



# Contract Award Notification

<b>Title</b>	:	<b>Group 38650 – Safety Equipment &amp; Products for Transportation &amp; Public Works – Comprehensive Crash Mitigation (including Attenuators, Barricades, Bridge Rails, Crash Cushions and Guide Rails) (Statewide)</b> Classification Code(s): 25, 30, 31, 46, 73, 90
<b>Award Number</b>	:	<b><u>23130</u></b> (Replaces Award 22734)
<b>Contract Period</b>	:	<b>October 1, 2018 through October 15, 2021</b>
<b>Bid Opening Date</b>	:	<b>August 28, 2018</b>
<b>Date of Issue</b>	:	<b>October 1, 2018 (Revised October 15, 2021)</b>
<b>Specification Reference:</b>		<b>As Incorporated In The Solicitation</b>
<b>Contractor Information:</b>		<b>Appears on Pages 4 through 7 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

This Solicitation is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services to provide Authorized Users with a means of acquiring traffic safety and crash mitigation equipment, associated accessories, parts and products manufactured and sold in the transportation and public safety industries to be primarily used by State Agencies, State Authorities, State and Local Parks, Counties, Municipalities, Educational Organizations and Facilities and other eligible Authorized Users.

Installation is not part of this award. Authorized Users are responsible for providing or procuring set up and/or installation of equipment purchased as needed.

This Contract Award Notification contains MWBE goals of 0% MBE and 5% WBE and contains SDVOB goals of 0%.

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**SECTION 1: CONTRACTOR INFORMATION**

**1.1 Contractor Information**

This Contract Award Notification is published as an informational aid for NYS OGS Procurement Services Authorized Users to assist them in the use of Award 23130. Contractors are reminded to refer to their specific Contract for guidance or contact the contract management specialist of record for assistance.

For information regarding specific Products awarded to each Contractor refer to the awarded Pricing:

<https://www.ogs.ny.gov/purchase/spg/awards/3865023130CAN.HTM>

<u>Contract</u>	<u>Contractor &amp; Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC68246	EBERL IRON WORKS, INC 128 SYCAMORE ST BUFFALO, NEW YORK 14204	16-0417520 1000007436
<b><u>Contact for New York State Contract Orders</u></b> <b><u>(during normal business hours):</u></b>		<b><u>Emergency Contact</u></b> <b><u>(after normal business hours; weekends/holidays):</u></b>
Toll-Free #:	(800) 285-3056	Toll-Free #: (800) 285-3056
Phone #:	(716) 854-7633	Phone #: (585-813-3665
Contact:	Mitch Wojda	Contact: Chip Braaten
E-mail:	sales@eberliron.com	E-mail: Chip.Braaten@eberliron.com
Website:	www.eberliron.com	
Hours:	8:00AM to 4:30PM EST (M-F)	
Additional Information: <i>Vendor offers prompt payment discount of 0.5% / 10 days</i> <i>Vendor accepts orders for less than the minimum.</i>		

<u>Contract</u>	<u>Contractor &amp; Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC68247	ELDERLEE, INC 729 CROSS ROAD OAKS CORNERS, NY 14518	16-0709819 1000028299
<b><u>Contact for New York State Contract Orders</u></b> <b><u>(during normal business hours):</u></b>		<b><u>Emergency Contact</u></b> <b><u>(after normal business hours; weekends/holidays):</u></b>
Phone #:	(315) 789-9915	N/A
Contact:	Joseph Chaapel	
E-mail:	JChaapel@elderlee.com	
Website:	www.elderlee.com	
Hours:	8:00AM to 5:00PM EST (M-F)	
Additional Information: <i>Vendor accepts NYS Procurement Card orders for up to \$20,000</i>		

