



**Office of General Services
Procurement Services**

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**AGREEMENT FOR
INDUSTRIAL AND COMMERCIAL SUPPLIES
AND EQUIPMENT (STATEWIDE)**

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND

[BIDDER NAME]

CONTRACT NUMBER PC[CONTRACT #]

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Attachment 4 – *Contractor/Reseller/Distributor Information Sheet*

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PC [REDACTED]
CENTRALIZED CONTRACT FOR PURCHASING,
INDUSTRIAL AND COMMERCIAL SUPPLIES AND EQUIPMENT (STATEWIDE)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made this ____ day of _____, 2023, by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), whose office is on the 36th Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) and [Bidder Name], having its principal place of business at [Bidder’s Principal Place of Business Address] (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

WHEREAS, OGS is statutorily authorized to enter into centralized contracts for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter “Authorized Users”); and

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Industrial and Commercial Supplies and Equipment, as further described herein; and

WHEREAS, OGS conducted a multiple award procurement to identify the bidder(s) which could provide the Industrial and Commercial Supplies and Equipment, referred to as Solicitation #23262 (hereinafter “Solicitation”), which was advertised on March 29, 2022 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, in accordance with the method of award set forth in the IFB, awards were made to all responsive and responsible Bidders who met the minimum qualifications and offered reasonable prices as determined by OGS; and

WHEREAS, the State has determined: that the Contractor submitted a responsive proposal; that the Contractor is a responsible vendor; and that the Contractor is willing to provide the Industrial and Commercial Supplies and Equipment set forth herein at reasonable prices and under the terms and conditions contained herein;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

1. INTRODUCTION

1.1 Overview

This Contract is for Industrial and Commercial Supplies and Equipment as specified herein. This Contract is a Centralized Contract established by the New York State (“NYS”) Office of General Services (OGS), and the Contract is available for use by any Authorized User, as that term is defined in State Finance Law § 163(1)(k), across the State of New York, including but not limited to: New York State agencies; public authorities; political subdivisions such as cities, towns, and villages; school districts; the State University of New York (SUNY); The City University of New York (CUNY); and certain other associations, entities and non-profit organizations designated as Authorized Users under State Finance Law § 163(1)(k).

1.2 Scope

The purpose of this Contract is to provide Authorized Users with a means of acquiring Industrial and Commercial Supplies and Equipment which are purchased repetitively or on an emergency basis. It also provides a means for inventory reduction by offering quick shipment (within twenty four (24) hours) of a broad array of Products and aggregation and purchasing of a variety of different Products from the same Contractor with a single order. This Contract offers Authorized Users the ability to pick-up orders (Refer to Section 2 *Contractor Qualifications*).

Contractors awarded a Contract pursuant to the Solicitation may offer any of the Product Categories below as long as they meet the qualifications set forth in Section 2 *Contractor Qualifications*. A Contractor awarded a Contract pursuant to the Solicitation must offer at least five (5) of the sixteen (16) Product Categories. Services are excluded from the scope of this Contract and may not be offered in any Product Category. Examples listed below are not exclusive of the Products allowed in each Product Category.

Product Categories	Product Examples
Building Supplies	<ul style="list-style-type: none"> • Ceiling Tiles • Dry Wall • Lumber • Windows
Cleaning	<ul style="list-style-type: none"> • Buckets • Cleaning Chemicals • Hand Soaps • Mops • Paper Products • Trash Can Liners • Vacuums
Electrical	<ul style="list-style-type: none"> • Circuit Breakers • Conduits • Connectors • Cords • Electrical Boxes • Fuses • Plugs • Solar Panels • Switches • Wire • Outlets

