



Contract Award Notification

Title	: Group 38708 – In-Breath Alcohol Testing Equipment and Accessories (Statewide) Classification Code(s): 41 & 42
Award Number	: 23164 (Replaces Award 22699)
Contract Period	: August 29, 2019 to August 28, 2024
Bid Opening Date	: April 16, 2019
Date of Issue	: August 29, 2019 (Revised December 11, 2019)
Specification Reference	: As Incorporated Herein
Contractor Information	: Appears on Page 2 of this Award

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

The purpose of these contracts is to provide Authorized Users with a means of acquiring In-Breath Alcohol Testing Equipment and Related Accessories. Items include: Instrumentation, Mouthpieces, Reference Standard for Liquid and Gas.

**Please note:
Lots – 3B1 and 3B2 were NOT awarded.**

This Contract Award Notification contains a subset of information from the Solicitation. The resulting Contracts from Solicitation 23164 have been executed by Contract Award Letter. Complete Contract details including terms and conditions can be found in the First Periodic Recruitment Solicitation document dated September 27, 2019. **This version of the Contract Award Notification contains the Original Awards and the First Periodic Recruitment Awards.**

This contract has 0% MWBE and 0% SDVOB Goals.

NOTE: See individual contract items to determine actual awardees.

Contract #	Contractor	FEIN NYS Vendor ID
PC68682	Alcohol Countermeasure Systems, Inc.	36-2876877 1100229480
PC68683	CMI, Inc.	61-1205273 1000009592
PC68684	Draeger, Inc.	23-1699096 1000055700
PC68685	Guth Laboratories, Inc.	23-2139091 1000008907
PC68686	Intoximeters, Inc.	43-0906533 1000009340

Lot(s)/Sub-Lot(s) Offered:

Contractor	Lot 1 - Instrumentation	Lot 2 - Mouthpieces
Alcohol Countermeasure Systems, Inc.	X	X
CMI, Inc.	X	X
Draeger, Inc.	X	X
Guth Laboratories, Inc.	X	
Intoximeters, Inc.	X	X

Contractor	Lot 3 – Reference Standard (Liquid)					
	3A Liquid Reference Standard for Calibration of Breath Testing Equipment			3B Liquid Reference Standard for Field Use on Breath Testing Equipment		
	3A1	3A2	3A3	3B1 Not Awarded	3B2 Not Awarded	3B3
Alcohol Countermeasure Systems, Inc.	X	X	X			
Guth Laboratories, Inc.			X			X

Contractor	Lot 4 – Reference Standard (Gas)					
	4A1	4A2	4A3	4B1	4B2	4B3
Guth Laboratories, Inc.		X	X		X	X
Intoximeters, Inc.	X	X	X	X	X	X

For complete Contractor information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:
<https://online.ogs.ny.gov/purchase/spg/awards/3870823164CAN.HTM>

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

AGENCIES SHOULD NOTIFY 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.

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:

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:

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation.
5. Contractor's Bid Prices as published by OGS.

OVERVIEW:

This Contract provides Authorized Users with a means of acquiring In-Breath Alcohol Testing Equipment and Accessories (Statewide) by New York State Agencies and Non-State Agencies, including political subdivisions, school districts and others authorized by law (See Sections titled, Non-State Agencies Participation in Centralized Contracts and Extension of Use). Products for purchase by all Authorized users are described in the Section titled, Scope. Procurement instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled, Procurement Instructions for Authorized Users.

Awards in Lots 1 and 2 were made by item based on the lowest price bid for each item by a responsive and responsible Bidder. This award allows for multiple awardees for each Lot.

Awards in Lot 3 were made to all responsive and responsible Bidders within each Sub-Lot who met the minimum requirements, and whose pricing was deemed to be reasonable as determined by the State. This Contract allows for multiple awardees for each Sub-Lot. **Lots – 3B1 and 3B2 were NOT awarded.**

Lot 4 – Reference Standard (Gas) was awarded during the First Periodic Recruitment – Solicitation 23164prb.

