



**PIGGYBACK CONTRACT FOR
HEAVY EQUIPMENT (STATEWIDE)
BY AND BETWEEN
NEW YORK STATE OFFICE OF GENERAL SERVICES
AND
CNH INDUSTRIAL AMERICA LLC**

New York State Contract #

PC70887

Master Contract #

011723-CNH

THIS CONTRACT for establishment of a "piggyback" contract is made between **the People of the State of New York**, acting by and through the Commissioner of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163(10)(e), and CNH Industrial America LLC (hereinafter "Contractor" or "Vendor" or "Offerer"), with its principal place of business at 700 State Street, Racine, WI 53404. OGS and Contractor are hereby individually referred to as a "Party" and collectively referred to as "Parties."

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

Whereas, Sourcewell a department, agency, office, political subdivision or instrumentality of the State of Minnesota, has recently let a certain Contract Number 011723-CNH with Contractor for Heavy Construction Equipment with Related Attachments and Technology (hereinafter "Master Contract").

Whereas, OGS is a member of Sourcewell and is therefore authorized to utilize Sourcewell contracts ;

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

Whereas, OGS provided notification of its intention to enter into this Piggyback Contract with Contractor by placing a notice in the March 25, 2025 edition of the New York State Contract Reporter.

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

1. INTRODUCTION

1.1 OVERVIEW AND SCOPE

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

The following Products are excluded from the scope of this Contract:

1. Sourced products or related services, which may be referred to as open market items or non-standard options; and
2. Leased products.

Unless specifically excluded above, the scope of this Piggyback Contract includes all Products approved for inclusion in the Master Contract.

The Master Contract is expressly amended as noted in Section 2.1, *Contract Documents and Conflict of Terms*, below.

1.2 ESTIMATED QUANTITIES

This Piggyback Contract will be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of this Piggyback Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B *Estimated/Specific Quantity Contracts*.

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

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

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

1.3 NYS COMPTROLLER APPROVAL

In accordance with Section 112 of the State Finance Law, this Contract 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.

2. CONTRACT TERMS AND CONDITIONS

This section sets forth the terms and conditions of the Contract.

2.1 CONTRACT DOCUMENTS AND CONFLICT OF TERMS

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

- A. Appendix A – *Standard Clauses for NYS Contracts* (June 2023);
- B. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023);
- C. Piggyback Contract (This Document);
- D. Appendix B – *General Specifications* (April 2016);
- E. Attachment 1 – *Pricing*;
- F. Attachment 2 – *Insurance Requirements*;
- G. Attachment 3 – *Report of Contract Usage*;
- H. Attachment 4 – *Contractor and Reseller/Distributor Information*; and
- I. *[Placeholder for any other attachments as necessary]*; *[and]*
- J. Master Contract, Sourcewell Contract #011723-CNH.

2.2 APPENDIX B MODIFICATIONS

The following Appendix B clauses are hereby modified for the purposes of this Contract:

- A. Appendix B, Section 31 *Product Delivery*, has been modified in accordance with Section 2.12 *Product Delivery*, below.

2.3 CONTRACT TERM AND EXTENSIONS

The term of this Piggyback Contract shall begin on the date of approval by OSC, pursuant to Section 1.3 *NYS Comptroller Approval*, and shall end upon the expiration or termination of the Master Contract, subject to OGS' right to terminate this Piggyback Contract as provided herein. The term of this Piggyback Contract shall be deemed extended whenever the term of the Master Contract is extended, without the need for the Parties to execute an extension or amendment to this Piggyback Contract.

2.4 PRICE

The price for Product shall either be at the agreed-upon discounts and service rates listed in Attachment 1 – *Pricing*, or at a price that is more advantageous to the Authorized User.

Any discounts, pricing or Products offered on the OGS Piggyback Contract or included on an Authorized User invoice must be set forth within the Master Contract Price list or in another Master Contract document and shall be disclosed to and agreed upon in advance by Authorized User.

Price shall include all customs, duties, and charges, and be net, F.O.B. destination any point in New York State as designated by the ordering Authorized User.

In the alternative, shipping costs from the shipping point may be added to the invoice for the product, with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. Contractor shall provide the Authorized User with an estimate of shipping charges prior to placement of an order. All such orders shall be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the Purchase Order by the Authorized User.

2.5 PRICE AND PRODUCT UPDATES

The Attachment 1 – *Pricing* set forth in the Contract may be updated from time to time, without a Contract amendment, to reflect Contractor discount or price changes, and the addition/deletion of Products, that have been approved for the Master Contract pricelist. Contractor must notify OGS when the Master Contract Holder has approved a Master Contract pricelist update, and provide OGS with an electronic copy of the approval and the approved updated pricelist or discount structure, as applicable. Updates to Attachment 1 – *Pricing* shall be posted on the OGS website for this Contract, and be effective on the date that the updates were originally approved by the Master Contract Holder.

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Approval of the Master Contract price list update by the Master Contract Holder, or OGS posting of updates to Attachment 1 – *Pricing* on the OGS website, does not indicate OGS approval of the addition of any Product that has been excluded from the Piggyback Contract scope (see Section 1.1 *Overview and Scope*).

2.6 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.

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

2.7 CATALOGS AND PRICE SHEETS

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

2.8 ORDERING

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

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

2.9 PURCHASING CARD ORDERS

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

2.10 MINIMUM ORDER

If the Master Contract contains minimum order quantities or values, Contractor may elect to honor orders for less than the minimum order.

If the Master Contract does not contain minimum order quantities or values, then there are no minimum order quantities under this Piggyback Contract.

2.11 INVOICING AND PAYMENT

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

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order

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- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

2.12 PRODUCT DELIVERY

Appendix B, Section 31 *Product Delivery*, is hereby deleted and replaced with the following:

Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise agreed to by the Authorized User and Contractor, delivery shall be made within ninety (90) calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

2.13 PROMPT PAYMENTS

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

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

2.14 PRODUCT RETURNS AND EXCHANGES

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

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

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

2.15 CONTRACT ADMINISTRATION

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

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Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website. 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.

2.16 NYS FINANCIAL SYSTEM (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <https://www.osc.ny.gov/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview>.

2.17 CONTRACTOR'S INSURANCE REQUIREMENTS

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*.

2.18 REPORT OF CONTRACT USAGE

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

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

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

The report in Attachment 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.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made less than \$250,000 in sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to Appendix B *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

Contractor shall also make the report or the information therein available to Sourcewell upon request in accordance with the Master Contract.

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

I. New York State Law

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

II. General Provisions

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- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

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

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
 - 1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.

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

IV. Contract Goals

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

B. Good Faith Efforts

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

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

V. Fraud

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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.

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

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

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

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

2.21 USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback 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*.

2.22 BULK DELIVERY AND ALTERNATE PACKAGING

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

2.23 SURPLUS/TAKE-BACK/RECYCLING

- A. 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.

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- B. 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 C below for specific requirements governing electronic equipment recycling.
- C. 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>.
- D. 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.

2.24 ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 *Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program* (“EO 22”), requires State Agencies, authorities, and public benefit corporations (“Affected Entities”) to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A list of currently approved specifications is located on the OGS website at <https://ogs.ny.gov/greenny/approved-greenny-specifications>.

Contractor(s) shall note Products that meet GreenNY Specifications on its Contract pricelist (see Attachment 1 – *Pricing*), and on Contract Usage Reports (see Section 2.18 *Report of Contract Usage*), in the format requested by OGS. OGS reserves the right to require that Contractors provide supporting documentation to demonstrate how identified Products meet the applicable GreenNY Specification(s).

2.25 CONSUMER PRODUCTS CONTAINING MERCURY

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

2.26 DIESEL EMISSION REDUCTION ACT

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

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance.

GROUP 40625, Award PGB-23345 – HEAVY EQUIPMENT (STATEWIDE)

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.

2.27 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under any Contract or subcontract resulting from this Solicitation, Bidder or resultant Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

2.28 OVERLAPPING CONTRACT PRODUCTS

Products/services available under this Piggyback Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements, and to document the basis for this selection in the procurement record.

2.29 NEW YORK STATE VENDOR RESPONSIBILITY

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

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Piggyback 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 Piggyback Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Piggyback 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 Piggyback Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

2.30 "OGS OR LESS" GUIDELINES

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

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

2.31 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

GROUP 40625, Award PGB-23345 – HEAVY EQUIPMENT (STATEWIDE)

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

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

2.32 RESELLERS

A. Definitions

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

B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the 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 in Attachment 4 – *Contractor and Reseller/Distributor Information* 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. In addition to notification, if the Contract has goals, Contractors MUST submit to OGS a completed MWBE 100 EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE.

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 and Reseller/Distributor Information*. 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.

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E. Applicability of Contract Terms

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

2.33 NEW ACCOUNTS

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

2.34 CONTRACT MODIFICATIONS

A. Piggyback Contract Modifications

Any modifications to this Piggyback Contract, must be made by an instrument in writing executed by the Parties, and subject to approval by OSC.

B. Master Contract Modifications

Contractor shall submit copies of any modifications to the Master Contract terms and conditions to OGS for review prior to enactment. Subject to approval by OSC, if required, OGS may accept a modification to the Master Contract in full. If the Master Contract modification requires a modification to this Contract, it shall be made in accordance with Paragraph A above. See Section 2.5 *Price and Product Updates* above, for modifications to the Master Contract pricelist.

C. Authorized Users

An Authorized User shall not have the authority to accept any requests for modifications to the Piggyback Contract, which must be handled as outlined in Paragraph A of this section. However, in accordance with Appendix B *Modification of Contract Terms*, in a specific transaction an Authorized User shall have the authority to accept an offer from Contractor for more advantageous terms and pricing than those provided under this Piggyback Contract.

2.35 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.

2.36 INSTRUCTION MANUALS

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

2.37 EMBEDDED SOFTWARE/FIRMWARE UPDATES

Contractor shall provide at no charge all updates to any embedded software or firmware in the Product offered to customers generally.

3. GENERAL PROVISIONS

3.1 NOTICES

Unless otherwise provided in the Contract, notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments (“Notices”) given pursuant to this Contract shall be in writing to the Parties’ respective representative and shall be validly given when e-mailed, mailed by registered or certified mail, or hand delivered.

The Parties may, from time to time, specify any address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

3.2 CAPTIONS

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

3.3 SEVERABILITY

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

3.4 COUNTERPARTS

This Piggyback Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

3.5 ENTIRE AGREEMENT

This Piggyback Contract and the referenced appendices and attachments 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 Piggyback Contract shall not be changed, modified or altered in any manner except as provided in Section 2.36 of this Piggyback Contract, *Contract Modifications*.