Product Categories	Product Examples
Fluid Power Equipment	<ul style="list-style-type: none"> • Hoses • Hydraulics • Hydraulic Liquids • Pressure Washers • Spray Guns and Kits • Tubing
Hand Tools	<ul style="list-style-type: none"> • Hammers • Hand Saw • Measuring Tools <ul style="list-style-type: none"> ○ Levels ○ Tape Measurers • Pliers • Rakes • Screwdrivers • Shovels
Heating, Ventilation, Air Conditioning (HVAC)	<ul style="list-style-type: none"> • Air Conditioner Units <ul style="list-style-type: none"> ○ Portable ○ Window • Air Filters • Blowers • Coolant • Diffusers • Fans • Filters • Foam Coil Cleaners • Small Heaters • Valves
Lighting	<ul style="list-style-type: none"> • Ballasts • Bulbs • Diodes • Fixtures • Lamps • Tubes
Maintenance	<ul style="list-style-type: none"> • Adhesives • Batteries • Fasteners • Generators • Ladders • Metal Raw Materials <ul style="list-style-type: none"> ○ Flat Stock ○ Pins ○ Rods • Paint • Paint Supplies • Sealant • Seasonal Lawn and Garden Supplies • Shop Supplies • Welding Supplies
Material Handling	<ul style="list-style-type: none"> • Cabinets • Containers • Chains • Hand Trucks • Pails/Drums • Wire Rope

Product Categories	Product Examples
Motors/Power Transmission	<ul style="list-style-type: none"> • Belts • Motors • Pulleys
On-Site Personal Safety	<ul style="list-style-type: none"> • Eye Protection • Eye Wash • Head and Face Protection • Hearing Protection • First Aid • Gloves • Protective Clothing
Pneumatics	<ul style="list-style-type: none"> • Compressors • Cylinders • Flanged Globes • Relays • Various Valves
Power Tools	<ul style="list-style-type: none"> • Electric Drills • Electric Grinders • Electric Sanders • Electric Saws
Production Tools	<ul style="list-style-type: none"> • Band Saws • Drive Bits • Friction Lighters • Lighter Sets • Tank Adapters
Pumps and Plumbing	<ul style="list-style-type: none"> • Drains • Facets • Fittings • Pipes • Plumbing Tools • Pumps • Water Filters
Site Safety and Security	<ul style="list-style-type: none"> • Barricades • Cones • Fire Escape Ladders • Harnesses • Master Lock • Strobes • Warning Signs

Contractors awarded a Contract pursuant to the Solicitation must offer Products in at least five (5) of the sixteen (16) Product Categories above and meet the qualifications set forth in Section 2 *Contractor Qualifications*. All Products offered must be available statewide.

Contractor and/or its Reseller(s) must offer at least one Physical Location or Physical Presence in each of the four (4) Districts as defined below. The Physical Location and/or Physical Presence needs to be in operation on Business Days for a minimum of eight (8) hours, between the hours of 7:00 am and 6:00 pm. Districts are grouped by counties as follows:

DISTRICT A	DISTRICT B	DISTRICT C	DISTRICT D
Allegany	Broome	Albany	Bronx
Cattaraugus	Cayuga	Clinton	Kings
Chautauqua	Chenango	Columbia	Nassau
Chemung	Cortland	Dutchess	New York
Erie	Delaware	Essex	Queens
Genesee	Fulton	Franklin	Richmond
Livingston	Hamilton	Greene	Rockland
Monroe	Herkimer	Orange	Suffolk
Niagara	Jefferson	Putnam	Westchester
Ontario	Lewis	Rensselaer	
Orleans	Madison	Saratoga	
Schuyler	Montgomery	Schenectady	
Seneca	Oneida	Sullivan	
Steuben	Onondaga	Ulster	
Wayne	Oswego	Warren	
Wyoming	Otsego	Washington	
Yates	St. Lawrence		
	Schoharie		
	Tioga		
	Tompkins		

1.3 Out of Scope

This Contract is intended to include commodities only and all services are out of scope. Products considered out of scope for this Contract include but are not limited to:

1. Candy
2. Customization
3. Flooring
4. Furniture (Non-Industrial or Non-Commercial)
5. Holiday Decorations
6. Office Supplies
7. Tactical Gear
8. Weapons

1.4 Estimated Quantities

This Contract is 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 pursuant to the Solicitation and the competitiveness of the pricing offered. Authorized Users are 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 this Contract to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

1. Such Contracts may be non-exclusive Contracts.
2. 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.
3. The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
4. 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.
5. Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.