<u>Contract</u>	<u>Contractor &amp; Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC68248	HILL & SMITH, INC d/b/a WORK AREA PROTECTION 2500 PRODUCTION DRIVE ST. CHARLES, IL 60174	26-2799513 1100213382
<b><u>Contact for New York State Contract Orders</u></b> <b><u>(during normal business hours):</u></b>		<b><u>Emergency Contact</u></b> <b><u>(after normal business hours; weekends/holidays):</u></b>
Toll-Free #:	(614) 340-6294	Toll-Free #: (614) 340-6294
Phone #:	(614) 907-6816	Phone #: (614) 907-6816
Contact:	Dena Sanford	Contact: Dena Sanford
E-mail:	Dena.Sanford@hillandsmith.com	E-mail: Dena.Sanford@hillandsmith.com
Website:	hillandsmith.com	
Hours:	8:00AM to 5:00PM CST (M-F)	
Additional Information:	<i>Vendor accepts NYS Procurement Card orders for up to \$50,000.</i>	

<u>Contract</u>	<u>Contractor &amp; Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC68249	IMPACT ABSORPTION, INC 180 TERMINAL DRIVE PLAINVIEW, NY 11803	11-3421420 1000033657
<b><u>Contact for New York State Contract Orders</u></b> <b><u>(during normal business hours):</u></b>		<b><u>Emergency Contact</u></b> <b><u>(after normal business hours; weekends/holidays):</u></b>
Toll-Free #:	(877) 229-5819	Toll-Free #: (800) 229-5819
Phone #:	(516) 498-1050	Phone #: (516) 498-1050
Contact:	Michael Kempen	Contact: Michael Kempen
E-mail:	MKempen@impactabsorption.com	E-mail: MKempen@impactabsorption.com
Website:	www.impactabsorption.com	
Hours:	8:30AM to 4:30PM EST (M-F)	
Additional Information:	<i>Vendor accepts NYS Procurement Card orders for up to \$2,000.</i>	

<u>Contract</u>	<u>Contractor &amp; Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC68250	ROYAL TRUCK & EQUIPMENT, INC 6910 N. ROUTE 309 COOPERSBURG, PENNSYLVANIA 18036	23-2707372 1100104381
<b><u>Contact for New York State Contract Orders</u></b> <b><u>(during normal business hours):</u></b>		<b><u>Emergency Contact</u></b> <b><u>(after normal business hours; weekends/holidays):</u></b>
Phone #:	484-895-1288	Phone #: 484-895-1288
Cell #:	484-714-8169	Cell #: 484-714-8169
Contact:	Tom Pucci	Contact: Tom Pucci
E-mail:	tpucci@royaltruckequip.com	E-mail: tpucci@royaltruckequip.com
Website:	royaltruckandequipment.com	
Hours:	8:00AM to 5:00PM EST (M-F)	

<u>Contract</u>	<u>Contractor &amp; Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC68251	TRAFFIX DEVICES, INC 160 AVENIDA LA PATA SAN CLEMENTE, CA 92673	33-0217824 1000019392
<b><u>Contact for New York State Contract Orders</u></b> <b><u>(during normal business hours):</u></b>		<b><u>Emergency Contact</u></b> <b><u>(after normal business hours; weekends/holidays):</u></b>
Toll-Free #:	N/A	Toll-Free #: N/A
Phone #:	(949) 361-5663	Phone #: (949) 374-2967
Contact:	Denise Sheppard	Contact: Scott Ryan
E-mail:	DSheppard@traffixdevices.com	E-mail: SRyan@traffixdevices.com
Website:	www.traffixdevices.com	
Hours:	8:00AM to 5:00PM PST (M-F)	
Additional Information: <i>Vendor offers volume discounts as noted on price list</i>		

