



Office of General Services

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FIRST AMENDMENT TO CONTRACT NUMBER PC70143

Hart InterCivic, Inc.

GROUP 22300, AWARD 23198

Voting Systems and Related Services and Accessories

THIS FIRST AMENDMENT, (hereinafter the "First Amendment") is made between the **People of the State of New York**, acting by and through the Commissioner of General Services (hereinafter the "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law § 163, and **Hart InterCivic, Inc.** (hereinafter the "Contractor"), with its principal place of business at P O Box 80649 Austin, TX 78728 - 0649 The foregoing are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, OGS entered into a Centralized Contract for the acquisition of Hart InterCivic, Inc and Accessories, (hereinafter the "Contract" or "Contract No. PC70143") with Hart InterCivic, Inc on June 15, 2021; and

WHEREAS, Contract No. PC70143 provided for an initial term from June 15, 2021 through and including June 14, 2026 and an option for an extension of the initial term was provided for in the following Sections:

1. Section 2.1 Contract Term and Extensions

The Contract will be in effect for a term of five (5) years. The Contract Term shall commence after all necessary approvals and shall become effective upon the date of NYS Office of the State Comptroller ("OSC") approval of the final executed documents. Unless terminated in accordance with the terms of this Contract, the Contract Term of each Contract, including those awarded during any subsequent periodic recruitment, shall be a maximum of five (5) years commencing on the date the first Contract is approved by OSC. All OGS Centralized Contracts resulting from Solicitation 23198 shall have a coterminous end date, including those Contracts awarded during any periodic recruitment period.

The Parties may renew the Contract, upon approval of the NYS OGS, and OSC, upon expiration of the original term and for an additional one (1) year.

Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual license granted to Authorized Users prior to such termination.

2. Section 2.2 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.

3. Appendix B *General Specifications, Section 23 Contract Term – Extension*

In addition to any stated extension periods in the Contract... may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

WHEREAS, the Parties now wish to amend the Contract to extend the Contract term through and including June 14, 2027 pursuant to Contract Section 2.1 *Contract Term and Extensions* and to amend other terms of the Contract, as set forth below.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties do hereby agree as follows:

1. TERM

Pursuant to Section 2.1 *Contract Term and Extensions*, the term of the Contract is extended for one (1) year through and including June 14, 2027.

2. NYS COMPTROLLER APPROVAL

Section 2.34 *OSC Approval* of the Contract is deleted in its entirety and replaced with the following new Section 2.34 *NYS Comptroller Approval*, to read as follows:

2.34 NYS COMPTROLLER APPROVAL

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until this Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions under this Contract(s) may also be subject to OSC approval.

3. DEFINITIONS

Section 1.4 *Definitions* is amended to delete the definition for “NYS Holidays” in its entirety and replace it with the following new definition:

1.4 DEFINITIONS

“NYS Holidays” shall refer 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; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’ Day; Thanksgiving Day; and Christmas Day.

4. CONFLICT OF TERMS - CONTRACT

Section 1.6 *Conflict of Terms - Contract* is deleted in its entirety and replaced with the following new Section 1.6 *Conflict of Terms*, to read as follows:

1.6 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* (June 2023);
2. Appendix C *Federal Funding Agency Mandatory Terms and Conditions* (October 2023);
3. The First Amendment;
4. The original base Contract;
5. Appendix B, *General Specifications* (April 2016); and
6. All other appendices and attachments to this Contract, including those added by a Contract Amendment.

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

Section 2.23 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, of the Contract is deleted in its entirety and replaced with the following new Section 2.23 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women, to read as follows:

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 (“MWBES 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, suspension or termination of the Contract, and/or such other actions 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

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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. 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. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
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 complete the Workforce Audit 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 complete the Workforce Audit 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 and 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. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/>. 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.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of 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.

V. 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>

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

6. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Section 2.24 *Participation Opportunities For New York State Certified Service-disabled Veteran Owned Businesses*, of the Contract is deleted in its entirety and replaced with the following new Section 2.24 *Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses*, to read as follows:

Article 3 of the New York State Veterans’ Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), 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/Contractors are strongly encouraged and 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.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>.

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

7. ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22

Section 2.30 *Environmental Attributes and NYS Executive Order Number 4* of the Contract is deleted in its entirety and replaced with the following new Section 2.30 *Environmental Sustainability and NYS Executive Order Number 22*, to read as follows:

2.30 ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 *Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program* (“EO 22”), requires State Agencies, authorities, and public benefit corporations (“Affected Entities”) to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A. GreenNY Specifications

A list of GreenNY specifications is located on the OGS website at <https://ogs.ny.gov/greenny/approved-greenny-specifications>.

B. Product Labeling per GreenNY Specifications

Over the life of the Contract, the Contractor must label the environmental attributes of all environmentally preferable Products per the GreenNY specifications, or other applicable environmental specifications for this Contract, on its Contract pricelist (see Attachment 1 – *Pricing*), and in any catalogs, marketing materials, or online ordering portal associated with this Contract.

Contractor shall also note Products that meet GreenNY Specifications on Contract Usage Reports (see Section 2.22 *Report of Contract Usage*), in the format requested by OGS.

All claims made about the environmental attributes of the Products and packaging offered shall be consistent with the Federal Trade Commission’s (FTC’s) [Guidelines for the Use of Environmental Marketing Terms](#). The State of New York reserves the right to require the Contractor to remove any environmental claims that are false, vague, misleading or unsubstantiated in catalogs, price sheets, websites or other marketing materials that are provided to the Authorized User under this Contract.

C. Verification of Contractor Compliance with GreenNY Requirements and Other Environmental Claims

At the request of OGS or the Authorized User, Contractor must provide verification of Product and packaging compliance with GreenNY specifications, required third-party certification(s), minimum amount of recycled content, or other environmental attributes required in the Contract. OGS and the Authorized User also reserve the right to request information documenting the Product and packaging desirable attributes and other Contractor environmental claims. The following types of verification documentation will be accepted:

- Third-party certification
- Product test results
- Compliance certification or affidavit signed by the manufacturer
- Other acceptable documentation as approved by OGS or the Authorized User

8. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contract is amended to add the following new Section, 2.45 *Prohibition On Contracting for Certain Telecommunications and Video Surveillance or Equipment*, to read as follows:

2.45 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under this Contract or any subcontract thereunder, Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined

by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

9. CONTRACT DOCUMENTS; ELECTRONIC FORMAT

The Contract is amended to add the following new Section, 2.46 *Contract Documents; Electronic Format*, to read as follows:

2.46 CONTRACT DOCUMENTS; ELECTRONIC FORMAT

OGS requires Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents that require original signatures. Documents requested by OGS should be submitted in the format specified by OGS, which may include a requirement for an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). Contractor is responsible for retaining all copies and originals (if applicable) of documents submitted to OGS for the term of the Contract and any extensions thereof, and for a period of six (6) years after the term of the Contract has ended. This requirement includes both electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Contractor shall submit such retained documents to OGS upon request. If Contractor seeks to assign the Contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (transferee/assignee) upon OGS consent to the assignment.

10. APPENDIX A

Appendix A *Standard Clauses for New York State Contracts*, included in the original Contract, is deleted in its entirety and replaced with the Appendix A dated June 2023, attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein. All references in the Contract to Appendix A shall be deemed to reference Appendix A, *Standard Clauses for New York State Contracts* (June 2023).

11. APPENDIX C

The Contract is amended to add Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* dated October 2023, attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein.

Appendix C *Contract Modification Procedure*, included in the original Contract, is therefore deemed to be titled Appendix I *Contract Modification Procedure*, within the Appendix and in any references to the *Contract Modification Procedure* within the Contract.

12. SEVERABILITY

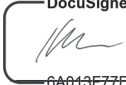
In the event that any one or more of the provisions of this First Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this First Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this First Amendment.

13. Except as herein modified, all other terms of Contract PC70143 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date last written below, and the Amendment shall become effective and binding on the date of NYS Office of the State Comptroller approval. The Parties further hereby certify that copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this First Amendment being executed simultaneously herewith. The Parties agree that this First Amendment may be signed electronically, and that by signing below, the Parties intend to be bound by the terms of this First Amendment. The Parties understand and agree that electronically signing the document is the legal equivalent of having placed a handwritten signature and affirmation on the document.