6. 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 Contract could vary substantially from the estimates provided in the Solicitation.

1.5 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Solicitation shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller (“OSC”).

Purchase orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

1.6 Definitions

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

“**Bid**” shall refer to a Bidder’s complete response to the Solicitation.

“**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.

“**Bidder**” Shall refer to any business entity who submitted a response to the Solicitation. At the time that the Bidder executes a Contract with the State, a Bidder shall become a “Contractor”. See also “Contractor”.

“**Bidder’s/Contractor’s Part Number**” shall refer to a unique identifier assigned to an individual Product or part; usually includes a combination of alpha and/or numeric characters or may be a unique Product name or unique Product description. Bidder’s/Contractor’s Part Numbers must be unique and cannot be the same as any other Bidder’s/Contractor’s Part Number on the price list.

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

“**Contractor**” shall refer to a responsive and responsible Bidder who is working under an executed contract with New York State. Contractor is a general term.

“**District**” shall refer to New York State counties that are grouped together for purposes of this solicitation.

“**Inside Delivery**” refers to a delivery method wherein the Contractor brings the shipped Product(s) from the vehicle into the entrance of the ordering Authorized User’s building.

“**Manufacturer’s Suggested Retail Price**” (**MSRP**) shall refer to the price that a Product’s Original Equipment Manufacturer (OEM) recommends or suggests the Product be sold to consumer for. The MSRP may be published in some form by the Manufacturer and available to and recognized by the trade.

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

“**Not-To-Exceed (NTE) Price**” shall refer to the price listed on the published Contract price list. Contractor and/or Reseller cannot quote or sell a Product for more than the NTE Price.

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

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

“**OEM Price List**” shall refer to the nationally published or internal document(s) issued by the Original Equipment Manufacturer (OEM) or its Distributors which lists, among other things, a description and MSRP for the OEM’s Products.

“**Original Equipment Manufacturer**” (**OEM**) shall refer to an organization or business entity that creates, makes, processes, or fabricates a Product or something of value, which changes a raw material or commodity from one form to another or creates a new Product or commodity.

“**Physical Location**” shall refer to a distribution center, store or warehouse in a fixed location. The Physical Location needs to be in operation on Business Days for a minimum of eight (8) hours, between the hours of 7:00 am and 6:00 pm.

“**Physical Presence**” shall refer to a mobile distribution center, store or warehouse. The Physical Presence needs to be available within that District on Business Days for a minimum of eight (8) hours, between the hours of 7:00 am and 6:00 pm.

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

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

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

“**Reseller**” or Authorized Reseller or Distributor or Authorized Dealer (hereafter commonly referred to as “Reseller”) is a company or individual (merchant) that purchases goods with the intention of selling them rather than consuming or using them.

“**ROP**” shall refer to Reasonableness of Price.

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

1.7 Contract Documents and Conflict of Terms

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Contract as fully as if set forth at length herein. In the case of any conflict(s) among these documents, conflicts shall be resolved in the following order of precedence:

1. Appendix A – *Standard Clauses for NYS Contracts (October 2019)*
2. This document
3. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions (January 2021)*

4. Appendix B – *General Specifications (April 2016)*
5. Attachment 1 – *Pricing*
6. Attachment 2 – *Insurance Requirements*
7. Attachment 3 – *Report of Contract Usage*
8. Attachment 4 – *Contractor/Reseller/Distributor Information Sheet*

2. CONTRACTOR QUALIFICATIONS

The State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors provide the Products under the Contracts resulting from the Solicitation. Procurement Services retains the right to request any additional information pertaining to the Contractor's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the Contract as it deems necessary to ensure safe and satisfactory work. Contractor shall meet the following qualifications throughout the term of this Contract:

