NEW YORK STATE | Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Solicitation (Revised 1/23/2026)

BID OPENING **DATE: February 26, 2026** **TIME: 1:30 P.M. ET** **SOLICITATION NUMBER: 23421**	**TITLE: Group 36100 – Kitchen and Laundry Equipment (Statewide)** **Classification Codes: 48**
CONTRACT PERIOD: Five (5) years from the date of OSC approval	
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.	
Email Address: Sara.Welsh@ogs.ny.gov	
Sara Welsh Contract Management Specialist 1 Phone: (518) 473-2193 Email: Sara.Welsh@ogs.ny.gov	Sarah Crossman Contract Management Specialist 2 Phone: (518) 473-9440 Email: Sarah.Crossman@ogs.ny.gov

Bidder's Federal Tax Identification Number: *(Do Not Use Social Security Number)*	**NYS Vendor Identification Number:** *(See New York State Vendor File Registration Clause)*
Legal Business Name of Company Bidding:	
D/B/A – Doing Business As (if applicable):	
Street	

City	State	County	Zip Code
Email Address:	Company Web Site:		

If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

☐ NYS Small Business # Employees	☐ Service Disabled Veteran Owned Business	☐ NYS Minority Owned Business	☐ NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only.

☐ WE ARE NOT BIDDING AT THIS TIME BECAUSE:

OGS Use Only: # of Binders/Packages: _____ # of USB Flash Drives _____ Documented by: _____

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 120 days from the date of submission to the New York State ("NYS") Office of General Services ("OGS"), or for such longer period as is set forth in the Solicitation.

2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Solicitation.

3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A – *Standard Clauses for New York State Contracts* and Appendix B – *General Specifications*.

4. The information contained in this Bid is complete, true, and accurate.

5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at https://ogs.ny.gov/acpl.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

_____
Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to
Legally Bind the Bidder

_____
Print Name of Signatory

_____
Print Title of Signatory

_____
Date

RETURN THIS PAGE AS PART OF BID

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Appendix B – *General Specifications* (April 2016)
Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)
Appendix D – *Contract Modification Procedure*

ATTACHMENTS

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Attachment 2 – *NYS Required Certifications*
Attachment 3 – *Encouraging Use of NYS Businesses*
Attachment 4 – *Insurance Requirements*
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1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services for Kitchen and Laundry Equipment as specified herein for all Authorized Users eligible to purchase through this Solicitation. OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k), and as set forth in Appendix B – *General Specifications*.

This Solicitation outlines the terms and conditions, and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

The purpose of this Solicitation is to award multiple Centralized Statewide Contracts for Kitchen and Laundry Equipment to responsive and responsible Bidders that meet the requirements detailed in Section 2 – *Bidder Qualifications and Requirements*, and whose Product offerings meet the scope of this Solicitation, as detailed in Section 1.2 – *Scope*. The prices proposed by Bidders in response to this Solicitation are to be based upon percent discounts from Manufacturer's Suggested Retail Price (MSRP) and whose pricing is determined to be reasonable by OGS. Authorized Users shall procure Products and services that best meet their form, function, and utility requirements, and demonstrate for their procurement record how that determination was made.

The Contracts resulting from this Solicitation will be issued under a multiple award structure. 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). Authorized Users are also encouraged to seek better than Contract pricing for all items, especially when purchasing in volume, as Contractors may not automatically offer volume discounts.

1.2 Scope

It is the intent of this Solicitation to establish multiple-award, statewide, Centralized Contracts for Kitchen and/or Laundry Equipment, appliances, and related accessories. This Solicitation contains four (4) Lots:

Lot 1 – Commercial Kitchen
Lot 2 – Commercial Laundry
Lot 3 – Residential Kitchen
Lot 4 – Residential Laundry

Bidders are not required to Bid on all Lots but may Bid on as many Lots as they wish. Lot 1 contains multiple Sub-Lots and Bidders are not required to Bid on all Sub-Lots within Lot 1 but may Bid on as many Sub-Lots as they wish. Bidders are not required to offer a Manufacturer's entire Product line within a Lot or Sub-Lot. Bidders shall only offer Products within the scope of this Solicitation as part of their Bids. Any Products outside the scope of this Solicitation shall be rejected.

When applicable, Products Bid under this Solicitation shall meet safety standards developed by safety standard organizations such as, but not limited to, NSF International, ISO (International Organization for Standardization). Contractor shall make available proof that Products Bid meet such safety standards at the request of OGS or Authorized User.

Examples of Products within each Lot are provided in the table below. Examples are not meant to be exhaustive.

LOT #	Title	Sub-Lot	Examples of Equipment, Appliances, and Related Accessories
1.	Commercial Kitchen	a. Food Prep, Storage and Transport b. Refrigeration c. Cooking, Holding and Warming d. Dishwashers	a. Mixers, slicers, food prep tables b. Reach-ins, walk-ins, freezers, cook chill c. Ovens, steamers, heated holding cabinets. d. Dishwashers, racks, dish tables.
2.	Commercial Laundry	Not applicable	Commercial washers and dryers
3.	Residential Kitchen	Not applicable	Residential refrigerators, ranges, ovens, microwaves, dishwashers
4.	Residential Laundry	Not applicable	Residential washers and dryers

Additional Offerings: Within each Lot, Bidders may also offer Product options, including but not limited to, maintenance and support services, extended warranties (beyond the standard Warranties section of Appendix B), for the Kitchen and/or Laundry Equipment, appliances and related accessories Bid. Additional offerings shall be included in Attachment 1 – *Pricing*.