SCOPE:

The Contract is divided into four (4) separate Lots as indicated below.

Contractors were not required to bid on all Lots, but could bid on as many Lots as they wished.

For Lots 1 and 2, Contractors were not required to bid on all items within a Lot, but could bid on as many items as they wished.

Lots 3 and 4 each contain six (6) Sub-Lots. Contractors were not required to bid on all Sub-Lots within Lots 3 or 4, but could bid on as many Sub-Lots as they wished.

Contractors were required to bid on all items in a Sub-Lot.

Lot	Description	Sub-Lot	Specifications
1	Instrumentation	None	As referenced below in Specifications
2	Mouthpieces	None	As referenced below in Specifications
3	Reference Standard (Liquid)		
3A	Liquid Reference Standard for Calibration of Breath Testing Equipment	3A1	As referenced below in Specifications
		3A2	As referenced below in Specifications
		3A3	As referenced below in Specifications
3B	Liquid Reference Standard for Field Use on Breath Testing Equipment	3B1	As referenced below in Specifications Not Awarded
		3B2	As referenced below in Specifications Not Awarded
		3B3	As referenced below in Specifications
4	Reference Standard (Gas)		
4A	Gas Reference Standard for Calibration of Breath Testing Equipment	4A1	As referenced below in Specifications
		4A2	As referenced below in Specifications
		4A3	As referenced below in Specifications
4B	Gas Reference Standard for Field Use	4B1	As referenced below in Specifications
		4B2	As referenced below in Specifications
		4B3	As referenced below in Specifications

PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS:

Authorized Users shall procure Products that best meet their form, function, and utility requirements.

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

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.

ESTIMATED QUANTITIES:

A Contract resulting from Solicitation 23164 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 Contract, based on historical purchases under previous awards, is approximately \$500,000 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 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 Solicitation 23164 to vary substantially from the estimates in Solicitation 23164. 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.

Contractor 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 Solicitation 23164.

DEFINITIONS:

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

“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.

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

“NYS Holidays” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; 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 New York State Finance Law § 162.

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

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

SPECIFICATIONS:

Lot 1 - Instrumentation

Breath testing instrumentation in Lot 1 includes breath analyzers, breath alcohol screening devices, and alcohol reference simulators.

Contract awards for the breath analyzers and screeners in Lot 1 are limited to: (1) those products enumerated by the National Highway Traffic Safety Administration (NHTSA) in its published Conforming Products List (available at: <https://www.govinfo.gov/content/pkg/FR-2017-11-02/pdf/2017-23869.pdf>) or (2) those products which OGS can otherwise verify have been approved by NHTSA for inclusion on the Conforming Products List for instruments that conform to the Evidential Breath Testing Devices (82 FR 50940 and any subsequent NHTSA amending docket).

A New York State Department of Health Approved Training Agency (“Training Agency”) reserves the right to evaluate and approve any unit prior to award. Approval by a Training Agency does not in any way relieve the manufacturer of their obligation to maintain such quality controls as will ensure that deliveries of their product will be no less acceptable than the sample upon which the inclusion was made. The Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours.

Lot 2 – Mouthpieces

Contract awards for Lot 2 are limited to mouthpieces for any instrument on the Conforming Products List.

A New York State Department of Health Approved Training Agency (“Training Agency”) reserves the right to evaluate and approve any unit prior to award. Approval by a Training Agency does not in any way relieve the manufacturer of their obligation to maintain such quality controls as will ensure that deliveries of their product will be no less acceptable than the sample upon which the inclusion was made. The Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours.

Lot 3 – Reference Standard (Liquid)

All Contractors for Lot 3 – Reference Standards (Liquid) submitted the following with their bid:

- Representative Samples of a single value (6 bottles). The samples must be bottled, labeled, coded and packaged in accordance with Detailed Specifications listed in Section 3 – SPECIFICATIONS of Solicitation 23164.
- A Certificate of Analysis, either their own, or from an independent lab
- A copy of the documentation of testing to ensure the water’s compliance with U.S.P. specifications.