1. Contractor must offer Products in at least five (5) of the sixteen (16) Product Categories as referenced in Section 1.2, *Scope*. All Products offered must be available statewide.
2. Contractor must offer:
 - a. A minimum of one hundred (100) Products in five (5) of the categories that were bid.
 - b. A minimum of fifteen thousand (15,000) Products on its price list overall.
 - i. These minimum one hundred (100) Products in each of the five (5) categories and minimum fifteen thousand (15,000) Products overall must fall within the Scope of this Contract and within the Scope of the Product Categories. Products and Services that OGS deems to fall outside the Scope of this Solicitation as well as those that do not have satisfactory proof of Reasonableness of Price (ROP) will be excluded from these counts.
 - ii. Offering the minimum number of Products in each category does not meet the minimum fifteen thousand (15,000) Products overall.
 1. Contractor will only be able to sell those items and Product Categories that are on its price list under this Contract.
3. In order to facilitate the need for Authorized Users to pick-up orders, free of charge, the Contractor and/or its Reseller(s) must have at least one Physical Location or a Physical Presence in each of the four (4) Districts. The Physical Location and/or Physical Presence needs to be in operation on Business Days for a minimum of eight (8) hours, between the hours of 7:00 am and 6:00 pm.

3. TERMS AND CONDITIONS

3.1 Contract Term and Extensions

The Contract will be in effect for a term of up to five (5) years. The Contract term shall commence on the later of (i) March 01, , 2023, or (ii) approval by the Comptroller of the State of New York.

All OGS Centralized Contracts resulting from the Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for 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 the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

The Contract term provided for in this section shall extend six (6) months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the six (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).

3.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to ninety (90) 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 one hundred eighty (180) calendar days in lieu of ninety (90) calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

3.3 Price

1. The Contractor must offer a NYS Contract Price that:
 - a. Is comparable to its pricing currently provided to another governmental entity as demonstrated in a contract; or
 - b. Has a forty percent (40%) (or higher) Total Discount percentage (as defined below) off its Contractor-Published Price List or an OEM Price List.
2. Minimum NYS Category Discount:
 - a. Contractor shall offer a Minimum NYS Category Discount percentage, greater than 1.0000%, from its regularly published pricing (A/K/A List Price) in effect at time of Bid opening.
 - b. Minimum NYS Category Discount must not exceed four decimal places.
 - c. Contractor must offer one Minimum NYS Category Discount percentage for each Product Category it wishes to provide Products under.
 - d. Contractor may offer different Minimum NYS Category Discount percentages for each of the Product Categories it wishes to provide Products under.
 - e. The Minimum NYS Category Discount percentage may increase during the term of the Contract but must never decrease.
3. Total Discount:
 - a. Contractor must offer a Total Discount percentage for individual Products that is equal to or better than the Minimum NYS Category Discount percentage for the Product Category that the individual Product is in.
 - b. Total Discount must not exceed four decimal places.
 - c. Contractor must offer a Total Discount percentage for each individual Product it wishes to provide.
 - d. Contractor may offer different Total Discount percentages for each Product.
 - e. Total Discount percentages may change as long as they do not fall below the established Minimum NYS Category Discount percentage for the Product Category that the individual Product is in during the life of Contract and Product's NYS Contract Price remains reasonable.
4. NYS Contract Price / Shipping Cost
 - a. Contractor has the following two (2) options for accounting for shipping costs for each Product's NYS Contract Price.
 - i. The NYS Contract Price may include all shipping costs (e.g. Customs duties, and freight charges) and be net, F.O.B. destination any point in NYS, as designated by the ordering agency including Inside Delivery. When the NYS Contract Price includes price of shipping, a Contractor shall not charge separately for shipping for that item; OR
 - ii. The NYS Contract Price may include only the cost of the Product, with shipping costs (e.g., customs, duties, and freight charges) added to the invoice as a separate line item. Shipping costs that are invoiced as separate line item are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. This option only applies to the costs to ship the product from the shipping point to the point of delivery. For Products that do not include shipping costs in the NYS Contract Price, the Contractor shall:
 1. Provide the Authorized User with an estimate of shipping charges at the time of order; and.