<u>Contract</u>	<u>Contractor &amp; Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC68252	TRANSPO INDUSTRIES, INC 20 JONES ST NEW ROCHELLE, NY 10801	13-2615924 1000006174
<b><u>Contact for New York State Contract Orders</u></b> <b><u>(during normal business hours):</u></b>		<b><u>Emergency Contact</u></b> <b><u>(after normal business hours; weekends/holidays):</u></b>
Toll-Free #:	(800) 321-7870	Toll-Free #: N/A
Phone #:	(914) 636-1000 x 647	Phone #: (914) 441-0307
Contact:	Janice Fernandez	Contact: Janice Fernandez
E-mail:	JFernandez@transpo.com	E-mail: JFernandez@transpo.com
Website:	www.transpo.com	
Hours:	8:30AM to 5:00PM EST (M-F)	
Additional Information: <i>Vendor offers volume discounts as noted on price list</i>		

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

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.  
 (See "Invoicing and Payments" in this document.)**

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

**1.2 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.

**1.3 Recycled, Remanufactured and Energy Efficient Products:**

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

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

**1.4 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).

**1.5 Estimated Quantities**

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$8.4 million annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

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

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

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

## **1.6 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 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.

## **1.7 Procurement Instructions for Authorized Users**

The resultant Contracts will be issued under a multiple award structure. Products offered under the resulting Contracts, pricing, and other Contract information are posted to the OGS website and/or the awarded Contractor(s)' dedicated website(s). Authorized Users shall procure Products that best meet their form, function, and utility requirements. Only those Products 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.



## SECTION 2: TERMS AND CONDITIONS

### 2.1 Contract Term and Extensions

The Contract will be in effect for a term of three (3) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

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

### 2.2 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

### 2.3 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 to the Authorized Users' receiving platform, including all customs, duties and charges to any destination in New York State. Standard shipping costs are to be prepaid by Contractor and, when determining the NYS Net Price, shall not be separately added to the Authorized User's invoice.

### 2.4 Pricelists/Discounts

Once awarded a Contract, 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 pricelists 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.

## **2.5 Price Updates**

The procedures below outline how Contract pricelist updates will be handled under the Contracts resulting from this Solicitation. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, §27, Modification of Contract Terms.

Contractor may update their pricelist as follows:

1. In the first year of the Contract, the Contractor shall be allowed to update the pricelist twice to add/delete Products as established by the Contractor in their normal course of business. However, pricelist updates must be submitted no earlier than sixty (60) calendar days from the date of OGS approval of prior pricelist update. There shall be no price increases allowed for existing Products during the first 6 months of the Contract.
2. Commencing with the second year of the Contract, the Contractor may update the pricelist semiannually to reflect Contractor price changes and the addition/deletion of Products as established by the Contractor in their normal course of business; thirty (30) calendar days from the anniversary date of the Contract; and, thirty (30) calendar days from the semiannual anniversary date of the Contract. The thirty (30) calendar days includes the anniversary and semiannual anniversary date of the Contract.

Any new Products added to pricelists shall have a discount structure consistent with existing Products on the Contractor's pricelist that are comparable in scope. 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.

All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied. Total price increases for pricelist updates in a single year of the Contract shall not exceed the escalation cap set forth in subdivision (4), Escalation Cap, below. All percentage discounts shall remain firm (unchanged) or they may increase for the duration of the Contract.

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 Products are to be added, the Contractor must demonstrate that the Products meets the scope as defined in Section 1.2, *Scope*, and that Products will be delivered at a reasonable price as determined by OGS Procurement Services. "Reasonable prices" may be determined by reviewing percentage discounts and net prices offered to GSA, NASPO, prices on any previously awarded NYS Contract, pricing offered by other Contractors, contracts with other state or government entities, etc. Discount(s) on the Products have to be equal or better than those currently offered on Products similar in scope.

The State reserves the right to require documentation to support the reasonableness of the prices offered. When requested, Contractor must provide copies of at least one governmental and/or municipal contract (GSA, NASPO, other State, etc.) that shows the discount and FOB point. If such contracts are not available, the Contractor shall supply invoices of sales to large entities or corporations with repeat business detailing the discount and FOB point.

