

Introduction

OGS Procurement Services is providing this document to assist both Contractors and Authorized Users (AUs) on how to correctly use the Athletic Equipment Contracts. These guidelines do not relieve the Contractors and AUs from complying with the terms and conditions of the awarded contracts or with all applicable statutes, regulations, AU internal procurement guidelines, policies and procedures as well as control agency requirements. This document is a living document that may be revised by OGS Procurement Services at any time.

Scope

The scope of the Contracts is to provide all Authorized Users the ability to purchase Athletic 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, and must be procured separately following the Authorized User’s regular procurement practices.

The scope of this Solicitation does not include bleachers, gym flooring, outdoor turf, storage sheds and lockers, indoor/outdoor electronic scoreboards, outdoor venue/stadium lighting, used or refurbished products, products designed for at-home use, or installation that requires Public Works. Installation services which are considered Public Works in accordance with New York State Labor Law are not permitted. See specific information provided in Solicitation Section 5.3 – *Price* and 5.3.1 – *Public Works*.

Product Categories

This Contract includes the Product Categories listed below:

1. **Cardiovascular Equipment and Accessories** - Equipment that focuses on increasing heart rate, building endurance, and strengthening the cardiovascular system.
2. **Gymnasium and Physical Education Equipment and Accessories** - Equipment for the athletic facilities of Authorized Users with core objects for organized team and individual sports, and indoor or outdoor physical training. Accessories are directly associated with or attached to the products in this category.
3. **Strength Training Equipment and Accessories** - Equipment specialized for improving strength and endurance through the use of weights, machines, or the user’s own body weight.

Product Category Name	Examples	Accessory examples
Cardiovascular Equipment and Accessories	<ul style="list-style-type: none"> • Treadmills • Elliptical machines • Stair climbers • Rowing machines • Stationary exercise bikes 	<ul style="list-style-type: none"> • Replacement equipment • Bike seat covers • Pedals • Equipment mats
Gymnasium & Physical Education Equipment and Accessories	<ul style="list-style-type: none"> • Gym mats (floor or wall) • Gymnasium dividers (curtain dividers, nets) • Climbing ropes • Practice cages • Sport goals and goal posts • Net game systems (e.g. volleyball, pickleball) • Basketball backboards • Indoor climbing walls 	<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 • Ball racks • Equipment bags • Protective player/official equipment (e.g. helmets, padding)

How to Use

	<ul style="list-style-type: none"> • Balls and other similar sporting goods (e.g. footballs, basketballs, soccer balls, racquets) • Sideline team benches 	
Strength Training Equipment and Accessories	<ul style="list-style-type: none"> • Weightlifting machines • Weight benches • Bars and plates • Dumbbells • Plyometric equipment • Medicine balls • Training ropes 	<ul style="list-style-type: none"> • Dumbbell racks • Medicine ball racks • Resistance bands • Weight vests and belts

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.

Procurement Instructions

- A. Before proceeding with a purchase, an Authorized User shall check the list of Preferred Source offerings and must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities or services of Preferred Source suppliers such as the Division of Correctional Industries (Corcraft), the New York State Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities or services meet the form, function, and utility of the Authorized User and the price offered by Corcraft does not exceed a reasonable fair market price and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices. If a Preferred Source does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or 15% above prevailing market prices, then the Authorized User may use this Contract.
- B. Each Contractor's Contract Price List and Contactor and Reseller/Distributor Information document will be posted on the OGS website without exception so that Authorized Users can find contact information, as well as discount structure, volume discounts (if applicable), prompt payment discount (if applicable), and NYS Purchasing Card information (if applicable).
- C. The Contracts under Award 23387 are Centralized Contracts issued under a multiple award structure. When making purchases from the Contracts resulting from the Solicitation, Authorized Users shall procure products and services that best meet their form, function, and utility requirements.

