



Contract Award Notification

Title	:	Group 23000 – Miscellaneous Office Supplies Classification Code(s): 14 & 44
Award Number	:	22790 – E*-EE-RA-RM (Replaces Award 22438)
Contract Period	:	April 1, 2016 – March 31, 2022
Bid Opening Date	:	September 1, 2015
Date of Issue	:	April 1, 2016 (Revised April 7, 2020)
Specification Reference	:	As Incorporated In The Solicitation
Contractor Information	:	Appears on Page 2 of this Award Notice

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Mark Helling Title : Contract Management Specialist Phone : 518-473-3253 E-mail : mark.helling@ogs.ny.gov	Procurement Services Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

**Procurement Services values input from Authorized Users.
Complete and return "Contract Performance Report" at end of document.**

Description

This contract is for Miscellaneous Office Supplies available from the Staples Advantage Catalog and Online Marketplace and includes the ability to directly purchase Preferred Source Products.

This Contract Award Notification contains Minority- and Women- owned Business Enterprises goals of 15% MBE and 15% WBE.

PR # 22790

<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PC67296	Staples Contract & Commercial, LLC	043390816 1000005286

For complete Contract and Pricing Information, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/2300022790Can.htm>

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AUTHORIZED USER FOR PAYMENT.

AUTHORIZED USERS SHOULD NOTIFY THE OFFICE OF GENERAL SERVICES (OGS), PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR DELIVERY THAT DOES NOT COMPLY WITH THE CONTRACT SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AUTHORIZED USER SHOULD ALSO BE REPORTED TO OGS PROCUREMENT SERVICES.

NOTE TO AUTHORIZED USERS

When placing purchase orders under the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. All Authorized Users shall issue purchase order(s) directly to the Contractor or Authorized Resellers pursuant to Section titled, *Orders*. The Authorized User is accountable and responsible for compliance with the requirements of the public procurement processes. The Authorized User must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an Authorized User should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible.

OVERVIEW

This Contract Award Notification relates to a Centralized Contract to provide Miscellaneous Office Supplies to NYS Authorized Users utilizing the Staples Advantage catalog and Contractor's Online Marketplace. The Contractor agrees to the terms and conditions set forth in the Centralized Contract and the Contractor is willing to provide such services as set forth therein to Authorized Users, on a statewide basis.

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE EXECUTED CONTRACT. COMPLETE CONTRACT DETAILS INCLUDING ALL TERMS AND CONDITIONS CAN BE FOUND IN THE EXECUTED CONTRACT.

DEFINITIONS

Business day shall refer to any calendar day, exclusive of Saturdays, Sundays, State recognized legal holidays, and such other holidays or State office closings as directed by the Governor.

Contractor is Staples Contract & Commercial, LLC and for the purposes of the Supplier Agreement, the term Awarded Supplier is synonymous with Contractor. See also "Awarded Supplier".

Core List is the list of Products specifically identified by name, SKU, etc., as set forth on the Contract Pricelist attached hereto and made a part hereof as Appendix C and for which Contractor's Reverse Auction bid price shall remain firm for the first three (3) years of the Contract except that the prices for the items under the Office Supplies Price List tab titled "Preferred Source Core List" shall only remain firm through September 30, 2017.

Delivery Compliance Rate means the ratio of the number of deliveries of Products under the Contract made in full conformance, without any error, pursuant to the terms of Section titled, *Orders*, Section titled, *Delivery*, and the Authorized User's Purchase Order, to the total number of orders of Products under the Contract within a period specified by OGS.

List Price means the nationally published price in Contractor's Staples Advantage Catalog and/or Online Marketplace (whichever is lower).

Miscellaneous Office Supplies refers to a wide range of small, expendable materials that are used on a regular or daily basis by Authorized Users and includes, but is not limited to, office supplies, break room supplies, paper, technology/electronics and accessories, janitorial/sanitation supplies, and ink/toner cartridges (excluding items identified in Section titled, *Excluded Products*). Further detail on subcategories can be found in Appendix C, Contract Pricelist.

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

Net Price shall be (1) for Core List Products, the exact price bid, (2) for Non-Core Products, the List Price, less the applicable discount bid by the Contractor and approved by OGS, and (3) shall be the price paid by Authorized Users of the resultant Contract.

