



# Office of General Services Procurement Services

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## PARTICIPATING ADDENDUM

**New York State Contract #**

**PC69595**

**Master Contract #**

**Commonwealth of Massachusetts  
Operational Services Division  
FAC 118 Environmentally Preferable  
Cleaning Products, Programs, Equipment  
and Supplies Statewide Contract**

**THIS CONTRACT** is made between **the People of the State of New York, acting by and through the Commissioner of the Office of General Services** (hereinafter “State” or “OGS”) whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163(10)(e), and **Hill & Markes, Inc.** (hereinafter “Contractor” or “Vendor” or “Offerer”), with its principal place of business at **1997 NY-5S, Amsterdam, NY 12010**. OGS and Contractor are hereby individually referred to as a “Party” and collectively referred to as “Parties.”

Contractor’s Employer Identification Number is **14-0751030** and NYS Vendor Identification Number is **100006631**.

**Whereas**, in accordance with New York State Finance Law §163(10)(e), the Commissioner of OGS (hereinafter “Commissioner”) may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (hereinafter “Issuing Agency”); and

**Whereas**, the Commonwealth of Massachusetts has recently let a certain contract number **FAC 118** with Contractor for Environmentally Preferable Cleaning Products, Programs, Equipment and Supplies (hereinafter “Master Contract”); and

**Whereas**, OGS Procurement Services, on behalf of the Commissioner, finds it necessary and desirable to enter into this contract (hereinafter “Participating Addendum” or “Contract”), with Contractor for the purchase of specified products or services under the terms and conditions established pursuant to the Master Contract; and

**Whereas**, OGS provided notification of its intention to enter into this Participating Addendum with Contractor by placing a notice in the November 26, 2021 edition of the New York State Contract Reporter.

**Therefore**, by completing and signing this Participating Addendum, Contractor is willing and able to enter into a contract and authorizes OGS to process the Participating Addendum and provide notification to Authorized Users regarding the availability of this Participating Addendum.

### 1. CONTRACT SCOPE

This document sets forth the terms and conditions governing acquisitions under this Participating Addendum for use by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Master Contract, except as modified by this Participating Addendum, are hereby incorporated by reference and deemed to be a part of this Participating Addendum as if fully set forth at length herein. The terms and conditions of this Participating Addendum shall supersede any conflicting terms and conditions set forth in the Master Contract.

PC69595 – Hill & Markes, Inc.

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The Master Contract is expressly amended as noted in Section 3, *Merger of Appendices/Conflict of Clauses*, below. New York State excludes the following from the scope of this Participating Addendum:

- a. Microfiber Cleaning Services
- b. Installation – includes the furnishing of any equipment, rigging and materials required to install or place the products in the proper location

**2. ESTIMATED QUANTITIES**

This Participating Addendum 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 individual value of this contract is indeterminate and will depend upon the number of contracts issued under the Master Contract 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, Section 28, *Estimated/Specific Quantity Contracts* and Section 25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under the Participating Addendum to vary substantially from any estimates. Such factors include, but are not limited to, the following:

- This Participating Addendum will be a nonexclusive contract;
- 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 this Participating Addendum 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 this Participating Addendum for cause or convenience prior to the end of the term pursuant to the terms and conditions of this Participating Addendum;
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated; and
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By execution of this Participating Addendum, Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of this Participating Addendum could vary substantially from any estimates provided herein or previous purchases.

**3. MERGER OF APPENDICES/CONFLICT OF CLAUSES**

This Participating Addendum shall incorporate the following appendices as if set forth herein at length. Only documents expressly enumerated below shall be deemed a part of this Participating Addendum, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence.

- I. Appendix A, *Standard Clauses for NYS Contracts (October 2019)*
- II. Participating Addendum (This Document)
- III. Attachment 4 – Insurance Requirements
- IV. Appendix B, *OGS General Specifications (April 2016)*
- V. Appendix C, *Federal Funding Terms and Conditions (July 2021)*
- VI. Master Contract
- VII. Attachment 5 – Contractor and Reseller Information Form

**4. NYS COMPTROLLER APPROVAL**

Pursuant to the Memorandum of Understanding (“MOU”) dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo (“Executive”), New York State Comptroller Thomas P. DiNapoli (“OSC”), the State University of New York (“SUNY”), the State University of New York Construction Fund (“SUCF”), the City University of New York (“CUNY”), and the City University of New York Construction Fund (“CUCF”), procurement documents and contracts awarded under the Participating Addendum shall have no force and effect and the State bears no liability unless such procurement documents and contracts awarded under the Participating Addendum are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

## **5. APPENDIX B AMENDMENTS**

The following Appendix B clauses are hereby modified for the purposes of this Participating Addendum.

