



# Contract Award Notification

<b>Title</b>	: <b>Group 38224 – Materials and Equipment for Educational Technology and Occupational Training (Statewide)</b> <b>Classification Code(s): 27, 41, 43, 45, 55, 86</b>
<b>Award Number</b>	: <b><u>23077</u></b> (Replaces Award 22257)
<b>Contract Period</b>	: <b>August 3, 2017 – August 2, 2022</b>
<b>Bid Opening Date</b>	: <b>May 23, 2017</b>
<b>Date of Issue</b>	: <b>August 3, 2017</b>
<b>Specification Reference</b>	: <b>As Incorporated Herein</b>
<b>Contractor Information</b>	: <b>Appears on Page 2 of this Award</b>

## Address Inquiries To:

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

## Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23077 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED MAY 11, 2017.

This contract provides Authorized Users with a means of acquiring materials, equipment and computer training modules to be used to teach different types of vocations, trades, or curriculums to grade, middle, and high school, college and vocational students. Included, but not limited to, are products that teach science, math, engineering, robotics and automation, computer aided drafting, pneumatics, hydraulics, computer technology, aerodynamics, electronics, HVAC, automotive technology, and communications. Not included are stand-alone equipment and products such as computers and peripherals, copiers, furniture, industrial tools and supplies, audio visual products, laboratory equipment and instrumentation, medical equipment, assistive technology products, cloud-based products or offerings, or books and serials unless those types of products are part of a contractor’s general product offering, and are to be utilized in conjunction with a contractor’s learning or training based systems and curriculums. **Agencies Note: Please refer to the Preferred Sources and Overlapping Contract Products clauses on pages 6-7. Agencies are required to purchase from the least expensive alternative meeting their form, function, and utility if overlapping items exist.**

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

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<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>FED.IDENT. #</u>	<u>NYS VENDOR#</u>
PC67810 SB	A+ Mobile Solutions Inc.	33-1167331	1000049515
PC67811 SB	A+ Technology & Security Solutions, Inc.	11-3571518	1100005450
PC67812	Allegheny Educational Systems, Inc.	25-1554488	1000033780
PC67814	C-Tech Associates, Inc.	22-3265901	1100136919
PC67815	Festo Didactic, Inc.	21-0415841	1100035752
PC67816	Haskell Instructional Technologies DBA HITech Inc.	35-2215411	1100085309
PC67817 SB	Joe Zahra Associates, LLC	46-1304836	1100103662
PC67818 SB	Kelvin LP	11-3383083	1100006208
PC67819	LJ Create Inc.	11-2867444	1000024445
PC67820	Midwest Shop Supplies, Inc. DBA Midwest Technology Products	42-0870533	1100015584
PC67821 SB	NADA Scientific, Ltd.	14-1691890	1100006973
PC67823	Promethean, Inc.	04-3647203	1100017897
PC67824	Tech-Ed Systems, Inc.	22-3222742	1000008824
PC67825 SB	Video Hi-Tech DBA Adwar Video	11-2765013	1000005772

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/3822423077Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**

**(See "INVOICING AND PAYMENT" in this document.)**

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

**SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:**

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

**RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:**

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

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

**NOTE TO AUTHORIZED USERS:**

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

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

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

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

**CONFLICT OF TERMS:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23077 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated May 11, 2017 and May 19, 2017 (previously provided);
4. Solicitation #23077 (Revised May 11, 2017) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as published by OGS; and
6. Contractor's Bid

**OVERVIEW:**

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

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

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$9,800,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

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

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

In Procurement Service’s experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

**DEFINITIONS:**

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

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

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

“**List Price**” shall mean the undiscounted price at which the Product/Service is offered for sale to the public.

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

“**National Public Entities**” are defined as state governments, the Federal Government, local governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions.

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

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

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

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

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

“**Product Category**” shall refer to the classification system used to categorize Educational Technology and Occupational Training Products/Services for sale during the normal course of business. For example: how Educational Technology and Occupational Training Products/Services may be categorized in a paper based hard copy catalog according to the catalog table of contents; or alternatively, how Educational Technology and Occupational Training Products/Services may be categorized for sale online.