GROUP 40625, Award PGB-23345 – HEAVY EQUIPMENT (STATEWIDE)

IN WITNESS WHEREOF, the Parties have executed this Piggyback Contract as of the date of last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Piggyback Contract being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Piggyback Contract, Appendix A *Standard Clauses For New York State Contracts*, June 2023, Appendix B *General Specifications*, April 2016, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CONTRACTOR

Signature: *Amy Swett*
 Printed Name: Amy Swett
 Title: Government Sales Mgr
 Date: 9/24/25
 Company Name: CNH Industrial America LLC
 Federal ID: 760433811
 NYS Vendor ID: 1100123548

**THE PEOPLE OF THE STATE OF NEW YORK,
ACTING BY AND THROUGH THE COMMISSIONER
OF GENERAL SERVICES**

Signature: *Ruth K. Rivera*
 Printed Name: Ruth K. Rivera
 Title: Assistant Director
 Date: 10/8/2025
Office of General Services

**NEW YORK STATE OFFICE OF THE STATE
COMPTROLLER**

APPROVED
 DEPT. OF AUDIT & CONTROL

Dec 01 2025
 James M. Iwaneczko

FOR THE STATE COMPTROLLER

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF Pennsylvania }

ss:
COUNTY OF Lancaster }

On the 24th day of September in the year 2025, before me personally appeared Amy Swett, known to me to be the person who executed the foregoing

instrument, who, being duly sworn by me did depose and say that She maintains an office at 500 Diller Ave Admin Building #39 New Holland, PA 17857

and further that:

[Check One]

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

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

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

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

Michelle M. Stanley
Signature of Notary Public

Commonwealth of Pennsylvania - Notary Seal
Michelle M. Stanley, Notary Public
Lancaster County
My commission expires April 11, 2027
Commission number 1433612
Member, Pennsylvania Association of Notaries

Notary Public Registration No. 1433612 State PA

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX B
GENERAL SPECIFICATIONS

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GENERAL

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

2. DEFINITIONS Terms used herein shall have the following meanings:

a. AUTHORIZED USER Authorized User shall have the meaning set forth in State Finance Law Section 163(1)(k) and includes, but is not limited to, New York State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

b. BID A response to the Solicitation submitted by a Bidder to provide Products.

c. BIDDER Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

d. BID SPECIFICATIONS A written description drafted by OGS or an Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

e. COMMISSIONER The Commissioner of OGS or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

f. CONTRACT The writings that contain the agreement of the Commissioner and the Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

- 1. Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.
- 2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another

jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. Back-Drop Contracts Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

4. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

5. Contract Award Letter A letter to the successful Bidder indicating acceptance of its Bid in response to a Solicitation. Unless otherwise specified, the issuance of a letter of acceptance forms a Contract but is not an order for Product, and the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

g. CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a Contract has been established.

h. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Commissioner.

i. DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

j. ENTERPRISE The total business operations in the United States of an Authorized User without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of the Authorized User.

k. ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

l. ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

m. GROUP A classification of a Product that is designated by OGS.

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, programs, code or data conversion, or custom programming).

p. LICENSEE An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

q. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

r. LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

s. MINI-BID A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

t. OGS The New York State Office of General Services.

u. PATCH Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

v. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

w. PURCHASE ORDER The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Purchasing Card, electronic Purchase Order, or other authorized instrument).

x. REQUEST FOR PROPOSALS (RFP) A type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to one or more responsive and responsible Bidders.

y. REQUEST FOR QUOTATION (RFQ) A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

z. RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

aa. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

bb. SINGLE SOURCE A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

cc. SITE The location (street address) where Product will be delivered or executed.

dd. SOLE SOURCE A procurement where only one Bidder is capable of supplying the required Product.

ee. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

ff. SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine object code.

gg. STATE State of New York.

hh. STATE AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

ii. SUBCONTRACTOR Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

jj. TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

kk. THIRD-PARTY SOFTWARE Any software that is developed independently of Contractor and which may be governed by a separate license.

ll. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

BID SUBMISSION

3. INTERNATIONAL BIDDING All Bids, including all information and Product required by the Solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (US\$). Any Bids submitted which do not meet the above criteria will be rejected.

4. BID OPENING Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

5. LATE BIDS Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

6. CONFIDENTIAL/TRADE SECRET MATERIALS

a. BIDDER/CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder/Contractor. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder/Contractor. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The Commissioner's or Authorized User's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder/Contractor will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. COMMISSIONER OR AUTHORIZED USER Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information

of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

7. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. PREVAILING WAGE RATE APPLICABLE TO BIDS A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rates for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

i. Posting The Contractor must publicly post on the work Site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in the State, such records must be kept at the work Site. For building services contracts, such records must be kept at the work Site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Day's Labor No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or

contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

8. TAXES

a. Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116(a)(1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

9. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized Users are not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

10. PRODUCT REFERENCES

a. "Or Equal" In all Solicitations or Bid Specifications, the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced.

References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

11. REMANUFACTURED, RECYCLED, RECYCLABLE, OR RECOVERED MATERIALS Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable, 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, welfare, safety requirements, or in the Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements, or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished, or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

12. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

Bids offering Products that are manufactured or produced in public institutions will be rejected.

13. PRICING

a. Unit Pricing If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places, for each item unless otherwise specified in the Solicitation. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. Net Pricing Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated in the Solicitation or Purchase Order.

c. "No Charge" Bid When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid "no charge" on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. Third Party Financing If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a

“Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.

f. Specific price decreases:

(i) **GSA Changes:** Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or

(iii) **Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) **Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

g. Cost Proposal Revisions A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law Section 163(9)(c). A cost proposal revision must be a lower price than the initial price.

14. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder’s ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

15. PURCHASING CARD The State’s Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized

User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

BID EVALUATION

16. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his or her sole discretion, may accept or reject illegible, incomplete or vague Bids, and the Commissioner’s decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder’s conditional or revocable terms in the Bid.

17. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

18. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

19. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

20. DEBRIEFINGS Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

21. CONTRACT PUBLICITY Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

TERMS & CONDITIONS

22. CONTRACT CREATION/EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidders upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

23. CONTRACT TERM - EXTENSION In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

24. OFFICIAL USE ONLY/NO PERSONAL USE The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

25. PARTICIPATION IN CENTRALIZED CONTRACTS

a. State Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law.

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to hold the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate

any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

26. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer any Authorized User more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against an Authorized User unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

27. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS

Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the Contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

29. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article

2-B of the Executive Law, or the Commissioner determines pursuant to his or her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract, as the Commissioner in his or her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

30. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

All Purchase Orders issued pursuant to a Contract let by the Commissioner must be identified with the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

31. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of

the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

32. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Contract or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

33. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

b. Shipping Charges Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

34. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS

Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner. Title, risk of loss, and acceptance for technology Products shall be governed by the Product Acceptance clause.

35. PRODUCT SUBSTITUTION In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for termination of Contract.

36. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

37. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to the Authorized User and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

38. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

39. EMPLOYEES, SUBCONTRACTORS AND AGENTS All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract or the Purchase Order, and must comply with all security and administrative requirements of the Authorized User that are communicated to the Contractor. The Commissioner and the Authorized

User reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract or the Purchase Order. The Commissioner and the Authorized User reserve the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

40. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

41. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

42. SUSPENSION OF WORK The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon

issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

43. TERMINATION

a. For Cause For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor an Authorized User shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

c. For Violation of Sections 139-j and 139-k of the State Finance Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility 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 at the Contractor's expense where the Contractor is determined by the Commissioner to be non-responsible. In such event, the Commissioner 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.

f. Upon Conviction of Certain Crimes The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

44. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

45. CONTRACT INVOICING

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at HelpDesk@sfs.ny.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt

of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

46. DEFAULT – AUTHORIZED USER

a. Breach by Authorized User An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 30 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least 10 business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. Insufficient basis If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

47. PROMPT PAYMENTS

a. By State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a non-State agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

48. REMEDIES FOR BREACH Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User,

the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

a. Cover/Substitute Performance In the event of Contractor's material, uncured breach, the Commissioner or Authorized User may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Commissioner or Authorized User is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner or Authorized User may acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

49. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC

Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

50. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Safety Data Sheet must be provided to and approved by the Authorized User.

51. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

52. SECURITY Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

53. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

54. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be substantially free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished

individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer’s standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor’s warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer’s Product.

Where Contractor, Third-Party Software vendor, or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through the standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable, or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor’s approval.

d. Virus Warranty The Contractor represents and warrants that any Product acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at an Authorized User’s Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an

acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor’s business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Authorized User must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

g. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

h. Prompt Notice of Breach The Authorized User shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

j. No Limitation of Rights The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

55. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

56. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold the Authorized Users harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation;

provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

57. INDEMNIFICATION RELATING TO INFRINGEMENT

The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its

own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters. This constitutes the Authorized User's sole and exclusive remedy for infringement of a patent, copyright, trademark, trade secret, or other proprietary right.

58. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Authorized User's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

59. DISPUTE RESOLUTION PROCEDURES

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to

administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at the OGS website. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

60. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.

c. Product Documentation Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone

or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Licensee does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Site not originally specified in the license, including transfers within Agencies, between Agencies, and pursuant to governmental restructuring or reorganization ("permitted license transfers"). Licensees do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 days prior written notice to Contractor of such moves and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Third Parties Third parties retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) such third party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for

archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

h. Confidentiality Restrictions If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

61. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have 30 days from the date of delivery to accept hardware Products and 60 days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data to be specified by Authorized User. Where using its own data or tests, Authorized User must have the tests or data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, which shall be made part of the Contractor's standard documentation and shall be covered by the Product warranty. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional 30 day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, if the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have 30 days to correct the deficiency, and the Authorized User shall have an additional 60 days to evaluate the Product as provided herein.

If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

62. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any Site where a copy of the Product resides. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee's security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee's normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

63. NO HARDSTOP OR PASSIVE LICENSE MONITORING Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Licensee shall be entitled.

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

a. Definitions

(i) For purposes of this clause, "Products" means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products" means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.

(iii) For purposes of this clause, "Custom Products" means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for Authorized User under the Contract.

b. Title to Project Deliverables Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing hardware Products shall pass to Authorized User upon acceptance.

2. Software - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor's standard license

agreement; provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Authorized User is a State Agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the Third-Party Software vendor's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purposes as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third-Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third-party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third-party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third-party, tax-exempt financing may not

occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Products, the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to Third-Party Software Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

65. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

66. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall

be required to: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

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APPENDIX C

Authorized users that may want to seek federal funds from the federal funding agencies for the purchase of goods or services during a declared disaster are advised that federal funding agencies require particular terms and conditions be included in the contract for those goods and services. For the convenience of authorized users, those terms and conditions are set out below and can also be found at the FEMA website.

Authorized users of statewide contracts should consider adding this language to future purchase orders and secondary level competitions (often referred to as RFQs or mini- bids), unless the language is already attached to the statewide contract. State agencies making purchases to respond to disasters through a vehicle other than a centralized contract are required by Section H.6. of Budget Bulletin H-501R to include these and other terms into their contracts using the Appendix set forth in the Budget Bulletin.

Federal Funding Agency Mandatory Terms and Conditions

The following provisions are required by federal funding agencies in order for expenditures by Authorized Users to be eligible for federal reimbursement in the event of a State declaration of disaster emergency pursuant to Section 28 of the Executive Law.

1. REMEDIES

Remedies for Contractor failure to observe or perform any term or condition shall be as provided in the OGS centralized contract (if applicable), including all appendices.

