



Contract Award Notification

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| Title | : Group 30204 – Athletic Equipment (Statewide) Classification Code(s): 49 |
| Award Number | : 23073 (Replaces Award 22225) |
| Contract Period | : September 1, 2017 through August 31, 2022 |
| Bid Opening Date | : May 11, 2017 |
| Date of Issue | : September 1, 2017 (Revised October 16, 2020) |
| 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 |
|---|--|
| Name : Sarah Crossman Title : Contract Management Specialist Phone : (518) 473-9440 E-mail : Sarah.Crossman@ogs.ny.gov | Procurement Services Customer Services Phone : (518) 474-6717 E-mail : customer.services@ogs.ny.gov |

**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 23073 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 (REVISED) SOLICITATION DOCUMENT DATED MAY 01, 2017.

These Contracts shall provide Authorized Users a selection of athletic equipment to be used in Correctional Facilities, State Agencies, State Colleges, Public Schools and other public buildings. Product categories include Strength training, Cardiovascular, and Gymnasium and Physical Education equipment. Authorized Users should contact the Contract Management Specialist named herein with any questions.

| <u>CONTRACT #</u> | <u>CONTRACTOR</u> | <u>FED.IDENT. #</u> | <u>NYS VENDOR ID#</u> |
|--|--|----------------------|-----------------------|
| PC67848 SB | Advantage Sport & Fitness, Inc | 161316405 | 1000008036 |
| PC67849 SB | Andrew Venditti d/b/a Syracuse Fitness Store | 161555460 | 1000008361 |
| PC67855 Cancelled August 21, 2020 | Brunswick Corporation d/b/a Life Fitness, A Division of Brunswick Corporation | 360848180 | 4000009166 |
| PC67850 | BSN SPORTS LLC | 222795073 | 1000030466 |
| PC67851 | Core Health & Fitness LLC | 452872763 | 1100169910 |
| PC67852 | Foundation Fitness LLC | 271639615 | 1100184141 |
| PC67853 | Gym Source USA, LLC d/b/a Gym Source | 464077906 | 1100111214 |
| PC67958 SB | Jacobs Ladder LLC | 010816950 | 1100087093 |
| PC67854 Cancelled September 6, 2018 | Johnson Health Tech North America, Inc. | 263652291 | 4100413654 |
| PC68954 | Life Fitness, LLC | 841741454 | 1100236952 |
| PC67959 | Nasco Education LLC d/b/a Nasco | 812923579 | 1100173898 |
| PC67856 SB WBE | Nickerson Corporation | 060905538 | 1000005344 |
| PC67857 | Technogym USA Corp | 912031278 | 1100009415 |

| Contractor | Strength Training | Cardiovascular | Gymnasium and Physical Education |
|--|-------------------|----------------|----------------------------------|
| ADVANTAGE SPORT & FITNESS, INC. | X | X | |
| ANDREW VENDITTI DBA SYRACUSE FITNESS STORE | X | X | |
| BRUNSWICK CORPORATION D/B/A LIFE FITNESS, A DIVISION OF BRUNSWICK CORPORATION | X | X | |
| BSN SPORTS LLC | X | | X |
| CORE HEALTH & FITNESS LLC | X | X | |
| FOUNDATION FITNESS LLC | | X | |
| GYM SOURCE USA, LLC DBA GYM SOURCE | X | X | |
| JACOBS LADDER LLC | | X | |
| JOHNSON HEALTH TECH NORTH AMERICA, INC. | X | X | |
| LIFE FITNESS, LLC | X | X | |
| NASCO EDUCATION LLC D/B/A NASCO | X | | X |
| NICKERSON CORPORATION | | | X |
| TECHNOGYM USA CORP | X | X | |

For complete Contractor information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:
<http://www.ogs.ny.gov/purchase/spg/awards/3020423073Can.htm>

Cash Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
 (See "INVOICING AND PAYMENT" in this document.)