Non-Core List refers to the subcategories and associated Products identified by name, SKU, , etc., and shall not include Core List Products. During the Reverse Auction Contractor bid a single discount for each subcategory of Non-Core List Products and agreed that such discounts apply to all products falling within the applicable categories and will not decrease for the life of the Contract.

NYS Holidays refers to the legal holidays for State Employees in the classified service of the Executive Branch, as more particularly specified on the website of the NYS Department of Civil Service (http://www.cs.ny.gov/attendance_leave/2016_legal_holidays.cfm). 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. This list is updated annually.

Online Marketplace means the Internet site where the Contractor conducts online sales and other business transactions.

Preferred Source Core List Products refers to the identified Core List Products Contractor agreed to purchase from designated preferred source organizations and sell to Authorized Users through the Contractor's NYS dedicated website under this Contract at the prices identified on the Contract Pricelist attached as Appendix C and as may be updated in accordance with the terms and conditions referenced herein and approved by OGS.

Preferred Source Program refers to the special social and economic goals set by New York State in State Finance Law §162 that requires Authorized Users to purchase select Products from designated organizations when the Products meet the "form, function and utility" requirements of the Authorized User. Under State Finance Law §163, purchases of Products from preferred sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State preferred sources include: Corcraft; New York State Preferred Source Program for People who are Blind (NYSPSP) and the New York State Industries for the Disabled (NYSID). These requirements apply to Authorized Users, including, but not limited to, State Agencies, political subdivisions and public benefit corporations (including most public authorities).

Preferred Source Supplemental Products refers to the identified supplemental Core List Products Contractor agreed to purchase from designated preferred source organizations and sell to Authorized Users through the Contractor's NYS dedicated website under this Contract at the prices identified on the Contract Pricelist attached as Appendix C and as may be updated in accordance with the terms and conditions referenced herein and approved by OGS.

Procurement Services (PS) refers to a division of the New York State Office of General Services which, among other things, lets centralized, statewide Contracts for use by Authorized Users.

Resellers refers to any model for distribution of Contractor's Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), dealers, sales agents, and alternate channel partners.

EXCLUDED PRODUCTS

There are numerous Products excluded from the scope of this Contract. The State reserves the right to delete or add Products during the term of this Contract. The following is a summary of the current excluded Products:

- All services (except delivery);
- Furniture such as desks, workstations, chairs, tables, chair carts, book cases, commercial shelving, file cabinets, storage cabinets, lockers, and privacy screens;
- Hand and platform trucks;
- Products weighing over 50lbs with the exception of any paper products, paper-based products or like products;
- Computers;
- Printers (not including desktop label printers), copiers, facsimile machines;
- Software requiring a licensing agreement; and
- Promotional products.

PRICE

The Net Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the Authorized User, including 72 hour delivery (excluding Saturday, Sunday and NYS legal holidays) for orders to either an inside storeroom, inside desk or a single dock based upon the needs of the Authorized User, which must be provided at no additional cost to all Authorized Users. In addition, upon mutual agreement of the Contractor and OGS, delivery locations may be expanded per the "Extension of Use" clause.

CONTRACT PRICELIST

The Core List Pricelist is published on Contractor’s website and provides Authorized Users with the greatest discounts for items offered under the Contract as well as discounted Preferred Source items. Authorized Users are encouraged to click on the items in the Core List that will open the page within Contractor’s on-line catalog displaying the Product and ordering information for each such Product.

The Non-Core Pricelist includes the price for each such Non-Core Product offered at the discount structure consistent with the applicable Non-Core List subcategory in which the Product falls.

USE OF MWBE RESELLERS

All MWBE Resellers used by Contractor will offer the Office Supply Products at the same price as Contractor. The Authorized User, when purchasing from Resellers, should hold the Reseller accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible.

All Resellers are required to maintain a web-based ordering system that mirrors that of the Contractor. The web-based ordering system must provide the same functionality, ease of use, and identical pricing as the Contractor’s web-based ordering system. Resellers are also required to provide Authorized Users with copies of catalogs and Contract Pricelist upon request.

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

PREFERRED SOURCE PRODUCTS

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in this Contract are available from one or more Preferred Sources.