By signing, you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this First Amendment, Appendix A *Standard Clauses For New York State Contracts* (June 2023), Appendix B *General Specifications* (April 2016), and State Finance Law § 139-j and § 139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law § 139-j(3) and § 139-j(6)(b).

CONTRACTOR

DocuSigned by:

 Signature: _____
 6A813F77B14D40D...

Printed Name: Hollie Osbourn

Title: CFO

Date: 1/19/2026 | 3:30 PM EST

Company Name: Hart InterCivic, Inc.

Federal ID: 95-3248916

NYS Vendor ID: 1100294324

**THE PEOPLE OF THE STATE OF NEW YORK,
ACTING BY AND THROUGH THE COMMISSIONER
OF GENERAL SERVICES**

DocuSigned by:

 Signature: _____
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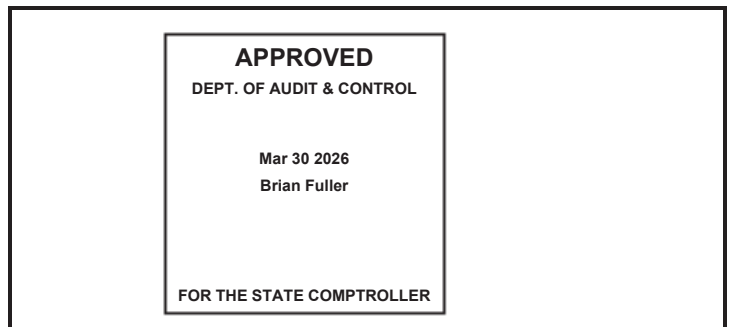
Printed Name: Kylesha Davis

Title: Assistant Director

Date: 3/5/2026 | 3:10 PM EST

Office of General Services

**NEW YORK STATE OFFICE OF THE STATE
COMPTROLLER**



NOTICE: Upon OSC approval of this Contract Amendment, OGS will post a notification to its website in the form of a Contract Award Notification Update.



**Office of
General Services**

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**CENTRALIZED CONTRACT FOR THE ACQUISITION OF
VOTING SYSTEMS AND RELATED SERVICES AND
ACCESSORIES**

BETWEEN

NEW YORK STATE OFFICE OF GENERAL SERVICES

AND

HART INTERCIVIC, INC.

CONTRACT NUMBER PC70143

THIS CENTRALIZED CONTRACT (hereinafter "Contract") for the acquisition of Voting Systems and Related Services and Accessories is made by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and Hart InterCivic, Inc. (hereinafter "Contractor"), whose principal place of business is at PO Box 80649, Austin, TX 78728. The State and the Contractor shall also be individually referred to as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, in the April 11, 2023 edition of the New York State Contract Reporter, OGS advertised the availability of the First Periodic Recruitment Solicitation 23198 (hereinafter the "Solicitation") to identify qualified vendors of Voting Systems and Related Services and Accessories;

WHEREAS, the Solicitation set forth the minimum requirements that a Bidder must meet to be eligible for consideration to receive a contract award;

WHEREAS, OGS has determined that the Contractor submitted a responsive proposal to the Solicitation, is a responsible vendor and that the Contractor's proposed pricing is reasonable; and

WHEREAS, the Contractor agrees to provide Voting Systems and Related Services and Accessories according to the terms and conditions set forth in this Contract, referenced as PC70143.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each Party hereto from the other, the Parties hereby agree as follows:

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ATTACHMENTS

- Attachment 1 – Link to NYS Election Law
- Attachment 2 – Link to NYS Election Codes, Rules, and Regulations

Section 1 INTRODUCTION.

1.1 OVERVIEW.

This Contract is a statewide Centralized Contract for all NYS County Boards of Elections (hereinafter Authorized Users) to acquire Voting Systems and Related Services and Accessories (“Voting Systems”), including voting systems, ballot marking or other voting devices accessible to individuals with disabilities, and related accessories, consumables, training, maintenance, and other related services as specified herein. Reseller participation is not allowed.

Contracts resulting from Solicitation 23198 are multiple non-competitively established Centralized Contracts awarded on a statewide basis. This Contract allows Authorized Users to procure Voting Systems by submitting a Purchase Order; Authorized Users are not required to release a Request For Quote (“RFQ”) to purchase under this Contract. The Contracts shall be awarded for up to five (5) years with the option of a one (1) year extension. The procurement pursuant to Solicitation 23198 includes provisions for Periodic Recruitment of additional Contractors during the term of the contract award.

1.2 SCOPE.

This Contract is for the acquisition, from established and qualified manufacturers, of Voting Systems certified by the New York State Board of Elections (“SBOE”).

1.3 ESTIMATED QUANTITIES.

This Contract is 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. See “Estimated/Specific Quantity Contracts” and “Participation in Centralized Contracts” in Appendix B, *OGS General Specifications*.

The individual value of the 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 this Contract to vary substantially from the estimates in Solicitation 23198. Such factors include, but are not limited to, the following:

- This Contract is a non-exclusive Contract.
- 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 this Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract Term.
- The State reserves the right to terminate this Contract for cause or convenience prior to the end of the Contract 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.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during

the Contract Term could vary substantially from the estimates provided in Solicitation 23198.

1.4 DEFINITIONS.

Capitalized terms used in this Contract shall be defined according to Appendix B, *Definitions*, or as below:

Term	Definition
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State Holidays or federal Holidays.
CBOE(s)	New York State County Boards of Election.
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract Term	The initial term of the Contract and any renewals, or extensions, or both.
Critical Period	Thirty (30) days prior to and after the election in which Voting Systems and Related Services and Accessories are used.
Cyber Incident	An event occurring on or conducted through a computer network or system that actually or imminently jeopardizes the integrity, confidentiality, or availability of computers, information or communications systems or networks, physical or virtual infrastructure controlled by computers or information systems, or information resident thereon. For purposes of this Contract, a cyber incident may include a vulnerability in an information system, system security procedures, internal controls, or implementation that could be exploited by a threat source.
Data Breach	Acquiring of information by a person without valid authorization or through unauthorized acquisition
Days	Unless otherwise specified, reference to days in this Contract shall mean Business Days, not calendar days.
Discount	An allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive.
Early Voting	An option available under NYS law which allows voters to cast their votes prior to Election Day in predetermined locations specified by an Authorized User.
Election Day	A day legally established for the election of public officials.
End-of-Life (EOL)	When a Product is no longer being marketed or sold.
Foreign person/national	<p>Federally defined as a person who is NOT:</p> <ul style="list-style-type: none"> • Granted permanent U.S. residence, as demonstrated by the issuance of a permanent residence card, i.e., a "Green Card", • Granted U.S. citizenship, <p>Granted status as a "protected person" under 8 U.S.C. 1324 b(a)(3), e.g., political refugees, political asylum holders, etc.</p> <p>Also any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).</p>
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Government Entity	A federal, State, municipal entity or tribal government located in the United States.
Hardware	The physical aspect of Voting Systems.
May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should."
Minority and/or Woman-Owned Business (MWBE)	Businesses certified as such by Empire State Development's Division of Minority and Women's Business Development. NOTE: Businesses eligible to participate in the program must be owned and operated by women and/or minority group members who are citizens of the United States or permanent resident aliens. Generally they must have been in operation for at least one year.
Must	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Shall" and "Will."

Term	Definition
New York State Legal Holidays (NYS Holidays)	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.
New York State Service-Disabled Veteran-Owned Business (SDVOB)	A NYS-certified Service-Disabled Veteran-Owned Business. Please refer to New York Executive Law Article 17-B for additional details.
New York State Small Business Enterprise (SBE)	A company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).
New York State Statewide Financial System (SFS)	The NYS Enterprise Resource Planning (ERP) System.
Non-State Agencies	Political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in Centralized Contracts in accordance with Appendix B, §25(b), Non-State Agency Authorized Users and §25(c), Voluntary Extension and State Finance Law Section 163(1)(k).
Part/Stock Number	A unique identifier assigned to an individual Product and/or Service or part by the Contractor for that Product and/or Service; usually includes a combination of alpha and/or numeric characters or may be a unique product name or unique product description. Part/Stock Numbers must be unique and cannot be the same as any other Part/Stock Number on the price list.
Procurement Services	A business unit of OGS responsible for establishing centralized contracts.
Shall	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see “Must” or “Will.”
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May.”
Small Business	Please refer to State Finance Law section 160(8) for the definition of “small business concern” or “small business.”
Software	Shall have the same definition as found in 9 CRR-NY 6209.1.
User Data	Any information, formula, algorithms, or other content that the Authorized User may directly or indirectly provide to the Contractor pursuant to the Contract.
Will	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see “Must” or “Shall.”
Written / Written Communication	Written Communication makes use of the written word. Examples of Written Communications include e-mail, Internet websites, letters, proposals, and Contracts.