Exclusions: The following are specifically excluded from the scope of this Solicitation:
1. Design services
2. Installation and/or maintenance requiring Public Works (Public Works compliance must be procured Separately)
3. Used or refurbished Products
4. Removal of existing equipment
5. Custom Products - Products that do not have an MSRP or are manufactured on a made to order basis

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately $12,000,000.00 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B - *Estimated/Specific Quantity Contracts* and *Participation in Centralized Contracts*.

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

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

- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

1.4 Key Events/Dates

Event	Date	Time
Solicitation Release Date	December 9, 2025	N/A
Deadline for Submission of Intent to Bid	January 5, 2026	5:00 PM ET
Closing Date for Bidder Questions	January 5, 2026	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	January 19, 2026 (tentative) Actual – January 23, 2026.	N/A
Bid Opening / Due date for Bids	February 26, 2026	1:30 PM ET
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

1.5 Intent to Bid

A Bidder is requested to indicate its intent to Bid by sending an e-mail titled "INTENT TO BID- [BIDDER NAME]" to Sara.Welsh@ogs.ny.gov on or before the date and time indicated in the *Key Events/Dates* section. The e-mail should include the Bidder's company name and a contact name and contact information. Submission of the intent to bid is not required in order to submit a Bid.

1.6 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter ("NYSCR") at https://www.nyscr.ny.gov in order to receive notifications about this Solicitation. Navigate to the "Find Bids/Find Contracts" page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must "bookmark this ad" within the right hand side of the ad, then then select "notify me if this ad updates" also listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

1.7 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to Sara.Welsh@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question-and-answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter ("NYSCR"). Your

company must select the "notify me if this ad updates" option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 4.10 *Bid Deviations* for additional information.

1.8 NYS Comptroller Approval

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

1.9 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: https://ogs.ny.gov/acpl/

1.10 Definitions

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

"**Authorized Dealer**" is a company or individual (merchant) that purchases goods with the intention of selling them rather than consuming or using them.

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

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

"Lot" shall refer to a category or grouping of Products with a shared broad commonality.

"**Manufacturer"** An organization or Business Entity that creates, makes, programs, processes, or fabricates a Product that is branded, warranted, supported and maintained by that organization or Business Entity.

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

"**NYS Holidays**" refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following:

New Year's Day; Dr. Martin Luther King, Jr. Day; Washington's Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day.

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

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

"**Preferred Source Program**" shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision ("Corcraft"); New York State Preferred Source Program for People Who Are Blind ("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).

"Products" shall refer to individual items offered within a Lot or Sub-Lot.

"**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.

1.11 Appendices and Attachments

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

Appendix A – *Standard Clauses for NYS Contracts* (June 2023)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*

Appendix D – *Contract Modification Procedure*

Attachment 1 – *Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Bidder Submission Checklist*

Attachment 7 – *Bidder Questions Form*

Attachment 8 – *Report of Contract Usage*

Attachment 9 – *Certification Under Executive Order No. 16*

Attachment 10 – *Contractor/Reseller/Distributor Information Sheet*

Attachment 11 – *Proof of Past Sales*

Attachment 12 – *Price List Update Template*

Attachment 13 - *Business Automobile Liability Insurance Attestation*

1.12 Conflict of Terms

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

1. Appendix A – *Standard Clauses for New York State Contracts (June 2023)*;
2. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions (October 2023)*;
3. The Solicitation;
4. Appendix B – *General Specifications (April 2016)*;
5. All other appendices and attachments to the Solicitation.

2. BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

1. Bidder must be:
    a. A Manufacturer, or
    b. an authorized reseller or distributor of a Manufacturer for the Products they are offering under this Solicitation. Any reseller or distributor submitting a Bid hereby guarantees that:
        i. it is an authorized reseller or distributor of a Manufacturer, and
        ii. the Manufacturer has agreed to provide the Bidder with all quantities of Products required in fulfillment of its obligations under any resultant Contract with the State.

2. Bidders must provide proof of sales to government and/or private entities for the following:
    a. **Commercial Equipment ONLY or BOTH Commercial and Residential Equipment Combined:** Bidders must have sold a minimum of $1,000,000 (one million) worth of Products consistent with those listed in Section 1.2 - *Scope* for the Lot(s) being Bid, within the two (2) years immediately preceding the Bid opening date.

    b. **Residential Equipment ONLY:** Bidders must have sold a minimum of $500,000 (five hundred thousand) worth of Products consistent with those listed in Section 1.2 - *Scope* for the Lot(s) being Bid, within the two (2) years immediately preceding the Bid opening date.

    Bidder shall provide proof of such sales, as part of its Bid submission within Attachment - 11 *Proof of Past Sales* – in Excel format, which shall include Purchasing Entity Name, Purchasing Entity Contract Number (if applicable). Purchase Order Number (if applicable) SKU/Part Number, Product Name/Description, Date of Sale, MSRP, Percent Discount, and Net Sale Amount.

    Bidder's failure to include proof of sales as part of its Bid may result in rejection of Bid.

    OGS reserves the right to request additional information and/or documentation, and to waive any or all of the requirements pertaining to Past Sales, if deemed to be in the best interest of the State.

3. SPECIFICATIONS

There are no Product specifications for the Contract.