AGENCIES SHOULD NOTIFY 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:

New York State supports and encourages contractors to use recycled, remanufactured or, 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).

CONFLICT OF TERMS:

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 #23073 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 (January 2014), *Standard Clauses for NYS Contracts* (previously provided);
2. Contract Award Letter
3. Revisions and Clarifications to Bid Specifications dated 05/01/2017 (previously provided);
4. Solicitation #23073 (revised 05/01/2017) including all Appendices and Attachments referenced therein (previously provided);
5. Appendix B (April 2016)
6. Contractor's Bid Price Lists as published by OGS; and
7. Contractor's Bid

OVERVIEW:

This Contract provides Authorized Users with a means of acquiring Athletic Equipment by New York State Agencies and Non-State agencies, including political subdivisions, school districts and others authorized by law (See Sections Non-State Agencies Participation in Centralized Contracts and Extension of Use). Products for purchase by all Authorized Users are described in the Section titled Scope.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, *Procurement Instructions for Authorized Users*.

ESTIMATED QUANTITIES:

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$5M to \$7M 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 meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

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

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

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

DEFINITIONS:

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

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

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

“Net Pricing” as specified in Appendix B Pricing and shall also include “Set-In-Place installation” as follows: unloading, moving to point of use, uncrating, assembling, adjusting, connecting all services and leaving ready to operate to the full extent of its design capabilities. However, anything considered Public Works is excluded.

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

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

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

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

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

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

SCOPE:

This is a discount from pricelist Contract providing for strength training, cardiovascular, and gymnasium and physical education equipment to Correctional Facilities, State Agencies, State Colleges, Public Schools and other eligible Authorized Users. Products designed primarily for home use will not be considered. Products shall be of commercial/institutional grade. Authorized Users are encouraged to purchase from Contractors who offer products and pricing that best meets their needs. Installation is not part of this Contract. Product categories are as follows:

| Strength training equipment and associated accessories | |
|--|--|
| Equipment specialized for improving muscular strength by gradually increasing the ability to resist force through the use of free weights, machines, or the person's own body weight. | |
| Examples include: <ul style="list-style-type: none"> • Weightlifting machines • Weight Benches • Bars and plates • Dumbbells • Plyometric equipment • Medicine balls • Training Ropes | Accessories include: <ul style="list-style-type: none"> • Dumbbell racks • Medicine ball racks • Resistance bands • Weight vests and belts |

| Cardiovascular equipment and associated accessories | |
|--|---|
| Equipment that focuses on raising heart rate and exercising the cardiovascular system. | |
| Examples include: <ul style="list-style-type: none"> • Treadmills • Elliptical Machines • Stair Climbers • Rowers • Stationary exercise bikes | Accessories include: <ul style="list-style-type: none"> • Replacement equipment • Bike seat covers • Pedals • Equipment mat |

| Gymnasium and Physical Education (indoor and outdoor) equipment and accessories that are directly associated with or attached to the products in this category | |
|---|---|
| Items in this category are intended to equip the athletic facilities of Authorized Users with core objects for organized sports and physical training. | |
| Examples include: <ul style="list-style-type: none"> • Gym mats (for wall or floor) • Gym curtain dividers • Climbing ropes • Practice cages • Sport goals and goal posts • Volleyball and other net game systems • Basketball backboards • Indoor climbing walls | Accessories include: <ul style="list-style-type: none"> • Ground sleeves (for outdoor steel post goals) • Goal nets • Protective padding for equipment • Floor sleeves • Floor cover plates • Winch |

Exclusions:

The Following products and/or services are specifically excluded from the scope of this Solicitation and resulting Contracts:

- Standalone tablets
- All Benches (except weight benches)
- Bleachers
- Gym floors
- Lockers
- Balls and other similar individual sporting equipment

Authorized Users may purchase Products with internet or Cloud-based capabilities, but must carefully review any associated terms and conditions prior to purchase, and such terms and conditions have not been reviewed or approved by OGS. Any costs for internet or Cloud services are not included in this

Solicitation and must be procured separately following the Authorized User's regular procurement practices.