2. TERMINATION FOR CAUSE AND CONVENIENCE

Termination for cause and convenience will be in accordance with Termination, Appendix B, General Specifications, if a statewide centralized contract, and Section 5, Copeland Anti-Kickback Act, of this document and/or the rules and regulations of your governing authority.

3. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of the contract, OGS centralized contract (if applicable) or any purchase by an Authorized User, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the

compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the OGS centralized contract or with any of the said rules, regulations, or orders, the OGS centralized contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Authorized User further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Authorized User so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Authorized User agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision

of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Authorized User further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Authorized User agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Authorized User under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Authorized User; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS-BACON ACT. (Applicable to all construction contracts in excess of (\$2000)

- A. If applicable, all transactions regarding the OGS centralized contract or any purchase by an Authorized User shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- B. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- C. Additionally, Contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT. (Applicable to all construction contracts in excess of (\$2000)

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. (Applicable to all contracts in excess of \$100,000 that involve employment of mechanics and laborers)

- A. Overtime requirements. No Contractor or subcontractor for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- C. Withholding for unpaid wages and liquidated damages. The Authorized User shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal Agreement with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

All such rights shall be addressed in accordance with Ownership/Title to Project Deliverables, Appendix B, General Specifications.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT. (Applicable to all contracts in excess of \$150,000)

Clean Air Act

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The Contractor agrees to report each violation to the contract manager or the Office of General Services and the Authorized User if a statewide centralized contract and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

Federal Water Pollution Control Act

- A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. The Contractor agrees to report each violation to the Office of General Services and Authorized User and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each

violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

9. DEBARMENT AND SUSPENSION

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the State or Authorized User. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or an Authorized User, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

If the OGS centralized contract or any purchase by an Authorized User has a value of \$100,000 or more, Contractor shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- A. Required Certification. If applicable, Contractors must sign and submit to the State the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

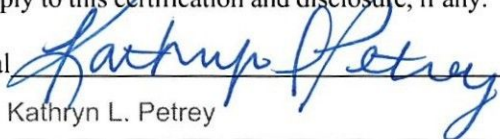
Certification for Contracts, Grants, Loans, and Cooperative Agreements. The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, CNH Industrial America, LLC,
certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official 

Name of Contractor's Authorized Official Kathryn L. Petrey

Title of Official Government Sales Manager

Date: 4/21/2025

11. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired —
- Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

12. ACCESS TO RECORDS

- A. The Contractor agrees to provide the Office of General Services or the Authorized User, the Federal funding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

-
- C. The Contractor agrees to provide the Federal funding agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- D. The State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal funding agency or the Comptroller General of the United States.

13. CHANGES

Amendments to this contract shall be in accordance with the terms of the OGS centralized contract.

14. FEDERAL SEAL(S), LOGOS, AND FLAGS

The Contractor shall not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

15. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that Federal funding agency financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA or other federal agency policies, procedures, and directives.

16. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract or any purchase by an Authorized User and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract or any purchase by an Authorized User.

17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract or any purchase by an Authorized User.

18. FEDERAL DEBT

The Contractor certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

19. CONFLICTS OF INTEREST

The Contractor shall notify the Office of General Services and Authorized User as soon as possible if this Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Office of General Services and Authorized User is able to assess the actual or potential conflict. The Contractor shall provide any additional information necessary for the Office of General Services and Authorized User to fully assess and address the actual or potential conflict of interest.

20. U.S. EXECUTIVE ORDER 13224

Contractor, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

ATTACHMENT 1 – Pricing

This spreadsheet has been included as a separate document

ATTACHMENT 1 – PRICING

HEAVY EQUIPMENT (STATEWIDE)

GROUP #: 40625

AWARD #: PGB-23345

CONTRACTOR: CNH INDUSTRIAL AMERICA LLC

NEW YORK STATE CONTRACT #: PC70887

MASTER CONTRACT HOLDER: SOURCEWELL

MASTER CONTRACT #: 011723-CNH

AS OF DATE: DECEMBER 1, 2025

WEBSITES TO VIEW MASTER CONTRACT PRICING:

[HTTPS://WWW.SOURCEWELL-MN.GOV/COOPERATIVE-PURCHASING/011723-CNH-1](https://www.sourcewell-mn.gov/cooperative-purchasing/011723-CNH-1)

[HTTPS://WWW.SOURCEWELL-MN.GOV/COOPERATIVE-PURCHASING/011723-CNH-2](https://www.sourcewell-mn.gov/cooperative-purchasing/011723-CNH-2)

ATTACHMENT 2**Insurance Requirements**

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

The Bidder shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance should be provided in accordance with Section B below;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award, the Contractor shall be required to provide proof of all insurance after policy renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation/this Contract, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation/Contract in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned, or delayed, acceptance and/or approval by OGS does not, and shall not be construed to relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation and any Contract resulting from this Solicitation/Contract.

The Contractor shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of any Contract resulting from this Solicitation/the Contract.

A. General Conditions Applicable to Insurance.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS requires Contractors to submit only certificates of insurance and additional insured endorsements. Contractors should refrain from submitting entire insurance policies. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review it and shall not be chargeable with knowledge of its contents. In addition, the submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation. OGS reserves the right to request other proof of insurance, including, but not limited to, policies, and Contractors agree to comply with all reasonable requests.

All policies of insurance required by this Solicitation and any Contract resulting from this Solicitation/Contract shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.
- 2. Policy Forms.** Except as otherwise specifically provided herein or agreed to in any Contract resulting from this Solicitation/Contract, all policies of insurance required by this Attachment shall be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, OGS reserves the right to accept claims-made policy forms, in its sole discretion, provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.
- 3. Certificates of Insurance/Notices.** Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates shall name The New York State Office of General Services, Bureau of Risk and Insurance Management (BRIM), 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD 25);
 - Disclose any deductible, self-insured retention, aggregate limit, or exclusion to the policy that materially changes the coverage required by this Solicitation and any Contract resulting from this Solicitation/Contract;
 - Be signed by an authorized representative of the referenced insurance carriers; and
 - Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: *Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.*
- 4. Primary Coverage.** All Commercial General Liability, Business Automobile Liability, and Umbrella/Excess Liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New

York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.

5. ***Breach for Lack of Proof of Coverage.*** The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation/the Contract shall be considered a breach of the terms of any Contract resulting from this Solicitation/the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation/the Contract, at law or in equity.
6. ***Self-Insured Retention/Deductibles.*** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned, or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
7. ***Subcontractors.*** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a Subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to OGS upon request. For Subcontractors that are self-insured, the Subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to the Commercial General Liability and Business Automobile Liability policies, in the same manner that the Subcontractor would have been required to pursuant to this section had the Subcontractor obtained such insurance policies.
8. ***Waiver of Subrogation.*** For all Commercial General Liability, Business Automobile Liability, Umbrella/Excess Liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. A Waiver of

Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. ***Additional Insured.*** The Contractor shall cause to be included in each of the Commercial General Liability, Business Automobile Liability, and Umbrella/Excess Liability policies required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 12 19 and CG 20 37 12 19 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. An Additional Insured Endorsement, or the equivalent, evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to the Commercial General Liability and Business Automobile Liability policies, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.
10. ***Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of Underlying Insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
11. ***Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation/Contract.
12. ***Policy Renewal/Expiration.*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation/Contract shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation/the Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation and any Contract resulting from this Solicitation/Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.
13. ***Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the OGS BRIM contact identified in the Contract Award Notice after policy renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days from request or renewal;

- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal;
- For other requested documentation evidencing coverage: 15 calendar days from request or renewal;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements.

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation/the Contract, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation/the Contract, or as required by law, whichever is greater:

Insurance Type – Option 1 Commercial General Liability Insurance and Garage Liability Insurance		Proof of Coverage is Due
Commercial General Liability	No less than \$1,000,000 each occurrence	Upon notification of tentative award and updated in accordance with the requirements of this Attachment.
General Aggregate	\$2,000,000	
Products Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Business Automobile Liability	No less than \$1,000,000 each accident	
Garage/Auto Dealers Liability		
Garage liability for garage operations	\$1,000,000	
Garagekeepers liability	\$100,000.00 per vehicle in custody; \$500,000.00 aggregate on a “direct primary” basis.	
Workers’ Compensation		At the time of bid submission and updated in accordance with the requirements of this Attachment.
Disability Benefits		

Insurance Type – Option 2 Garage Liability Insurance Only		Proof of Coverage is Due
Garage Liability Insurance		Upon notification of tentative award and updated in accordance with the requirements of this Attachment.
Garage liability for garage operations	Not less than \$1,000,000 each occurrence	
General Aggregate	\$2,000,000	
Products Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Garagekeepers liability	\$100,000.00 per vehicle in custody; \$500,000.00 aggregate on a “direct primary” basis.	
Business Automobile Liability	No less than \$1,000,000 each accident	
Workers’ Compensation		At the time of bid submission and updated in accordance with the requirements of this Attachment.
Disability Benefits		

Insurance Type – Option 3 Commercial General Liability Insurance Only		Proof of Coverage is Due
Commercial General Liability	No less than \$1,000,000 each occurrence	Upon notification of tentative award and updated in accordance with Contract
General Aggregate	\$2,000,000	
Products-Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Business Automobile Liability Insurance	No less than \$1,000,000 each accident	
Garage Liability Insurance		
Garagekeepers liability	\$100,000.00 per vehicle in custody; \$500,000.00 aggregate on a “direct primary” basis.	
Workers’ Compensation		At the time of bid submission and updated in accordance with the requirements of this Attachment.
Disability Benefits		

1. **Commercial General Liability Insurance.** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) [and explosion, collapse & underground coverage].

Policy shall include bodily injury, property damage and broad form contractual liability within the following:

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation/the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than three [1-3] years, commencing upon acceptance of the work, as required by the Contract.

2. **Business Automobile Liability Insurance.** Such insurance shall cover liability arising out of automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation/the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation/the Contract.

3. **Garage Liability/Auto Dealers Insurance.** If Commercial General Liability and Business Automobile Liability is covered under a Garage Liability or Auto Dealers policy such liability shall be written on the current edition of ISO occurrence form CA 00 05, or a substitute form providing equivalent coverage, including coverage for all garage operations of the Contractor, including premises and operations; and products and completed operations coverage with minimum limits.

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by any Contract resulting from this Solicitation;

4. **Garagekeepers Liability.** The aggregate must be on a “*direct primary*” basis.

5. Workers’ Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers’ compensation and disability insurance is provided to OGS.** Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation/Contract shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/Contract and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation/Contract, at law or in equity.

Proof of Compliance with Workers’ Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits*

Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.businessexpress.ny.gov/app/answers/cms/a_id/2263/kw/CE200)

- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.businessexpress.ny.gov/app/answers/cms/a_id/2263/kw/CE200)
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>.

ATTACHMENT 3 – Report of Contract Usage

This spreadsheet has been included as a separate document

Group 40625 Award PGB-23345 - Heavy Equipment ATTACHMENT 3 – REPORT OF CONTRACT USAGE

Enter the required information in the cells below.