4. BID SUBMISSION

4.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website: https://osc.state.ny.us/vendors/

4.3 Format of Bid Submission

A. The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, Section 5, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder. Situations susceptible to disqualification may include:

   1. E-mail or facsimile Bid submissions are not acceptable, and
   2. Absent Price Pages (Attachment 1 – *Pricing*) are not acceptable.

B. It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

C. Any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the

Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

D. Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

4.4 Content

A. A complete Bid consists of submission of the following documents (unless noted as "Not required to be submitted with the Bid). All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign) for documents that are not designated to allow for or require an electronic signature. See also Attachment 6 – *Bidder Submission Checklist*.

	Bid Document	Required File Format *(Submit on USB)*	Original also Required *(Submit paper original)*
1	Page 1 of the Solicitation	PDF	**X**
2	Page 2 of the Solicitation – *Bidder Certification and Affirmation*, with signature	PDF	**X**
3	Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*, with Section 10 completed (page 6)	PDF	
4	Appendix D – *Contract Modification Procedure*	Not required to be submitted with the Bid	
5	Attachment 1 – *Pricing* (must be included with the Bid at the Bid Opening / Due date for Bids)	Excel	
6	Attachment 2 – *NYS Required Certifications*, with signature	PDF	
7	Attachment 3 – *Encouraging Use of NYS Businesses in Contract Performance*	PDF	
8	Proof of Compliance with Attachment 4 – *Insurance Requirements.*	PDF	
9	Attachment 5 – *Bidder Information Questionnaire*	Excel	
10	Attachment 6 – *Bidder Submission Checklist*	Excel	
11	Attachment 7 – *Bidder Questions Form*	Not required to be submitted with the Bid	
12	Attachment 8 – *Report of Contract Usage*	Not required to be submitted with the Bid	
13	Attachment 9 – *Certification Under Executive Order 16,* with signature	PDF	
14	Attachment 10 – *Contractor/Reseller/Distributor Information*	Excel	
15	Attachment 11 – *Proof of Past Sales*	Excel	
16	Attachment 12 – *Price List Update Template*	Not required to be submitted with the Bid	
17	Attachment 13 – *Business Automobile Liability Insurance Attestation (as applicable)*	PDF	**X**
18	Manufacturer's Suggested Retail Price for each Manufacturer offered	Excel	
19	Proof of Price Reasonableness documents (per Section 4.5 - *Bid Pricing Submittal*)	PDF	

	Bid Document	Required File Format *(Submit on USB)*	Original also Required *(Submit paper original)*
20	EEO 100 – *Equal Employment Opportunity Staffing Plan*, with signature (see https://ogs.ny.gov/mwbe/forms under "Commodity & Service Contracts")	PDF	
21	Vendor Responsibility Questionnaire (copy of certification that a Questionnaire has been completed online, and certified no more than six (6) months prior to the Bid opening date; see https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire)	PDF	
22	ST-220-CA, *Contractor Certification to Covered Agency*, with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)	PDF	**X**
23	ST-220-TD, *Contractor Certification*, with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)	Must be submitted directly to the NYS Tax Department	
24	Bid Updates (if applicable), with signature	PDF	**X**

B. Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. When submitting electronic documents, include a printed copy of page 1 of the Solicitation with the Bid (see Section 4.6 *Bid Envelopes and Packages*, below).

   Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html).

C. OGS shall consider documents submitted on multiple USB flash drives to be equal, provided that the date/time modified is the same for documents that have the same file name. In the case of discrepancies between file names and date/time modified, the file with the most recent date/time modified shall take precedence.

D. Documents that are not indicated as "Original Also Required" in the above table should not be submitted in paper format and may not be reviewed by OGS if they are received. In the case of discrepancies between paper versions that are received (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper version.

E. Bidder is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically until a determination of award is made. If an award is made to Bidder, the documents with original signatures shall be retained by the Bidder for a period of six (6) years after the term of the Contract has ended. Bidder shall submit such documents with original signatures to OGS upon request.

4.5 Bid Pricing Submittal

Bidder shall include ALL products they intend to offer, that fall within Section 1.2 – *Scope*, on the *Pricing* Worksheet within Attachment 1 – *Pricing.*

A Bidder shall submit its proposed Products and pricing within Attachment 1 – *Pricing* in Excel format only, on USB Flash Drives, as per Section 4.3 – *Format of Bid Submission* and Section 4.4 - *Content* and in accordance with the *Instructions & Fields* worksheet listed within Attachment 1 – *Pricing*. Failure to submit and enter all required information on Attachment 1 – *Pricing* may render the Bid non-responsive and result in the rejection of the Bid.

The Attachment 1 – *Pricing* submitted by the successful Bidder shall be incorporated into the resultant Contract and the Bidder shall be required to provide the awarded Lots at the prices quoted in its Bid. See also Section 6.3 - *Price* for terms and conditions of pricing for the Contract.

A. A Bidder is not required to Bid on every Lot or Bid on every Sub-Lot within Lot 1.

B. The following requirements must be met for the Bidder's Bid to be considered responsive:

   1. Bidder shall provide, on Attachment 1 – *Pricing, a* NYS Discount Percentage off each Manufacturer's Suggested Retail Price (MSRP), for each Lot and Sub-Lot being Bid.

   2. All discount percentage values shall not exceed two decimal places (e.g., 6%, 6.5%, 6.25% are permitted, 6.875% is not permitted).