1.5 APPENDICES AND ATTACHMENTS.

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

APPENDICES

Appendix A – *Standard Clauses for NYS Contracts* (June 2023)
Appendix B – *General Specifications* (April 2016)
Appendix C – *Contract Modification Procedure*
Appendix D – *Contractor Information*
Appendix E – *NYS Contract Price List*
Appendix F – *Contractor's Insurance Requirements*
Appendix G – *How to Use*
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Attachment 1 – Link to NYS Election Law
Attachment 2 – Link to NYS Election Codes, Rules, and Regulations

1.6 CONFLICT OF TERMS - CONTRACT.

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

- Appendix A, *Standard Clauses for NYS Contracts* (June 2023);
- Contract;
- Appendix B, *General Specifications* (April 2016);
- All other appendices and attachments to the Contract.

Section 2 TERMS AND CONDITIONS

2.1 CONTRACT TERM AND EXTENSIONS.

The Contract Term shall commence upon approval by the Office of the State Comptroller ("OSC"). Unless otherwise terminated or renewed in accordance with the terms of this Contract, this Contract shall have an end date of June 14, 2026.

The Parties may renew the Contract, upon approval of the NYS OGS, SBOE and OSC, upon expiration of the original term for an additional one (1) year.

Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

2.2 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.

2.3 CANCELLATION FOR CONVENIENCE.

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

2.4 RESERVED RIGHTS.

2.4.1 NYS Reserved Rights.

New York State reserves the right, in its sole discretion, to add templates for use by the Authorized User.

2.4.2 Authorized User Reserved Rights

Authorized Users shall have the rights afforded pursuant to this Contract, at law or in equity.

2.5 NYS CONTRACT PRICE LIST.

The approved NYS Contract Price List for this Contract, Contractor's Appendix E, *NYS Contract Price List*, is posted on the OGS Procurement Services website. Only Products listed on such price list shall be sold under the Contract. OGS reserves the right in its sole discretion to remove any Products deemed to be out of scope of the Contract from the Contract price list at any time during the Contract Term, upon notice to the Contractor.

All prices as defined in Appendix E, NYS Contract Price List ("Net NYS Price") must include all applicable shipping, handling, insurance, and associated delivery charges (F.O.B. Destination the dock/delivery location of the Authorized User). See Appendix B, *Shipping/Receipt of Product*. The prices shown on Appendix E, *NYS Contract Price List* reflect the complete cost of the Products, and the price list states whether prices include the cost of travel, meals and lodging, where applicable.

A Part/Stock Number is to be provided for every Product on Appendix E, *NYS Contract Price List* and for all future offerings. Each Part/Stock Number must be unique. A Part/Stock Number may be equal to the Product's Name. Part/Stock Numbers must be included in the "Part/Stock Number" Column for that Product on Appendix E, *NYS Contract Price List*.

Appendix E, *NYS Contract Price List* shall only contain plain text and shall not include any marketing language, marketing materials, or additional terms and conditions.

2.5.1 Monetary Values.

All monetary values shall be in U.S. Dollar amounts and will be two decimal points (For Example - \$1.12).

2.5.2 Discount Percentage Values.

All Discount percentage values shall not exceed two decimal places (For Example - 20.25222% will be rounded to nearest one hundredth 20.25%). A Discount Percentage value cannot be expressed as a range (For Example - 10%-20%, or "varies").

2.5.3 Volume Discounts.

Contractor is encouraged to offer volume Discounts to Authorized Users.

2.5.4 Discounts.

All Discounts shown on the Contractor's Appendix E, *NYS Contract Price List* shall not be decreased by the September 2023

Contractor during the Contract Term or through any Purchase Orders issued pursuant to this Contract.

Discounts shown on the Contractor's Appendix E, *NYS Contract Price List* may be increased by the Contractor at any time during the Contract Term or through any Purchase Order issued pursuant to this Contract.

2.6 GSA ASSOCIATED DISCOUNTS.

Where the NYS Net Price is based upon an approved GSA supply schedule, New York State shall be entitled to all associated Discounts enumerated in the GSA supply schedule (including, but not limited to Discounts for additional sites and volume Discounts), as well as any other pricing or Discount terms as are expressly enumerated in this NYS Contract or GSA supply schedule, when calculating the NYS Net Price. If Contractor provides such GSA schedule pricing as proof of reasonableness of price for Products on Appendix E, *NYS Contract Price List*, those discounts will be listed on Appendix E in the Category Discounts tab.

2.7 GSA INDUSTRIAL FUNDING FEE.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". If the Contractor provides GSA pricing it shall identify the amount of the IFF in Appendix E, *NYS Contract Price List*.

2.8 PROMPT PAYMENT DISCOUNTS.

If a Contractor offers a Discount for prompt payment, it shall include the terms of the Discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the number of days for which the prompt payment Discount offer applies. If offered, Contractor's prompt payment Discount percentage and time frame is listed on Contractor's Appendix D, *Contractor Information*.

2.9 PRICE LIST UPDATES.

Contractor may update its price list as provided in this section. All price list modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedure*.

Contractor may submit a request for Product addition, change, and/or deletion at any time following the commencement date of the Contract, and on an as-needed basis during the Contract Term. The Discount offered on any new Products added to the Contractor's price list shall be no lower than the minimum established product category Discount. Contractors shall submit all requests to the OGS Procurement Services Contract administrator in the form and format contained in Appendix C, *Contract Modification Procedure* for the review and written approval of OGS. 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.

Commencing at a minimum after the first anniversary of the date that the Contractor's Bid was opened by OGS, and annually thereafter, the Contractor may update the price list to reflect Contractor price changes, once every 365 calendar days per Product. Price Increase updates are subject to all Contract update provisions included within Appendix C, *Contract Modification Procedure*.

Contractors may submit requests for price adjustments no sooner than 30 calendar days prior to the anniversary of the date that their Bid was opened by OGS, but no price adjustments shall become effective until approval by OGS on or after the anniversary date. Contractors may request subsequent price adjustments annually thereafter. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who needs to submit Sales Reports, Proof of Insurance or any other documentation that is required under the Contract.

Contractors shall be permitted to reduce their pricing any time during the Contract Term.

The Discount offered on any new Products added to price lists shall be no lower than the minimum established
September 2023

product category Discount. Contractors shall submit their updated price list 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 price list updates shall apply prospectively upon approval by OGS. Total price increases for price list updates in a single year of the Contract Term shall not exceed the maximum price increase cap as set forth in the *Maximum Price Increase* subdivision, below. All percentage Discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract Term.

2.9.1 Price List Format.

Contractors are required to submit Contract price list updates electronically in an unprotected Microsoft Excel (2019 or lower version) spreadsheet on USB flash drive or via e-mail to the OGS Procurement Services contract administrator. The price list must be dated and the format shall be consistent with the format of the Contractor’s approved Contract price list. The price list 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.

2.9.2 Contractor’s Submission of Contract Updates.

In connection with any Contract price list 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.

2.9.3 Maximum Price Increase.

In a single year of the Contract Term, 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
<u>Result multiplied by 100</u>	<u>0.022 x 100</u>
Equals percent change	2.2

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

2.9.4 Reasonableness of Price.

Pricing offered as part of a price list modification request will be reviewed by OGS to assess reasonableness of price. Contractors are encouraged to offer their best possible pricing. Contractors shall submit one or more forms of reasonableness of price set forth in the Acceptable Reasonableness of Pricing Documentation section below to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers. Contractors should carefully read Appendix C, *Contract Modification Procedure* to be sure that all information requested therein is provided and that proposed pricing is equal to or less than the pricing found on the reasonableness of price documentation.