- D. 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. Authorized Users are required to obtain three (3) quotes when multiple Contractors offer Products that are identical to the Product being sought (e.g., multiple Contractors offer a Product that has an identical manufacturer's model code). Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, when multiple Contractors offer Product(s) that are similar in nature to the Product being sought (e.g., multiple Contractors offer a Product that is a similar size, style and/or material).
- E. When placing orders under this Award, the Authorized User should follow and be familiar with the terms and conditions governing the Contract and are responsible for determining that the product(s) they intend to purchase fit within the scope of the Award. Bidders/Contractors are encouraged, though not required, to self-identify products meeting EO22 requirements within the product name/description on their Price List.

Authorized Users are strongly encouraged to confirm the accuracy of the entries by contacting the Contractor directly. Authorized Users have the responsibility to document purchases, and such documentation should include:

1. A statement of need and associated requirements;
2. Proof of obtaining all necessary prior approvals;
3. A summary of the Contract alternatives considered for the purchase; and
4. 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 place orders directly to the Contractor or the Contractor's authorized reseller (if applicable), as specified by the Contractor, and specify any shipping/delivery requirements, including inside delivery and/or installation. Inside delivery and installation terms must be agreed upon at time of order and prior to delivery.

All orders should clearly note the OGS Contract Name and Award Number, Contract Number, and Contractor Name. A Contractor shall not initiate delivery of products until the order is placed by an Authorized User.

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.

Price

Price includes all customs, duties, delivery charges and is F.O.B. destination any point in New York State, for orders, as designated by the Authorized User. (see *Product Delivery*).

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause (see *Extension of Use*).

It is OGS's intention that all Contractor price lists be maintained and updated regularly to keep Product offerings, pricing, Product numbers and Product descriptions current. Contractors are required to honor

their posted contract pricing at all times and may not charge greater than Contract price at any time during the Contract term. Contractor's pricing is posted on the OGS website.

Discounts

Discounts quoted are to be firm for the entire period of the contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time. This contract includes the following discounts:

Product Discount – The Contractor shall offer a single minimum discount percentage (must be greater than 0%) for each manufacturer offered, in each Category bid, from their regularly published commercial price list. The same manufacturer discount must apply to all products by that manufacturer within the Product Category.

The Contractor may offer an additional discount for various reasons and are encouraged to provide price decreases or discount increases at any time to the Authorized Users.

The Contractor may also offer the following discounts in addition to those listed above. To find out if a Contractor offers these discounts, please check the Contractor Information Summary page, posted on the OGS website.

- **Volume Discounts** – The Contractor may offer volume discounts. Volume discounts may be applied per order, and are additional discounts applied to individual orders over a specified dollar amount. See the Contractor's Information Page for
- **Procurement Card Discount** – The Contractor may offer an additional discount for purchases made with the NYS Purchasing Card.
- **Prompt Payment Discount** – The Contractor may offer a prompt payment discount for payments made in less than 30 days after receipt of a proper invoice.

Minimum Order

Minimum order, if required, shall be established by the Contractor. The Contractor may offer to ship orders less than the minimum order with the freight prepaid and added to the invoice. It shall be the Authorized User's choice if they wish to accept the offer. Contractor must establish minimum order, if they so choose, at time of Bid submission. The minimum order amount may be decreased, but not increased, once established. The minimum order, if applicable, is listed on the Contractor Information Summary 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).

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.

Assembly/Configuration/Installation/Networking Services

Assembly/Configuration/Installation Services may include moving materials and equipment to its final location, uncrating, assembling, adjusting, connecting to the network and leaving free-standing equipment ready to operate to the full extent of its design capabilities. These services do not include any installation that is considered Public Works under the New York State Labor Law. See Appendix B, §37, *Installation*, for terms applicable to installation. These services may include, but are not limited to, the following:

1. System setup (e.g., key operator orientation, system parameters);
2. System enhancement (e.g., memory upgrades, network interfaces);
3. Network set up, including but not limited to, applying network settings, and verification of network functionality;
4. Software installation; and
5. Hardware verification (including appropriate tests and diagnostics to ensure proper Product operation).

Installation work which is considered Public Works in accordance with the New York State Labor Law is **excluded** from purchase under this Contract. 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 and any resulting Contracts do 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). 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. A listing of district offices and contact information is available at: www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm.

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.

Licensing Terms and Conditions

An Authorized User looking to acquire Products under a Contract resulting from this Solicitation must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. **Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.**

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.

“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 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.