   3. For each Manufacturer offered, Bidders may offer either a single (same) or variable percentage discount structure for each Lot Bid. In Lot 1, Bidder may choose to offer varying discount percentages per Sub-Lot. The Manufacturer discount offered for each Lot or Sub-Lot shall apply to all Products listed within that Manufacturer's applicable Lot or Sub-Lot. Discount percentage shall be greater than 0.00% with the exception of additional offerings (as described in Section 1.2 - *Scope*).

   4. In the event that Additional Offerings (see Section 1.2 – *Scope* herein) are available in conjunction with the Manufacturer offered, please indicate in Column K – *Additional Offerings* under the *Manufacturer Discount* worksheet in Attachment 1 – *Pricing*.

   5. Prices shall include all customs duties and charges and be net, F.O.B. destination at any point in New York State for orders, as designated by the ordering agency, including delivery, which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck for agency personnel to remove the load without entering the truck. Standard shipping costs are to be prepaid by Contractor and when determining the NYS Net price, shall not be separately added to the Authorized User's invoice.

   6. For all dollar amounts that a Bidder may enter on Attachment 1 - *Pricing*, a Bidder may enter up to as many decimal places as desired, but the response shown will be rounded to two decimal places.

C. Additional instructions for submitting Bid pricing are included in the *Instructions & Fields* worksheet in Attachment 1 – *Pricing*. A Bidder is responsible for reviewing the completed Attachment 1 – *Pricing* prior to Bid submittal to ensure compliance with the Solicitation requirements and that all necessary fields have been populated.

D. Bid pricing submitted in a format other than Attachment 1 – *Pricing* shall render the Bid non-responsive and result in rejection of the Bid. Also, Bidder shall not attempt to alter or modify Attachment 1 – *Pricing* from the original format (e.g. hide or unhide cell(s)/row(s)/worksheet(s) or modify formulas in Attachment 1 – *Pricing*). Only those cells provided for entering a Bidder's response on Attachment 1 – *Pricing* are to be accessed by the Bidder. If the number of items a bidder would like considered exceeds the allowable space within the Pricing Worksheet of Attachment 1, the Bidder should submit an additional Attachment 1. Should an additional Attachment - 1 *Pricing* be submitted, the naming convention should be as follows: Attachment 1_1of2, Attachment 1_2of2. Bidders may not create new tabs within Attachment 1 - *Pricing*. Any attempt to alter or modify Attachment 1 – *Pricing* beyond what is allowed may result in the Bid being deemed non-responsive and rejected.

E. All Bids must be accompanied with current MSRP prices in Excel format for all Products offered.

F. For each Manufacturer offered, Bidder shall demonstrate reasonableness of pricing by submitting supporting documentation, in accordance with Section 5.1 – *Method of Award*, and Section 4.4 – *Content*: The following forms of Price Reasonableness may be accepted:

1. Comparable contracts which identify discounts offered on any previous awarded NYS Contract(s).
2. Contracts with other state or government entities.
3. Invoices from sales made to government or private entities that are within twelve (12) months prior to the Bid opening date, or such other information as determined by OGS.
4. If a Bidder holds another contract that requires them to offer a better percentage discount than to any other entity, then the Bidder will be required to provide a copy of the contract language.
5. If a Bidder holds another contract in which the price is F.O.B. origin, then OGS will require written proof of the cost and/or percentage difference to support the potential allowance of a difference in the discount structure.

If the Bidder is unable to offer the Percentage Discount off MSRP to the State that is the same or better than given to other similarly situated government entities, Bidder must provide a brief explanation in Attachment 5 – *Bidder Information Questionnaire, General Questions* worksheet. It is within OGS's discretion to determine whether the Percentage Discount and explanation provided by the Bidder is reasonable. OGS reserves the right to request further information to determine reasonableness of price.

4.6 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)

2. Solicitation number 23421

3. Bid Opening Date and Time (per Section - 1.4 *Key Events/Dates*)

4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of page 1 of the Solicitation, completed with the Bidder's information. This printed copy of page 1 should be placed in the envelope with the USB flash drives.

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

4.7 Bid Delivery

Bids shall be delivered to the following address on or before 1:30 p.m. ET, on or before the Bid opening date as stated in Section 1.4 - *Key Events/Dates:*

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Attn: Bid Enclosed – Solicitation 23421

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the timeclock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B - *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned. Refer to "*Important Building Access Procedures*" clause.

4.8 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower Information Desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services Receptionist at (518) 474-6262 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a Bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

4.9 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – *NYS Required Certifications*) with its Bid.

4.10 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A – *Standard Clauses for New York State Contracts*. OGS will also not entertain exceptions to the Solicitation or Appendix B – *General Specifications* that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: Product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract but shall be deemed included for informational or promotional purposes only.

4.11 Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage makes available the list of Bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: https://ogs.ny.gov/procurement/bid-opening-results-0.

4.12 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the Production of a Bid or for any work performed prior to the formal execution of a Contract.

4.13 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 120 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.14 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

A. Reject any or all Bids received in response to the Solicitation;
B. Withdraw the Solicitation at any time at the sole discretion of the State;
C. Make an award under the Solicitation in whole or in part;
D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
E. Seek clarifications and revisions of the Bid;
F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
H. Change any of the schedule dates with notification through the NYS Contract Reporter;
I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
J. Waive any requirements that are not material;
K. Utilize any and all ideas submitted in the Bids received;
L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder’s Bid and/or to determine a Bidder’s compliance with the requirements of the Solicitation;
O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS’s sole discretion, for the purposes of Bid evaluation and Contractor selection;
R. Consider a proper alternative where an evidently incorrect reference/parameter/component/Product/model/code number is stated by the State or the Bidder;
S. Reject an obviously unbalanced Bid as determined by the State;
T. Conduct Contract negotiations with the next responsible Bidder, should the State be unsuccessful in negotiating with the selected Bidder;

U. Make no award for any Product, region, or Lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or Lots;

V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing; and

W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

4.15 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. OGS may require that the document be executed with an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). The final Contract will be formalized either through a separate Contract document or through a Contract Award Letter incorporating the Bid, each having its own provision governing conflict of terms.