To determine reasonableness of price for a Product, OGS will compare the price of the Part/Stock Number proposed with the price of the same Part/Stock Number (handwritten or otherwise) found on one of the acceptable reasonableness of price documents listed in Section 2.9.4.1 below. The price of the Part/Stock Number proposed must be equal to or less than the price of the same Part/Stock Number (handwritten or otherwise) as found on the reasonableness of price documentation. Any Part/Stock Number not meeting reasonableness of price may be removed from Contractor's price list modification request.

OGS reserves the right to conduct additional research and request additional information to assess the reasonableness of price. Additionally, OGS reserves the right to require the Contractor to lower its offered pricing to that which OGS has determined to be reasonable in price and to remove items from Contractor's Contract modification for which pricing is determined not to be reasonable.

All required information contained in reasonableness of price documentation should be free of restrictions on confidentiality or claims of confidentiality. OGS will not enter into a Non-Disclosure Agreement (NDA) for Contractor who asserts that information contained in Contractor's reasonableness of price documentation is confidential.

If reasonableness of pricing is not demonstrated to OGS's satisfaction, OGS may not approve the Contractor's price list modification request.

2.9.4.1 Acceptable Reasonableness of Price Documentation.

Acceptable reasonableness of price documentation include, but are not limited to:

1. FEDERAL CONTRACT PRICE LIST

- a. Contract must have been executed by the Government Entity;
- b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
- c. If contract has expired, the expiration date of the contract shall be no more than 1 year prior to the date the price list modification request was submitted to OGS; and
- d. Contract and contract price list (both in searchable PDF or Excel spreadsheet) will be included with the price list modification request submission.

2. OTHER GOVERNMENT ENTITY OR NYS CONTRACT PRICE LIST

- a. Contract must have been executed by NYS or the Government Entity;
- b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
- c. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the date the price list modification request was submitted to OGS; and
- d. Contract and contract price list (both in searchable PDF or Excel spreadsheet) will be included with the price list modification request submission.

3. PAID INVOICES OR RECEIPTS FROM GOVERNMENT ENTITIES

- a. Product(s) invoices must be paid (i.e. amounts have been paid and funds have been collected by the Government Entity);
- b. Paid invoices are to be provided in searchable PDF;
- c. Sufficient information must be included on the invoice to identify the Product(s), including the following:

- 1) Government Entity;
 - 2) Description of Product(s);
 - 3) Part/Stock Number, SKU, or unique Product name, or unique detailed description of Product; and
 - 4) Net price of each Product;
- d. Invoice date must be no more than 12 months prior to the date the price list modification request was submitted to OGS; and
- e. All paid invoices will be included with the price list modification request.

4. NYS CENTRALIZED CONTRACT PRICE LIST OR SALES REPORTS

- a. Contract must have been executed by NYS;
- b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
- c. An itemized sales report for an OGS Centralized Contract would be accepted in lieu of the price list as well;
- d. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the date the price list modification request as submitted to OGS;
- e. Contract and either the contract price list or the sales report (both in searchable PDF or Excel spreadsheet) will be included with the price list modification request.

5. MANUFACTURER SUGGESTED RETAIL PRICE (MSRP) PRICE LIST

- a. Only acceptable if proof from options 1 – 4 is not available for the Product(s);
- b. MSRP (or equivalent) must be available to Contractor's commercial customers;
- c. MSRP price list must be submitted as a searchable PDF;
- d. OGS retains the right to reject MSRP as justification of price.

2.10 BEST PRICING OFFER.

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

2.11 PERFORMANCE BOND OR LETTER OF CREDIT.

PERFORMANCE BONDS: Upon award, the Contractor has fifteen (15) business days to forward a performance bond or letter of credit in the amount of 0.5% of the total estimated value of the Contract, \$75,000,000.00, to OGS. If the performance bond or letter of credit is not received by the close of business on the 15th day, the award may be cancelled. The Performance Bond must be issued annually for five years unless said term is extended after agreement by both parties. OGS has the right to recover damages from the performance bond pursuant to the terms and conditions of the Contract on behalf of the State where standard arrangements for the refund of monies cannot be recovered by a credit issued by the Contractor against present or future payments due, or under circumstances where the Contractor has refused credits to the State where such credits are due under the terms of the Contract. The SBOE may permit substitution of a performance bond of a lesser value during the Contract Term. If the Contractor provides additional security deposit in the form of a performance bond as required herein, the Contractor shall renew the performance bond at least seven (7) calendar days prior to the cancellation date of the performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for performance under the Contract. If the credit rating of any bonding company that has provided the Contractor with a performance bond provided as security hereunder has fallen below "B", OGS will provide Written notice to the Contractor that the Contractor must provide a replacement bond within fifteen (15) calendar days of OGS's Written notice. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for the Contractor's performance under the Contract. Notwithstanding anything contained in the Contract to the contrary, the State shall be authorized to draw down the full amount of any letter of credit or take action on any performance bond provided by the Contractor as security hereunder if the Contractor defaults on its performance under the Contract, as required herein.

The State and the Contractor agree that recovery against the performance bond will be subject to the following conditions:

(1) FOR AMOUNTS LESS THAN \$1,000,000

(a) signed and dated certification from an authorized representative of the State indicating that:

- (i) as applicable, Contractor has failed to issue credits under Contract No. PC70143;
- (ii) the State and Contractor have attempted, through good faith dispute resolution efforts undertaken at the Contractor's Vice-Presidential levels and equivalent State senior executive management levels, to 'resolve' such matters to the parties' satisfaction, and such attempts have not been successful;
- (iii) after the conclusion of such dispute resolution efforts, the State notified Contractor, as applicable, by either overnight express mail with verifiable delivery or by certified mail, return receipt requested, of the unresolved matters, and, in such notice, gave Contractor 30 calendar days from receipt of such notice to remedy such matters;
- (iv) as applicable, Contractor did not satisfactorily remedy such matters; and
- (v) the State has calculated the amount of the damages requested in the draft in accordance with the provisions of the Contract and the laws governing the Contract.

(2) FOR AMOUNTS MORE THAN \$1,000,000

(a) signed and dated certification from an authorized representative of the State containing the statements set forth in paragraphs 1(a)(i) through 1(a)(v) above, and

(b) such certification shall have attached a certified copy of a final order of a court of competent jurisdiction finding that as applicable, Contractor materially breached and defaulted under the Contract, and that Contractor is liable to the State in the amount requested in the draft. Partial drafts will be permitted.

(3) FOR ALL AMOUNTS

(a) any notice of the issue or the material breach will be specific as to the nature of the issue or the material breach claim and the remedy sought to satisfy such claim;

(b) drafts shall be drawn periodically upon confirmation of the claim by the State and the Contract with partial drafts will be permitted; and

(c) all drafts must reference the number and issue date of the performance bond and have attached the certified letter of notice of identifying either the issue or the material breach that was sent to Contractor, as applicable. Draft(s) must clearly specify that they are drawn under the performance bond and must be presented to the issuer not later than thirty (30) calendar days after expiration of the Contract term.

LETTERS OF CREDIT: The State may, but is not obligated to, draw on a letter of credit, as applicable, upon the occurrence of any one of the following events:

(a) The Contractor owes the State undisputed charges under the Contract that are more than thirty (30) calendar days past due; or

(b) The Contractor admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

If the State draws on a letter of credit, upon request by OGS, the Contractor will provide a replacement or supplemental letter of credit or performance bond conforming to the requirements of this section.

The fact that a letter of credit is requested by the State shall in no way relieve the Contractor from timely compliance
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with all obligations under this Contract.

