



Contract Award Notification

Title	: Group 23100 – School & Art Supplies (Statewide) Classification Code(s): 14 & 44
Award Number	: 23297 (Replaces Award 23006)
Contract Period	: May 29, 2024 – May 28, 2029
Bid Opening Date	: December 6, 2023
Date of Issue	: May 29, 2024 (Revised November 1, 2024)
Specification Reference	: As Incorporated In The Solicitation
Contractor Information	: Appears on Page 2 of this Award

Address Inquiries To:

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

Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23297 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED NOVEMBER 21, 2023.

This contract provides Authorized Users with a means of acquiring new School and Art Supplies for delivery throughout New York State. Products for purchase by all Authorized Users include, but are not limited to, arts and crafts tools and supplies, classroom materials and supplies, easels, chalkboards, marker boards, bulletin boards, flash cards, games and puzzles, paper materials, writing books, teacher resources, early childhood products, instructional materials, and certain pieces of equipment such as appropriate laminators and label makers. The following are excluded from the scope of this Solicitation: Services; books not specifically for Pre-K and K-12 school environments, audiobooks, e-books, and textbooks; eReaders and tablet devices; furniture such as desks, chairs, tables, bookcases, commercial shelving, file cabinets, lockers, storage cabinets; cleaning and janitorial supplies; library supplies; audio visual equipment and supplies; computers, peripherals and supplies; printers, copiers, facsimile machines and related supplies including toner and ink cartridges; shredders; cafeteria supplies and equipment; software requiring a licensing agreement, and playground equipment are excluded from this contract.

This Award has 0% MBE, 0% WBE and 0% SDVOB goal requirements.

<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>NYS VENDOR #</u>	<u>FED. TAX #</u>
PC70360	Aarco Products, Inc.	1100294156	11-2355286
PC70361	Blick Art Materials LLC DBA Blick Art Materials	1100112717	46-3756132
PC70362	Cascade School Supplies, INC.	1000011010	04-2088666
PC70363	Charles J Becker & Bro., Inc. DBA Becker's School Supplies	1000008891	23-1647078
PC70364	Clarus Glassboards, LLC	1100027928	26-4738270
PC70365	Community Products, LLC DBA Community Playthings	1000014386	14-1803009
PC70366	Demco, Inc.*	1000031618	20-8230779
PC70367	Earlychildhood LLC DBA Discount School Supply	1000018583	77-0407301
PC70368	Eric Armin Inc DBA EAI Education	1000008754	22-2381343
PC70369	Everest Trading Corp	1000032914	95-3734070
PC70370	Fun and Function	1100036688	38-3728269
PC70371	Gramco School Supplies Inc.	1000011557	11-2245415
PC70372	Hanson Grant, LLC DBA Think Board	1100182872	81-2492404
PC70373	Island School & Art Supply, Inc.	1000043233	11-2780794
PC70374	Kaplan Early Learning Company	1000009500	56-0935286
PC70375	Kurtz Bros.	1000008979	25-0605470
PC70376	Lakeshore Learning Materials, LLC*	1000009785	87-2802658
PC70377	Really Good Stuff, LLC*	1100166951	06-0957692
PC70378	S&B Computer & Office Products, Inc.	1000007137	14-1752798
PC70379	S&S Worldwide, Inc.	1000005330	06-0520020
PC70380	School Specialty, LLC.	1100257675	85-2162684
PC70381	Skylark Claridge, LLC DBA Claridge Products and Equipment, Inc.	1100005935	71-0302078
PC70383	Steps To Literacy, LLC DBA Steps To Literacy	1000020040	22-3603124
PC70385	United Supply Corp.	1000024756	11-3309950
PC70386	WB Mason Company Inc.	1000011030	04-2455641