- I. The following sections of Appendix B are hereby deleted: 3 (*International Bidding*), 4 (*Bid Opening*), 5 (*Late Bids*), 10 (*Product References*), 14 (*Site Inspection*), 17 (*Tie Bids*), 18 (*Quantity Changes Prior To Award*), and 19 (*Timeframe for Offers*).

## **6. APPLICABLE LAW**

This Participating Addendum shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

## **7. CONTRACT TERM AND EXTENSIONS**

The term of this Participating Addendum shall begin on the date of approval by the New York State Office of the State Comptroller (OSC) and shall end upon the expiration or termination of the Master Contract, subject to OGS’ right to terminate this Participating Addendum as provided herein. It is the intent of the Parties that the term of this Participating Addendum be coterminous with the term of the Master Contract; accordingly, the term of this Participating Addendum shall be deemed extended whenever the term of the Master Contract is extended, without the need for the Parties to execute an extension or amendment to this Participating Addendum.

## **8. AUTHORIZED USERS**

“Authorized User” shall have the meaning set forth in the New York State Finance Law, Section 163(1)(k). This Participating Addendum is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

Upon request, all eligible non-State agencies must furnish the Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization’s eligibility to purchase from New York State contracts may also be directed to OGS Customer Services at 518-474-6717 or at [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov).

## **9. 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 this Participating Addendum 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.

## **10. PRICE AND DISCOUNTS**

- I. PRICE AND DISCOUNTS. 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.

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Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Participating Addendum.

### **II. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT**

Purchases of the Products included in the Participating Addendum 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.

### **11. BEST PRICING OFFER**

During the Participating Addendum term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Participating Addendum upon the same or similar terms and conditions as that of this Participating Addendum at a lower price to a federal, state or local governmental entity, the price under this Participating Addendum, 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.

### **12. 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 or its authorized dealer on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon receipt of an order by Contractor or its authorized dealer, 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).

### **13. 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.

### **14. MINIMUM ORDER**

There are no minimum order quantities under this Participating Addendum.

### **15. 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 Participating Addendum price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address

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- 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>.

### **16. PROCESSING CONTRACT PAYMENTS**

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted.

### **17. PROMPT PAYMENTS**

Appendix B, Section 47, *Prompt Payments*, applies to this Participating Addendum. The parties acknowledge that Article 11-A of the State Finance Law requires payments to small businesses to be made within 15 days if the conditions set forth therein are met.

The Federal Prompt Payment Act (or any other law governing payment terms incorporated in the Master Contract) does not apply to the Participating Addendum regardless of customer.

### **18. PRODUCT RETURNS AND EXCHANGES**

In addition to the provisions of Appendix B, Section 34, *Title and Risk of Loss for Products Other than Technology Products*, Section 35, *Product Substitution*, and Section 36, *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.

### **19. USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS**

Contractor shall be fully liable for Subcontractor, dealer, distributor and/or reseller performance under this Participating

Addendum, and their compliance with all Participating Addendum terms and conditions.

## **20. RESELLERS**

### **A. Definitions**

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

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

Resellers must be approved in advance by the State as a condition of eligibility under the Participating Addendum. 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 Participating Addendum 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 Participating Addendum term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations, as identified in the *Contractor and Reseller/Distributor Information* document, 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 Participating Addendum term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Participating Addendum 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 and Reseller/Distributor Information* document. 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 Participating Addendum terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor’s sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User’s Participating Addendum activity with the Reseller.

### **E. Applicability of Participating Addendum Terms**

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

## **21. 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.

## **22. OVERLAPPING CONTRACT PRODUCTS**

Products available under this Participating Addendum 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.

## **23. 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 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/>.

## **24. 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 this Participating Addendum. the Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

The Contractor shall provide a dedicated Contract Administrator to support the updating and management of this Participating Addendum on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in the Procurement Services contract page for this Participating Addendum. Contractor must notify OGS within five Business Days if its 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.

## **25. CONTRACTOR'S INSURANCE REQUIREMENTS**

During the term of this Participating Addendum, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by Attachment 4 – Insurance Requirements.