Required Information	Response
Contractor Business Name:	
NYS Contract Number:	
Reporting Period (Dates):	

Contractor shall submit this 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 15 days after the close of each calendar quarter. Calendar quarters are Q1: January 1 to March 31, Q2: April 1 to June 30, Q3: July 1 to September 30, and Q4: October 1 to December 31. Include sales for each quarter based on the date the invoice was issued, not the date of order. 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. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

The report is to be submitted electronically via email in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification. Format the subject line of the email as follows: Sales Report_Sales Year_Sales Quarter_Contractor Business Name (e.g., Sales Report 2025 Q4 XYZ Business Name).

The chart below provides definitions and instructions, and example data, for the Columns listed in the Contract Usage tab.

Column	Definition / Instructions	Example
Vendor Business Name	Enter the business name of the entity, (i.e., the Contractor or an Authorized Reseller/Distributor/Dealer/etc. that has been approved by OGS to provide Product under the Contract), that sold the Contract item to the Authorized User.	ABC Company
Contractor or Reseller	Select "Contractor" or "Reseller" from the drop-down menu, as applicable, to indicate if the vendor identified in the Vendor Business Name Column is the Contractor or a Reseller. The term "Reseller" includes Distributor/Dealer/Subcontractor/etc.	Contractor
SB	Select "SB" or "N/A" from the drop-down menu, as applicable, to indicate if the vendor identified in the Vendor Business Name Column is a NYS Small Business. "Small Business" means a business which: (a) is resident in New York State, (b) is independently owned and operated, (c) is not dominant in its field and, (d) employs one hundred or fewer persons.	N/A
M/WBE	Select "MBE" "WBE" "MWBE" or "N/A" from the drop-down menu, as applicable, to indicate if the vendor identified in the Vendor Business Name Column is listed as a certified Minority- or Women-Owned Business Enterprise in the NYS Empire State Development Directory of Certified Minority- and Women-Owned Businesses, located at https://ny.newnycontracts.com (click on "Search the Directory" under "NYS Directory of Certified Firms").	MWBE
SDVOB	Select "SDVOB" or "N/A" from the drop-down menu, as applicable, to indicate if the vendor identified in the Vendor Business Name Column is listed in the Directory of New York State Service-Disabled Veteran-Owned Businesses located at https://online.ogs.ny.gov/sdvob/search .	SDVOB
Order Date	Date on ordering entity's purchase order or other document used to place the order	10/01/30
Purchase Order Number	Number on ordering entity's purchase order or other document used to place the order	0000035842
Invoice Date	Date on vendor's invoice to ordering entity	10/30/30
Invoice Number	Number on vendor's invoice to ordering entity	25-12345
Mini-Bid Number	Number that identifies the mini-bid issued and awarded by the Authorized User	PB-12345
State / Non-State	Select "State" or "Non-State" from the drop-down menu, as applicable, to indicate if the ordering entity is a State Agency (see "State Agency List" worksheet), or a Non-State entity (e.g., a county, town, school district)	State
Authorized User Entity Name	Name of the entity that placed the order. If "State" was selected in the State / Non-State Column, select the entity name from the drop-down. If "Non-State" was selected, manually enter the name of the entity.	Department of Transportation
Region / Facility / Location Name	Region / Facility / Location or other secondary name that identifies the ordering entity	Region 5
Authorized User Location (Ship to City)	City where the item was delivered. Enter "Multiple" if one order was placed for delivery to multiple locations.	Buffalo
Authorized User Location (Ship to County)	County where the item was delivered. Enter "Multiple" if one order was placed for delivery to multiple locations.	Erie
Contract Lot	The number, letter, or category of the Contract Lot for the item purchased, and description if applicable.	A - Tools
Item Number	Contractor's unique alphanumeric identifier assigned to the item. Examples of item numbers include Product Order Codes, ID Numbers, Model Numbers and Catalog Numbers.	A123
Item Name / Description	Description of the item	Claw Hammer
Manufacturer Name	Manufacturer business name of the item purchased	Acme Co.
Manufacturer's Item Number	The manufacturer's unique alphanumeric identifier assigned to the item. Examples of manufacturer's item numbers include Product Order Codes, ID Numbers, Model Numbers and Catalog Numbers.	4567B
GreenNY	Select "Yes" or "No" from the drop-down menu, as applicable, to indicate if the Item meets the GreenNY Specifications (https://ogs.ny.gov/greenny)	No
Unit of Measure	Packing size of product (e.g. each, per foot, etc.)	Each
Unit List Price	Published Contractor unit price for the item purchased	\$100.00
NYS Discount %	The percent difference between Unit List Price and NYS Contract Unit Price (automatically calculated)	10.00%
NYS Contract Unit Price	Unit Price that the Authorized User was invoiced for the item	\$90.00
Delivered Quantity	Quantity of the item purchased by the Authorized User	2
Total NYS Contract Price	The NYS Contract Unit Price multiplied by the Quantity (automatically calculated)	\$180.00

State Agency List

The following entities are considered NY State Agencies. When completing the Report of Contract Usage, indicate "State" in Column K for the entity type for Authorized Users with these entity names. *Note: Other entities (counties, towns, villages, etc.) may have divisions with similar names (e.g., Wayne County Department of Transportation), but are not considered "State" entities). To streamline completion of the Report of Contract Usage, it is recommended that Contractor/Resellers use the exact names in this list when processing orders for State Agencies. This list is provided as a courtesy and may not be up to date.*

State

Adirondack Park Agency
 Authorities Budget Office
 Battery Park City Authority
 Board of Elections
 Bridge Authority
 Canal Corporation
 Central Pine Barrens Joint Planning and Policy Commission
 Commission of Correction
 Commission on Ethics and Lobbying in Government
 Commission on Judicial Conduct
 Council on Children and Families
 Council on Developmental Disabilities
 Council on the Arts
 CUNY - City University of New York
 CUNY - Baccalaureate Degree
 CUNY - Baruch College
 CUNY - Borough of Manhattan Community College
 CUNY - Bronx Community College
 CUNY - Brooklyn College
 CUNY - City College
 CUNY - City University Accounting Office
 CUNY - City University Construction Fund
 CUNY - College of Staten Island
 CUNY - Graduate Center
 CUNY - Graduate School
 CUNY - Graduate School of Journalism
 CUNY - Guttman Community College
 CUNY - Hostos Community College
 CUNY - Hunter College
 CUNY - John Jay College
 CUNY - John Jay College of Criminal Justice
 CUNY - Kingsborough Community College
 CUNY - LaGuardia Community College
 CUNY - Lehman College
 CUNY - Macaulay Honors College
 CUNY - Medgar Evers College
 CUNY - New York City College of Technology
 CUNY - New York City Technical College
 CUNY - Online Baccalaureate Degree
 CUNY - Queens College
 CUNY - Queensborough Community College
 CUNY - School of Law
 CUNY - School of Professional Studies
 CUNY - School of Public Health

State Agency List

CUNY - York College
Department of Agriculture and Markets
Department of Civil Service
DOCCS - Department of Corrections and Community Supervision
DOCCS - Adirondack Correctional Facility
DOCCS - Albion Correctional Facility
DOCCS - Altona Correctional Facility
DOCCS - Arthur Kill Correctional Facility
DOCCS - Attica Correctional Facility
DOCCS - Auburn Correctional Facility
DOCCS - Bare Hill Correctional Facility
DOCCS - Bayview Correctional Facility
DOCCS - Beacon Correctional Facility
DOCCS - Bedford Hills Correctional Facility
DOCCS - Butler Correctional Facility
DOCCS - Camp Georgetown Correctional Facility
DOCCS - Camp Pharsalia Correctional Facility
DOCCS - Cape Vincent Correctional Facility
DOCCS - Cayuga Correctional Facility
DOCCS - Central Office Medical Bill Paying Unit
DOCCS - Central Pharmacy
DOCCS - Chateaugay Alcohol Substance Abuse Correctional Treatment Center
DOCCS - Clinton Correctional Facility
DOCCS - Collins Correctional Facility
DOCCS - Corcraft - Division of Correctional Industries (within DOCCS)
DOCCS - Corcraft - Albion
DOCCS - Corcraft - Attica
DOCCS - Corcraft - Auburn
DOCCS - Corcraft - Central Office
DOCCS - Corcraft - Clinton
DOCCS - Corcraft - Coxsackie
DOCCS - Corcraft - Elmira
DOCCS - Corcraft - Fishkill
DOCCS - Corcraft - Great Meadow
DOCCS - Coxsackie Correctional Facility
DOCCS - Department of Correctional Services - Agencywide
DOCCS - Downstate Correctional Facility
DOCCS - Eastern Correctional Facility
DOCCS - Edgecombe Correctional Facility
DOCCS - Elmira Correctional Facility
DOCCS - Fishkill Correctional Facility
DOCCS - Five Points Correctional Facility
DOCCS - Franklin Correctional Facility
DOCCS - Fulton Correctional Facility
DOCCS - Gouverneur Correctional Facility
DOCCS - Gowanda Correctional Facility
DOCCS - Great Meadow Correctional Facility
DOCCS - Green Haven Correctional Facility
DOCCS - Greene Correctional Facility
DOCCS - Groveland Correctional Facility
DOCCS - Hale Creek Alcohol Substance Abuse Treatment Correctional Annex
DOCCS - Hudson Correctional Facility
DOCCS - Lakeview Shock Incarceration Correctional Facility

State Agency List

DOCCS - Lincoln Correctional Facility
DOCCS - Livingston Correctional Facility
DOCCS - Lyon Mountain Correctional Facility
DOCCS - Marcy Correctional Facility
DOCCS - Mid-Orange Correctional Facility
DOCCS - Mid-State Correctional Facility
DOCCS - Mohawk Correctional Facility
DOCCS - Monterey Shock Incarceration Correctional Facility
DOCCS - Moriah Shock Incarceration Correctional Facility
DOCCS - Mt. McGregor Correctional Facility
DOCCS - Ogdensburg Correctional Facility
DOCCS - Oneida Correctional Facility
DOCCS - Oneida Food Production Center
DOCCS - Operations - NYC Central Administration
DOCCS - Orleans Correctional Facility
DOCCS - Otisville Correctional Facility
DOCCS - Queensboro Correctional Facility
DOCCS - Riverview Correctional Facility
DOCCS - Shawangunk Correctional Facility
DOCCS - Sing Sing Correctional Facility
DOCCS - Southport Correctional Facility
DOCCS - Sullivan Correctional Facility
DOCCS - Summit Shock Incarceration Correctional Facility
DOCCS - Taconic Correctional Facility
DOCCS - Ulster Correctional Facility
DOCCS - Upstate Correctional Facility
DOCCS - Walkkill Correctional Facility
DOCCS - Washington Correctional Facility
DOCCS - Watertown Correctional Facility
DOCCS - Wende Correctional Facility
DOCCS - Willard Drug Treatment Center
DOCCS - Woodbourne Correctional Facility
DOCCS - Wyoming Correctional Facility
Department of Education
Department of Environmental Conservation
Department of Financial Services
DOH - Department of Health
DOH - Helen Hayes Hospital
DOH - Veterans' Home at Montrose
DOH - Veterans' Home at Oxford
DOH - Veterans' Home at Saint Albans
DOH - Western New York Veterans' Home at Batavia
Department of Labor
Department of Motor Vehicles
Department of Public Service
Department of State
Department of Taxation and Finance
Department of Transportation
Department of Veterans' Services
Division of Consumer Protection
Division of Criminal Justice Services
Division of Homeland Security and Emergency Services
Division of Human Rights