At least seven (7) calendar days prior to the expiration of any letter of credit provided by the Contractor as security under the Contract, the Contractor shall renew such letter of credit or provide OGS with evidence that it has obtained a suitable replacement for the letter of credit in the form of a performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to draw down the full amount of such letter of credit and utilize the cash proceeds as security for performance under the Contract. If the Contractor provides additional security deposit in the form of a performance bond as required herein, the Contractor shall renew the performance bond at least seven (7) calendar days prior to the cancellation date of the performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for performance under the Contract. If the credit rating of any bonding company that has provided the Contractor with a performance bond provided as security hereunder has fallen below "B", OGS will provide Written notice to the Contractor that the Contractor must provide a replacement bond within fifteen (15) calendar days of OGS's Written notice. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for the Contractor's performance under the Contract. Notwithstanding anything contained in the Contract to the contrary, the State shall be authorized to draw down the full amount of any letter of credit or take action on any performance bond provided by the Contractor as security hereunder if the Contractor defaults on its performance under the Contract, as required herein.

2.12 ORDERING.

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering or e-mail 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. 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).

2.13 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.

2.14 MINIMUM ORDER.

Minimum order shall be \$100.00. Contractor may elect to honor orders for less than the minimum order. For such orders, at the Contractor's option, shipping costs from the Contractor's address (as stated in Appendix D – Contractor Information) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the Authorized User.

2.15 INVOICING AND PAYMENT.

Contractor and the distributors/resellers designated by the Contractor and approved by the State, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal acceptance notice for the specified Product by the Authorized User's Purchasing Official. Such notification shall not be unreasonably withheld. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the September 2023

Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

Billings for Authorized Users that are State entities must contain all information required by the Contract and the State Comptroller. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with OSC's procedures to authorize electronic payments. Authorization forms are available at the OSC website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by OSC if it does not comply with OSC's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

For all Voting Systems, payment shall be made in accordance with the following Payment Schedule: 80% upon acceptance by the Authorized User and 20% upon use in a successful election.

2.16 PRODUCT DELIVERY.

Delivery must be made as ordered to each Authorized User according to the specific details included in the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Contract, delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor and shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the SBOE. Said procedures shall comply with §6209.10 and the guidelines established by the SBOE. The Authorized User and the Contractor shall mutually agree to a delivery schedule as required by §6209.9(A)(4)(a) of the SBOE Regulations. Said agreed-upon delivery schedule shall be adhered to by the Contractor.

The decision of the Commissioner and the SBOE as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the OGS Contract administrator, the SBOE and the Authorized User, confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner and the SBOE's discretion, the Contract.

2.17 CONTRACT ADMINISTRATION / DESIGNATED PERSONNEL / CONTACT INFORMATION.

Contractor shall provide and maintain the following personnel for the duration of the Contract at no charge to the State: Contract Administrator, Account Manager, Sales Manager, Billing Contact, and Emergency Contact. The Designated Personnel must have the authority to act on behalf of the Contractor. The Designated Personnel information will be listed in the Contractor's Appendix D, *Contractor Information*.

During the Contract Term and until the end of any related Purchase Orders, Contractor must provide OGS at least five (5) Business Days' notice prior to making changes to its designated Contract Administrator, Account Manager, Sales Manager, Billing Contact, or Emergency Contact. In addition, Contractor must provide an experienced temporary interim contact person until the position is permanently filled, to ensure no gap in

coverage for any of the contacts. Notification of changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist pursuant to the instructions in Appendix C, *Contract Modification Procedure*.

An Authorized User may require the Contractor to conduct background checks on certain Contractor staff at no charge to the Authorized User, and may require the separation of job duties, and that Contractor staff knowledge of User Data be limited to that which is absolutely needed to perform job duties.

2.17.1 Contract Administrator.

The Contract Administrator shall be responsible for the updating and management of the Contract on a timely basis. The Contract Administrator shall serve as the Single Point of Contact (SPOC) for the Authorized User for all issues regarding Products. The Contract Administrator must also serve as the SPOC for any additional Products that may be added to the Contract.

2.17.2 Account Manager.

The Account Manager shall be responsible for the overall relationship with the State during the Contract Term and shall act as the central point of contact.

2.17.3 Sales Manager.

The Sales Manager shall be responsible for the overall relationship with the Authorized Users for matters relating to Purchase Orders.

2.17.4 Billing Contact.

The Billing Contact shall be responsible for serving as the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing and payment.

2.17.5 Emergency Contact.

The Emergency Contact shall be responsible for being available 24 hours a day, 365 days per year for emergencies occurring during and after business hours Monday through Sunday, Eastern Time, including New York State or federal holidays. OGS reserves the right to determine whether the contact information provided is sufficient.

2.17.6 Toll Free Number.

Contractor shall provide a toll-free telephone number for use by Authorized Users. Contractor shall staff this toll-free number as outlined in Section 2.44.1 – Minimum Cures. This number shall be provided at no cost to the State.

2.18 NYS FINANCIAL SYSTEM (SFS).

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

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized 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: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

2.19 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, Subcontractors 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 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. The following language is incorporated into this Contract:

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. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

2.20 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. Contractor 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.

2.21 INSURANCE.

The Contractor shall maintain in force at all times during the Contract Term, policies of insurance pursuant to the requirements outlined in Appendix F, *Contractor's Insurance Requirements*.

2.22 REPORT OF CONTRACT USAGE.

Contractor shall submit Appendix H, *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 calendar 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 Appendix H, *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.

By using this Contract, an Authorized User consents to OGS receiving the information listed on Appendix H, *Report of Contract Usage*.

2.23 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR 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

1. 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.
2. 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.
3. 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, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

1. 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.
 - a. 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.
 - b. 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.

2. 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.

3. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
 - a. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. 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. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
 - b. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
 - c. 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 complete the Workforce Audit 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 complete the Workforce Audit 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.

4. Contractor shall comply with the provisions of the Human Rights Law and 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

1. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/>. 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.
2. Good Faith Efforts
Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
 - a. 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.
 - b. 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.
- c. 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.
 - d. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
 - e. 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.
 - f. Other information deemed relevant to the request.

V. 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>

2.24 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 ("SDVOBs"), 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, Contractors are strongly encouraged and 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.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

2.25 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 not allowed. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

2.26 EPA ENERGY STAR PROGRAM.

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from Contract

selected products as mandated by any NYS energy legislation that is enacted during the term of this Contract. The Contractor shall have no recourse with the State for such discontinuance/deletion.

2.27 GUARANTEE.

1. The Contractor guarantees that the Voting Systems, equipment, all required accessories, associated products and all parts regularly used with the same are:
 - New - Standard new equipment, latest model of regular stock equipment, in production at the time of the bid opening. New assembled equipment is factory produced, has been assembled for the first time, and may contain new and/or recycled components that have been fully inspected, tested and fully meet product performance and reliability specifications. Equipment must be newly serialized and the Authorized User must be the first end user of the product.
2. Every new Product delivered must be warranted for five (5) years from the date of acceptance of the Products by an Authorized User. During the warranty period, the Authorized User will incur no charges for maintenance.
3. The Contractor will bear all material and labor costs for repair of defects and failures occurring during the warranty period from date of acceptance of the Products by an Authorized User. Service/maintenance during the warranty period will be no less than service requirements under a maintenance agreement. If a Voting System does not perform to the satisfaction of the Authorized User during the warranty period, the Contractor will, upon approval of the SBOE, replace the Product with a like model. The replacement machine will have a new machine warranty identical to the original machine (not less than five (5) years from the date of acceptance of the Product by an Authorized User).
4. Contractor will also guarantee that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
5. Where accessories (options) are to be supplied, they must be compatible with the rest of the equipment.

2.28 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.

2.29 SURPLUS/TAKE-BACK/RECYCLING.

1. 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.
2. 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 3 below for specific requirements governing electronic equipment recycling.
3. 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>

4. 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.

2.30 ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22.

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. 22 ((Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 22 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.

2.31 CONSUMER PRODUCTS CONTAINING MERCURY.

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

2.32 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 Contractor 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.

2.33 NYS VENDOR RESPONSIBILITY.

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.

2.34 OSC APPROVAL.

In accordance with Section 112 of the State Finance Law, a Contract awarded under Solicitation 23198 shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller ("OSC"). Purchase orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

2.35 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.

2.36 EXTENSION OF USE.

This Contract 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.

2.37 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. Authorized Users and SBOE shall not be required to provide credit references.