**Demco, Inc. is a disregarded entity of Wall Family Enterprises. Wall Family Enterprises' Employer Identification Number is 20-8230779. The Parent/Owner's Employer Identification Number is used for payment and tax reporting purposes under the Contract. Demco, Inc is the entity who holds Contract PC70366 and is fully responsible for the performance of duties under Contract PC70366. As stated above, it is the Parent/Owner's Employer Identification Number that is used for payment and tax reporting purposes under the Contract.*

**Lakeshore Learning Materials, LLC is a disregarded entity of Lakeshore Parent, LLC. Lakeshore Parent, LLC's Employer Identification Number is 87-2802658. The Parent/Owner's Employer Identification Number is used for payment and tax reporting purposes under the Contract. Lakeshore Learning Materials, LLC is the entity who holds Contract PC70376 and is fully responsible for the performance of duties under Contract PC70376. As stated above, it is the Parent/Owner's Employer Identification Number that is used for payment and tax reporting purposes under the Contract.*

**Really Good Stuff, LLC is a disregarded entity of Excelligence Learning Corporation. Excelligence Learning Corporation's Employer Identification Number is 77-0559897. The Parent/Owner's Employer Identification Number is used for payment and tax reporting purposes under the Contract. Really Good Stuff, LLC is the entity who holds Contract PC70377. As stated above, it is the Parent/Owner's Employer Identification Number that is used for payment and tax reporting purposes under the Contract.*

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:
<https://online.ogs.ny.gov/purchase/spg/pdfdocs/2310023297ContractorInfo.pdf>

Cash Discount, If Shown, Should be Given Special Attention.

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

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

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

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

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

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

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

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

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

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

ORDER OF PRECEDENCE:

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23297 or provided by the contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (June 2023), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated November 21, 2023 (previously provided);
4. Solicitation 23297 (Revised November 21, 2023) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid as stated in Attachment 1 – Pricing (as posted to the OGS webpage);
6. Contractor's Bid

OVERVIEW:

This Contract is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services for School & Art Supplies as specified herein for all Authorized Users eligible to purchase through this Contract.

SCOPE:

The purpose of this Award and any resultant Contracts is to provide Authorized Users with a means of acquiring School & Art Supplies for delivery throughout New York State. Contractors may offer either a single (same) or variable percentage discount structure for each Product Category bid. Discount shall be applied to all items within a category.

Inclusions: Products for purchase by all Authorized Users include, but are not limited to, arts and crafts tools and supplies, classroom materials and supplies, easels, chalkboards, marker boards, bulletin boards, flash cards, games and puzzles, paper materials, writing books, teacher resources, early childhood Products, instructional materials, certain pieces of equipment such as appropriate laminators and label makers.

Exclusions: Services; books not specifically for Pre-K and K-12 school environments, audiobooks, e-books, and textbooks; eReaders and tablet devices; furniture such as desks, chairs, tables, bookcases, commercial shelving, file cabinets, lockers, storage cabinets; cleaning and janitorial supplies; library supplies; audio visual equipment and supplies; computers, peripherals and supplies; printers, copiers, facsimile machines and related supplies including toner and ink cartridges; shredders; cafeteria supplies and equipment; software requiring a licensing agreement, and playground equipment are excluded from this contract.

ESTIMATED QUANTITIES:

No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Award, based on historical purchases under previous awards, is approximately \$10,000,000.00 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts* and Participation in Centralized Contracts.

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

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

DEFINITIONS:

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

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

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

“List Price” shall refer to price suggested by manufacturer or supplier of a product. It is also known as the manufacturer’s suggested retail price (MSRP), suggested retail price, advertised price, and published price.

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

“N/A” is a common abbreviation for not applicable or not available, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

“National Public Entities” are defined as State Governments, the Federal Government, Local Governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions.

“Net Price” shall be the List Price, less the applicable discount bid by the Bidder/Contractor and approved by OGS, and shall be the price paid by Authorized Users of the resultant 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. 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.

“NYS Vendor ID” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

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

“Preferred Source Program” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

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

“Product Category” shall refer to the classification system used to categorize School & Art Supplies Products for sale during the normal course of business. For example: how School & Art Supplies Products may be categorized in a paper based hard copy catalog according to the catalog table of contents; or alternatively, how School & Art Supplies may be categorized for sale online.