State Agency List

Division of Military and Naval Affairs
Division of State Police
Division of Tax Appeals and Tax Appeals Tribunal
Division of the Budget
Dormitory Authority
Empire State Development
Energy Research and Development Authority
Environmental Facilities Corporation
Financial Control Board
Gaming Commission
Geographic Information Systems
Governor's Traffic Safety Committee
Higher Education Services Corporation
Homes and Community Renewal
Housing Finance Agency/ State of NY Mortgage Agency
Hudson River Park Trust
Hudson River Valley Greenway
Jacob K. Javits Convention Center
Justice Center for the Protection of People with Special Needs
Liquidation Bureau
Liquor Authority, Division of Alcoholic Beverage Control
Long Island Power Authority
Metropolitan Transportation Authority
MTA Inspector General
New York Assembly
New York State Insurance Fund
New York State Law Revision Commission
New York State Senate
Niagara Frontier Transportation Authority
NYC311
Office for New Americans
OPWDD - Office for People With Developmental Disabilities
OPWDD - Bernard M. Fineson Developmental Disabilities Service Office
OPWDD - Brooklyn Developmental Disabilities Service Office
OPWDD - Broome Developmental Disabilities Service Office
OPWDD - Capital District Developmental Disabilities Service Office
OPWDD - Central New York Developmental Disabilities Service Office
OPWDD - Finger Lakes Developmental Disabilities Service Office
OPWDD - Hudson Valley Developmental Disabilities Service Office
OPWDD - Institute for Basic Research
OPWDD - Long Island Developmental Disabilities Service Office
OPWDD - Metro New York Developmental Disabilities Service Office
OPWDD - Office For People with Developmental Disabilities
OPWDD - Staten Island Developmental Disabilities Service Office
OPWDD - Sunmount Developmental Disabilities Service Office
OPWDD - Taconic Developmental Disabilities Service Office
OPWDD - Western New York Developmental Disabilities Service Office
Office for the Aging
Office for the Prevention of Domestic Violence
Office of Addiction Services and Supports
Office of Attorney General
Office of Cannabis Management
Office of Children and Family Services

State Agency List

Office of Counter Terrorism
Office of Emergency Management
Office of Employee Relations
Office of Fire Prevention and Control
Office of General Services
Office of Information Technology Services
Office of Interoperable and Emergency Communications
OMH - Office of Mental Health
OMH - Binghamton Psychiatric Center
OMH - Bronx Psychiatric Center
OMH - Brooklyn Children's Center
OMH - Buffalo Psychiatric Center
OMH - Capital District Psychiatric Center
OMH - Central New York Psychiatric Center
OMH - Creedmoor Psychiatric Center
OMH - Elmira Psychiatric Center
OMH - Hudson River Psychiatric Center
OMH - Hutchings Psychiatric Center
OMH - Kingsboro Psychiatric Center
OMH - Kirby Forensic Psychiatric Center
OMH - Manhattan Psychiatric Center
OMH - Mid-Hudson Forensic Psychiatric Center
OMH - Mohawk Valley Psychiatric Center
OMH - Nathan S. Kline Institute
OMH - New York Psychiatric Institute
OMH - Office of Mental Health
OMH - Pilgrim Psychiatric Center
OMH - Rochester Psychiatric Center
OMH - Rockland Psychiatric Center
OMH - South Beach Psychiatric Center
OMH - St. Lawrence Psychiatric Center
OMH - Western New York Psychiatric Center
Office of Parks, Recreation and Historic Preservation
Office of State Comptroller
Office of Temporary and Disability Assistance
Office of the Governor
Office of the Inspector General
Office of the Medicaid Inspector General
Office of Victim Services
Olympic Regional Development Authority
Port Authority of New York and New Jersey
Power Authority
Roosevelt Island Operating Corporation of the State of New York
South Shore Estuary Council
State Employees Federated Appeal
State University Construction Fund
SUNY - State University of New York
SUNY - Adirondack Community College
SUNY - Albany
SUNY - Alfred State
SUNY - Alfred State - College of Ceramics
SUNY - Alfred State - College of Technology
SUNY - Alfred University - College of Ceramics

State Agency List

SUNY - Binghamton
SUNY - Brockport
SUNY - Brooklyn - Educational Opportunity Center
SUNY - Brooklyn - Health Science Center
SUNY - Broome Community College
SUNY - Buffalo State College
SUNY - Buffalo, University of
SUNY - Buffalo, University of - Research Institute on Addictions
SUNY - Canton - College of Technology
SUNY - Capital District Opportunity Center
SUNY - Cayuga Community College
SUNY - Clinton Community College
SUNY - Cobleskill - College of Agriculture and Technology
SUNY - College of Environmental Science and Forestry - ESF
SUNY - College of Optometry
SUNY - Columbia-Greene Community College
SUNY - Cornell University
SUNY - Cornell University - College of Agriculture & Life Sciences
SUNY - Cornell University - College of Human Ecology
SUNY - Cornell University - College of Veterinary Medicine
SUNY - Cornell University - New York State Statutory College
SUNY - Cornell University - NYS School of Industrial & Labor Relations
SUNY - Corning Community College
SUNY - Corning Community College
SUNY - Cortland
SUNY - Delhi - College of Technology
SUNY - Downstate Medical Center
SUNY - Dutchess Community College
SUNY - Empire State College
SUNY - Erie Community College
SUNY - Farmingdale - College of Technology
SUNY - Farmingdale State College
SUNY - Fashion Institute of Technology
SUNY - Fiduciary Student Loan - Federal and State
SUNY - Finger Lakes Community College
SUNY - Fredonia
SUNY - Fulton-Montgomery Community College
SUNY - General State Charges
SUNY - Genesee Community College
SUNY - Geneseo
SUNY - Herkimer County Community College
SUNY - Hudson Valley Community College
SUNY - Jamestown Community College
SUNY - Jefferson Community College
SUNY - Kingston - Small Business Development Corporation
SUNY - Manhattan Educational Opportunity Center - EOC
SUNY - Maritime College
SUNY - Mohawk Valley Community College
SUNY - Monroe Community College
SUNY - Morrisville
SUNY - Nassau Community College
SUNY - New Paltz
SUNY - Niagara County Community College

State Agency List

SUNY - North Country Community College
SUNY - Old Westbury
SUNY - Oneonta
SUNY - Onondaga Community College
SUNY - Orange County Community College
SUNY - Oswego
SUNY - Plattsburgh
SUNY - Polytechnical Institute - SUNY CNSE
SUNY - Polytechnical Institute - SUNY IT
SUNY - Potsdam
SUNY - Purchase
SUNY - Rockland Community College
SUNY - Schenectady County Community College
SUNY - State University Construction Fund
SUNY - State University Plaza - System Administration
SUNY - Stony Brook
SUNY - Stony Brook - Long Island State Veterans Home
SUNY - Stony Brook - University Hospital
SUNY - Suffolk County Community College
SUNY - Sullivan County Community College
SUNY - System Administration
SUNY - Tompkins Cortland Community College
SUNY - Ulster County Community College
SUNY - Upstate Medical University
SUNY - Upstate Medical University - Health Sciences Center
SUNY - Upstate Medical University - Hospital Purchasing
SUNY - Utica/Rome - Institute of Technology - Union
SUNY - Westchester Community College
Teachers' Retirement System
Thruway Authority
Workers Compensation Board
Unified Court System

ATTACHMENT 4 – Contractor and Reseller/Distributor Information

This spreadsheet has been included as a separate document

Group 40625 Award PGB-23345 - Heavy Equipment
ATTACHMENT 4 – CONTRACTOR and RESELLER/DISTRIBUTOR
INFORMATION
(for ordering and contract administration purposes)

NOTE: Contractors MUST submit an updated form to OGS EVERY TIME a reseller/distributor is added or removed. If a contract has Minority- and/or Women-owned Business Enterprise (MWBE) participation goals, in addition to this form, Contractors MUST submit to OGS a completed MWBE 100 form EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE. The MWBE 100 form is available under the "Commodity & Service Contracts" section at: <https://ogs.ny.gov/mwbe/forms>

Contractor/Company Information	
Company Business Name:	CNH Industrial America LLC
D/B/A – Doing Business As (if applicable):	
Address:	700 State Street, Racine, WI 53402
Company Website:	construction.newholland.com/casece.com
Federal Tax ID #:	76-0433811
NYS Vendor ID #:	1100123548
Contact for Contract Administration issues:	
Contract Administrator Name:	Nick Libbi-Case / Amy Swett - New Holland CE
Title:	Government Sales Manager
Address (if different from above):	
Email:	nicholas.libbi@cnh.com, amy.swett@newholland.com
Phone:	445-866-1513 - 815-680-9632
Toll Free Phone:	445-866-1513 - 815-680-9632
Contact for Contract Sales/Billing (if different from above)	
Contact Name:	Nick Libbi-Case / Amy Swett - New Holland CE
Title:	Government Sales Manager
Address:	
Email:	nicholas.libbi@cnh.com, amy.swett@newholland.com
Phone:	445-866-1513 - 815-680-9632
Toll Free Phone:	445-866-1513 - 815-680-9632
Business hours (Specify M-F, Sat, Sun):	M-F 8-5pm
Contact for Emergencies	
Contact Name:	Nick Libbi-Case / Amy Swett - New Holland CE
Title:	Government Sales Manager
Address:	
Email:	nicholas.libbi@cnh.com, amy.swett@newholland.com
Phone:	445-866-1513 - 815-680-9632
Cell Phone:	445-866-1513 - 815-680-9632
Invoicing (Entity information that will appear on invoices, for orders placed directly with the Contractor, if different from Contractor/Company information above)	
Invoicing Entity Company Name:	CNH Industrial America LLC - Dealers
Federal Tax ID #:	760433811 - dealers will be invoicing
NYS Vendor ID #:	1100123548
Is payment made to the above Entity/Federal ID#? <i>Note: If yes, the invoicing entity NYS Vendor ID MUST be referenced on Purchase Orders</i>	No

**Group 40625 Award PGB-23345 - Heavy Equipment
ATTACHMENT 4 – CONTRACTOR and RESELLER/DISTRIBUTOR INFORMATION
(for ordering and contract administration purposes)**

NOTE: Contractors MUST submit an updated form to OGS EVERY TIME a reseller/distributor is added or removed. If a contract has Minority- and/or Women-owned Business Enterprise (MWBE) participation goals, in addition to this form, Contractors MUST submit to OGS a completed MWBE 100 form EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE. The MWBE 100 form is available under the "Commodity & Service Contracts" section at: <https://ogs.ny.gov/mwbe/forms>

Contractor/Company Information	
Company Business Name:	CNH Industrial America LLC
D/B/A – Doing Business As (if applicable):	

Contractor locations, subsidiaries, and/or Resellers/Distributors for the Contract are listed below. In order for an Authorized User to obtain MWBE or SDVOB credit, the applicable MWBE or SDVOB Reseller/Distributor MUST be allowed to "Take Orders" AND "Receive Payment" and be entered into SFS with their own NYS Vendor ID #. An MWBE Reseller/Distributor that is noted as a "Broker" in the "Restrictions Applicable to this Contractor Location" field has been identified as a broker in the NYS Directory of Certified Firms located at <https://ny.newyorkcontracts.com>, and the Contractor and the Authorized User will receive only a 25% MWBE credit for its utilization.