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

**SCOPE:**

The purpose of this Solicitation, and the resulting discount-from-pricelist contracts, is to provide Authorized Users with a means of acquiring materials, equipment and computer training modules to be used to teach different types of vocations, trades, or curriculums to grade, middle, and high school; college; and vocational students.

Products include, but are not limited to, those that teach science, math, engineering, robotics and automation, computer aided drafting, pneumatics, hydraulics, computer technology, aerodynamics, electronics, HVAC, automotive technology, and communications. Products may include printed and/or digital materials, blended solutions that are generally used in conjunction with a training system, or equipment, to teach the particular vocation, trade, or curriculum. Software and online or Internet-based learning services that work in conjunction with materials, and training equipment or products, offered by the vendor for the purposes of teaching a particular vocation, trade, or curriculum will be allowed. Not included are stand-alone equipment and products such as computers and peripherals, copiers, furniture, industrial tools and supplies, audio visual products, laboratory equipment and instrumentation, medical equipment, assistive technology products, cloud-based products or offerings, or books and serials unless those types of products are part of a contractor’s general product offering, and are to be utilized in conjunction with a contractor’s learning or training based systems and curriculums. Procurement or acquisition of standalone virtual, online, or Internet-based learning services; or of standalone educational software products is also not permitted.

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

**PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

The contracts resulting from this Solicitation will be centralized contracts under a multiple award structure. Products offered under the contracts, pricing, and other Contract information will be posted to the OGS website and/or the awarded Contractors' dedicated websites. Authorized Users shall procure Products that best meet their form, function, and utility requirements. Only those Products/Services on the OGS approved pricelists may be purchased under this Contract.

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

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.

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

**OVERLAPPING CONTRACT ITEMS:**

Products available in 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.

Contracts with possible overlap are listed below:

NYS OGS Group #	12000 Medical and Laboratory Supplies and Equipment	20060 Books and Non-Print Library Materials	23100 School and Art Supplies	38806 Audio Visual Equipment and Accessories	39000 Industrial & Commercial Supplies and Equipment
A+ Mobile Solutions, Inc.			X		
A+ Technology & Security Solutions, Inc.				X	
Allegheny Educational Systems, Inc.					X
C-Tech Associates, Inc.					
Festo Didactic, Inc.					X
Haskell Instructional Technologies DBA HITECH Inc.					X
Joe Zahra Associates, Inc.					
Kelvin LP	X	X	X	X	X
LJ Create Inc.					
Midwest Shop Supplies DBA Midwest Technology Products	X	X	X	X	X
NADA Scientific, Ltd.					
Promethean, Inc.			X	X	
Tech-Ed Systems, Inc.					
Video Hi-Tech DBA Adwar Video				X	

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

**CONTRACT PERIOD AND EXTENSIONS:**

- A. Base Term. The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*). All Contracts shall be coterminous with the first contract awarded as a result of this Solicitation.
- B. Extensions. All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for up to two years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

**SHORT TERM EXTENSION:**

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. 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/Services covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

**PRICE:**

Net Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering Authorized User. This includes all transportation charges and delivery inside doors of the Authorized Users' receiving platform. Additional fees may be charged when Authorized Users require inside delivery, such as to an upper floor, and Authorized User should clearly indicate on purchase order the specific location where delivery is required to be made. (For Example, Authorized Users should use terminology such as "DELIVERY TO ROOM \_\_\_\_\_ LOCATED ON \_\_\_\_\_ floor," etc., on purchase orders). If additional delivery charges are required for upper floor delivery, Authorized User shall agree to such charges prior to delivery and such costs shall be prepaid by the Contractor and added to the invoice. NOTE: If it is determined the Contractor is charging excessive amounts for delivery, the State may seek reimbursement for such amounts.

Upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.



The percentage discount offered to Authorized Users may, at the Contractor's option, be increased based on individual orders. Discounts may be greater, but in no instance may they be lower than the awarded discount. If Contractor is offering a single discount structure, the same discount shall be applied to all purchases made from the Contractor's pricelist. All Contract List and Net Prices shall be rounded to two decimals in the resultant Contract. Subsequent to award, the Contractor shall assist Authorized Users in the use of their pricelist upon request.