2.38 CENTRALIZED CONTRACT MODIFICATIONS.

1. 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. "Voting Systems Updates," as defined in Appendix C, *Contract Modification Procedure*, are changes related to a SBOE approved Voting System. All such changes are subject to the prior approval of SBOE, proof of which must be provided by the Contractor along with the Appendix C, *Contract Modification Form*. "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.

2. 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.

3. 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.

4. 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.

5. 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, Section 26, *Modification of Contract Terms*.

2.39 DRUG AND ALCOHOL USE PROHIBITED.

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

2.40 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.

2.41 EMBEDDED SOFTWARE/FIRMWARE; UPDATES.

Contractor shall provide at no charge all updates to any embedded Software or firmware in the Product offered to customers generally.

2.42 TRAVEL, MEALS AND LODGING.

When provided for in the Purchase Order, Authorized User may reimburse travel expenses. Travel costs are limited to NYS rates approved by OSC. All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be paid for charges that exceeds the per diem rates provided at the above link. All travel will be paid only as specified within the Purchase Order and must be billed with the associated services on the same invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of a Purchase Order. Parking fees and/or parking tickets shall not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor is responsible for keeping adequate records to substantiate any claims for travel reimbursement.

All services provided under the resultant Purchase Order must be performed within CONUS.

2.43 POOR PERFORMANCE.

An Authorized User should notify OGS Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
New York State Procurement Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services Coordination E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717

2.44 REMEDIES FOR BREACH.

In the event of a breach by the Contractor, it is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

1. Minimum Cures:

a. **Minimum cures:** Unless otherwise agreed to by the Authorized User, at a minimum, in order to be able to address a failure of Voting System(s) or a failure in the provision of support and/or services, from pre-election day 30 up to pre-election day 15, Contractor shall provide phone support which shall be available on each of said calendar days, from 7:00 am to 10:00 pm, Eastern Time. When a problem with Voting System hardware, or software manifests itself within this 15-day period, and same is unable to be resolved with phone support as provided by the Contractor, upon such notice by the Authorized User, on-site support/assistance must be provided by the Contractor within 24 hours of such when such notice is made. If after such on-site support/assistance, the failure still has not been resolved, upon notice of the Authorized User, new, replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice. For the period of pre- Election Day 15 to pre-Election Day 1, telephone support shall be provided 24 hours a day, seven days a week. In addition, Contractor shall provide, upon request, on-site support/assistance and/or equipment replacement as soon as requested, but in no event shall such on-site support/assistance be provided more than twenty-four (24) hours after request is made by Authorized User exceed the time set for the prior Critical Period, as defined Section 1.10 - Definitions. In the event that the Contractor discovers a problem, notice should be provided to the SBOE and the Authorized User and SBOE shall be advised of the resolution of the problem.

b. Beyond the State's statutory and regulatory requirements, for the period including Election Day minus 1, Election Day and Election Day plus 1, telephone support must be available during this entire 72-hour period. On Election Day, in addition to phone support as defined above, the Contractor, upon notice of the Authorized User, shall promptly provide on-site support.

c. For the post-election period, which is defined as Election Day plus 1 through Election Day plus 15, phone support shall be provided by the Contractor, on each of said calendar days, between the hours of 7:00 am until 10:00 pm, EST. If such phone support does not resolve the failure, on-site support

must be provided within 24 hours of when notice is made, and if after such on-site support, the failure has not been resolved, the Authorized User shall advise the Contractor of the continuing failure and new replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice by the Authorized User.

d. In periods other than as set forth above (hereinafter the “Non-Critical Periods”), except during the conduct of quarterly maintenance processes, phone support shall be made available by the Contractor, on each business day (Monday – Friday), between the hours of 8:00 am and 6:00 pm, Eastern Time. If such phone support fails to resolve the voting equipment or system failure, the Contractor must provide for an on-site service call within 10 business days of when such notice is made by the Authorized User, and if the failure remains unresolved, Contractor must provide replacement within 30 calendar days of when such notice is made by the Authorized User, or by day 1 of the next ensuing Critical Period (as defined in Section 1.4 - Definitions) prior to an election, whichever is sooner.

Cover/Substitute Performance In the event a Contractor's material breach is not cured within the applicable notice and cure period, the Commissioner, in conjunction with the SBOE, and/or any Authorized User may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner and the SBOE, and/or any Authorized User, are unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product and Services of equal or comparable quality, the Commissioner and the SBOE, and/or any Authorized User, may acquire acceptable replacement Product and Services of equal or greater quality.

Such purchases may, in the discretion of the Commissioner and the SBOE, and/or any Authorized User, be deducted from the Contract quantity and payments due Contractor.

2. **Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner and the SBOE. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

3. **Bankruptcy** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise their right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.

4. **Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product and Services. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction. In addition, any sums required to be expended by the Authorized User in order to carry out their statutory election responsibilities as a result of the Contractor's failure to timely deliver shall be reimbursed promptly by the Contractor or deducted by the Authorized User from payments due or to become due to the Contractor on the same or another transaction.

5. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner and the SBOE reserve the right to determine the disposition of any rebates, settlements, restitution or liquidated damages.

Section 3 CONTRACTOR REQUIREMENTS

3.1 NYS ELECTION CODES, RULES, AND REGULATIONS.

Each Voting System must be provided in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Code and Regulations (<https://www.elections.ny.gov/ElectionLaw.html>).

3.2 TRAINING.

Contractors shall provide for sufficient training of Authorized User personnel in the following:

1. training prior to delivery of Voting Systems and equipment on procedures for unpacking, inspecting, installing, assembling and acceptance testing of such Voting Systems and equipment
2. adjusting and aligning the Voting Systems and equipment
3. proper use of such Voting Systems and equipment including maintenance, storage and transportation procedures
4. the use of the Contractor's voting system's supporting software
5. procedures to be used to accomplish ballot face layout and ballot programming, and all other features of the software
6. operating the Product (including layout and interconnection diagrams and schematic and wiring diagrams)
7. preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable)
8. voter education instruction materials on the use of the Voting System and any accessibility devices (including methods to be used by eligible voters to mark a ballot, cast a vote and have that vote counted)
9. procedures to be followed by inspectors at polling places
10. the training of all elections personnel (including election inspectors) during the first two elections, to include a general election, in which the Voting System or equipment is used. Such assistance relating to the number of people and the hours of assistance shall be identified in the executed contract

The Contractor shall provide detailed information regarding in-person training as follows:

1. The maximum number of participants per training session.
2. The duration of training based on Contractor-recommended roles and responsibilities.
3. The cost and terms for training to include both regionalized and on-site county training.
4. The cost and terms for training in the procedures to be used to accomplish ballot configuration and ballot programming

Such information is provided on Appendix E, *NYS Contract Price List*.

Within ten (10) Business Days of acceptance by the Contractor of a Purchase Order, the Contractor and the Authorized User shall agree upon mutually-acceptable training dates. Training must include live instruction by qualified personnel sufficient to ensure that the product is operating correctly and may be operator-maintained so as to perform to the full extent of its design capabilities. The Authorized User shall designate personnel to receive training.

3.3 TRAINING MATERIALS AND OPERATIONS MANUALS.

Within ten (10) Business Days of the SBOE's certification of a Voting System and prior to the commencement of any training of Authorized Users, the Contractor shall furnish to the SBOE five (5) complete sets of instruction materials (video, graphics, audio or text) for each product and component supplied to the Authorized Users.

The Contractor shall provide complete operations manuals (including operations manuals for any auxiliary features, programming, hardware, telecommunications systems and central vote tabulating systems) upon delivery of voting systems equipment to a jurisdiction. Such manuals shall include one copy of procedures to be followed by inspectors at polling places. The Contractor shall permit this copy to be reproduced and distributed by the Authorized User at its training school for election inspectors or the Contractor shall supply as many copies of the procedures as required by the Authorized User for such distribution.

All training materials shall also be provided, at no additional cost, to the SBOE and the Authorized Users in an electronic version to enable the SBOE and the Authorized Users to incorporate the training materials into their training procedures, manuals and outreach materials. This requirement is separate from, and in addition to, any materials otherwise provided with the Bid.

The vendor shall permit the SBOE and Authorized Users to duplicate these materials for wide distribution, including posting to their websites, for use in public education and training programs.