Company Business Name	WBE	MBE	SDVOB	SB	FEIN	NYS Vendor ID	Is this Location a Subcontractor?	Take Orders	Deliver Product	Receive Payment	Over-the-Counter Hours	Street Address	City	Zip Code	County	Contact Name	Telephone Number	Fax Number	Email Address	Restrictions Applicable to this Contractor Location
KEY TRACTOR COMPANY, LLC				X	810867188	1100305653	yes	X	X	X	M-F 8-5:00	5 LATOUR AVE, STE 200	PLATTSBURGH	12901	Clinton	Nick Avery	518-643-2312		navery@taylorsequipmty.com	
CAPITAL TRACTOR, INC.				X	141742773	1000007120	yes	X	X	X	M-F 7:30 - 5:00	1135 State Route 29	Greenwich	12834	Washington	Kevin Armitage	5186929611		karmitage@capitaltractorinc.com	
CHAMBERS TRACTOR SALES, INC.				X	141709028	1000007069	yes	X	X	X	M-F 8-5:00	167 WARD STREET (RTE 17K)	MONTGOMERY	12549	Orange	John Henry	845-457-3094		chamberstrator@gmail.com	
CHAMPLAIN VALLEY EQUIPMENT, INC.				X	03-0224700	1100081406	yes	X	X	X	M-F 8:00-5:00	1437 ROUTE 318	WATERLOO	13165	Seneca	Phill Doty	315-539-7000		pdoty@champlainvalleyequipment.com	
CHAMPLAIN VALLEY EQUIPMENT, INC.				X	03-0224700	1100081406	yes	X	X	X	M-F 8:00-5:00	5072 EAST MAIN STREET ROAD	BATAVIA	14020	Genesee	Tim Call	585-343-1822		tcall@champlainvalleyequipment.com	
CHAMPLAIN VALLEY EQUIPMENT, INC.				X	03-0224700	1100081406	yes	X	X	X	M-F 8:00-5:00	6207 US HWY 11	CANTON	13617	St. Lawrence	Terry Rose	315-379-9119		trose@champlainvalleyequipment.com	
CHAMPLAIN VALLEY EQUIPMENT, INC.				X	03-0224700	1100081406	yes	X	X	X	M-F 8:00-5:00	638 ROUTE 13	CORTLAND	13045	Courtland	Chris Carpenter	607-753-9656		ccarpenter@champlainvalleyequipment.com	
CHAMPLAIN VALLEY EQUIPMENT, INC.				X	03-0224700	1100081406	yes	X	X	X	M-F 8:00-5:00	5 COHOCTON ST	ATLANTA	14808	Stuben	Phill Doty	585-534-5935		pdoty@champlainvalleyequipment.com	
CHAMPLAIN VALLEY EQUIPMENT, INC.				X	03-0224700	1100081406	yes	X	X	X	M-F 8:00-5:00	22537 MURROCK CL	WATERTOWN	13601	Jefferson	Jim Der	315-788-1115		ider@champlainvalleyequipment.com	
Clinton Tractor & Implement Co Inc				X	150614114	1000014727	yes	X	X	X	M-F 7-5:00	31 MEADOW STREET (RT 12B)	CLINTON	13323	Oneida	Joe Martini	315-853-6151		ioe@clintontractor.net	
CNY POWER SPORTS, LLC				X	100008304	1000011291	yes	X	X	X	M-F 8-5:00	3865 US ROUTE 11	CORTLAND	13045	Cortland	Eric Law	607-218-0200		eric@cnyfarmssupply.com	
FOSTERDALE EQUIPMENT, CORP.				X	141701839	1000007052	yes	X	X	X	M-F 8-5:00	3137 ROUTE 17B	COCHECTON	12726	Sullivan	Lloyd Brucher	845-932-8611		feqacct@gmail.com	Only sells SSL
H. & M. EQUIPMENT CO., INC.				X	141454053	1000013782	yes	X	X	X	M-F 8-5:00	4551 STATE HWY 30	AMSTERDAM	12010	Fulton	Bill Murphy	518-843-1660		bmurphy@Hmequipment.com	
JACK MILLERS TRACTOR & TRUCK, INC.				X	141648389	1100038510	yes	X	X	X	M-F 8-5:00	4932 State Route 30	Schoharie	12157	Schoharie	Josh Miller	518-295-7733		millers@mictel.net	
JOHN WIGGERS & SON, INC.				X	161110922	1000007767	yes	X	X	X	M-F 8-5:00	7700 ROUTE 474	CLYMER	14724	Chautauqua	Jacob Wiggers	716-355-2511		johnwiggersjr@gmail.com	
LARRY ROMANCE & SON, INC				X	160990457	1000028523	yes	X	X	X	M-F 8-5:00	2769 RT 20 - BOX 38	SHERIDAN	14135	Chautauqua	Mike Wilson	716-679-3366		tractorsales@netsync.net	
LARRY ROMANCE & SON, INC				X	160990457	1000028523	yes	X	X	X	M-F 8-5:00	543 W MAIN ST	ARCADE	14009	Wyoming	Bob White	585-492-3810		Bobw@larryromanceandson.com	
LARRY ROMANCE & SON, INC				X	160990457	1000028523	yes	X	X	X	M-F 8-5:00	5304 STATE ROUTE 417	WOODHULL	14898	Steuben	Jason Gross	607-458-5200		jasong@larryromanceandson.com	
LARRY ROMANCE & SON, INC				X	161057977	1000028608	yes	X	X	X	M-F 8:00 - 5:00	7033 MUTTON HILL RD	ALBURN	13021	Cayuga	Greg Komarisky	315-253-6269		GRE@MAINANDPINK[sells only SSL & CTW only	
Malvese Equipment Co Inc.				X	112587856	1000005724	yes	X	X	X	M-F 7:00 - 4:00	1 HENRIETTA STREET	HICKSVILLE	11801	Nassau	Otto Cooley	516-881-7600		OCOOLEY@MALVESEEQUIPMENT.COM	
Niagara Frontier Equipment Sales Inc.				X	112587856	1000005724	yes	X	X	X	M-F 7:00 - 4:00	232 E OLD COUNTRY ROAD (RTE 59)	RIVERHEAD	11901	Suffolk	Otto Cooley	631-369-1147		OCOOLEY@MALVESEEQUIPMENT.COM	
Pine Plains Tractor				X	161302268	1000008016	yes	X	X	X	M-F 7:30 - 5	4060 LAKE AVE	LOCKPORT	14094	Niagara	Karl Hetrick	716-434-2000		karl.hetrick@fresales.com	
RIVER VALLEY NEW HOLLAND, INC.				X	141512952	1100010247	yes	X	X	X	M-F 8-4:30	2786 CHURCH ST (ROUTE 199)	PINE PLAINS	12567	Dutchess	Brian Pinkey	518-398-7152		brian.pineplainstractor@gmail.com	
RIVER VALLEY NEW HOLLAND, INC.				X	161102728	1000028663	yes	X	X	X	M-F 8-5:30	33785 STATE HIGHWAY 10	HAMDEN	13782	Delaware	Adam Pinkey	607-865-8180		adam.rivervalley@yahoo.com	
RIVER VALLEY NEW HOLLAND, INC.				X	161102728	1000028663	yes	X	X	X	M-F 8-5:30	3910 STATE HIGHWAY 7	OTEGO	13825	Otsego	Adam Pinkey	607-432-8180		adam.rivervalley@yahoo.com	
TRACEY ROAD EQUIPMENT, INC				X	161058204	1000007710	yes	X	X	X	M-F 8-5:00	300 MIDDLE RD	HENRIETTA	14467	Monroe	Jesse Weller	315-437-1471		iweller@traceyroad.com	
TRACEY ROAD EQUIPMENT, INC				X	161058204	1000007710	yes	X	X	X	M-F 8-5:00	6803 Manlius Center Road	EAST SYRACUSE	13057	Onondaga	Jesse Weller	315-437-1471		iweller@traceyroad.com	
TRACEY ROAD EQUIPMENT, INC				X	161058204	1000007710	yes	X	X	X	M-F 8-5:00	19598 CADY ROAD	ADAMS CENTER	13606	Jefferson	Jesse Weller	315-437-1471		iweller@traceyroad.com	
WESTCHESTER TRACTOR, INC.			X	X	132858396	1000006235	yes	X	X	X	M-F 8:00 - 5:00	60 INTERNATIONAL BLVD	BREWSTER	10509	Putnam	Andrew Prusinowski	845-278-7766		andrew@wtractor.com	
HOFFMAN INTERNATIONAL, INC.				X	22-2176843	1000008736	yes	X	X	X	M-F 8:00 - 5:00	22 PECONIC AVENUE	Medford	11763	Suffolk	Dennis Brophy	613-207-2900		mike.anderson@hoffmanequip.com	
HOFFMAN INTERNATIONAL, INC.				X	22-2176843	1000008736	yes	X	X	X	M-F 8:00 - 5:00	1144 ZEREGA AVENUE	Bronx	10462	Bronx	Joe Barbara	718-822-1180		mike.anderson@hoffmanequip.com	
HOFFMAN INTERNATIONAL, INC.				X	22-2176843	1000008736	yes	X	X	X	M-F 8:00 - 5:00	1440 ROUTE 9W	Marlboro	12542	Ulster	Dave Koch	845-236-3000		mike.anderson@hoffmanequip.com	
MONROE TRACTOR & IMPLEMENT CO., INC				X	16-0850083	100007551	yes	X	X	X	M-F 7-5:00	1001 LEHIGH STATION ROAD	Henrietta	14467	Monroe	John Dancy	585-334-3867		jdancy@monroetractor.com	
MONROE TRACTOR & IMPLEMENT CO., INC				X	16-0850083	100007551	yes	X	X	X	M-F 7-5:00	5035 GENESEE STREET	Buffalo	14225	Erie	Bruce Klementowski	716-681-7100		bklementowski@monroetractor.com	
MONROE TRACTOR & IMPLEMENT CO., INC				X	16-0850083	100007551	yes	X	X	X	M-F 7-5:00	7300 EASTMAN ROAD	North Syracuse	13212	Onondaga	Mark Wisniewski	315-452-0000		mwisniewski@monroetractor.com	
MONROE TRACTOR & IMPLEMENT CO., INC				X	16-0850083	100007551	yes	X	X	X	M-F 7-5:00	8194 STATE ROUTE 415	Campbell	14845	Steuben	Kris Bower	607-739-8741		kbower@monroetractor.com	
MONROE TRACTOR & IMPLEMENT CO., INC				X	16-0850083	100007551	yes	X	X	X	M-F 7-5:00	6 EQUIPMENT DRIVE	Binghamton	13904	Broome	Jim Mitchell	607-754-6570		jmitchell@monroetractor.com	
MONROE TRACTOR & IMPLEMENT CO., INC				X	16-0850083	100007551	yes	X	X	X	M-F 7-5:00	423 OLD LOUDON ROAD	Latham	12110	Albany	Josh Clark	518-785-8013		jclark@monroetractor.com	
Beauregard Equipment Inc.				X	01-0461781	1100128658	yes	X	X	X	M-F 8-5:00	28 Jasper Mine Road	Colchester	05446	Delaware	Jesse Scott	802-893-1555		jscott@beauregardequip.com	



Solicitation Number: RFP # 011723

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and CNH Industrial America LLC, 700 State Street, Racine, WI 53404 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Heavy Construction Equipment with Related Attachments and Technology from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires April 14, 2027, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities.

Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcwell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcwell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcwell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcwell Price and Product Change Request Form to the assigned Sourcwell Supplier Development Administrator. This approved form is available from the assigned Sourcwell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcwell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and

- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity

payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;

- Timely response to all Sourcwell and Participating Entity inquiries; and
- Business reviews to Sourcwell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcwell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcwell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcwell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcwell, the Supplier will pay an administrative fee to Sourcwell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcwell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should

note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers, resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in

advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. Use; Quality Control.

- a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for products liability-completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:
\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:
\$2,000,000 per occurrence
\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional

insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional

requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess

of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery;

and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

CNH Industrial America LLC

DocuSigned by:
Jeremy Schwartz
By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer

Date: 4/4/2023 | 2:29 PM CDT

DocuSigned by:
Amy Swett
By: 7FCB6D1BF7F04C0...
Amy Swett
Title: Government & Fleet Sales Account
Manager–New Holland CE brand

Date: 4/4/2023 | 2:31 PM CDT

Approved:
DocuSigned by:
Chad Coauette
By: 7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO

Date: 4/4/2023 | 2:39 PM CDT

RFP 011723 - Heavy Construction Equipment with Related Attachments and Technology

Vendor Details

Company Name: CNH Industrial America LLC
Address: 700 State Street
Racine, WI 53404
Contact: Clint Jenkins
Email: Clinton.jenkins@caseih.com
Phone: 937-218-1701
Fax: 877-764-1369
HST#: 760433811

Submission Details

Created On: Wednesday November 16, 2022 13:07:37
Submitted On: Tuesday January 17, 2023 12:55:10
Submitted By: Amy Swett
Email: amy.swett@newholland.com
Transaction #: a0423bfd-2f16-47ee-b66d-446ac499cd78
Submitter's IP Address: 159.61.192.15

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	CNH Industrial America LLC
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	CNH America LLC
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	CNH Industrial America LLC does not have any assumed names or DBA.
4	Provide your CAGE code or Unique Entity Identifier (SAM):	10988
5	Proposer Physical Address:	700 State Street Racine, Wisconsin 53402
6	Proposer website address (or addresses):	https://www.cnhindustrial.com https://www.casece.com https://construction.newholland.com www.newholland.com
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Amy Swett Government & Fleet Sales Account Manager – New Holland CE brand 500 Diller Avenue New Holland, PA 17557 Amy.swett@newholland.com 717-715-2489
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Amy Swett Government & Fleet Sales Account Manager – New Holland CE brand 500 Diller Avenue New Holland, PA 17557 Amy.swett@newholland.com 717-715-2489
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Tony Simpson Government Affairs 6021 State Street Racine, WI 53142 262-631-0881 tony.simpson@cnhind.com

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>The origins of Case date to 1842, when Jerome Increase Case (born in 1819) created Racine Threshing Machine Works in Racine, Wisconsin. The company produced its first portable steam engine in 1876, which is now on display at the Smithsonian Institution.</p> <p>In 1957 Case made the 320 Construction King backhoe loader. Since 1969 Case has manufactured skid steers, starting in Burlington, Iowa and later moving production to Wichita.</p> <p>The company evolved into the Case Corporation, which merged with New Holland in 1999 to become CNH Global which in 2011 became CNH Industrial.</p>

2005: Case made its 500,000th backhoe loader and in 2010 made its 250,000th skid steer loader.

2016: Case released the new G-Series wheel loader lineup consisting of seven new models from 521G thru 1121G.

2017: In its 175th year in business, Case announced its facility in Wichita produced its 300,000th skid-steer loader.

2017: At Conexpo-Con/Agg 2017 Case released the CX750D excavator.

As of May 2017, Case "sells a full line of construction equipment around the world, including the number one loader/backhoes, excavators, motor graders, wheel loaders, vibratory compaction rollers, crawler dozers, skid steers, compact track loaders and rough-terrain forklifts.

New Holland Construction was founded in 1895 in New Holland, Pennsylvania; in 1966 New Holland's first backhoe loader was introduced; in 2005 New Holland Construction Brand was created with a global full-line product offering of Skid steer loaders, compact track loaders, tractor loader backhoes, tractor loaders, wheel loaders and excavators. Since 1999, New Holland is a brand of CNH, which was demerged from Fiat Group to Fiat Industrial at the start of 2011.

2007 New Holland made 200,000 Skid Steer loaders and celebrated 35 years of designing and building its highly successful skid steer loader. They are the preferred choice of landscapers around the world and #1 in lift and carry compact machines.

2008 New Holland's "green" engine. New Holland launched the E215B crawler excavator, which mounts a brand-new engine which dramatically reduces emissions well below the levels required by regulations.

New Holland equipment is built all around the world; the headquarters is in Turin, Italy and with ten plants and ten research and development centers spread globally, more than 800 dealers and 2,100 outlets. It is present in 100 countries worldwide.

New Holland produces thirteen product families, five in the heavy range and eight in the light range; products include dozers, mini excavators, graders, wheel loaders, crawler excavators, backhoe loaders, skid steer loaders.

Productivity, safety, and environmental responsibility are the cornerstones of New Holland's offering built around our customers. We are a key player in the global construction equipment industry born of the rich heritage of brands that made the history of this sector.

In partnership with our worldwide network of dealers, we deliver products and services that meet our customers' requirements for productivity, safety, environmental performance, and fuel and cost efficiency. We know our customers' business and we provide them with a full line of innovative products and services designed for the specific applications of their industry.

CNH Industrial is committed to delivering the highest ethical standards and supporting its dealers and customers through a diverse and inclusive workforce, industry-leading technology, exceptional safety and quality, and unmatched innovation.

At CNH Industrial, we pride ourselves on delivering the best. That means strengthening our product portfolio with dedicated financing, tools and components and selecting the best partners to support us in delivering value to our customers.

We are proud of the work we do at CNH Industrial, where a focus on innovation has helped us to maintain our competitive edge and our position of global leadership.

In 2014 we have a new licensing agreement with Sumitomo Construction Machinery to manufacture Sumitomo designed crawler excavators from 13 to 35 tons. In 2016 we entered an exclusive mini-excavator alliance with Hyundai Heavy Industries.

The full integration of environmental and social considerations with economic objectives enables the Group to identify potential risks and seize additional development opportunities, resulting in a process of continuous, and sustainable, improvement that creates value over the long-term. We recognize the real importance of promoting a circular product life cycle in which resources are used fully and for as long as possible, and products and materials are recovered and regenerated at the end of their service life. For this reason, the Company offers a range of products able to run on fuels derived from renewable sources and is committed to adopting sustainability criteria from the design stage to develop more environmentally friendly products. To maximize product life, CNH Industrial also offers

its customers a range of remanufactured spare parts, in line with its circular economy approach. In manufacturing processes, emphasis is given to improvements that increase waste recovery and reuse.

Living and working in cooperation with the surrounding area, and collaborating on projects that benefit the community, contribute to enhancing the satisfaction of employees (who often live close to plants) and their sense of belonging to the Company, while bringing economic advantages to both the Company and the community. Projects are measured in three fundamental areas. These areas are: Improving food availability, combating climate change & reducing environmental impact and supporting youth training.

A key priority at CNH Industrial is to improve food availability. In the USA, CNH Industrial supports the FFA (formerly known as Future Farmers of America), an association active in farming education since 1928. In 2018, to further its commitment, the Company chartered its own FFA Alumni and Supporters Chapter¹, through which employees can engage with students pursuing agriculture degrees and with members of other FFA Chapters nationwide. In 2021, the Company continued to be heavily involved with the FFA. Case IH, New Holland Agriculture, and CNH Industrial Capital continued their Silver Sponsorship of the National FFA Foundation, including its national convention with over 60,000 attendees. Furthermore, employees continued to engage with FFA students at professional development events, and again raised funds towards the purchase of approximately 70 FFA uniforms for students in need.

CNH Industrial also continued its We Care We Share outreach program, holding an educational event at the Thai Sa Kao College of Agriculture and Technology aimed at raising agricultural technology standards in the country while creating a new generation of agricultural experts.

In 2021, given the ongoing pandemic, CNH Industrial continued to support more vulnerable sections of society, including through food where needed. Located near the Company's sites in Racine (USA), the Hunger Task Force Farm yields over 226,000 kilos of fresh produce each harvest season to feed the hungry and create a reliable source of healthy food for its network of food banks. In 2017, the farm added a New Holland Agriculture tractor (donated by CNH Industrial Capital) to its operation. In 2021, the Company made a cash donation to the organization to purchase Thanksgiving turkeys for community members in need, while employees provided additional support by volunteering on the farm.

A key priority at CNH Industrial is to combat climate change, whose negative impact on ecosystems affects the quality of life for people in local communities and consumer choices. The Company has initiated several projects to tackle this global issue, which are also aligned with SDG 13 'Climate Action'. These projects are increasingly focusing on reducing the environmental impact of Company plants, including on local communities, and on helping protect the latter against the effects of climate change such as desertification, water scarcity, and the loss of biodiversity. Other initiatives are in place to promote responsible behavior to minimize environmental impact. Participation in the projects associated with this key priority allows CNH Industrial's brands to enhance their profile and increase their visibility among potential customers and strengthens Company employees' sense of belonging.

At CNH Industrial, a key priority is to engage local communities. To this end, and in line with stakeholders' expectations, the Company prioritizes initiatives that support local community development, especially youth training. In addition to the awards and scholarships given to employees' children, the Company works hard to promote young people's education by collaborating with private and public institutions and other stakeholders. Projects are also aligned with SDG 10 'Reduce inequality within and among countries', as they promote training in Emerging Markets with the aim of developing qualified potential recruits for the Company's sales and service networks.

TechPro2, a joint project with schools run by the Don Bosco Salesian Society, aims at training mechatronics specialists to meet a growing demand for skilled personnel, thus offering young people greater employment opportunities – especially within the Company's sales and service network. Training includes theory and hands-on learning at Salesian centers, followed by targeted internships in the field. The goal of TechPro2 is two-fold: on the one hand, to ensure students have a future vocation; on the other, to enhance the quality of specialized technical assistance for the brands' products while meeting the demand for qualified technicians at authorized dealers and workshops. The Company provides expertise by training the teachers, who pass on the knowledge to the classroom students. It also offers financial aid, tools, and essential parts (such as complementary vehicles, engines, drives, and diagnostic tools) for classroom training and practice.