Lot 3A – Liquid Reference Standard for Calibration of Breath Testing Equipment

CALIBRATION SIMULATOR SOLUTION CRITERIA

A. SOLUTION:

The three calibration (3) reference standards shall be pre-mixed, ready for immediate use, ethanol (Ethyl Alcohol) reference solutions for simulators, one with a value (standard) of 0.18%, one with a value (standard) of 0.10% and one with a value (standard) of 0.08%. The manufacturer must agree to change the values (standards) upon 60 days’ notice in writing from a New York State Department of Health Approved Training Agency. The solutions must contain only ethanol (Ethyl Alcohol) and purified water as described below. Packaging shall be in 500 mL bottles.

The ethanol used shall meet the requirements for Ethyl Alcohol - 200 proof dehydrated as specified in the U.S.P. (United States Pharmacopoeia) monograph for 200 proof dehydrated ethyl alcohol.

The water used in the manufacture of the solution shall be purified water as specified in the U.S.P. monograph for purified water. This water will be tested by the manufacturer to ensure compliance with U.S.P. specifications.

Documentation of these testing results will be maintained by the manufacturer. A copy of the testing results must accompany the samples. (Any sample found to include additional chemicals used in the manufacturing to control the growth of algae, fungus, mildew, etc. will be rejected and the bid offer will be disqualified.)

At a value (standard) of 0.18%, the solution shall:

- Contain 0.218 (± 0.007) grams of ethanol per 100 mL of solution
- Provide a value of 0.180% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

At a value (standard) of 0.10%, the solution shall:

- Contain 0.121 (± 0.004) grams of ethanol per 100 mL of solution.
- Provide a value of 0.100% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

At a value (standard) of 0.08%, the solution shall:

- Contain 0.097 (± 0.003) grams of ethanol per 100 mL of solution
- Provide a value of 0.080% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

All solutions shall have been tested for accuracy by an independent laboratory other than the supplier unless the supplier is an ISO 17034 accredited reference material producer with testing activities assessed to conform to the relevant parts of ISO 17025 per Section 2.3.1– BIDDER QUALIFICATIONS, Lot 3A – Liquid Reference Standard for Calibration of Breath Testing Equipment, #1 – Sub-Lot 3A1, of Solicitation 23164. All analyses shall be performed utilizing gas chromatography and procedures traceable to the standards established by the National Institute of Standards and Technology. All analyses shall reflect the batch/lot number assigned to the solution analyzed and the test results of analysis shall be expressed in grams of ethanol per 100 mL of solution or its equivalent.

If the solution fails at any time to meet specifications as determined by the agencies, the contractor shall replace the entire batch/lot within one month at no cost to the State, and also, be responsible for any additional cost factors.

The analytical laboratory's certificate of analysis/assay of the specific batch/lot must be forwarded to and received by the requesting New York State Department of Health Approved Training Agency. The certificate shall minimally contain the following:

- Name and address of testing facility
- Batch/Lot Number
- Date of Analysis
- Results of acceptable method of analysis

If the analytical laboratory testing the simulator solution is accredited, the certificate of analysis must also include:

- Reference to accreditation held by manufacturer and/or testing laboratory
- Estimation of measurement uncertainty with a 95% confidence level (coverage factor $k=2$)

B. FURTHER CONTRACT INFORMATION:

The New York State Department of Health Approved Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours. The bidder of the reference standard must also be the manufacturer of the reference standard. The bidder must include along with evaluation samples, three (3) current customer references. These references will contain the following:

- Name of Reference
- Address of Reference
- Telephone Number
- Contact Person

C. PACKAGING:

All bottles supplied shall be pharmaceutical quality, high-density polyethylene with a natural finish.

Each bottle shall be designed to contain 500 milliliters of solution for a simulator.

The bottle closure (cap) shall have a liner specifically designed to provide a non-absorptive positive seal. In addition, once the cap is in place, the liner will remain attached to the top of the bottle (pressure seal), whenever the cap is removed.

Each bottle shall be designed with a tamper-proof outer seal, which must be broken and removed before the cap can be removed.