**PRICE UPDATES:**

Contractor may update their pricelist as follows:

In the first year of the Contract, the Contractor shall be allowed to update their pricelist once to add/delete Products/Services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products/Services during the first year of the Contract.

Commencing with the first anniversary date of the first contract awarded under this Solicitation, and semi-annually from that date thereafter, the Contractor may update the pricelist to reflect Contractor price changes and the addition/deletion of Products/Services.

Requests for price adjustments and new items shall be submitted 30 days prior to the semi-annual anniversary date of the first contract awarded under this Solicitation and semi-annually from that date thereafter. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

If new product lines are to be added, this may be done after the first anniversary date of the first contract award. The Contractor has to demonstrate that the product line meets the scope as defined in Section, *Scope*, and that pricing is reasonable as defined in Section, *Price*. A comparable contract, or invoice, to a national public entity must be submitted showing pricing, discount(s), and delivery terms. Discount(s) on the product line have to be equal or better than those currently offered in that product category.

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

The discount offered on any new Products/Services added to pricelists shall be no lower than the minimum established Product Category discount. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or pricelists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved pricelist updates shall apply prospectively upon approval by OGS. Total price increases for pricelist updates in a single year of the Contract shall not exceed the escalation cap as set forth in Maximum Price Increase subdivision, below. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

**Pricelist Format**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or thumb drive or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

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

Contractor’s Submission of Contract Updates

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

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

Maximum Price Increase

In a single year of the Contract, the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The “CPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “CPI for previous period” shall be the index in effect when the Contract pricelist was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only.

Cover Letters

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or WSCA Contract pricing update, to add/delete Products/Services, etc., subject to any applicable caps) along with a current nationally published pricelist and pricelist of a comparable government contract for the items that are to be added.

**VOLUME DISCOUNTS:**

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

**ORDERING:**

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

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

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**MINIMUM ORDER:**

Minimum order shall be \$100.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the contractor's option, shipping costs from the contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the Product unless special instructions are stated on the order by the agency.

**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/Service Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Delivery (if applicable)

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

**PRODUCT DELIVERY:**

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

**PRODUCT RETURNS AND EXCHANGES:**

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

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

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

**UNANTICIPATED EXCESSIVE PURCHASE:**

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

**CONTRACT ADMINISTRATION:**

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

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if 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.

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products/Services in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>.

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

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

**WEB-BASED ORDERING:**

As an option the Contractor (and any approved Resellers) may accept orders electronically via the Internet through a web-based ordering system on a dedicated NYS website. If a web-based ordering system is offered by Contractor, it must have the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. Contractor (and any approved Resellers) shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor's (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor's website.

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

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

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

**ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY:**

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors 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 f/k/a Office for Technology 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. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

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

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**INSURANCE:**

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

**REPORT OF CONTRACT USAGE:**

Contractor shall submit Attachment 8 – *Report of Contract Usage*, including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the close of the contract semi-annual period from the commencement date of the initial award. 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 semi-annual report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBs), 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.

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

**New York State Law**

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

**General Provisions**

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

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority- and women-owned business enterprises (“MWBES”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract and applicable law.

**Equal Employment Opportunity (EEO)**

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

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

**Form EEO 100 – Staffing Plan**

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

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

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

Separate forms shall be completed by Contractor and any subcontractor.

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

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

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.



**Good Faith Efforts**

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

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

**Fraud**

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

ALL FORMS ARE AVAILABLE AT: <https://www.ogs.ny.gov/MWBE/Forms.asp>

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

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, 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/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf)

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

**ALL FORMS ARE AVAILABLE AT:**

[https://www.ogs.ny.gov/Core/SDVOBA.asp?\\_sm\\_au\\_=iVVjF227tLf4JJH](https://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=iVVjF227tLf4JJH)

**CONTRACT ADVERTISING:**

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

**RESELLERS:**

A. Definition

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

B. Conditions of Reseller Participation

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

1. Such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor’s established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. Those qualifying criteria met by the Reseller must be identified in Reseller designations Attachment 9 – *Reseller Directory* at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller’s status occurs during the Contract term.