“Reseller” shall refer to an alternate distribution source under 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.

“School & Art Supplies” shall refer to items such as arts and crafts tools and supplies, classroom materials and supplies, easels, chalkboards, marker boards, bulletin boards, flash cards, games and puzzles, paper materials, writing books, teacher resources, early childhood Products, instructional materials, and certain pieces of equipment such as appropriate laminators and label makers.

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

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

1. **“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.”
2. **“Must”** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall.”
3. **“Shall”** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must.”
4. **“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.”

PERIODIC RECRUITMENT:

This Contract allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Award. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Products covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:

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

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

1. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function and utility of the Authorized User.
2. Where Products are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the Centralized Contracts awarded under this Award. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users should obtain quotes from at least three (3) Contractors prior to issuing a Purchase Order for contract purchases to ensure that the Authorized User is receiving the best possible pricing.
3. When placing orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. Additionally, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible.

Authorized Users have the responsibility to document purchases which should include:

- Statement of need and associated requirements;
 - Obtaining all necessary prior approvals;
 - A summary of the Contract alternatives considered for the purchase; and
 - The reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
4. Authorized Users will issue Purchase Orders directly to the Contractor, specifying any shipping/delivery requirements.
 5. Upon Authorized User acceptance of Products itemized on the Purchase Order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.

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

CONTRACT TERM AND EXTENSIONS:

- A. Base Term. The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents, and the Contract term shall end five (5) years from the date of OSC

approval. All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment.

- B. Extensions. If mutually agreed between OGS and the Contractor, and subject to the approval of OSC, the Contract may be extended under the same terms and conditions for up to two (2) years. The Contract extension may be exercised on a month to month basis such as an additional three-month, six month, twelve month, or twenty-four-month period. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.
- C. The Contract term provided for in this section shall extend six (6) months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the six (6) month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

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.

PRICE:

All prices are Freight on Board ("F.O.B.") destination including delivery inside doors of the Authorized Users receiving platform, and shall include all customs, duties, and charges to any destination in New York State. Standard shipping costs are to be prepaid by Contractor and shall not be separately added to the Authorized User's invoice.

Additional fees may be charged when Authorized Users require inside delivery, such as to an upper floor, or for certain oversized and heavy items; and Authorized User should clearly indicate on purchase order the specific location where delivery is required to be made. (For Example, Authorized Users should use terminology such as "DELIVERY TO ROOM _____ LOCATED ON _____ floor," etc., on purchase orders). If additional delivery charges are required under such circumstances, Authorized User shall agree to such charges prior to delivery and such costs shall be prepaid by the Contractor and added to the invoice.

NOTE: If it is determined the Contractor is charging excessive amounts for delivery, the State may seek reimbursement for such amounts.

The percentage discount offered to Authorized Users may, at the Contractor's option, be increased based on individual orders. Discounts may be greater, but in no instance may they be lower than the awarded discount. See Section titled, *Pricelist Updates*.

PRICELIST UPDATES:

Contractor may update their pricelist as follows:

CONTRACT YEAR ONE:

Following the first six (6) months of the Contract start date and during the first year of the Contract, the Contractor shall be allowed to update their pricelist one time. There shall be no Net Price increases allowed in the first year of the Contract; however, the Contractor may add new Products or remove

Products that are no longer available. Any new Products added shall have a discount structure consistent with existing comparable Products or Product Category.

SUBSEQUENT CONTRACT YEARS:

Commencing with the first anniversary date of the Contract, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes and the addition/deletion of Products. Pricelist update requests shall be submitted within 30 calendar days of the anniversary date of the Contract and annually thereafter. Pricelist update requests from Contractor(s) at any other time will not be granted.

Contractor shall be allowed to increase Net Prices for existing Products commensurate with any increase in List Price. The discount offered on any new Products added to pricelists shall have a discount structure consistent with existing comparable Products or Product Category.