The shipping carton shall be designed to protect each shipment against damage.

Calibration solution shipments shall be packaged and transported so as to arrive directly to any location within New York State within two (2) business days of shipping. Shipments must be secured from loss and damage. A New York State Department of Health Approved Training Agency may allow other transit timeframes if mutually agreed upon.

The contractor shall be able to provide shipments of at least a package of two (2) 500 ml bottles.

D. VOLUME:

The volume within the appropriate container shall be within 5%.

E. LABELING:

Labels for the 0.10% reference standard must be white, and labels for the 0.18% and 0.08% reference standard must be contrasting colors. Labels shall be prepared using permanent-type, non-water-soluble ink.

Each container must be minimally labeled to indicate:

- Batch/Lot number assigned to the particular batch
- Expiration date (month/day/year)
- Bottle number
- Nominal Value via breath test instrument
- Name & address of manufacturer

Each package of two bottles or more of Simulator Reference Solution (500mL) shall carry the necessary extra labels listing a stamped batch/lot number, expiration/use date (month/day/year), value.

The extra labels shall be designed so that they may be readily removed from the Simulator Reservoir Jar

F. CODE:

Each batch/lot shall be assigned a unique batch/lot code, which shall appear on the label and on the manufacturer’s analysis/assay report.

Every batch/lot code number must be unique and never be reused. Each batch/lot code number shall represent a batch produced in a single vessel.

Each batch/lot produced may be sold to other customers in addition to New York State, but must be sold to them at a similar market value.

G. NUMBERING:

All bottles of Simulator Reference Solution shall be numbered consecutively starting with 0001 for each bottle filled from a particular batch/lot number.

H. BATCH/LOT SIZE:

Each batch must be mixed in a single container. The minimum amount requested in each order will be at the training agency’s discretion.

I. MIXING:

Mixing of the solution must be accomplished using an electronic submersible pump or an alternative method deemed acceptable by a New York State Department of Health Approved Training Agency.

J. EXPIRATION DATE:

Expiration date shall not exceed twelve (12) months from date of manufacture, unless requested by a New York State Department of Health Approved Training Agency.

Shipments must be received by agencies within New York State so that there is a minimum of ten (10) months remaining before the expiration date.

Items requested for Lot 3A (all Sub-Lots):

ITEM	REFERENCE
1	0.08% Calibration Reference Standard (Liquid)
2	0.10% Calibration Reference Standard (Liquid)
3	0.18% Calibration Reference Standard (Liquid)

Lot 3B – Liquid Reference Standard for Field Use on Breath Testing Equipment

FIELD SIMULATOR SOLUTION CRITERIA

A. SOLUTION:

The field reference standard shall be pre-mixed, ready for immediate use, ethanol (ethyl alcohol) reference solutions for simulator use with a value (standard) of 0.10%. The manufacturer must agree to change the value (standard) upon 60 days’ notice in writing from a New York State Department of Health Approved Training Agency. The solutions must contain only ethanol (Ethyl Alcohol) and purified water as described below. Packaging shall be in 500 mL bottles.

The ethanol used shall meet the requirements for Ethyl Alcohol - 200 proof dehydrated as specified in the U.S.P. (United States Pharmacopoeia) monograph for 200 proof dehydrated ethyl alcohol.

The water used in the manufacture of the solution shall be purified water as specified in the U.S.P. monograph for purified water. This water will be tested by the manufacturer to ensure compliance with U.S.P. specifications. Documentation of these testing results will be maintained by the manufacturer. A copy of the testing results must accompany the samples. (Any sample found to include additional chemicals used in the manufacturing to control the growth of algae, fungus, mildew, etc. will be rejected and the bid offer will be disqualified.)

