders to various destinations. Each order shall be delivered based upon the needs of the Authorized User.

Delivery shall be made in accordance with the instructions on the Purchase Order from each Authorized User and in accordance with Authorized User's security rules, which will be communicated during purchase ordering process. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the Authorized User and, if applicable, from OGS.

CUSTOMER SERVICE

The Contractor shall provide a sufficient number of employees who are knowledgeable and responsive to customer needs and who can effectively service the contract.

Contractor shall provide toll-free telephone support/assistance at no extra charge to all Authorized Users.

PRODUCT RETURNS AND EXCHANGES

Contractor Errors or Quality Problems

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

Products shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement Product shall be the same as stated in the Product Delivery clause herein.

Returned Products shall be picked up by the Contractor in accordance with Appendix B, Rejected Product. No restocking Fee is allowed.

Authorized User Errors

Products returned/exchanged due to Authorized User errors shall be replaced with specified Products or the Authorized User shall be credited/refunded for the full purchase price.

Product shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement Product shall be the same as stated in Product Delivery clause herein.

Returned Products shall be picked up by the Contractor at the time of delivery of the replacement Product, or within ten calendar days of receipt of written notification by the Contractor if a credit/refund is to be issued.

There shall be no restocking fee if returned Products are suitable for resale. Contractor may charge a restocking fee not to exceed the net price of a returned Product if not suitable for resale.

CONTRACT ADMINISTRATOR

Contractors have provided a dedicated Contract Administrator to support the updating and management of each Contract. Information regarding the Contract Administrator is provided in each Contractor's Information page linked from the *Contractors Summary* page. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled.

Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

INSURANCE REQUIREMENTS

The Contractor shall procure, at its sole cost and expense and shall maintain in full force at all times during the term of this Contract, all policies of insurance pursuant to the requirements outlined in *Insurance Requirements* of the bid solicitation.

REPORT OF CONTRACT USAGE

Contractor shall submit *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 the fifteenth of the month following the end of each six month period of the Contract start date. If Authorized Resellers or Dealers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report.

Contractor shall specify if any Authorized Resellers, Dealers or Distributors are NYS Certified Minority and/or Women Owned Business Enterprises (MWBES) within the Report of Contract Usage document. Contractor shall refer to Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women section for information on how to verify certified status.

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

The State reserves the right to seek alternate data and reporting elements. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

RESELLER/DISTRIBUTOR/AUTHORIZED DEALER

Contractors may, if they desire, designate Resellers, Distributors or Authorized Dealers with whom purchase orders may be placed, however, they must also indicate if such Reseller(s), Distributor(s) and/or Authorized Reseller(s) are authorized to ship direct and/or receive payment. Reseller(s) and/or Distributors are listed on the *Reseller/Distributor/Authorized Dealer Information Sheet* linked from the *Contractors Information Summary* page.

Reseller(s) 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 the Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions.

PREFERRED SOURCE PRODUCTS

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products/services 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/services meet the form, function and utility of the agency. Some products/services in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law §162(3) or (4)(b), respectively, before engaging the Contractor.

NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) and any Authorized Resellers who accept payment directly from the State, 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, unique New York State ten-digit vendor identification numbers will be assigned to your company and to each of your Authorized Resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors 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 vendor must enter the vendor's ten-digit Vendor Id number on the first page of this Bid document. Authorized Resellers already registered should list the ten-digit Vendor Id number along with the Authorized Reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor Id number from OGS. Complete the OSC Substitute W-9 Form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf and submit the form to OGS in advance of Bid submittal. Please send this document to the Designated Contact in the Solicitation. In addition, if an Authorized Reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf should be completed by each designated Authorized Reseller and submitted to OGS. The OGS will initiate the vendor registration process for all Bidders and their Authorized Resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website:
http://www.osc.state.ny.us/vendor_management