## **26. REPORT OF CONTRACT USAGE**

Contractor shall furnish to OGS a report of all Products provided under the Participating Addendum to Authorized Users of this Participating Addendum by Contractor, and all authorized resellers, dealers and distributors, if any, during each quarterly period, no later than the 15th of the month following the close of each quarter. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and be indicated as required. A template for such report is included in the Master Contract.

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

The report is to be submitted electronically via e-mail in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the New York State Contract Number, Sales Period, and Contractor's (or other authorized agent) name, and all other fields required.

OGS reserves the right to amend the report template during the Participating Addendum term. 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 Participating Addendum cancellation and designation of Contractor as non-responsible.

## **27. CATALOGS AND PRICE LISTS**

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

## **28. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING**

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

## **29. NEW YORK STATE VENDOR RESPONSIBILITY**

- I. OGS conducts a review of prospective contractors ("offerers") to provide reasonable assurances that an offerer 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 an offerer's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. If interested in contracting with New York State, an offerer must agree and hereby agrees to fully and accurately complete the Questionnaire. The offerer acknowledges that the State's execution of a contract will be contingent upon the State's determination that the offerer is responsible and that the State will be relying upon the offerer'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 offerer 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>. Offerers 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](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the offerer prior to contract award, the offerer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to OGS' transmittal to you of this Participating Addendum. An offerer's Questionnaire cannot be viewed by OGS until the offerer has certified the Questionnaire. It is recommended that all offerers become familiar with all of the requirements of the Questionnaire and complete as soon as possible to allow sufficient time for OGS review prior to contract execution.

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

The Commissioner of OGS or their designee, in their sole discretion, reserves the right to suspend any or all activities under this Participating Addendum, at any time, when they discover information that calls into question

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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. Activity under the Participating Addendum may resume at such time as the Commissioner of OGS or their designee issues a written notice authorizing a resumption of performance under the Participating Addendum.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Participating Addendum. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Participating Addendum may be terminated by the Commissioner of OGS or their designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or their designee to be non-responsible. In such event, the Commissioner of OGS or their designee may complete the contractual requirements in any manner they may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Participating Addendum 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.

### **30. NEW YORK STATE TAX LAW SECTION 5-A**

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

A Contractor is required to file the completed and notarized Form ST-220-CA with 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](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](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 prior to such request). 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.

### **31. NEW YORK STATE VENDOR FILE REGISTRATION**

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

If the Contractor is already registered in the Vendor File, the Contractor must enter its ten-digit Vendor ID on this Participating Addendum. Authorized dealers/distributors/resellers already registered should list the Vendor ID number along with the authorized dealers/distributors/reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

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If the Contractor is not currently registered in the Vendor File, it must request assignment of a Vendor ID number from OGS. Contractor must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) and submit the form to OGS. Please send this document to a Designated Contact for this Participating Addendum. In addition, if an authorized dealer/distributor/reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized dealer/distributor/reseller and submitted to OGS. The OGS will initiate the vendor registration process for all companies and their authorized dealers/distributors/resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File, please visit the following website: [http://www.osc.state.ny.us/vendor\\_management](http://www.osc.state.ny.us/vendor_management).

### **32. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 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 Participating Addendum, may be found at <http://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 Participating Addendum.

### **33. 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 Participating Addendum. 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*.

### **34. MERCURY-ADDED CONSUMER PRODUCTS**

The 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 Participating Addendum.

### **35. 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 Participating Addendum, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

### **36. BULK DELIVERY AND ALTERNATE PACKAGING**

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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.

### **37. SURPLUS/TAKE-BACK/RECYCLING**

- I. A State Agency is reminded of its obligation to comply with the New York State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation (“DEC”) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (“NIST”) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

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

#### **I. New York State Law**

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

#### **II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBES 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

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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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
  - 1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
  - 2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
  - 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the

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Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law, 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 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% 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 Business Diversity. 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

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a partial or total waiver of MWBE participation goals on Form BDC 333.1. 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 shall contact the Designated Contacts listed on page 1 of this document 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 333.1, 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

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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 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/FrontEnd/TrainingList.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 OBD 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 MWBE requirements of this

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Section, 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://ogs.ny.gov/MWBE>. Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

**39. 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 (“SDVOB”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are 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.

**I. Contract Goals**

- A. OGS hereby establishes an overall goal of **6%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

**II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of

Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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 SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.

- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB 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.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. further agrees that a failure to use SDVOBs as agreed in the 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-responsibility.

### **III. Request For Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at OGS for guidance
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (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 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) 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 business days of

receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to [Sefora.Castrello@ogs.ny.gov](mailto:Sefora.Castrello@ogs.ny.gov).

#### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

#### **V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [Sefora.Castrello@ogs.ny.gov](mailto:Sefora.Castrello@ogs.ny.gov).

#### **VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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

### **40. NEW YORK STATE REQUIRED CERTIFICATIONS**

A Contractor is required to submit the New York State Required Certifications form prior to execution of this Participating Addendum.

### **41. CONTRACT MODIFICATIONS AND RENEWALS**

With the exception of term extensions addressed in Section 7, *Contract Term and Extensions*, any modifications to this Participating Addendum must be made by an instrument in writing executed by the Parties. Contractor shall submit copies of any modifications to or renewals of the Master Contract, including new products, terms, or price changes, to OGS for review prior to enactment. OGS may accept a modification to or renewal of the Master Contract in full. If a modification is not fully acceptable to OGS, either the Contractor or OGS may terminate the Participating Addendum in accordance with its terms or amend the Participating Addendum to accept the modification to the Master Contract in part.

However, in accordance with Appendix B, *Modification of Contract Terms*, an Authorized User shall have the authority to accept an offer from Contractor for more advantageous terms and pricing than those under this Participating Addendum. An Authorized User shall not have the authority to accept any other requests for modifications to the Participating Addendum, which must be handled as outlined herein.

### **42. NOTICES**

**GROUP 39000, 23245– Environmentally Preferable Cleaning Products, Programs, Equipment. and Supplies (Statewide)**

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals, and other instruments given pursuant to this Participating Addendum shall be in writing and shall be validly given when mailed by registered, certified or overnight mail, or hand delivered. The Parties mutually agree to designate individuals in their respective organizations for purposes of receiving such communications pursuant to this Participating Addendum, and the addresses to which such communications are to be sent. The representatives for the State and the Contractor, and their addresses, will be identified and updated on the Contract Award Notification page associated with this Participating Addendum. A Party may, from time to time, specify any address in the United States as its address for purposes of notices under this Participating Addendum by giving fifteen (15) days written notice to the other Party.

**43. CAPTIONS**

The captions contained in this Participating Addendum are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**44. SEVERABILITY**

If any provision of this Participating Addendum is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Participating Addendum, which shall be enforced and interpreted as if such provision was never included in the Participating Addendum.

**45. ENTIRE AGREEMENT**

This Participating Addendum and the referenced appendices constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Participating Addendum shall not be changed, modified or altered in any manner except as provided in Section 41 of this Participating Addendum.

GROUP 39000, 23245-- Environmentally Preferable Cleaning Products, Programs, Equipment. and Supplies (Statewide)

IN WITNESS WHEREOF, the Parties therefore hereby execute their mutual agreement to the terms of this Participating Addendum. This Participating Addendum shall be a binding agreement between the Parties effective on the date of OSC approval. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Participating Addendum, the approved signature page(s) will be affixed by the State to additional copies of this Participating Addendum which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Participating Addendum, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and New York State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by New York State Finance Law §139-j(3) and §139-j(6)(b).

**CONTRACTOR**

Signature: Jason Packer  
Printed Name: JASON PACKER  
Title: CEO  
Date: 5-12-2022  
Company Name: Hill + MARKES, INC.  
Federal ID: 14-0751030  
NYS Vendor ID: 1000006631

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature: E. M. Boyce  
Printed Name: Erin M. Boyce  
Title: Asst. Director  
Date: 6/25/22  
Office of General Services

**APPROVED**  
DEPT. OF AUDIT & CONTROL  
  
Jun 30 2022  
Mark DiFiore  
  
FOR THE STATE COMPTROLLER

**OFFICE OF THE NEW YORK STATE COMPTROLLER**

Approved \_\_\_ Approved as Amended \_\_\_ Disapproved \_\_\_  
Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF New York }

: ss:

COUNTY OF Montgomery }

On the 12 day of May in the year 2022, before me personally appeared Jason Packer, known to me to be the person who executed the foregoing instrument,

who, being duly sworn by me did depose and say that he maintains an office at Hill + Markes, Inc. 1917 State Hwy 55 in Amsterdam, NY 12010

and further that:

[Check One]

If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

If a corporation): he is the CEO of Hill + Markes, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

If a limited liability company): he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Jennifer N. Gierszewski

Signature of Notary Public

Notary Public Registration No. 01DU6127966

State New York

Jennifer N. Gierszewski  
Notary Public, State of New York  
No. 01DU6127966  
Qualified in Fulton County  
Commission Expires July 11th, 2025