At a value (standard) of 0.10%, the solution shall:

- Contain 0.121 (± 0.004) grams of ethanol per 100 mL of solution.
- Provide a value of 0.100% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

All solutions will be produced at and distributed from a site within the United States and shall have been tested for accuracy by an independent laboratory other than the supplier unless the supplier is an accredited ISO 17034 reference material producer (as described in 2.3.2 Sub-Lot 3B1) with testing activities assessed to conform to the relevant parts to ISO 17025 per ISO 17034 accreditation practices for such testing. All analyses shall be performed utilizing gas chromatography and procedures traceable to the standards established by the National Institute of Standards and Technology. All analyses shall reflect the batch/lot number assigned to the solution analyzed and the test results of analysis shall be expressed in grams of ethanol per 100 mL of solution or its equivalent.

The analytical laboratory's certificate of analysis/assay of the specific batch/lot must be forwarded to and received by the requesting New York State Department of Health Approved Training Agency. The certificate shall minimally contain the following:

- Name and address of testing facility
- Batch/Lot Number
- Date of Analysis
- Results of acceptable method of analysis

If the analytical laboratory testing the simulator solution is accredited, the certificate of analysis must also include:

- Reference to accreditation held by manufacturer and/or testing laboratory
- Estimation of measurement uncertainty with a 95% confidence level (coverage factor $k=2$)

B. SAMPLES:

Representative samples (500 mL bottles) from the beginning, middle, and end of the bottling process of each batch/lot shall be sent to the requesting New York State Department of Health Approved Training Agency for analysis prior to any distribution of the batch/lot in New York State.

These representative samples will be the beginning, middle, and end of the bottling process. All bottles in the batch/lot must be labeled and numbered consecutively.

These samples will be accompanied by a recording of the total number of bottles of Simulator Reference Solution manufactured in the particular batch/lot for distribution to authorized agencies within New York State.

No shipments of the batch/lot may be distributed in New York State until the requesting New York State Department of Health Approved Training Agency approves their contents and resultant values.

If the solution fails at any time to meet specifications as determined by the agencies, the contractor shall replace the entire batch/lot within one month at no cost to the State, and also be responsible for any additional cost factors.

Upon approval of the solutions by the State, shipments of the product shall be made by the contractor to agencies requested in the State.

C. FURTHER CONTRACT INFORMATION:

The New York State Department of Health Approved Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours. The bidder of the reference standard must also be the manufacturer of the reference standard. The bidder must include along with evaluation samples, three (3) current customer references. These references will contain the following:

- Name of Reference
- Address of Reference
- Telephone Number
- Contact Person

D. PACKAGING:

All bottles supplied shall be pharmaceutical quality, high-density polyethylene with a natural finish.

Each bottle shall be designed to contain 500 milliliters of solution for a simulator.

The bottle closure (cap) shall have a liner specifically designed to provide a non-absorptive positive seal. In addition, once the cap is in place, the liner will remain attached to the top of the bottle (pressure seal), whenever the cap is removed.

Each bottle shall be designed with a tamper-proof outer seal, which must be broken and removed before the cap can be removed.

The shipping carton shall be designed to protect each shipment against damage.

Field solution shipments shall be packaged and transported so as to arrive directly to each of over 240 agencies within New York State within two (2) business days of shipping, every two (2) months. Shipments must be secured from loss and damage. A New York State Department of Health Approved Training Agency may request other agency shipment timeframes, and allow other transit timeframes if mutually agreed upon.

The contractor shall be able to provide shipments of at least a package of two (2) 500 ml bottles.

E. VOLUME:

The volume within the appropriate container shall be within 5%.

F. LABELING:

Labels for the 0.10% field reference standard must be white. Labels shall be prepared using permanent-type, non-water-soluble ink.

Each container must be minimally labeled to indicate:

- Batch/Lot number assigned to the particular batch
- Expiration date (month/day/year)
- Bottle number
- Nominal Value via breath test instrument
- Name & address of manufacturer

Each package of two bottles or more of Simulator Reference Solution (500mL) shall carry the necessary extra labels listing a stamped batch/lot number, expiration/use date (month/day/year), value.

These extra labels shall be designed so that they may be readily removed from the Simulator Reservoir Jar.

G. CODE:

Each batch/lot shall be assigned a unique batch/lot code, which shall appear on the label and on the manufacturer’s analysis/assay report.