Authorized Users may purchase Products requiring installation from any resultant Contract. However, any installation shall need to be procured separately following the Authorized User's regular procurement procedures and taking into account any Public Works requirements found in the sections titled PRICE and PUBLIC WORKS.

PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:

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

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

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

When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include: statement of need and associated requirements; obtaining all necessary prior approvals; a summary of the Contract alternatives considered for the purchase; and the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

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

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

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

Authorized Users may purchase Products requiring installation from any resultant Contract. However, any installation shall need to be procured separately following the Authorized User's regular procurement procedures and taking into account any Public Works requirements.

OVERLAPPING CONTRACT ITEMS:

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

CONTRACT PERIOD AND EXTENSIONS:

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

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for up to two (2) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

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.

PERIODIC RECRUITMENT:

This Solicitation 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. Contractor 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 Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Contractor s 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/Services 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 Contractor cannot reapply for a future Contract until the next recruitment period.

PRICE:

A single minimum percentage discount is required for each Item Category. Contractor must provide a Product Category discount that is greater than zero. However, Contractor may offer an additional percent discount for certain items in each category. In no event can the total percent discount for any

item be lower than the awarded minimum Category Discount percentage. Percent offered should be stated within two decimal places.

Pricing shall be Net Pricing as specified in Appendix B Pricing and shall include “Set-In-Place installation” as follows: unloading, moving to point of use, uncrating, assembling, adjusting, connecting all services and leaving ready to operate to the full extent of its design capabilities. However, anything considered Public Works is excluded.

Delivery shall be to the specific location indicated by the Authorized User on the Purchase Order. 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 for any reason, Contractor shall provide a detailed written statement of such additional delivery charges to the Authorized User, and 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.

PUBLIC WORKS:

Installation work which is considered public works is excluded from purchase under this Solicitation. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance, and repair of equipment attached to any wall, ceiling, or floor, or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be considered public work. Thus, this Solicitation does not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g. installation on a wall, ceiling, or floor in a fixed location, or affixed by hard-wiring or plumbing). This includes bolting or bracketing into walls, floors, or ceilings for the purpose of security, stability, or use. See Appendix B, Prevailing Wage Rates – Public Works and Building Services Contracts. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work district office in your area.

Authorized Users **may** purchase Products requiring installation from any resultant Contract. However, any installation shall be procured separately following the Authorized User’s regular procurement procedures and taking into account any Public Works requirements.

PRICE UPDATES:

Contractor may update their pricelist as follows:

Commencing with the first anniversary date of the Bid opening, and annually thereafter, the Contractor may update their pricelist to reflect Contractor price changes and the addition/deletion of Products. Requests for price adjustments based on changes to the nationally published price list and addition or deletion of items shall be submitted no less than 30 days prior to the anniversary date of the Bid opening and annually thereafter. Requests from Contractor(s) for price adjustments at any other time will not be granted. Percent discount can never decrease. Contract Price Lists may be modified at other intervals at the request of OGS Procurement Services.

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

Contractor must also submit the supporting documentation listed below with their update request:

- Manufacturer’s Suggested List Price (MSLP)
- Manufacturer’s Suggested Retail Price (MSRP)
- Governmental Pricelist
- Manufacturer’s Commercial Pricelist

In the event that such contracts are not available, the Contractor shall supply invoices of sales to the referenced entities with repeat business detailing the discount and FOB point.

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

The discount offered on any existing or new Products added to pricelists must be at least the minimum established product category discount. If existing products have an additional discount, this may not be decreased. Contractors shall submit their updated pricelist to the OGS Procurement Services Contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or thumb 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 Updates

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

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

VOLUME DISCOUNTS:

Contractor may offer volume discounts based on total dollars purchased using the thresholds listed on each Contractor's Information Page.