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

Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2016 or lower version) spreadsheet either on CD or thumb drive or via e-mail to the OGS Procurement Services contract administrator. The Contract pricelist update must be dated and the format shall be consistent with the format of the Contractor’s approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

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

Contractor’s Submission of Contract Updates

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

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

Maximum Price Increase/Escalation Cap

In a single year of the Contract, the maximum price increase for each individual item on Contract shall not exceed the lesser of:

1. Ten (10%) percent annually, or
2. The percent increase in the latest available Producer Price Index (PPI) – Fabricated Metal Product Mfg, Not Seasonally Adjusted (Series Id: PCU332---332---); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. PPI data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

PPI for current period	230.000
Less PPI for previous period	220.000
Equals index point change	10.000
Divided by previous period PPI	220.000
Equals	0.045
Result multiplied by 100	0.045 x 100
Equals percent change	4.5

The “PPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “PPI 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.

The State reserves the right to implement changes in price based on unforeseen factors such as dramatic changes in availability, delivery, costs, etc., for product, supplies, etc., that substantively affect the contractor’s business processes or that may impact contract pricing. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources.

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 NASPO Contract pricing update, to add/delete Products, etc., subject to any applicable caps).

Government Mandated Program Adjustment

An adjustment in product and/or price may be permitted if a government mandated program, such as a new Federal Highway Administration Specification Standards, take effect and suitable documentation is furnished to the State and the State determines the requested change is verifiable and is reasonable. Replacement Product would be subject to NYSDOT testing and approval. Such a price adjustment may be permitted for only a limited time since such an adjustment would eventually be reflected in the price list(s).

## **2.6 Best Pricing Offer**

During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

## **2.7 Price Structure**

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

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

## **2.8 Volume Discounts**

Contractors are encouraged to offer volume discounts based on total dollars purchased. Other discounts including, but not limited to, electronic access ordering are also encouraged. Any volume discounts offered shall be listed in Section 1.1 - Contractor Information.

Optional volume discounts may also be offered and shall also be based on same price list. Volume discounts shall not be evaluated. Volume discounts may be applied per purchase order, cumulatively per customer agency, and cumulatively statewide. Volume discounts shall be defined and applied as follows:

- Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount.
- Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency.
- Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this contract.

Any cumulative discounts shall be annually based, with thresholds being reset annually with each anniversary date of the contract start date.

## **2.9 Purchasing Card Orders**

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

## **2.10 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).

## **2.11 Minimum Order**

The minimum order for this Contract is \$500.00

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.

## **2.12 Invoicing and Payment**

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

### Purchase Orders

Purchase Orders are to include the following information:

1. Contract number
2. Contractor name
3. SKU/PN
4. Product description
5. Net Price

### Invoices

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
- NYS Vendor ID Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- SKU/PN
- Line item breakdown of all charges to Authorized User including Net Price of each product
- Quantity

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>.

### **2.13 Product Delivery**

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

#### Shipping Dates and Delivery Time:

Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order, which will include an anticipated shipping date of each order. The Contractor must notify the Authorized User at least forty-eight (48) hours in advance of shipment so that necessary receiving arrangements can be made.

If shipment will not be made within the delivery time, the Contractor is required to notify the Authorized User in writing at least two weeks prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the product will be shipped. Should the delay not be acceptable to the Authorized User, appropriate contract default proceedings will be initiated. Failure to supply timely written notification of delay may be cause for default proceedings.

All correspondence on shipping dates and delivery time shall be directed to the ordering Authorized User's contact person.

#### Delivery Certification:

Contractor shall secure a signed receipt from Authorized User certifying to delivery of product. In the event deficiencies are later noted and a properly signed receipt is not available, Contractor will be responsible to ship adequate additional product, as soon as possible, to resolve the deficiency.

### **2.14 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.

### **2.15 Unanticipated Excessive Purchase**

The State reserves the right to negotiate lower pricing for any unanticipated excessive purchase.