Every batch/lot code number must be unique and never be reused. Every batch/lot code number shall represent a batch produced in a single vessel.

Each batch/lot produced may be sold to other customers in addition to New York State, but must be sold to them at a similar market value.

H. NUMBERING:

All bottles of Simulator Reference Solution shall be numbered consecutively starting with 0001 for each bottle filled from a particular batch/lot number.

I. BATCH/LOT SIZE:

Each batch, mixed in a single container, shall not be less than 30 gallons nor more than 300 gallons.

The State reserves the right to request a batch run of less than thirty (30) gallons for each item.

J. MIXING:

Mixing of the solution must be accomplished using an electronic submersible pump or an alternative method deemed acceptable by a New York State Department of Health Approved Training Agency.

K. EXPIRATION DATE:

Expiration date shall not exceed six (6) months from date of manufacture, unless requested by a New York State Department of Health Approved Training Agency.

Shipments must be received by agencies within New York State so that there is a minimum of four (4) months remaining before the expiration date.

Item requested for Lot 3B (all Sub-Lots):

ITEM	REFERENCE
1	0.10% Field Reference Standard (Liquid)

Lot 4 – Reference Standard (Gas)

Dry gas ethanol-nitrogen reference standards shall be pre-mixed and ready for immediate use in the concentrations specified in sections A and B below. The dry gas is intended for use for both evidential Breath Analyzers and the Screening Devices. The ethanol gas mixture shall be traceable to National Institute of Standards and Technology or equivalent ethanol standard (sample “certificate of analysis” shall be provided with bid). All cylinders will be labeled with the standard value in ppm and %BrAC (breath alcohol concentration), unique cylinder number, batch/lot number and expiration date. The supplier shall pressure test and leak test all cylinders that will be shipped to the requesting New York State Department of Health Approved Training Agency. Contractors must provide the name(s) of the instruments(s) on the Conforming Products List (CPL) with which their gases are compatible.

The New York State Department of Health Approved Training Agencies may request other cylinder sizes and/or concentrations if needed.

The dry gas ethanol standards shall meet the following acceptability requirements:

- Concentrations $\geq 0.100\%$ BrAC $\pm 2\%$
- Concentrations $< 0.100\%$ BrAC $\pm 0.002\%$ BrAC.

The supplier shall provide with each batch/lot a certificate of analysis to minimally contain:

- Name and address of supplier
- Batch/Lot Number
- Date of manufacture
- Method of analysis
- Results obtained
- Traceability information for any critical reference materials used in the production of the ethanol standards
- Reference to accreditation held by the manufacturer and/or testing laboratory (if applicable)
- Estimation of measurement uncertainty with a 95% confidence level (coverage factor $k=2$), if available

PACKAGING:

All cylinders supplied shall conform to all appropriate standards to facilitate safe storage and shipment. Each cylinder shall have an appropriate tamper proof/safety seal over the gas outlet port to protect the valve from contamination and tampering. The shipping carton shall be designed to protect each shipment from damage. Shipments shall be packaged to arrive at their final destination point(s) in satisfactory condition. The contractor shall be capable of providing shipments of a package of 1 cylinder or more.

Lot 4A – Gas Reference Standard for Calibration of Breath Testing Equipment

Cylinders used for delivering the standard to breath testing instruments shall hold approximately 105 liters of gas at approximately 1000 psig at 70 degrees F. Dry gas cylinders will be provided in the following concentrations.

Items requested for Lot 4A (all Sub-Lots):

ITEM	REFERENCE
1	Dry Gas Cylinder 0.020%
2	Dry Gas Cylinder 0.080%
3	Dry Gas Cylinder 0.100%
4	Dry Gas Cylinder 0.180%
5	Dry Gas Cylinder 0.250%

Lot 4B – Gas Reference Standard for Field Use

Cylinders used for delivering the standard to breath testing instruments shall hold an appropriate amount of gas dependent upon the instrument utilized at approximately 1000 psig at 70 degrees F. A representative sampling from the batch/lot will be provided to the requesting New York State Department of Health Approved Training Agency for testing and approval prior to the release of the batch/lot for purchase. The manufacturer must provide information on the total number of cylinders filled for each batch/lot. Once approved, the particular batch/lot number will be available solely for the requesting agency (unless prior written authorization is received from the requesting agency). If the dry gas reference standard fails to meet the specifications of the batch/lot, the manufacturer shall replace the cylinder(s) at no cost to the State.