2. Upon delivery, include the shipping costs on the invoice for the Product, and provide the Authorized User with a copy of the freight bill for the Product(s).
 - b. Failure of a Contractor to provide the Authorized User with an estimate of shipping costs prior to placement of an order and/or a copy of the freight bill with the invoice, will result in the Contractor forfeiting the option to invoice for shipping separately.
 - c. Contractor shall not charge additional fees to the NYS Contract Price such as for oversized Products, hazardous materials or special handling.
5. Attachment 1 – *Pricing*
- a. Contractor's pricing will be shown using Attachment 1 – *Pricing*.
 - b. Contractor must use the indicator provided on the Attachment 1 – *Pricing* document to identify the Product(s) whose NYS Contract Prices include the shipping cost and the Product(s) that do not.
6. Reasonableness of Price
- a. Examples of acceptable sources to prove Reasonableness of Price (ROP) may include but are not limited to:
 - i. A contract with a Federal government agency (e.g., General Services Administration (GSA));
 - ii. A contract with a State government agency;
 - iii. A contract with a Cooperative purchasing organization (e.g., National Association of State Procurement Officials (NASPO Valuepoint) or Sourcwell);
 - iv. Contractor-Published Price List
 1. Will only be accepted if the Bidder offers a NYS Contract Price that has a forty percent (40%) (or higher) Total Discount percentage off the Contractor Published Price List.
 - v. OEM Price List
 1. Will only be accepted if the Contractor offers a NYS Contract Price that has a forty percent (40%) (or higher) Total Discount percentage off an OEM Price List.
 - b. The determination of what is an acceptable source to prove ROP is at the sole discretion of the state.
 - c. Acceptable formats of ROP documents include:
 - i. Microsoft Excel
 - ii. Microsoft Word
 - iii. Adobe Acrobat PDF that has been converted to allow for Optical Character Recognition (OCR)
 - d. ROP will be determined by comparing the NYS Contract Price with the comparable price for each Product.
7. The NYS Contract Price on Attachment 1 - *Pricing* is a Not-To-Exceed (NTE) Price.
8. Contractor's pricing information is included in the posted Price List linked from the Contractor's Information page, which will apply statewide.
9. OGS reserves the right to require Contractors to hold pricing for a minimum of six (6) months from the start date of the initial Contract Award.
10. OGS reserves the right to remove Products that it does not deem to be reasonable from the Contractor's price list.

3.4 Price Updates

Contractor may update its price list as follows:

1. OGS reserves the right to change the processes set forth in this section. This may include but is not limited to an electronic submission system.
2. Commencing six (6) months after the initial Contract Award, the Contractor may request to update its price list to reflect Contractor price changes and the addition/deletion of Products.
3. Contractor requests for price list updates may be submitted a maximum of twice per calendar year. The Contractor shall provide OGS with one electronic copy of the requested updated price list.
4. A Contractor may not submit a price list update while the Contractor has a previously submitted price list update that remains under review.
5. Price list updates may not be granted to Contractor if it has outstanding sales reports, proof of insurance or any other documentation that is required under this Contract.