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:

Contractors are encouraged not to set a minimum order. Any minimum order set by a Contractor is listed on the Contractor's Information Page. Contractors may not raise their minimum order amount after the Contract is awarded, but may lower or waive it at any time.

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/content/vendor-information>.

PRODUCT DELIVERY:

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

Authorized Users may have certain security requirements for delivery, including schools, hospitals, or correctional facilities. Authorized Users with such requirements shall specify such requirements on the Purchase Order. Contractor shall be responsible for following all specified requirements.

PRODUCT RETURNS AND EXCHANGES:

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

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. 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 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 is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at:

<https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

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

WEB-BASED ORDERING:

The State encourages the Contractor (and any approved Resellers) to establish and maintain a dedicated NYS website specifically for the resulting Contract that has a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User’s order. Contractor (and any approved Resellers) shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor’s (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor’s website.

The web-based ordering system must be capable of controlling, documenting and reporting on the following minimum data elements:

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address

- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

In the event the Contractor utilizes Resellers under the resulting Contract, Contractor must provide on the landing page of its dedicated NYS website, a link to each Reseller's website. All Resellers must provide a dedicated NYS website that mirrors that of the Contractor as set forth above.

ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY:

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, Resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

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, 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 15 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

The report in Attachment 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.

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION
OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES
AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN:**

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.

General Provisions

OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State Contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A 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.

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.

Equal Employment Opportunity (EEO)

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.

Form EEO 100 – Staffing Plan

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

Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

The Contractor shall submit, and shall require each of its Subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

Separate forms shall be completed by Contractor and all Subcontractors.

In limited instances, the Contractor or Subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or Subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or Subcontractor's total workforce, the Contractor or Subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or Subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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 and conviction and prior arrest.

Contract Goals

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/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. 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.

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.

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: <http://www.ogs.ny.gov/MWBE/Forms.asp>

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS Contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

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

Contractor is encouraged to contact the Division of Service-Disabled Veteran’s Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT:

http://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=iVVjF227tLf4JJH

CONTRACT ADVERTISING:

In addition to the requirements set forth in Appendix B, *Contract Publicity*, any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by Procurement Services prior to issuance. Contractor also cannot use, for any purpose, the New York State of Opportunity registered trademark or the State coat of arms without prior approval from the State.

RESELLERS:

A. Definition

“**Reseller**” shall refer to alternate distribution sources (distributors or dealers) for a manufacturer that are authorized and designated by said manufacturer, subject to approval by New York State.

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 9 - *Contractor and 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 9 - *Contractor and 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 quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor’s sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User’s Contract activity with the Reseller.

E. Applicability of Contract Terms

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

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.

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 ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

CONSUMER PRODUCTS CONTAINING MERCURY:

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

NYS VENDOR RESPONSIBILITY:

OGS conducts a review of prospective Contractors to provide reasonable assurances that the Contractor is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess a Contractor’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Contractor agrees to fully and accurately complete the Questionnaire. The Contractor acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Contractor is responsible, and that the State will be relying upon the Contractor’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Contractor file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website at <http://www.osc.state.ny.us/vendrep/index.htm> or to enroll, go directly to the VendRep System online at <http://www.osc.state.ny.us/vendrep/enroll.htm>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Contractor s opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

The Contractor agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, 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 http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at http://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 <http://www.tax.ny.gov/> for additional information.

"OGS OR LESS" GUIDELINES:

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the

New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

New York State political subdivisions and others authorized by New York State law may participate in Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See 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 (www.ogs.state.ny.us). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

EXTENSION OF USE:

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

CENTRALIZED CONTRACT MODIFICATIONS:

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

DRUG AND ALCOHOL USE PROHIBITED:

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

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.

INSTRUCTION MANUALS:

At the time of delivery, Contractor shall provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User.

EMBEDDED SOFTWARE/FIRMWARE; UPDATES:

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

**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 complete & return either by email to Customer.Services@ogs.ny.gov or by mail to:

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