## **2.16 Contract Administration**

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

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Section 1.1 – Contractor Information. 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.

## **2.17 NYS Financial System (SFS)**

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

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

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

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

## **2.18 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 *Insurance Requirements*.

**2.19 Report of Contract Usage**

Contractor shall submit *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized Resellers, if any, according to the table below.

<u>Report #</u>	<u>From</u>	<u>To</u>	<u>Report Due Date</u>
1	10/1/2018	3/31/2019	4/15/2019
2	4/1/2019	9/30/2019	10/15/2019
3	10/1/2019	3/31/2020	4/15/2020
4	4/1/2020	9/30/2020	10/15/2020
5	10/1/2020	3/31/2021	4/15/2021
6	4/1/2021	9/30/2021	10/15/2021

Contractors shall specify if any authorized Resellers 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 of Contract Usage* provided 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.

**2.20 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

I. New York State Law

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

II. General Provisions

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



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

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan.

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

- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
1. 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.
  2. Separate forms shall be completed by Contractor and any subcontractor.
  3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall 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.
- D. 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 conviction and prior arrest.
- IV. Contract Goals
- A. OGS hereby establishes an overall goal of 5% for MWBE participation, 0% for Minority-Owned Business Enterprises (“MBE”) participation and 5% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.
- The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. 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.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

- V. MWBE Utilization Plan
- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
  - B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
  - C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
  - D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
  - E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
  - F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
    - (a) If a Bidder fails to submit an MWBE Utilization Plan;
    - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
    - (c) If a Bidder fails to submit a request for waiver; or
    - (d) If OGS determines that the Bidder has failed to document good faith efforts.
  - G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
  - H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

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

6. Other information deemed relevant to the request.
- VIII. Monthly MWBE Contractor Compliance Report
- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
  - B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
  - C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>
  - D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
  - E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS,  
  
Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.
- IX. Breach of Contract and Liquidated Damages
  - A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
  - B. Such liquidated damages shall be calculated as an amount equaling the difference between:
    - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
    - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
  - C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.
- X. 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>

## **2.21 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses**

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

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

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

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://ogs.ny.gov/Veterans/default.asp>

## **2.22 Use of Recycled or Remanufactured Materials**

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

## **2.23 Bulk Delivery and Alternate Packaging**

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

## **2.24 Environmental Attributes and NYS Executive Order Number 4**

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/greenny>. 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.

## **2.25 Consumer Products Containing Mercury**

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

## **2.26 Overlapping Contract Products**

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

## **2.27 Preferred Source Products**

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

## **2.28 NYS Vendor Responsibility**

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

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.



## **2.29 “OGS or Less” Guidelines**

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

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

## **2.30 Non-State Agencies Participation in Centralized Contracts**

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

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

## **2.31 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.

## **2.32 Resellers**

### **A. Definition**

“Reseller” shall refer to any model for distribution of Product other than direct from the Contractor. Authorized Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.

### **B. Conditions of Reseller Participation**

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

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

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 the Contractor/Reseller/Distributor Information Sheet. Contractor shall also specify whether orders must be placed directly with Contractor or may be placed directly with designated Resellers.

### **D. Responsibility for Reporting/Performance**

Contractor shall be fully liable for a Reseller’s performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor’s sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User’s Contract activity with the Reseller.

### **E. Applicability of Contract Terms**

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

**2.33 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.

**2.34 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.

**2.35 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.

**2.36 Instruction Manuals**

At the time of delivery, Contractor should provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

\* \* \* \* \*

**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 & return via email to [Brandy.Alden@ogs.ny.gov](mailto:Brandy.Alden@ogs.ny.gov) or mail to:**

OGS PROCUREMENT SERVICES  
 Customer Services, 38th Floor  
 Attn: Brandy Alden  
 Corning 2<sup>nd</sup> Tower - Empire State Plaza  
 Albany, New York 12242  
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