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

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 9 – *Reseller Directory*. 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/Service purchased through a Reseller must be reported by Contractor in the required semi-annual 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/Service ordered directly through Resellers shall be limited to Products/Services previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

**NEW ACCOUNTS:**

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

**USE OF RECYCLED OR REMANUFACTURED MATERIALS:**

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

**BULK DELIVERY AND ALTERNATE PACKAGING:**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. Contractors are encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

**SURPLUS/TAKE-BACK/RECYCLING:**

- I. A State agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <https://www.dec.ny.gov/chemical/65583.html>.

- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

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

**CONSUMER PRODUCTS CONTAINING MERCURY**

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

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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 or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee 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.

**NEW YORK STATE 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.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**EXTENSION OF USE:**

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

**DRUG AND ALCOHOL USE PROHIBITED:**

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

**TRAFFIC INFRACTIONS:**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

**INSTRUCTION MANUALS:**

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

**LICENSE TERMS AND CONDITIONS:**

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

**ASSEMBLY/CONFIGURATION/INSTALLATION/NETWORKING SERVICES:**

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

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

Installation work which is considered Public Works in accordance with the New York State Labor Law is **excluded** from purchase under this Contract. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is Public Work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be considered Public Work. Thus, this Solicitation and any resulting Contracts do not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g., installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in your area. A listing of district offices and contact information is available at: [www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm](http://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm).

**APPENDIX A**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**APPENDIX B**

Appendix B, Office of General Services General Specifications, dated April 2016 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23077 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED MAY 11, 2017.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

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

**Contract No.:** \_\_\_\_\_ **Contractor:** \_\_\_\_\_

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

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

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

**CONTRACTOR**

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

Comments: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_ (over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

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

\* \* \* \* \*



# Supplemental Contract Award Notification

PAGE 23

<b>Title</b>	: <b>Group 38224 – Materials and Equipment for Educational Technology and Occupational Training (Statewide)</b> <b>Classification Code(s): 27, 41, 43, 45, 55, 86</b>
<b>Award Number</b>	: <b><u>23077</u></b> (Replaces Award 22257)
<b>Contract Period</b>	: <b>August 22, 2017 – August 2, 2022</b>
<b>Bid Opening Date</b>	: <b>May 23, 2017</b>
<b>Date of Issue</b>	: <b>August 22, 2017</b>
<b>Specification Reference</b>	: <b>As Incorporated Herein</b>
<b>Contractor Information</b>	: <b>Appears on Page 2 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Shrilata Nath	Procurement Services
Title : Contract Management Specialist	Customer Services
Phone : 518-474-3034	Phone : 518-474-6717
E-mail : Shrilata.Nath@ogs.ny.gov	E-mail : customer.services@ogs.ny.gov

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

### Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23077 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED MAY 11, 2017.

This contract provides Authorized Users with a means of acquiring materials, equipment and computer training modules to be used to teach different types of vocations, trades, or curriculums to grade, middle, and high school, college and vocational students. Included, but not limited to, are products that teach science, math, engineering, robotics and automation, computer aided drafting, pneumatics, hydraulics, computer technology, aerodynamics, electronics, HVAC, automotive technology, and communications. Not included are stand-alone equipment and products such as computers and peripherals, copiers, furniture, industrial tools and supplies, audio visual products, laboratory equipment and instrumentation, medical equipment, assistive technology products, cloud-based products or offerings, or books and serials unless those types of products are part of a contractor’s general product offering, and are to be utilized in conjunction with a contractor’s learning or training based systems and curriculums. **Agencies Note: Please refer to the Preferred Sources and Overlapping Contract Products clauses on pages 6-7. Agencies are required to purchase from the least expensive alternative meeting their form, function, and utility if overlapping items exist.**