6. OGS reserves the right to reject a Contractor's request for a price list update if the contractor does not cure outstanding issues within the timeframe specified by OGS's correspondence of said issues. If the contractor fails to cure the issue within the specified timeframe, OGS shall reject the request and the Contractor's submission shall be forfeited. An example of a timeline where the Contractor's submission shall be rejected and the submission forfeited is as follows:
 - a. OGS Conducts the preliminary review and advises the Contractor of issues that need to be cured. Within OGS's notification of the errors found OGS shall advise Contractor they have fourteen (14) calendar days to respond and cure the issues.
 - b. If after those fourteen (14) calendar days the Contractor does not cure the issues OGS shall remind the Contractor there are issues that need to be cured and shall further advise the Contractor they have seven (7) calendar days to cure the issues.
 - c. If after those seven (7) calendar days the Contractor does not cure the issues OGS shall remind the Contractor there are issues that need to be cured, shall advise the Contractor they have seven (7) calendar days to cure the issues and shall further advise the Contractor that if the outstanding issues are not cured within seven (7) calendar days the price list update request will be rejected and the Contractor will forfeit their opportunity for one of their price list submissions for that calendar year.
7. OGS reserves the right to request price list updates in addition to the twice-yearly request limit imposed above.
8. OGS reserves the right to disallow for price list updates within the six (6) months prior to the end of the Contract Term.
9. Contractors shall be permitted to reduce their pricing any time during the contract term without prior approval from OGS.
10. All Minimum NYS Category Discount percentages shall either remain firm (unchanged) or they may increase for the duration of the Contract.
11. The Total Discount percentage offered on any new Products added to price lists shall be no lower than the established Minimum NYS Category Discount percentage for the Product Category the individual Product is in.
12. Contractors shall submit their updated price list to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated NYS website.
13. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.
14. In the event a Contractor requests to remove a Category from their price list then later requests to add the same Category to their price list the Contractor must offer an equal or better Minimum NYS Category Discount percentage than what they offered the previous time they requested to offer said Category.
15. When re-adding a preexisting Product Category Contractor may submit the previously approved price list for said Product Category for consideration as proof of ROP.
16. All approved price list updates shall apply prospectively upon approval by OGS.
17. Within fourteen (14) calendar days following the approval of a proposed price list, Contractors and Resellers who elect to have an eMarketplace presence shall update the price list on said eMarketplace (as defined below in Section 3.17- *NYS Financial System (SFS)*).
18. OGS reserves the right to remove any item(s) it deems outside the scope of the Award. Likewise, OGS reserves the right to require that the Contractor move any item(s) to the correct category within the Contractor's pricelist. If the Contractor is not approved to sell products in that category then the item will be removed by OGS.
19. OGS reserves the right to require clarification at any time and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Contractor's update and/or to determine a Contractor's compliance with the requirements of the Contract;
20. To reject any update or portion(s) thereof determined to have been altered/modified from the original format by the Contractor. Such alterations/modifications include but are not limited to any change(s) to document header(s), footer(s) and/or cell(s); unprotecting worksheet(s)/workbook(s); hiding/unhiding cell(s)/column(s)/row(s)/worksheet(s); and locking/unlocking cell(s).;

3.5 Price List Format

1. Contractor is required to submit Contract price list updates electronically in an unprotected Microsoft Excel spreadsheet, see Attachment 1 – *Pricing*, on USB flash drive or via e-mail to the OGS Procurement Services contract administrator.
2. The price list must be dated and the format shall be consistent with the format and content of the Contractor's approved Contract price list.
3. The price list shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) changes such as:
 - a. Minimum NYS Category Discount percentage increased;
 - b. Product Categories being added;
 - c. Product Categories being deleted (a minimum of five (5) Product Categories must be retained at all times);
 - d. Price increases;
 - e. Price decreases;
 - f. NYS Contract Price including all costs;
 - g. NYS Contract Price not including shipping costs;
 - h. Products being added; and
 - i. Products being deleted (a minimum of one hundred (100) Products in at least five (5) categories and a minimum fifteen thousand (15,000) Products throughout the entire price list must be retained at all times).
4. In connection with any Contract price list update, OGS reserves the right to:
 - a. Request additional information;
 - b. Reject Contract updates;
 - c. Remove Products from Contracts;
 - d. Remove Products from Contract updates; and
 - e. Request additional discounts for new or existing Products.

3.6 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.

3.7 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify OGS 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 ten (10) business days written notice mailed to the Contractor.

3.8 Additional Discounts

Contractor may offer Additional Discounts at the transaction level. Contractor's Additional Discount information may be included in the posted Price List linked from the Contractor's Information page.

3.9 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's name, and sales representative (if applicable).

3.10 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.

3.11 Minimum Order

There is no minimum order for this Contract.