These instruction materials and any other documents provided to the SBOE or an Authorized User shall not bear confidential or proprietary labels of any sort.

3.4 SERVICE PROVISIONS.

1. The Contractor must promptly rectify any problems identified through testing any or all of the Voting Systems equipment delivered to the Authorized User.
2. The Contractor shall, without additional cost, provide to the Authorized User a five-year guarantee of parts and service, that such voting equipment shall be kept in good working order and that other statutory requirements are met. Shipping costs for any factory repairs or part replacement will be incurred by the Contractor.
3. The Contractor shall provide to the Authorized User of said Voting Systems equipment a detailed listing of proper maintenance, storage and transportation procedures to be carried out by each Authorized User.
4. The Contractor and the Authorized User shall agree in writing as to the proper maintenance procedures to be implemented on each piece of equipment and shall further agree in writing as to the obligations of each party for servicing and maintenance procedures.
5. The Contractor must correct any problems or defects in the voting equipment or Voting Systems within a commercially reasonable time period. If the time for resolving problems or defects is insufficient to allow for adequate resolution prior to use in an election, an alternate machine or unit shall be provided by the Contractor, and such machine or unit shall be subjected to the acceptance testing requirements of 9 CRR-NY 6209.
6. The Contractor shall provide the Authorized User with the criteria necessary for the proper operation of the voting system or equipment at a polling place.

3.5 POLLING SITE SURVEY.

The Contractor, together with the Authorized User, shall survey the present polling places in a jurisdiction to which its Voting System or equipment has been sold, to determine whether or not such polling places meet environmental conditions for the proper operation of the voting system or equipment. This provision shall apply to those polling places which are in use at the time of the proposed sale. If any polling places are not compatible, the Contractor shall advise the jurisdiction purchasing the voting system or equipment on the methods or procedures that the said jurisdiction may use to remedy any such problem.

3.6 EI-ISAC MEMBERSHIP.

Contractor must be a member of the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC).

Section 4 VOTING SYSTEM SPECIFIC TERMS AND CONDITIONS.

4.1 VOTING SYSTEM CERTIFICATION.

During the Contract Term, all Voting Systems offered by the Contractor pursuant to the Contract shall meet and maintain compliance with all applicable functional, security, and other report requirements promulgated by the SBOE and maintain certification from the SBOE.

OGS reserves the right in its sole discretion to add or remove Voting Systems from the Contractor's NYS Price List and/or from the scope of this Contract at any time during the Contract Term, including following any approval or removal of a prior approval of a Voting System by the SBOE, upon notice to the Contractor.

Authorized Users shall not implement any Voting System until certification for such system has been obtained from the SBOE.

4.1.1 Voting System Examination.

Contractor is aware that in order to obtain certification of a Voting System, an application fee of \$5,000, and the cost of examination of the Voting System, as estimated by SBOE at time of application must be paid by the Contractor, unless such requirements are waived by the SBOE.

When any change is made in the operation or material of any feature or component of any Voting System which has been certified pursuant to the provisions of this section, such Voting System must be submitted for re-examination and re-certification as the SBOE deems necessary.

If at any time after any Voting System has been certified pursuant to the provisions of the Election Law, the SBOE has any reason to believe that such Voting System does not meet all applicable requirements, Contractor must immediately resubmit the Voting System for re-examination. If the opinions in the report of such examinations do not state that the Voting System can safely and properly be used by voters during elections, the SBOE shall rescind its certification. After the date on which the certification of any Voting System is rescinded, those machines or devices cannot be used or purchased for use in this State. The SBOE may, at its discretion, examine all Voting Systems of such type which were previously purchased, to determine if they may continue to be used in elections in this State.

4.2 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE.

Contractor is responsible for providing physical and logical security for all User Data, infrastructure (e.g. hardware, network, physical devices), and Software related to the services the Contractor is providing under the Purchase Order.

All User Data security provisions agreed to by the Authorized User and Contractor within a Purchase Order may not be diminished for the duration of the Purchase Order without prior written agreement by the parties amending the Purchase Order.

4.3 SECURITY POLICIES AND NOTIFICATIONS.

4.3.1 Security Policies and Procedures.

New York State considers the protection of sensitive and confidential information and business systems to be of the utmost importance. The information collected and maintained by SBOE and Authorized Users is protected by a myriad of Federal, State and local laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents, for authorized purposes only.

The Contractor and its personnel shall review and be familiar with all Authorized User's security requirements (e.g. laws, policies, procedures and directives) currently existing or implemented during the term of the Contract. If required within the Purchase Order, Contractor will provide verification of compliance with Authorized User security requirements.

4.3.2 Security Incidents.

Contractor must notify SBOE and Authorized User(s) within 48 hours of the Contractor's first notice of the incident, based on the criticality outlined below:

1. High-Intensity Incident: cyber-related incident that triggers reporting obligations, or one that is highly visible requiring response.
2. Medium-Intensity Incident: cyber-related incident resulting in the loss or compromise of User Data or Voting Systems, but no formal reporting obligations are triggered.
3. Low-Intensity Incident: cyber-related incident resulting in minor disruption that may not be visible to public.

Notifications must be submitted via e-mail to CyberNY@elections.ny.gov. Each notification must clearly indicate the criticality level of the security incident along with details of the security incident.

4.4 DATA BREACH.

4.4.1 Required Contractor Actions.

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

1. notify the SBOE and any potentially affected Authorized User by telephone as soon as possible, but in no event more than 24 hours from the time the Contractor confirms Data Breach;
2. consult with and receive authorization from the SBOE and, where applicable, Authorized User as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by the SBOE, Authorized User or statute;
3. coordinate all communication regarding the Data Breach with the SBOE and, where applicable, Authorized User (including possible communications with third parties);
4. cooperate with the SBOE and where applicable, Authorized User and any Contractor working on behalf of the SBOE and/or Authorized User in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches;
5. take such corrective actions that the Contractor deems necessary to contain the Data Breach. Contractor shall provide Written notice to the SBOE and, where applicable, Authorized User as to all such corrective actions taken by the Contractor to remedy the Data Breach. If Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Section 8.43, *Remedies for Breach* shall apply and (a) the SBOE and/or Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the SBOE and/or Authorized User, or until the SBOE or Authorized User has completed a new procurement for a replacement service System; (b) and the Contractor will be responsible for the reasonable cost of these services during this period; and
6. provide Written documentation to the SBOE and, where applicable, Authorized User, as to all such corrective actions taken by the Contractor to remedy the cause of the Data Breach and mitigate against a repeat of the Data Breach.

Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General, or other law enforcement agency having jurisdiction, to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

4.5 DATA OWNERSHIP, ACCESS AND LOCATION.

4.5.1 Data Ownership.

The Authorized User shall own all right, title and interest in User Data.

4.5.2 Authorized User Access to Data.

The Authorized User shall have access to its User Data at all times, through the term of the Purchase Order, plus the applicable period as specified in Section 4.8, *Expiration, Termination or Suspension of Services*.

The Authorized User shall have the ability to import or export User Data in piecemeal or in its entirety at the Authorized User's discretion at no charge to the Authorized User. This includes the ability for the Authorized User to import or export User Data to/from other Contractors. This can, if specified within the Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools.

4.5.3 Contractor Access to Data.

The Contractor shall not copy or transfer User Data unless authorized by the Authorized User. In such an event the User Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any User Data for any purpose other than fulfilling the service. Contractor is prohibited from data mining, cross tabulating, monitoring Authorized User's User Data usage and/or access, or performing any other analytics other than those required within the Purchase Order. At no time shall any User Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Authorized User be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of User Data. Documentation of back-up must be provided to the Authorized User upon request. Contractor must comply with any and all security requirements within the Purchase Order.

4.5.4 Source Code Escrow for Licensed Product.

Contractor shall be required to comply with the source code escrow provisions of the NYS Election Law (Section 7-208) and NYS Election Codes, Rules and Regulations (Section 6209.6(F)(10) and as set forth by the SBOE.

4.6 TRANSFERRING OF DATA.

4.6.1 General.

Except as required for reliability, performance, security, or availability of the services, the Contractor will not transfer User Data, unless directed to do so in Writing by the Authorized User. All data shall remain in CONUS.