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

PR #23077



<u>CONTRACT #</u>	<u>CONTRACTOR</u>	<u>FED.IDENT. #</u>	<u>NYS VENDOR#</u>
PC67813	Creative Learning Systems LLC,	81-5084073	1100184935
PC67822	Pitsco Inc. DBA Pitsco Education	48-0780825	1000031896

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at: <http://www.ogs.ny.gov/purchase/spg/awards/3822423077Can.htm>

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**

**(See "INVOICING AND PAYMENT" in this document.)**

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

**SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:**

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

**RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:**

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

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

**NOTE TO AUTHORIZED USERS:**

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

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

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

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

**CONFLICT OF TERMS:**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23077 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated May 11, 2017 and May 19, 2017 (previously provided);
4. Solicitation #23077 (Revised May 11, 2017) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as published by OGS; and
6. Contractor's Bid

**OVERVIEW:**

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

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

**ESTIMATED QUANTITIES:**

All quantities or dollar values listed within this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards was approximately \$9,800,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meets their needs in the most practical and economical manner. See Appendix B, §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

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

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

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially

greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimates/historical values provided in this Contract.

**DEFINITIONS:**

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

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

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

**“List Price”** shall mean the undiscounted price at which the Product/Service is offered for sale to the public.

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

**“National Public Entities”** are defined as state governments, the Federal Government, local governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions.

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

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

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

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

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

**“Product Category”** shall refer to the classification system used to categorize Educational Technology and Occupational Training Products/Services for sale during the normal course of business. For example: how Educational Technology and Occupational Training Products/Services may be categorized in a paper based hard copy catalog according to the catalog table of contents; or alternatively, how Educational Technology and Occupational Training Products/Services may be categorized for sale online.

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

**SCOPE:**

The purpose of this Solicitation, and the resulting discount-from-pricelist contracts, is to provide Authorized Users with a means of acquiring materials, equipment and computer training modules to be used to teach different types of vocations, trades, or curriculums to grade, middle, and high school; college; and vocational students.

Products include, but are not limited to, those that teach science, math, engineering, robotics and automation, computer aided drafting, pneumatics, hydraulics, computer technology, aerodynamics, electronics, HVAC, automotive technology, and communications. Products may include printed and/or digital materials, blended solutions that are generally used in conjunction with a training system, or equipment, to teach the particular vocation, trade, or curriculum. Software and online or Internet-based learning services that work in conjunction with materials, and training equipment or products, offered by the vendor for the purposes of teaching a particular vocation, trade, or curriculum will be allowed. Not included are stand-alone equipment and products such as computers and peripherals, copiers, furniture, industrial tools and supplies, audio visual products, laboratory equipment and instrumentation, medical equipment, assistive technology products, cloud-based products or offerings, or books and serials unless those types of products are part of a contractor's general product offering, and are to be utilized in conjunction with a contractor's learning or training based systems and curriculums. Procurement or acquisition of standalone virtual, online, or Internet-based learning services; or of standalone educational software products is also not permitted.

It is the Contractor's responsibility to ensure that only Products and services that meet the scope of the Contract are purchased through the Contract. Questions concerning items covered under the resultant Contract should be addressed to the OGS Procurement Services contract manager designated on the Contract Award Notification prior to accepting the order.

If a Contractor sells Products that are excluded under this Contract as set forth above, such Contractor's Contract may be suspended or terminated.

**PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS:**

The contracts resulting from this Solicitation will be centralized contracts under a multiple award structure. Products offered under the contracts, pricing, and other Contract information will be posted to the OGS website and/or the awarded Contractors' dedicated websites. Authorized Users shall procure Products that best meet their form, function, and utility requirements. Only those Products/Services on the OGS approved pricelists may be purchased under this Contract.

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

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.

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

**OVERLAPPING CONTRACT ITEMS:**

Products available in 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.