3.12 Invoicing and Payment

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

The Contractor or Reseller 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:

1. Contractor/Reseller Name
2. Contractor/Reseller Billing Address
3. Contractor/Reseller Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number
7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Contractor's Part Number
15. Product Descriptions
16. Unit Price
17. Quantity
18. Unit of Measure

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

3.13 Product Delivery

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

The option to pick-up orders is at the discretion of the Authorized User and must be denoted on the purchase order. Pick-up orders shall be ready within twenty four (24) hours after receipt of order with the exception of non-stock orders which should be ready for pickup within ten (10) business days after receipt of order. See Section 3.9, *Ordering*. The Physical Location and/or Physical Presence needs to be in operation on Business Days for a minimum of eight (8) hours, between the hours of 7:00 am and 6:00 pm.

Orders shall be shipped to the specified destination within twenty four (24) hours after receipt of order with the exception of non-stock orders which should be shipped within ten (10) business days after receipt of order. In the event that orders are not shipped in the times specified, the Contractor is responsible for contacting the Authorized User in a timely manner utilizing the contact information provided on the Authorized User's Purchase Order.

The Contractor must offer Inside Delivery. Each delivery shall be delivered based upon the needs of the Authorized User. Authorized User and Contractor may agree to delivery terms other than Inside Delivery, however, such other delivery is not included in the NYS Contract Price and Contractor may add charges with the agreement of the Authorized User.

Delivery shall be made in accordance with the instructions on the Purchase Order from each Authorized User and in accordance with Authorized User's security rules, which will be communicated during purchase ordering process. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the Authorized User and, if applicable, from OGS.

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

3.14 Product Returns and Exchanges

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

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

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

3.15 Unanticipated Excessive Purchase

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

3.16 Contract Administration

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. 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.

3.17 NYS Financial System (SFS)

Contractors with Centralized Contracts may have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and will be available to Authorized Users via a centralized website(“eMarketplace”).

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/>.

3.18 Web-Based Ordering

Contractor (and any approved Resellers) may establish and maintain a dedicated NYS website specifically for the Contract that has a web-based ordering system with the capability of receiving electronic orders from over five thousand (5,000) Authorized Users via the internet. If applicable, the web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User’s order. If applicable, Contractor (and any approved Resellers) shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. If applicable, the website link(s) will be listed under the Contractor information on the OGS website. The Contractor’s (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor’s website.

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

1. Contractor Name and Address
2. Contract Number
3. Ordering Agency/Facility/Political Subdivision, etc. and Address
4. Purchase Order/Requisition Numbers
5. Contact (individual placing order)
6. Delivery Location
7. Delivery Instructions
8. Contractor’s Part Number
9. Stock Number
10. Manufacturer
11. Description
12. Unit of Measure
13. List Price (unit)
14. Net Price (unit)
15. In the event the Contractor utilizes Resellers under this Contract, Contractor must provide on the landing page of its dedicated NYS website, a link to each Reseller’s website. All Resellers must provide a dedicated NYS website that mirrors that of the Contractor as set forth above.

3.19 Accessibility of Web-Based Information and Applications Policy

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor’s website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any

authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities.

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

3.20 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Contractor to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

3.21 Performance and Bid Bonds

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

3.22 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 2 – *Insurance Requirements*.

3.23 Report of Contract Usage (A/K/A Sales Reports)

Contractor shall submit [Attachment 3 – *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 one (1) month after the close of each calendar quarter. The Attachment 3 – *Report of Contract Usage* will be based on calendar year quarters (January - March, April - June, July - September and October - December). 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 3 – *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.

3.24 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”), 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 Twenty Five Thousand Dollars and No Cents (\$25,000.00) for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of One Hundred Thousand Dollars and No Cents (\$100,000.00) 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 NYS.
 - 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. 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 tenth (10th) day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:
<https://ny.newnycontracts.com>.
2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law, 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 thirty percent (30%) for MWBE participation, fifteen percent (15%) for Minority-Owned Business Enterprises ("MBE") participation and fifteen percent (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 NYS 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 NYS 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 twenty five percent (25%) 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 thirty (30) days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. 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 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 NYS-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout NYS.
- 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 tenth (10th) day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th 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 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.