OGS is supporting the Preferred Source Program by including on the Core List, Preferred Source Core List Products and Preferred Source Supplemental Products sold by NYSPSP. Contractor and Resellers are precluded from selling essentially the same Products of a different manufacturer/brand from the Preferred Source Core List Products identified by OGS under this Contract. Should an Authorized User attempt to purchase a Product OGS deems to be essentially the same as a Preferred Source Core List Product, Contractor and Reseller will identify such Products as blocked from sale under this Contract and refer the user to the replacement Preferred Source Product that will be shipped. For example, if an Authorized User attempts to purchase a product offered by Contractor that is essentially the same as a Preferred Source Core List Product offered by a Preferred Source on the Core List, a pop-up window in the web-based ordering system must display the Preferred Source Product information and advise the Authorized User that it cannot purchase the Contractor’s similar Product and must instead purchase the Preferred Source Product.

The Core List also includes Products offered by NYSPSP under the heading of Preferred Source Supplemental Products. When an Authorized User orders a Product that is similar to a Preferred Source Supplemental Product through Contractor’s and Reseller’s NYS dedicated website, a pop-up window will be displayed containing the Preferred Source Product information and indicate that consideration should be given to purchasing the Preferred Source Supplemental Product in place of the Contractor’s original Product.

ORDERS

Contractor agrees it, and all approved Resellers, will accept orders between the hours of 8:00 a.m. through 5:00 p.m. ET, Monday through Friday, except NYS Holidays. Orders will be accepted verbally via toll-free numbers; manually, via facsimile; and electronically via the Internet through a web-based ordering system on a NYS dedicated website. All orders (verbal, fax, electronic) shall reference the Contract number, requisition and/or Purchase Order number and all other information as required to track the order. Contractor agrees that for all orders that cannot be fully delivered in compliance with the terms of Section titled, *Delivery*, the Contractor (and any approved Resellers) shall inform the ordering Authorized User, within 48 hours (excluding Saturday, Sunday and NYS legal holidays) after receipt of the order(s), of the date when such order(s) will be fully delivered. Contractor confirms that it will not refuse to fulfill orders based upon allegations, including but not limited to, that the quantities being ordered exceed Contractor’s

expectations or that the volume of orders are disproportionate or unreasonable to prior contracts, estimates, understandings or expectations Contractor had when it participated in the Reverse Auction.

MINIMUM ORDER AMOUNT IS \$20.00 DOLLARS.

ORDERING AND INVOICING

The State is implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in the Statewide Financial System. This application provides catalog capabilities in which vendors with centralized contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Upon completion and activation of Contractor’s 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.

PROVISION OF CATALOGS

The Contractor shall provide, upon request and at no charge, sufficient hard copies of the Prequalified Catalog to service all Authorized Users.

TOLL-FREE NUMBERS

Contractor and all Resellers have a toll-free number that is staffed at a minimum from 8:00am to 5:00pm ET Monday through Friday, except NYS Holidays.

NEW ACCOUNTS

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

METHOD OF PAYMENT AND INVOICING

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. Contractor agrees that its billing system will meet the needs of varying ordering systems in use by different Authorized Users. Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, §48, Contract Invoicing.

DELIVERY

Contractor agrees to complete delivery within 72 hours (excluding Saturday, Sunday and NYS legal holidays) after receipt of order. If Contractor (and any approved Resellers) determines the order cannot be fully delivered in compliance with this section within 72 hours, the Contractor (and any approved Resellers) shall contact the ordering Authorized User within 48 hours (excluding Saturday, Sunday and NYS legal holidays) after receipt of the order and advise when the order will be fully delivered. If Contractor (and any approved Resellers) fails to make contact and provide a certain delivery date, the Contractor (and any approved Resellers) must deliver the full order within 72 hours to avoid breaching the Contract terms and conditions.

Contractor agrees to offer (a) inside storeroom delivery, (b) inside desk delivery and (c) single dock delivery and to deliver to either an inside storeroom, inside desk or a single dock based upon the needs of the Authorized User.

If an Authorized User requires an inside delivery (storeroom or desk), it must be clearly indicated on the Purchase Order what inside delivery is required and the specific location where inside delivery is required to be made. (Authorized Users should use terminology such as "INSIDE DELIVERY TO ROOM [number] LOCATED ON [number] FLOOR," etc., when inside delivery is required.)

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

Contractor and all approved Resellers are required to fully deliver 95% of each and all orders within the time frames set forth herein.

PURCHASING CARD

Contractor and all approved Resellers agree to accept the NYS Purchasing Card for orders up to \$50,000.00. See Appendix B, § 18, Purchasing Card. For all purchases executed using a NYS Purchasing Card, Contractor or approved Reseller shall provide an itemized receipt with each delivery, identifying each Product shipped and price charged.