Contracts with possible overlap are listed below:

	12000	20060	23100	38806	39000
NYS OGS Group #	Medical and Laboratory Supplies and Equipment	Books and Non-Print Library Materials	School and Art Supplies	Audio Visual Equipment and Accessories	Industrial & Commercial Supplies and Equipment
Creative Learning Systems LLC					
Pitsco Inc. DBA Pitsco Education			X		X

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products meet the form, function and utility of the agency. Some products in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

**CONTRACT PERIOD AND EXTENSIONS:**

- A. Base Term. The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*). All Contracts shall be coterminous with the first contract awarded as a result of this Solicitation.
- B. Extensions. All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State’s option, the Contract may be extended for up to two years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

**SHORT TERM EXTENSION:**

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**PERIODIC RECRUITMENT:**

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. 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/Services covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

**PRICE:**

Net Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering Authorized User. This includes all transportation charges and delivery inside doors of the Authorized Users' receiving platform. Additional fees may be charged when Authorized Users require inside delivery, such as to an upper floor, and Authorized User should clearly indicate on purchase order the specific location where delivery is required to be made. (For Example, Authorized Users should use terminology such as "DELIVERY TO ROOM \_\_\_\_\_ LOCATED ON \_\_\_\_\_ floor," etc., on purchase orders). If additional delivery charges are required for upper floor delivery, Authorized User shall agree to such charges prior to delivery and such costs shall be prepaid by the Contractor and added to the invoice. NOTE: If it is determined the Contractor is charging excessive amounts for delivery, the State may seek reimbursement for such amounts.

Upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

The percentage discount offered to Authorized Users may, at the Contractor's option, be increased based on individual orders. Discounts may be greater, but in no instance may they be lower than the awarded discount. If Contractor is offering a single discount structure, the same discount shall be applied to all purchases made from the Contractor's pricelist. All Contract List and Net Prices shall be rounded to two decimals in the resultant Contract. Subsequent to award, the Contractor shall assist Authorized Users in the use of their pricelist upon request.

**PRICE UPDATES:**

Contractor may update their pricelist as follows:

In the first year of the Contract, the Contractor shall be allowed to update their pricelist once to add/delete Products/Services as established by the Contractor in their normal course of business. There shall be no price increases allowed for existing Products/Services during the first year of the Contract.

Commencing with the first anniversary date of the first contract awarded under this Solicitation, and semi-annually from that date thereafter, the Contractor may update the pricelist to reflect Contractor price changes and the addition/deletion of Products/Services.

Requests for price adjustments and new items shall be submitted 30 days prior to the semi-annual anniversary date of the first contract awarded under this Solicitation and semi-annually from that date thereafter. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

If new product lines are to be added, this may be done after the first anniversary date of the first contract award. The Contractor has to demonstrate that the product line meets the scope as defined in Section, *Scope*, and that pricing is reasonable as defined in Section, *Price*. A comparable contract, or invoice, to a national public entity must be submitted showing pricing, discount(s), and delivery terms. Discount(s) on the product line have to be equal or better than those currently offered in that product category.

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

The discount offered on any new Products/Services added to pricelists shall be no lower than the minimum established Product Category discount. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves

the right to request copies of existing contracts or pricelists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved pricelist updates shall apply prospectively upon approval by OGS. Total price increases for pricelist updates in a single year of the Contract shall not exceed the escalation cap as set forth in Maximum Price Increase subdivision, below. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or thumb drive or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor’s approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

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

Contractor’s Submission of Contract Updates

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

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

Maximum Price Increase

In a single year of the Contract, the total request for price increases shall not exceed the lesser of:

1. three (3%) percent annually, or
2. the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The “CPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “CPI for previous period” shall be the index in effect when the Contract pricelist was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only.

Cover Letters

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or WSCA Contract pricing

update, to add/delete Products/Services, etc., subject to any applicable caps) along with a current nationally published pricelist and pricelist of a comparable government contract for the items that are to be added.

**VOLUME DISCOUNTS:**

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

**ORDERING:**

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

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

**MINIMUM ORDER:**

Minimum order shall be \$100.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the contractor's option, shipping costs from the contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the Product unless special instructions are stated on the order by the agency.

**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/Service Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Delivery (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering



systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>.

**PRODUCT DELIVERY:**

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

**PRODUCT RETURNS AND EXCHANGES:**

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

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

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

**UNANTICIPATED EXCESSIVE PURCHASE:**

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

**CONTRACT ADMINISTRATION:**

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

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if 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.