3.25 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 NYS'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 NYS, 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 two percent (2%) 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 OGS's Division of Service-Disabled Veteran's Business Development at 518-474-2015 or 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 twenty (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. Contractor 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 OGS.sm.PS.IndustrialCommercial@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:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
3. 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.
4. 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.
5. 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: OGS.sm.PS.IndustrialCommercial@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 UNDER AT: <https://ogs.ny.gov/Veterans/>

3.26 Use of Recycled or Remanufactured Materials

NYS 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*.

3.27 Bulk Delivery and Alternate Packaging

NYS encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. 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. NYS 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.

3.28 Surplus/Take-Back/Recycling

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

3.29 Environmental Attributes and NYS Executive Order Number 4

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

3.30 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.

3.31 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 eight thousand five hundred (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.

3.32 Overlapping Contract Products

Products available under this Contract may also be available from other NYS 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.

3.33 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 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.

3.34 NYS Vendor Responsibility

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 NYS, 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.

3.35 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 NYS and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into NYS is in excess of Three Hundred Thousand Dollars and No Cents (\$300,000) for the four (4) 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 NYS exceeded Three Hundred Thousand Dollars and No Cents (\$300,000) for the four (4) 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.

3.36 “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 NYSCR prior approval of OSC and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

3.37 Non-State Agencies Participation in Centralized Contracts

NYS political subdivisions and others authorized by NYS 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 NYS), the terms of the Section 3.3, *Price* clause shall be modified to include delivery to locations adjacent to NYS.

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 NYS Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

3.38 Extension of Use

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between NYS 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. NYS reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

3.39 Resellers

A. Definitions

“Reseller/Distributor/Authorized Dealer” is a company or individual (merchant) that purchases goods with the intention of selling them rather than consuming or using them.

B. Conditions of Reseller Participation

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

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

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

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 4 – *Contractor/Reseller/Distributor Sheet*. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

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

E. Applicability of Contract Terms

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

3.40 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 NYS Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

3.41 Centralized Contract Modifications

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

3.42 Drug and Alcohol Use Prohibited

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

3.43 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 this Contract.

3.44 Procurement Instructions for Authorized Users

This Contract was issued under a multiple award structure. 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.

3.45 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the Contract and any extensions thereof, and for a period of six (6) years after the term of the Contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the Contract during the term, Contractor shall provide all documents relating to the bid and Contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

3.46 Periodic Recruitment

Contracts awarded pursuant to the Solicitation allow 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 NYSCR. A bidder must register with the NYSCR at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments pursuant to the Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of any periodic recruitment Solicitation.

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

3.47 Contract Modifications and Renewals

With the exception of term extensions addressed in Section 3.1, *Contract Term and Extensions*, any modifications to this Contract must be made by an instrument in writing executed by the Parties.

However, in accordance with Appendix B, Section 26, *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 Contract. An Authorized User shall not have the authority to accept any other requests for modifications to the Contract, which must be handled as outlined herein.

3.48 Notices

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered, certified or overnight mail, hand delivered, or by electronic mail. The Parties mutually agree to designate individuals in their respective organizations for purposes of receiving such communications pursuant to this Contract, 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 Contract. A Party may, from time to time, specify any address in the United States as its address for purposes of notices under this Contract by giving fifteen (15) days written notice to the other Party.

3.49 Captions

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

3.50 Severability

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

3.51 Entire Agreement

This Contract 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 Contract shall not be changed, modified or altered in any manner except as provided in this Contract.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. . 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 Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____

Printed Name: _____

Title: _____

Company Name: **[Bidder Name]** _____

Federal ID: **[Bidder FEIN]** _____

NYS Vendor ID: **[Bidder NYS Vendor ID]** _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Office of the New York State Comptroller

Signature: _____

Printed Name: _____

Title: _____

Date: _____