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. Contractor (and any authorized Reseller) 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.

APPENDIX B AMENDMENTS

A. Appendix B, § 32, Product Delivery, is deleted and replaced in its entirety by Section titled, Delivery herein.

B. Appendix B, § 35, Title and Risk of Loss, is hereby deleted and replaced with the following:

Title and Risk of Loss

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received by the Authorized User.

C. Appendix B, § 60, Indemnification, is hereby deleted and replaced with the following:

Indemnification

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B, §11, Advertising Results, any Contractor and any approved Reseller advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

“OGS OR LESS” GUIDELINES APPLY

Purchases of the Products included in the Contract are subject to the "OGS or Less" provisions of New York State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the

Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are:

- i. lower in price; and/or
- ii. available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

State Agencies are reminded that they must provide the Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit, as applicable. State Agencies should refer to the "OGS or Less" section of the New York State Procurement Guidelines for complete procedural and reporting requirements: <http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>.

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.

ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

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

USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State, as a member of the Council of Great Lakes Governors, supports and encourages Contractor to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §13 Remanufactured, Recycled, Recyclable or Recovered Materials.

MERCURY ADDED CONSUMER PRODUCTS

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

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

AUTHORIZED USER SALES REPORTS

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of Products purchased, quantity purchased, unit price and total dollar volume of purchases. Contractor must be able to separately report Core List and Non-Core List purchases at the Authorized User's written request.

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 §26 *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 Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to Procurement Service's Customer Services at (518) 474-6717.

PERSONAL USE PROHIBITED

Contractor and all Authorized Resellers shall not permit Authorized Users or the employees of Authorized Users to establish personal accounts or to purchase from this Contract for personal use.

OVERLAPPING CONTRACT PRODUCTS

If Contractor's pricelist includes Products which overlap with offerings of other State Contracts, OGS reserves the right (in its sole judgment) to exclude or delete such overlapping Products from this Contract; or to include, or continue to include, such Products under this Contract only if the Contractor offers such overlapping Products at, or below, the alternative Contract price.

PRODUCT RETURNS BECAUSE OF QUALITY PROBLEMS

Upon written notification by the Authorized User to the Contractor or Reseller, Products determined to have quality problems, outdated Product, damage, etc., shall be picked up by the Contractor or Reseller within ten (10) business days after notification with no restocking charge. The Authorized User shall elect whether to receive a replacement Product or a credit/refund for the full purchase price. The Authorized User must conduct its inspection, and notify the Contractor or Reseller within 30 calendar days of delivery. If a defect is not identified within 30 calendar days after delivery, the Authorized User may be required to contact the manufacturer directly. Contractor or Reseller shall provide an Authorized User with the manufacturer's contact number, upon request.

PRODUCT RETURNS DUE TO AUTHORIZED USER ERROR

Products ordered in error by an Authorized User shall be returned by Authorized User at its expense for credit within fifteen (15) business days of delivery. Standard stock Products must be in resalable condition (original container, unused). Contractor agrees it will not charge a restocking fee for Product returns due to Authorized User error.

CONTRACTOR PERFORMANCE

Authorized Users should notify the Procurement Services Contract administrator promptly if the Contractor or any Authorized Reseller fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to OGS Procurement Services.

DISCREPANCIES

The Contractor and Authorized Reseller shall resolve all order and invoice discrepancies (e.g., shortages, incorrect Product received, etc.) with Authorized Users within five business days from notification.

CONTRACTOR REQUIREMENTS FOR PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

Contract Goals

OGS established an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises participation and 15% for Women-Owned Business Enterprises participation (based on the current availability of qualified MBEs and WBEs) for this Contract. The MWBEs the Contractor is using to fulfill the MWBE goals are identified on the Contractor Information page found at:

<http://www.ogs.ny.gov/purchase/spg/awards/2300022790Can.htm>

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, 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/>

NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address listed above, and (ii) if to Contractor, addressed to Contract Administrator at the Contractor address. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

Contractor is required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

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.

SEVERABILITY

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

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.

ENTIRE AGREEMENT

This Contract and the referenced Appendices constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein in accordance with the terms set forth in Appendix B Clauses 27, *Modification of Contract Terms*, and 31, *Purchase Orders*.

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

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

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

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

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

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

CONTRACTOR

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

Comments:

_____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by mail to:

PROCUREMENT SERVICES
Customer Services, 38th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
* * * * *