Item requested for Lot 4B (all Sub-Lots):

ITEM	REFERENCE
1	Dry Gas Cylinder 0.100%

CONTRACT TERM AND EXTENSIONS:

The Contract will 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 OGS Centralized Contracts resulting from Solicitation 23164 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 five (5) 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).

SHORT TERM EXTENSION:

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

PERIODIC RECRUITMENT:

Solicitation 23164 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 Contract. 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.

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:

Pricing was collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1.

Contractor's pricing information is included in the posted Pricelist linked to the Contractor Information page.

CPI PRICE UPDATE:

On each annual anniversary date of the Bid Opening, the Contractor may request a rate change (increase or decrease) based upon fluctuations in the latest published copy of the Consumer Price Index for all urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212.

The index is also available through the Internet at the Bureau of Labor Statistics web site at <https://stats.bls.gov/>. Go to "Subjects" > "Inflation and Prices Overview" > "Consumer Price Index" > "CPI Tables" and then refer to "Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present is now available in the CPI Detailed Report as Table 24".

The Contractor is solely responsible for notifying OGS Procurement Services that the Contractor wishes to receive the CPI rate change and to submit a request for the adjusted rate on the applicable Bid Opening anniversary date; and Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to OGS Procurement Services and the Authorized User(s), as appropriate. Should the Contractor fail to make a request and submit supporting documentation to OGS Procurement Services within ninety (90) days after the applicable anniversary date, the Contractor shall be deemed to have waived its right to any increase in price for that year, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

Price adjustments using the CPI involve changing the base payment by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two readings and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value for January 2019 and subtract the CPI value for January 2018. The difference is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change (increase or decrease) shall be applied to the next Contract year, upon release of a Contract Addendum from OGS Procurement Services.

BEST PRICING OFFER:

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

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.

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).

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.

MINIMUM ORDER:

There is no minimum order for this Contract.

INVOICING AND PAYMENT:

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

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

PRODUCT DELIVERY:

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

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.

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 on the Contractor Information Page, as revised from time to time by OGS and posted on the OGS landing page of the OGS website. 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 individual listed on the Contract landing page on the OGS website.

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://ogs.ny.gov/procurement/emarketplace>

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 may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

N.Y. STATE FINANCE LAW § 139-L:

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

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

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

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

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

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* of Solicitation 23164.

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

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

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

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

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

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

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

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

V. Fraud

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

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

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/>

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

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

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 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. 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.

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.

DIESEL EMISSION REDUCTION ACT:

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

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART

by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

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.

NYS VENDOR RESPONSIBILITY:

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

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

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

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

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

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

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

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

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

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

NYS TAX LAW SECTION 5-A:

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

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

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

“OGS OR LESS” GUIDELINES:

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

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

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

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

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

EXTENSION OF USE:

The Contract 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.

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.

DRUG AND ALCOHOL USE PROHIBITED:

For reasons of safety and public policy, 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.

SAMPLES:

A. Contractor Supplied Samples - The Commissioner reserves the right to request from the Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Contractor's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Contractor, at the Contractor's expense and risk. Where the Contractor has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

B. Enhanced Samples - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

C. Conformance with Samples - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in Solicitation 23164. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in Solicitation 23164, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

D. Testing - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in Solicitation 23164, Contractor samples consumed or rendered useless by testing will not be returned to the Contractor. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

**State of New York
 Office of General Services
 PROCUREMENT SERVICES
 Contract Performance Report**

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

Contract No.: _____ **Contractor:** _____

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

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

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

CONTRACTOR

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

Comments: _____

 _____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please complete this form & return via email to customer.services@ogs.ny.gov or mail to:

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