At the request of the Authorized User, the Contractor will provide the services required to transfer User Data from existing databases to physical storage Devices, to facilitate movement of large volumes of User Data.

4.7 REQUESTS FOR DATA BY THIRD PARTIES.

Unless prohibited by law, Contractor shall notify the Authorized User in Writing within 24 hours of any request for User Data (including requestor, nature of User Data requested and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure Written acknowledgement of such notification from the Authorized User before responding to the request for User Data.

Unless compelled by United States law, the Contractor shall not release User Data without the Authorized User's prior Written approval.

4.8 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES.

4.8.1 Return of Data.

The Contractor shall return User Data in a format agreed upon within the Purchase Order or as agreed to with the Authorized User. The Contractor must certify all User Data has been removed from its System and removed from backups within timeframes established in the Purchase Order or as agreed to with the Authorized User.

4.8.2 Suspension of Services.

During any period of suspension of service, the Authorized User shall have full access to all User Data at no charge. This can, if specified within the Purchase Order, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

4.8.3 Expiration or Termination of Services.

Upon expiration or termination of a Purchase Order, the Authorized User shall have full access to all User Data for a period of 60 calendar days. Unless noted in the original Purchase Order, this period will be covered at no charge. This can, if specified within the Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

4.9 ACCESS TO SECURITY LOGS AND REPORTS.

Upon request, the Contractor shall provide access to security logs and reports to the State or Authorized User in a format as specified in the Purchase Order.

4.10 MODIFICATION TO APPROVED VOTING SYSTEMS.

Changes of any size or scope to an approved Voting System require SBOE approval prior to implementation. Proposed changes must first be provided to SBOE in the manner prescribed by the SBOE. Following approval of the changes, changes to any Voting System included on the Contractor's NYS Price List must be submitted to OGS via Appendix C, *Contract Modification Procedure*.

4.11 LEGACY MAINTENANCE PLANS.

Pursuant to Contract Award 21231, contractors were required to provide a Project Warranty Period which warranted the voting systems set forth below for five years from the date of acceptance of the voting system set forth below by an Authorized User.

This warranty covered, among other things, modifications required by New York State law or regulation. After the expiration of the Project Warranty Period, Authorized Users had the option to purchase Extended Maintenance Plans and enter into an Extended Warranty Period. Some Authorized Users may not have purchased those Extended Maintenance Plans, and may now wish to purchase an Extended Maintenance Plan for Voting Systems purchased under a Contract awarded pursuant to Contract Award 21231. In such instances, Authorized Users shall be responsible for the cost of any parts and labor necessary, as a result of any damage or defects which occurred or arose after the end of the Project Warranty Period, to bring the Voting System back to its current certified version, as determined by the SBOE. Contractors shall not charge for any other parts or labor costs as those costs are covered by the Project Warranty Period. Prior to the commencement of any work performed in accordance with this paragraph, Contractors shall submit a written proposal for any such charges to the Authorized User and must receive written acceptance of such proposal from the Authorized User prior to beginning any work or commencing any Extended Maintenance Plan.

In addition to the foregoing, during the term and any renewal or extension of the Contract, the SBOE may require Authorized Users to obtain maintenance services, which are not covered by the Project Warranty Period or the Extended Maintenance Plans, including those options made available by the Contractor in its normal course of business in order to maintain the voting systems in accordance with their current certification. These services may include on-site maintenance (Contractor will dispatch a Contractor representative to the Authorized User's site) and shall be subject to the charges included in the Contractor's price list attached to the Contract.

The voting machines that this provision applies to are:

ES & S Precinct-based Voting System:

DS200(i) 2.16.0.1, DS200(i) Hardware Revision 1.3, AutoMark 1.8.3.0, VAT Preview 1.8.3.0, EMS/EVS Suite

5.6.0.1, EMS/EVS Suite 5.6.0.2

Event Log Service 1.5.7.0, Removable Media 1.4.7.0, DS 200 Power Management v 1.2.8.0

ES & S Central Count Voting System:

DS 850 v. 2.4.0.1, DS 850 v. 2.13.0.0

DOMINION Precinct-based Voting System:

EMS Suite 4.9.17 ImageCast scanner 4.9.10, ImageCast scanner v 4.9.10/BMD 4.9.6, ImageCast scanner v 4.9.12, ImageCast scanner v 4.9.12/BMD 4.9.6, ImageCast Evolution scanner v 4.14.25, ImageCast Evolution scanner v 4.14.27, BCU v 4.9.18.0

DOMINION Central Count Voting System: (ICC) v.4.9.14, 4.14.18,

CLEARBALLOT Central Count Voting System:

ClearCount v. 1.0, ClearCount v 1.6.0

Hart InterCivic Verity Voting System:

Verity Touch Writer 2.7, Verity Scan 2.7, Verity Print 2.7, Verity Reader 2.7, Verity Data 2.7, Verity Build 2.7, Verity Count 2.7, Verity Election Management 2.7, Verity User Management 2.7, Verity Desktop 2.7, Verity Central 2.7

4.12 APPLICATION PROGRAM INTERFACE (API) OR SELF-SERVICE ELECTRONIC PORTAL.

Except as otherwise provided for in this Section, Contractor may offer an API or self-service electronic portal for such purposes as allowing the Authorized User to access security logs, reports, and audit information, to import or export User Data, and for such other purposes as agreed to in the Purchase Order.

4.13 CAPTIONS

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

4.14 SEVERABILITY

In the event that any one or more of the provisions of this Contract shall for any reason be declared unenforceable under the laws or regulations in force, such provision will have no effect on the validity of the remainder of this Contract, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Contract.

4.15 COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such Party.

4.16 ENTIRE AGREEMENT

This Contract and any referenced appendices and attachments constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the Parties, whether written or oral, with respect to the subject matter hereof. No statement, promise, condition, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall be binding or valid and the Contract may not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor.

[Signatures appear on next page]

IN WITNESS WHEREOF, this Contract is effective as of the date of the Office of the State Comptroller (OSC) approval below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Contract being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

HART INTERCIVIC, INC.

THE PEOPLE OF THE STATE OF NEW YORK, ACTING BY AND THROUGH THE COMMISSIONER OF GENERAL SERVICES

Signature:



Printed Name:

Hollie Osbourn

Title:

CFO

Date:

9/22/2023

Federal ID:

95-3248916

NYS Vendor ID:

1100294324

Contract Number:

PC70143

Signature:



Printed Name:

Kylesha N. Davis

Title:

Assistant Director
OGS Procurement Services, IT & Telecom

Date:

12/14/23

NYS OFFICE OF THE STATE COMPTROLLER

APPROVED
DEPT. OF AUDIT & CONTROL

Jan 19 2024
James M. Iwaneczko

FOR THE STATE COMPTROLLER

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

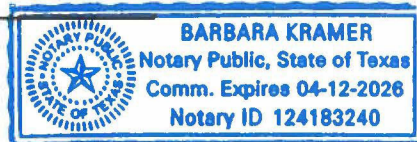
STATE OF Texas }
: SS.:
COUNTY OF Williamson }

On the 22nd day of September in the year 2023,
, before me personally appeared Hollie Osbourn,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me
did depose and say that Hollie Osbourn maintains an office at Hart InterCivic, Inc.
3800 Quick Hill Road
Austin, TX 78728, and further that:

[Check One]

- If an individual):** ___ executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** Hollie Osbourn is the Chief Financial Officer of Hart InterCivic, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, She is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, She executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** ___ is the ___ of ___ the partnership described in said instrument; that, by the terms of said partnership, ___he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company):** ___ is a duly authorized member of ___ LLC, the limited liability company described in said instrument; that ___he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Barbara Kramer
Notary Public
Registration No. 124183240



Agreed and accepted

NYS Board of Elections

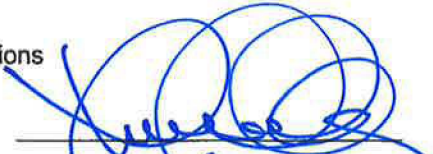
Signature:

Printed

Name:

Title:

Date:



THOMAS Connolly
Deputy Executive Director

12/21/23


Signature:

Printed

Name:

Title:

Date:



Brendan Lovullo
Deputy Executive Director

12/21/23