PRICELIST FORMAT:

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2022 or lower version) spreadsheet on USB flash drive or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated, and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

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

CONTRACTOR'S SUBMISSION OF CONTRACT PRICELIST UPDATES:

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

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

SUPPORTING DOCUMENTATION:

Each pricelist update request must be accompanied by an electronic copy of a published pricelist(s) in its original format detailing current list prices relevant to the Products the Contractor is updating and at least one governmental and/or municipal contract [General Services Administration (GSA), National Association of State Procurement Officials (NASPO), OMNIA, NYS, other State, etc.] that shows the discount and F.O.B point.

The Contractor shall provide OGS with one electronic copy of the updated pricing. No Pricelist Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance, or any other documentation that is required under the resulting Contract.

Additional pricelist update requests will only be granted at the sole discretion of OGS if it's determined that it is in the best interest of the State and/or its Authorized Users.

OGS reserves to right to remove any items(s) deemed to be out of scope and/or unreasonably priced, at any time.

All approved pricelist updates shall apply prospectively upon approval by OGS. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

BEST PRICING OFFER:

During the Contract term if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower

price to a federal, state or local governmental entity the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

PRICE STRUCTURE:

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

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

VOLUME DISCOUNTS:

Contractors are encouraged to offer volume discounts based on total dollars purchased. Other discounts including but not limited to electronic access ordering are also encouraged.

ORDERING:

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

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

MINIMUM ORDER:

The minimum order for this Contract is \$125.00.

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.

INVOICING AND PAYMENT:

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

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number

- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

PRODUCT DELIVERY:

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

PRODUCT RETURNS AND EXCHANGES:

In addition to the provisions of Appendix B, *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within ten (10) Business Days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the Net Price of the returned or exchanged Product.

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

UNANTICIPATED EXCESSIVE PURCHASE:

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

CONTRACT ADMINISTRATION:

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

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

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 supports requisition-to-payment processing and financial management functions. 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/>.

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. Although it is not mandatory for Contractor to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

INSURANCE:

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

REPORT OF CONTRACT USAGE:

Contractor shall submit Attachment 8 – *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 fifteen (15) Business Days after the close of each semiannual period.

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

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

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

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

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:

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These

requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.

- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, 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.

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

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/>

USE OF RECYCLED OR REMANUFACTURED MATERIALS:

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

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.

SURPLUS/TAKE-BACK/RECYCLING:

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

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

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.

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.

DIESEL EMISSION REDUCTION ACT:

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

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

OVERLAPPING CONTRACT PRODUCTS:

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

PREFERRED SOURCE PRODUCTS:

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People

who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

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.

NYS TAX LAW SECTION 5-A:

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

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

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

"OGS OR LESS" GUIDELINES:

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

than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two (2) Business Days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

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.

EXTENSION OF USE:

The 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.

RESELLERS:

A. Definitions

"Reseller" shall refer to an alternate distribution source under 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.

B. Conditions of Reseller Participation

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

1. Such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. Those qualifying criteria met by the Reseller must be identified in Reseller designations in Attachment 10 – *Reseller Information* at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

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

- C. **Designation of Resellers**
When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 10 – *Reseller Information*. Contractor shall also specify whether orders must be placed directly with Contractor or may be placed directly with designated Resellers.
- D. **Responsibility for Reporting/Performance**
Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.
- E. **Applicability of Contract Terms**
Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

NEW ACCOUNTS:

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

CENTRALIZED CONTRACT MODIFICATIONS:

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the 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 Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor shall be submitted as a request.
- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Contract and Appendix B, *Modification of Contract Terms*.

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.

CONTRACT DOCUMENTS; ELECTRONIC FORMAT:

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically 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. Contractor shall submit such documents with original signatures 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 (assignee) upon OGS consent to the assignment.

**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 & returned to:

OGS Procurement Services
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242
customer.services@ogs.ny.gov
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