5. METHOD OF AWARD

5.1 Method of Award

As specified in Solicitation Section 1.2 – *Scope,* this Solicitation includes four (4) Lots and within Lot 1, several Sub-Lots. Awards shall be made to all responsive and responsible Bidder(s) that are able to meet the terms and conditions of this Solicitation and the minimum qualifications detailed in Section 2 – *Bidder Qualifications*, and whose Product offerings, will be provided at a reasonable price as determined by OGS.

Bids will be reviewed to ensure that the Bidder has provided all required Attachments, completed in full, and in original hard copy, where requested. Failure by a Bidder to provide properly completed required documents and/or Attachments may result in their Bid being deemed non-responsive and denied further consideration for award. OGS reserves the right to give first consideration to Bids which are substantially complete over those that are not, and to make awards on a rolling or staggered start basis, as per Section 4.14 - *NYS Reserved Rights*, as deemed necessary and determined solely by OGS Procurement.

Bidder must be financially stable and able to demonstrate the financial stability of the company. In addition to sales history, current financial statements or other financial information, as requested and deemed appropriate by OGS, must be provided within five (5) business days of request. New York State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Solicitation.

The Commissioner reserves the right to evaluate and/or reject any and all Bids, in whole or in part and to waive technicalities, irregularities and omissions if in his or her considered judgment, the best interests of the State will be served. In the event satisfactory Bids, fully in accord with the Bid documents, are not received, the Commissioner reserves the right to consider late or non-conforming Bids as stipulated in "Late Bid" clause of Appendix B – *General Specifications*.

5.2 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. Bidder must register with the New York State Contract Reporter at https://www.nyscr.ny.gov in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

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

5.3 Procurement Instructions for Authorized Users

The following procurement instructions for Authorized users shall be published on the OGS website for the resultant Contract Award as a stand-alone document separate from the Contract. OGS reserves the right to change the instructions in the stand-alone document, once published, in non-material and substantive ways without seeking a Contract Amendment. The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

A. Each Contractor's approved Attachment 1 – *Pricing*, and Attachment 10 – *Contractor/Reseller/Distributor Information Sheet* will be posted on the OGS website so that Authorized Users can find Contract pricing information, Contractor and Reseller/Distributor contract information, prompt payment discounts, and NYS Purchasing Card Information.

B. When utilizing the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should also hold the Contractor accountable for compliance with 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. Bidders are encouraged, though not required, to self-identity 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 which should include:

    a. A statement of need and associated requirements;
    b. Obtaining all necessary prior approvals;
    c. A summary of the Contract alternatives for the purchase, if any; and
    d. The reasons supporting the resulting purchase (e.g., show that 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).

C. All State agencies, political subdivisions, and public benefit corporations (which include most public authorities) having their own purchasing agency are required to purchase approved products and services from Preferred Sources in accordance with § 162 and § 163 of the New York State Finance Law. Before proceeding with their purchase, such Authorized Users shall check the list of Preferred Source Program offerings for Products that meet the form, function, and utility required. These Authorized Users are reminded that they must comply with State Finance Law § 162, which requires that they afford first priority to the commodities and services of Preferred Source suppliers, which include the Division of Correctional Industries (Corcraft), the NYS 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 offering does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or more than 15% above prevailing market prices, then the Authorized User may use this Contract.

D. Prior to making a purchase, any **State Agency Authorized Users** whose systems are managed or administered by New York State Office of Information Technology (ITS), must contact their Deputy Commissioner for Technology to determine if an ITS owned or managed service is available for use. Agencies are reminded of the requirement for an approved Plan to Procure in accordance with the

ITS Plan to Procure Policy, available via https://its.ny.gov/system/files/documents/2023/07/nys-p08-001-plan-to-procure.pdf, with exceptions to technology standards granted in limited circumstances.

E. The Contracts resulting from this Solicitation will be Centralized Contracts issued under a multiple award structure. 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). Authorized Users are also encouraged to seek better than Contract pricing for all items, especially when purchasing in volume, as Contractors may not automatically offer volume discounts.

5.4 Notification of Award

Tentative Contract award(s) shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective on July 12, 2026, or upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end five (5) years from the date of OSC approval of the final executed documents.

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 three (3) 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 the approval of OSC and 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*.

The Contract term provided for in this section shall extend six (6) months beyond its termination date only for Authorized Users whose Contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose Contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B - *Contract Term – Extension*. In the event that OGS determines that a short term extension is in the best interests of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), 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 previously approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to ninety (90) calendar days in lieu of 30 calendar days. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Price

Pricing shall be a percent discount from Manufacturer's MSRP, and the discount shall be equal to or better than any other offered to another government and/or private entity for the same type of Products. Discounts will be confirmed by comparison with other government and/or private entity contracts held by the Bidder in effect within twelve (12) months preceding the Bid opening.