NEW YORK STATE VENDOR RESPONSIBILITY

OGS conducts a review of prospective Contractors ("Bidders") to provide reasonable assurances that the Contractor is responsive and responsible. A Questionnaire is used for non-construction Contracts and is designed to provide information to assess a Contractor'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, Contractor agrees to fully and accurately complete the "Questionnaire." The Contractor further agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally

false or intentionally incomplete, on such finding, OGS may terminate the Contract. The Contractor acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Contractor is responsible, and that the State will be relying upon the Contractor'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 Contractor 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) web site, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Contractors opting to complete the paper questionnaire can access this form and associated definitions via the OSC web site at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

NOTE: A New York State Vendor File Registry Number is required to access the VendRep site (see previous clause). Contractors who do not have an assigned NYS Vendor File Registration Number must submit a hard copy paper questionnaire with their Bid.

The Contractor 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 or her designee, 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 or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee 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.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND
BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW**

YORK STATE CERTIFIED MINORITY-AND-WOMEN-OWNED BUSINESS ENTERPRISES

Policy Statement

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

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

General Provisions

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.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract.

Equal Employment Opportunity (EEO)

Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

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) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

1. 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.

A. Form EEO 100 - Staffing Plan.

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

Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")

1. If Contractor's Form EEO 100- Staffing Plan provides that Contractor is able to report the actual workforce utilized in the performance of this Contract, the following clause shall apply: Contractor agrees it will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.
2. If Contractor's EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

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.

CONTRACT GOALS

OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). 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.

For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

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

In accordance with 5 NYCRR § 142.4, Contractors are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

- A. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the Contract, a description of the Contract scope of work the Contractor intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Contractor intends to be performed

by a MWBE. By signing the Utilization Plan, the Contractor 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 NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

- B. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- C. 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.
- D. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit a MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- E. 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.
- F. Contractor further agrees that a failure to use 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, Contractor shall speak to the Designated Contacts of the **OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.**
- B. In accordance with 5 NYCRR § 142.7, a /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 Contractor 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 /Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract

goals.

Required Good Faith Efforts

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

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

Monthly MWBE Contractor Compliance Report

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.

When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System for Vendors**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>

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.

- A. 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.
- B. 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.

Breach of Contract and Liquidated Damages

In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

Such liquidated damages shall be calculated as an amount equaling the difference between:

All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

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

USE OF RECYCLED OR REMANUFACTURED MATERIALS

The New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors 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 Bid 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 "*Remanufactured, Recycled, Recyclable or Recovered Materials*" in Appendix B, *OGS General Specifications*. Surplus/Take-Back/Recycling

- I. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

- III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.
- V. Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://ogs.ny.gov/EO4/Default.asp>.

State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

NEW YORK STATE TAX LAW §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.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

OVERLAPPING CONTRACT ITEMS

Products/services available in 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.

"OGS OR LESS" GUIDELINES

Purchases of the Products included in the 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:

- a. lower in price
and/or-
- b. 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 Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State Agencies should refer to Procurement Council Guidelines for additional information.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in 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 "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), 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 (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

EXTENSION OF USE

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in the 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.

EMERGENCY PURCHASING

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

CONTRACTOR PERFORMANCE/POOR PERFORMANCE

Contractors shall be required, upon request, to provide performance surveys to customer agencies. Contract performance measures may include, but not be limited to, the following: delivery time, fill rate, response time to inquiries, resolution of problems, employee courtesy, staff knowledge ability, and overall performance. The information reported on the surveys will be used to assess Contractor's performance and may, if necessary, be used to determine continuation or cancellation of award.

MERCURY-ADDED CONSUMER PRODUCTS

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

AMERICANS WITH DISABILITIES ACT (ADA)

The Federal ADA Act bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals.

Although it is not mandatory for Contractor to have this equipment, it is necessary to identify any such

**State of New York
Office of General Services
Procurement Services
Contract Performance Report**

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

Contract No.: _____ **Contractor:** _____

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

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

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

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

Comments: _____

 _____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:

OGS Procurement Services
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242
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