**NEW YORK STATE FINANCIAL SYSTEM (SFS):**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products/Services in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>.

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

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

**WEB-BASED ORDERING:**

As an option the Contractor (and any approved Resellers) may accept orders electronically via the Internet through a web-based ordering system on a dedicated NYS website. If a web-based ordering system is offered by Contractor, it must have the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. Contractor (and any approved Resellers) shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor's (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor's website.

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

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

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

**ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY:**

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors 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 f/k/a Office for Technology 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. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

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

**AMERICANS WITH DISABILITIES ACT (ADA):**

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities.

Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

**INSURANCE:**

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

**REPORT OF CONTRACT USAGE:**

Contractor shall submit Attachment 8 – *Report of Contract Usage*, including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the close of the contract semi-annual period from the commencement date of the initial award. 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 semi-annual report.

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

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

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

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

**New York State Law**

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

**General Provisions**

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

The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority- and women-owned business

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

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract and applicable law.

**Equal Employment Opportunity (EEO)**

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

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

**Form EEO 100 – Staffing Plan**

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

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

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

Separate forms shall be completed by Contractor and any subcontractor.

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

Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence

victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

**Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and 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.newycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528> Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**Good Faith Efforts**

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

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

**Fraud**

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

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

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

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

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

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service

providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at:  
[https://ogs.ny.gov/Veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf)

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

**ALL FORMS ARE AVAILABLE AT:**

[https://www.ogs.ny.gov/Core/SDVOBA.asp?\\_sm\\_au\\_=iVVjF227tLtF4JJH](https://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=iVVjF227tLtF4JJH)

**CONTRACT ADVERTISING:**

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

**RESELLERS:**

A. Definition

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

B. Conditions of Reseller Participation

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

1. Such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor’s established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. Those qualifying criteria met by the Reseller must be identified in Reseller designations Attachment 9 – *Reseller Directory* at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller’s status occurs during the Contract term.

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

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 9 – *Reseller Directory*. 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/Service purchased through a Reseller must be reported by Contractor in the required semi-annual 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/Service ordered directly through Resellers shall be limited to Products/Services previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

**NEW ACCOUNTS:**

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

**USE OF RECYCLED OR REMANUFACTURED MATERIALS:**

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

**BULK DELIVERY AND ALTERNATE PACKAGING:**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. Contractors are encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

**SURPLUS/TAKE-BACK/RECYCLING:**

- I. A State agency is reminded of its obligation to comply with the NY State Finance Law §167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse),

requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.

- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4:**

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

**CONSUMER PRODUCTS CONTAINING MERCURY:**

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

**NEW YORK STATE VENDOR RESPONSIBILITY:**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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 or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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 or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee 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.

**NEW YORK STATE 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.

Contractors may consult with DTF's website at <http://www.tax.ny.gov/> for additional information and frequently asked questions.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.state.ny.us](http://www.ogs.state.ny.us)). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

**EXTENSION OF USE:**

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

**DRUG AND ALCOHOL USE PROHIBITED:**

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

**TRAFFIC INFRACTIONS:**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

**INSTRUCTION MANUALS:**

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

**LICENSE TERMS AND CONDITIONS:**

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

**ASSEMBLY/CONFIGURATION/INSTALLATION/NETWORKING SERVICES:**

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

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

Installation work which is considered Public Works in accordance with the New York State Labor Law is **excluded** from purchase under this Contract. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is Public Work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be considered Public Work. Thus, this Solicitation and any resulting Contracts do not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g., installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in your area. A listing of district offices and contact information is available at: [www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm](http://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm).

**APPENDIX A**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014 is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**APPENDIX B**

Appendix B, Office of General Services General Specifications, dated April 2016 is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by the bid document or Appendix A.

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 23077 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED MAY 11, 2017.**

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

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

**Contract No.:** \_\_\_\_\_ **Contractor:** \_\_\_\_\_

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

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

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

**CONTRACTOR**

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

Comments: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_ (over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & returned to:**

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

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