Reasonableness of price will be determined by reviewing percent discounts on any current or previously awarded New York State or government entity contracts, pricing offered by other Bidders for this Solicitation, and/or other non-governmental entities contracts (such as CUNY, SUNY, educational entities or hospitals), or such other information as determined by OGS. If a Bidder submits a comparable contract that requires them to offer a better discount than to any other entity, then the Bidder will be required to provide a copy of the contract language.

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the *Instructions & Fields* worksheet listed within Attachment 1 - *Pricing*. If the offered New York State discount structure is less than the comparable contract, the Bidder must provide a written explanation that is acceptable to OGS in order to establish the reasonableness of price. Failure to provide either a New York State Contract discount structure that is greater than or equal to the comparable contract discount or an acceptable explanation may result in the pricing being found unreasonable and that Lot and/or Sub-Lot being rejected. OGS reserves the right to request additional information to make a determination of price reasonableness.

The following terms and conditions shall apply to pricing offered under the Contract. For Bid pricing, see Section 4.5 - *Bid Pricing Submittal.* Pricing will be collected using Attachment 1 – *Pricing* in accordance with the *Instructions & Fields* worksheet listed within Attachment 1 - *Pricing.*

A. Contractor may include an additional fee for inside delivery requests with the quote. Inside delivery is intended for essentially free-standing equipment and appliances when the ordering agency is unable to bring it from the dock to the point of use. It shall consist of removal from truck, bringing to the point of use, uncrating, minor assembly, leaving ready for use and removal of debris. This cannot be applied to installations that require Public Works, please see Section 6.7 - *Public Works*.

B. Additional Offerings: Within each Lot, Bidders may also offer product options, including but not limited to, maintenance and support services, extended warranties (beyond the standard Warranties section of Appendix B), for the Kitchen and/or Laundry Equipment, appliances and related accessories Bid. Additional offerings shall be included in Attachment 1 – *Pricing*.

6.4 Price Updates

Updates to a Contractor's OGS Price List (price list updates) will be allowed twice per Manufacturer per calendar year after the first anniversary date of the Bid Opening. Price list update requests from a Contractor at any other time will not be granted, unless OGS determines that such update is in the best interests of the State and/or its Authorized Users. Contractor may update their price list as follows:

A. Price adjustments (e.g., changes to the MSRP, NYS Discount, NYS Contract Price, or another cost indicator identified as applicable for a Product). All price list update requests must be accompanied with current MSRP prices in Excel format for all Products offered.

B. Addition/deletion of Products, the Contractor may add new Products or remove Products that are no longer available. The discount offered on any new Products added to price lists shall be no lower than the minimum established discount for each manufacturer in the corresponding Lot or Sub-Lot.

C. Addition/deletion of Manufacturers, price list updates that include the addition of a new Manufacturer must be accompanied by proof of reasonableness of price, which may be in the form of pricing from a contract held with a government or private entity, invoices from sales made to such entities, or sales reports that are less than twelve (12) months old from the date of the Contract price list update submission for the Products offered, or such other information as determined by OGS.

D. Addition/deletion of Lots or Sub-Lots price list updates that include the addition of a new Lot/ Sub-Lot must be accompanied by proof of reasonableness of price, which may be in the form of pricing from a contract held with a government or private entity, invoices from sales made to such entities, or sales reports that are less than twelve (12) months old from the date of the Contract price list update submission for the Products offered, or such other information as determined by OGS.

E. Other changes to a Product listed on the price list that is currently posted on the OGS website (e.g., Product description, Manufacturer, Part Number/SKU, Unit of Measure, or other Product information).

F. Price list update requests should be submitted within thirty (30) calendar days of a Manufacturer price list update. Contractor shall submit its request for an updated price list to the OGS Procurement Services Contract Manager pursuant to the requirements of Section 6.5 - *Price List Update Format* below for review and approval.

G. Contractor shall be permitted to reduce its pricing at any time during the Contract term, without prior approval from OGS. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

H. Price list updates are effective upon notification from OGS that the update has been approved. Revised price lists shall be posted by OGS on the OGS Contract website within five (5) Business Days after approval, or as soon as possible thereafter.

6.5 Price List Update Format

Contractor is required to submit Contract price list updates in the format requested by the OGS Contract Manager. The price list update must be dated and submitted electronically via e-mail to the OGS Contract Manager. Unless otherwise directed, the price list update must include the complete updated price list, with the following changes from the price list currently posted on the OGS website identified (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts). Contractors shall adhere to the instructions in Attachment 12 – *Price List Update Template* which shall be completed to the satisfaction of OGS. OGS shall not accept price list update submissions without a completed and signed Appendix D.

All Contract price list updates shall be accompanied by an explanation within the body of an email, describing the nature and purpose of the update (e.g., update requested in order to reflect an updated Manufacturer list price or to add/delete Products, etc.).

6.6 Contract Price List Updates Reserved Rights

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

1. Request additional information;
2. Reject Contract price list updates in full or in part;
3. Remove previously approved Products from Contracts;
4. Remove Products from Contract price list updates;
5. Request additional discounts for new or existing Products;

6. Require the Contractor to lower its offered pricing to that which OGS has determined to be reasonable and to remove items from Contractor's price list which are either out of scope, not in compliance with Contract requirements, or for which pricing is determined not to be reasonable;
7. Confirm that the existing Contract price and all related columns on the price list adheres to Contract terms and conditions, and to remove any items determined not to be in compliance with the Contract;
8. Deny price list updates to Contractors that are delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 8 – *Report of Contract Usage*, and/or proof of insurance requirements;
9. Request price list updates in addition to the annual limit imposed above in Section 6.4 *Price Updates*, or to not permit price list updates requested within six (6) months prior to the end of the Contract term; and
10. Revise the price list update template (Attachment 12) at any time during the Contract term to add, remove and/or revise instructions, columns and/or required information without a formal Contract amendment.

6.7 Public Works

Installation work which is considered public works is excluded from purchase under this Solicitation. For questions about whether a proposed installation constitutes public work, please contact your local New York State Department of Labor's Bureau of Public Work district office. 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.

6.8 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.9 Price Structure

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

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

6.10 Volume Discounts

If Contractor offers a Volume Discount, this should be indicated on Attachment 5 - *Bidder Information Questionnaire*.

Volume discounts will not be assessed when determining if a vendor's prices are reasonable.

6.11 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).

6.12 Minimum Order

There is no minimum order for this Contract.

6.13 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
- Manufacturer's Suggested Retail Price
- Item discount
- NYS Net 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.

6.14 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B - *Product Delivery* and *Shipping/Receipt of Product*. Delivery shall be F.O.B. Destination any point in New York State for orders, as designated by the ordering agency, including delivery, which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck for agency personnel to remove the load without entering the truck. Standard shipping costs are to be prepaid by Contractor and, when determining the NYS Net Price, shall not be separately added to the Authorized User's invoice.
Inside delivery is intended for essentially free-standing equipment and appliances when the ordering agency is unable to bring it from the dock to the point of use. It shall consist of removal from the delivery truck, bringing to the point of use, uncrating, minor assembly, leaving ready for use and removal of debris. This cannot be applied to installations that require Public Works, please see Section 6.7 – *Public Works*.

Contractor may include an additional fee for inside delivery with the quote. Contractor shall provide a detailed written statement of such additional charges to the Authorized User; the Authorized User shall determine whether such charges are appropriate and should be agreed to prior to acceptance of an order and such costs shall be prepaid by the Contractor and added to the invoice.

6.15 Product Returns and Exchanges

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

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

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

6.16 Unanticipated Excessive Purchase

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

6.17 Contract Administration

The Bidder 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. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder shall provide a minimum of one (1) dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five (5) Business Days if it's 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.

6.18 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: http://www.sfs.ny.gov and https://www.osc.ny.gov/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview.

6.19 Web-Based Ordering

The State encourages the Contractor (and any approved Resellers) 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.

6.20 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 network-based information and applications development, or programming, including, but not limited to, websites delivered to or by the State pursuant to the Contract or procurement, will comply with Section 130-d of the State Technology Law, as amended, Executive Law Section 170-f, as amended, and be consistent with New

York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the "Accessibility Policy"), The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to all users, including those with disabilities as determined by accessibility compliance testing. . Such accessibility compliance testing will be conducted by OGS or a third-party at the direction of OGS, and any report on the results of such testing must be satisfactory to OGS.

6.21 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. Bidder 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 Bidder 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.

6.22 N.Y. State Finance Law § 139-l

Pursuant to N.Y. State Finance Law § 139-l, every Bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: https://www.ny.gov/combating-sexual-harassment-workplace/employers.

Pursuant to N.Y. State Finance Law § 139-l, any Bid by a corporate Bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such Bidder, and such authorization shall be deemed to include the signing and submission of such Bid and the inclusion therein of such statement as the act and deed of the Bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the Bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the Bid or may decide that there are sufficient reasons to accept the Bid without such certification.

The certification required above can be found on Attachment 2 – *NYS Required Certifications*, which Bidder must submit with its Bid.

6.23 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*.

6.24 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than fifteen (15) 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.

In accordance with Section 6.30 – *Environmental Sustainability and NYS Executive Order Number 22*, Contractor shall identify any Products that meet GreenNY Specifications on Contract Usage Reports. The report must also include, at a minimum, details about the third-party sustainability certifications and other environmental attributes of the Products and related packaging offered under the Contract.

The Authorized User reserves the right to request its applicable sales data from the Contractor, based on criteria identified by the Authorized User, over the life of the contract. If sales data is requested, Contractor must provide datapoints that are required by Attachment 8 – *Report of Contract Usage*.

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

OGS reserves the right to revise the Report of Contract Usage template (Attachment 8) at any time during the Contract term to add, remove and/or revise instructions, columns and/or required information without a formal Contract amendment.

6.25 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

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

II. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State Contracts as defined therein, with a value (1) in excess

of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.
C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of Contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any Subcontractors, awarded a subcontract over $25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

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

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

1. The Contractor shall complete and shall require each of its Subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its Subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its Subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: https://ny.newnycontracts.com.

2. Separate audits shall be completed by Contractor and all Subcontractors utilized on this Contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their Subcontractors.

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

D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as Subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: https://ny.newnycontracts.com/. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as Subcontractors/suppliers, copies of such solicitations, and any responses thereto.

2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.

4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-Bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.

6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: https://ogs.ny.gov/MWBE

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

6.26 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS Contracts.

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

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

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

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

6.27 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.*

6.28 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. Authorized Users are urged to inquire about these programs at the time of

purchase and determine the best solution for their needs. The following required and encouraged attributes apply to all layers of Product packaging.

A. Packaging is REQUIRED to have the following sustainability attributes:

1. Pursuant to NYS Hazardous Packaging Law Section 37-0205, the vendor is prohibited from offering packaging or packaging components (inks, dyes, pigments, adhesives, stabilizers, or any other additives) with lead, cadmium, mercury, or hexavalent chromium at concentration levels exceeding 100 parts per million by weight (0.01%).

2. Pursuant to NYS Expanded Polystyrene Foam Container and Loose Packaging Law Section 27-3003, the vendor is prohibited from offering polystyrene loose fill packaging.

3. Packaging must not contain polyvinyl chloride (PVC).

4. Plastic packaging must not be labeled with terms "biodegradable", "decomposable", "degradable", or “oxo-degradable”.

5. If packaging is labeled as compostable it must be certified by the Biodegradable Products Institute (BPI), Compost Manufacturing Alliance (CMA), or an equivalent certifier approved by the State.

B. Contractor is ENCOURAGED to offer one (1) or more of the following sustainability attributes:

1. Bulk shipping, order consolidation, and right-sizing packaging

2. Ship Products in only the Manufacturer’s packaging

3. Packaging that is:
   - Reusable, including pallets, pallet wrap, boxes, and other types of containers
   - Free of expanded polystyrene
   - Free of per- and polyfluoroalkyl substances (PFAS) (Note: Items that are certified by BPI or CMA are verified PFAS-free)
   - Compostable (Note: Compostable packaging should only be used in areas where a composting facility exists and will accept the material)
   - Recyclable (i.e., accepted by most recycling service providers in NYS)
   - Made of a single material
   - Contains a minimum of 25% post-consumer recycled content

C. Verification of Packaging Requirements and Additional Desirable Attributes

At the request of OGS or the Authorized User, the Contractor must provide verification of compliance with one (1) or more of the minimum requirements for packaging. OGS and the Authorized User also reserves the right to request information documenting the packaging desirable attributes and other Contractor environmental claims. The following types of verification documentation will be accepted:
- Third-party certification
- Product test results
- Compliance certification or affidavit signed by the Manufacturer
- Other acceptable documentation as approved by OGS or the Authorized User

6.29 Surplus/Take-Back/Recycling

The Contractor is encouraged to offer Product and packaging takeback and recycling services for its Products, and Manufacturers must offer such services for electronic equipment (see Paragraph C below). Takeback services may include those offered by the Manufacturer or the Contractor. When offered, the Contractor should provide the OGS Contract Manager with, at a minimum, a list of accepted Products and packaging materials, estimated pricing (if applicable), and contact information for the service.

A. 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.

B. 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 Paragraph C below for specific requirements governing electronic equipment recycling.

C. 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

   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.

6.30 Environmental Sustainability and NYS Executive Order Number 22

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

A. GreenNY Specifications

A list of GreenNY specifications is located on the OGS website at https://ogs.ny.gov/greenny/approved-greenny-specifications. Specification(s) currently applicable to this Contract are Commercial Hot Food Holding Cabinets, Commercial Ovens, Commercial and Domestic Clothes Washers.

B. Product Labeling per GreenNY Specifications

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

Contractor(s) shall also note Products that meet GreenNY Specifications on Contract Usage Reports (see Section 6.24 *Report of Contract Usage*), in the format requested by OGS.

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

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

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

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

6.31 Consumer Products Containing Mercury

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

6.32 Diesel Emission Reduction Act

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

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

6.33 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under any Contract or subcontract resulting from this Solicitation, Bidder or resultant Contractor or Subcontractor shall not

provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

6.34 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.

6.35 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.

6.36 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors (“Bidders”) to provide reasonable assurances that the Bidder 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 Bidder’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, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’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 Bidder 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/vendors/index.htm or to enroll, go directly to the VendRep System online at https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system.

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. Bidders 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 Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder’s Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders 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 Bidder 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.

6.37 NYS Tax Law Section 5-a

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

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

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

6.38 "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 (2) business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

6.39 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://ogs.ny.gov/procurement/nys-laws-extending-use-state-centralized-contracts). 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.

6.40 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. Requests for extension of use must be sent via e-mail to: OGS.sm.customer.services@ogs.ny.gov.

New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions. Authorized Users (NYS) must be given priority with regard to Product availability and delivery. Additional States permitted by OGS to use the Contracts resulting from this Solicitation may add their own terms and conditions although they may not conflict with OGS'. Additional States may not charge any fees to the Contractor(s) awarded from this Solicitation. OGS' terms and conditions, including this Section, may not be modified in any way by another State's terms and conditions. All requests must be approved by OGS prior to Contract use.

6.41 Resellers

A. Definitions

"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 within Attachment 10 - *Contractor/Reseller/Distributor Information Sheet* 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. In addition to notification, if the Contract has goals, Contractors MUST submit to OGS a completed MWBE 100 EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE.

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

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 10 - *Contractor/Reseller/Distributor Information Sheet*. 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.

6.42 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.

6.43 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. All modifications proposed by Contractor shall be processed in accordance with Appendix D – *Contract Modification Procedure.* The Contractor shall submit all requests in the form and format contained in Appendix D – *Contract Modification Procedure*. The form contained within Appendix D is subject to change at the sole discretion of OGS.

E. 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*.

6.44 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the Contractor’s personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

6.45 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.

6.46 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.

6.47 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.

6.48 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the Contract and any extensions thereof, and for a period of six (6) years after the term of the Contract has ended. Contractor shall submit such documents with original

signatures to OGS upon request. If Contractor seeks to assign the Contract during the term, Contractor shall provide all documents relating to the Bid and Contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

6.49 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B - *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.