CNH Industrial believes that operating in a socially responsible and ethical manner,

		<p>and in compliance with the laws of the countries in which it operates, is crucial to its long-term success. The Company's Code of Conduct summarizes its policies on various compliance and ethics issues (such as conflicts of interest, corruption, competition, and health and safety). Such policies reflect, among other things, the Company's commitment to adopting fair employment practices, ensuring safety in the workplace, supporting, and fostering environmental awareness, and respecting the communities in which it operates, in compliance with applicable laws. The Company is also committed to the creation of long-term sustainable value for all its stakeholders and is firmly convinced that respect for fundamental human rights and for basic working conditions is a prerequisite to achieving this. The Board of Directors is responsible for creating a culture that fosters such long-term value creation – a task that requires compliance with all applicable laws. To this end, and to clarify and make explicit the Company's values and expectations, the Board has adopted both a Code of Conduct and a Supplier Code of Conduct.</p> <p>Our vast network of CNHi dealers will provide local product technical support at the dealership or out on the road to the members along with providing the start-up and operations training compliant with OSHA regulations, which the members need to get to receive the max. performance and efficiencies out of their products. The customers can also purchase OEM parts from our dealer network to support the members and to ensure their equipment obtains the max. amount of run time. Our financial services to the members include leasing options and extended warranties which are handled directly at the dealership. Members who are on a budget can rent or demo equipment from the dealership. The equipment will be a unit that has not been retailed and comes with full warranty (less than 250 hrs) or pro-rated warranty (if the unit has over 250 hrs). The customer will receive the member list discount and demo/lease adjustment based on rent for sale program rates less any service or clean up fees dealer would have incurred.</p>	
11	What are your company's expectations in the event of an award?	<p>When CNH Industrial is awarded the Sourcwell contract, we expect to continue to achieve an overall sales growth of over 10%. Throughout the pandemic and component parts not reaching our plants in a timely manner, we still saw growth in our Sourcwell contract. We plan to continue this growth cycle in 2023. CNH Industrial announce a culture transformation where everyone's voice will be heard. We have five new beliefs Customer first, grow together, one team, make it simple, be the best. This is exactly what we are planning to do with this contract. We want our customers to walk into our dealerships and be heard. Get the product they want and make it an effortless process with Sourcwell. We will continue to partner with Government Solutions Team (GST) where we have done more training in 2022 and plan to continue to follow that process in 2023. Their training includes web training, ride-a-longs to help educate the sales teams and the customers in addition to training new or re-train dealers within their first 60 days. Additional emphasis will go to getting our dealers to attend GTKU's and universities to round out their knowledge of the contract and how to use it to drive the contract's need. We are also going to target and engage with the government entities to get our Sourcwell contract adopted versus these entities having their own contract.</p>	*
12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	<p>CNH Industrial reported strong full year performance in 2021, its final year of operations as a combined Off- and On-Highway entity. We delivered consolidated revenues of \$33.5 billion, up 29% from the previous year. Both our adjusted EBIT from our Industrial Activities at \$2,086 million(1) and our full year Net Income at \$1.8 billion (which translates to \$1.28 in earnings per share) were the highest in our Company's history. Market driven volume and disciplined pricing were key drivers of our record earnings, alongside the team's successful execution, which they achieved while often managing very challenging supply chain and logistics issues. We also recorded another very strong year for positive free cash flow of Industrial Activities(1), at over \$1.8 billion as our operational execution improved. For additional information see our Annual Financial Report 2021</p>	*
13	What is your US market share for the solutions that you are proposing?	<p>Model Year 2021 CNH Industrial market share 9.5%</p> <p>Case Construction 7.9%</p> <p>New Holland Construction 1.6%</p>	*
14	What is your Canadian market share for the solutions that you are proposing?	<p>Model Year 2021 CNH Industrial market share 12.6%</p> <p>Case Construction 12.1%</p> <p>New Holland Construction .5%</p>	*
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	NO	*

16	<p>How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.</p> <p>a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?</p> <p>b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?</p>	<p>CNH Industrial is the manufacturer of the equipment offered in this proposal. Our sales and service force is provided through our network of 1107 North American dealers. Our dealerships are independently owned and operated so they are positioned to provide sales and post support for our customers. Through the post-sale support our dealers offer parts and service. CNH Industrial imposes strict contract regulations and standards (Pinnacle), to hold dealers accountable for all interactions a customer has. This would include sales, service, parts, marketing, and operations.</p>
17	<p>If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.</p>	<p>CNH Industrial adopts the World Class Manufacturing (WCM) management system, a program for innovation based on continuous improvement, developed to eliminate all types of waste and loss through the rigorous application of specific methods and standards (see page 165). Given the customers' demand for ever-higher quality and the level of excellence required by the WCM, the focus is on the quality of every aspect of the manufacturing process, which has led plants to also adopt a quality management system compliant with ISO 9001. As of December 31, 2021, 57 CNH Industrial plants were ISO 9001 certified, collectively accounting for 98% of revenues from sales of products manufactured at the Company's plants¹. To achieve its quality standards, CNH Industrial devised a robust supply chain management process (see page 151) to ensure the procurement of quality components, which are essential to produce vehicles that meet the high standards demanded by customers. CNH INDUSTRIAL completed an initiative, known as Technology Days, gives suppliers a chance to display their innovative products in terms of innovation, technology, and quality, while addressing specific topics and sharing information on recent technological developments. In 2021, the event was as always attended by CNH Industrial employees but held virtually. As of December 31, 2021, 220 supplier plants had adopted the World Class Manufacturing (WCM) program, with no increase compared to 2020 due to pandemic-related restrictions and strategy changes to the WCM supplier program itself. The WCM adoption process entails several activities that take place in two distinct yet equally important phases, and that are meant to provide suppliers with the necessary knowledge to apply the intrinsic concepts of Lean Production. Firstly, various training sessions led by CNH Industrial's WCM program specialists are delivered to suppliers. Secondly, supplier WCM teams are given the opportunity to visit selected CNH Industrial plants to learn about the Company's best practices.</p> <p>Safety is a priority across the Company, as evidenced by the compliance of management systems with the ISO 45001 international standard, as well as with the continuous improvement principles of World Class Manufacturing (WCM) and its specific Safety pillar (see page 165). CNH Industrial's approach to occupational health and safety is based on effective preventive and protective measures, implemented both collectively and individually, aimed at minimizing risk of injury in the workplace. The Company endeavors to ensure optimal working conditions, applying principles of industrial hygiene and ergonomics to managing processes at an organizational and operational level. Additionally, it adopts the highest standards in the countries in which it operates, even where regulatory requirements are less stringent, believing this to be the best way to achieve excellence. In addition, the central Environment, Health, and Safety (EHS) function (which serves as a reference point for sustainability) coordinates and manages health and safety issues as per CNH Industrial's Health and Safety Policy. It periodically verifies performance against targets, proposes new initiatives, and defines health and safety policies. The Company's certification of its occupational health and safety management systems as per the ISO 45001 international standard is voluntary and covers 58 CNH Industrial manufacturing plants worldwide, accounting for 45,521 employees. In 2021, the Company completed its transition to the new ISO 45001:2018 Occupational Health and Safety Management standard, which supersedes the OHSAS 18001:2007 standard. Certifications are awarded by accredited international bodies (in turn continuously and rigorously monitored by other international organizations) that review and certify the high levels of reliability and of operational and procedural standards. In 2021, the occupational health and safety management systems at some non-manufacturing sites were ISO 45001 certified, accounting for 5,684 employees at 12 different sites and locations. In total, 70 CNH Industrial sites worldwide (manufacturing and non-manufacturing) are now ISO 45001 compliant – covering 51,205 employees (about 75.9% of the employees within the reporting scope), 5,388</p>

		<p>contractors, and 7,190 agency workers (representing, respectively, 97% and 91% of the relative populations within the reporting scope) – as are all joint venture plants in which CNH Industrial has at least a 51% interest.</p> <p>World Class Manufacturing (WCM) data (see page 165) relates to 51 plants, representing 99% of revenues from sales of products manufactured at CNH Industrial plants⁴. Occupational health and safety data (see page 82) relates to 66,129 employees, or about 98% of the workforce within the reporting scope. There are 58 ISO 45001 certified plants, accounting for 95% of Company plants and representing approximately 100% of revenues from sales of products manufactured at CNH Industrial plants⁴. Information on environmental performance (including VOC⁵, water, and waste) and management systems (see pages 167; 170) relates to 54 fully consolidated plants, accounting for 89% of Company plants and representing 99.5% of revenues from sales of products manufactured at CNH Industrial plants⁴. There are 58 ISO 14001 certified plants, accounting for 95% of Company plants, representing approximately 100% of revenues from sales of products manufactured at CNH Industrial plants⁴, and relating to 44,682 employees (or about 97% of the workforce at the plants within the reporting scope⁴). Information on energy performance (including CO₂, NO_x, SO_x, and dust emissions) and management systems (see pages 171; 179; 181) relates to 55 fully consolidated plants, accounting for 90% of Company plants and representing 99.7% of revenues from sales of products manufactured at CNH Industrial plants⁴. There are 54 ISO 50001 certified plants, accounting for 89% of Company plants, representing 99.5% of revenues from sales of products manufactured at CNH Industrial plants⁴, and relating to 44,146 employees (or about 95.5% of the workforce at the plants within the reporting scope⁴).</p> <p>Moreover, there are 57 ISO 9001 certified plants, accounting for 93% of Company plants, representing 98% of revenues from sales of products manufactured at CNH Industrial plants⁴, and relating to 44,256 employees (or about 96% of the workforce at the plants within the reporting scope⁴).</p> <p>CNH Industrial also holds its suppliers to a high standard in human resources and sustainability. Please see the attached files for CNH Industrial’s Sustainability Plan and Supplier Code of Conduct for more information.</p>
18	Provide all “Suspension or Debarment” information that has applied to your organization during the past ten years.	<p>CNH Industrial has not been Suspended or debarred</p>

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
19	Describe any relevant industry awards or recognition that your company has received in the past five years	<p>CNH Industrial (NYSE: CNH INDUSTRIAL / MI: CNH INDUSTRIAL) received a 2022 Manufacturing Leadership Award for outstanding achievement in the Sustainability Leadership category, which honors manufacturers that are shaping the future of the sector through digital transformation. This is the third consecutive year that the Company has earned recognition from the Manufacturing Leadership Council, which is a division of the National Association of Manufacturers.</p> <p>CNH Industrial’s award-winning project, Smart Pretreatment for the Paint Shop, was executed by the manufacturing team at the Case IH and STEYR agricultural production plant in St. Valentin, Austria. The project enhanced operator safety while ensuring optimum paint quality and sustainable use of additives.</p> <p>The T6 Methane Power also won the prestigious Sustainable Tractor of the Year 2022 award at the EIMA International⁴ trade show held in Bologna (Italy), assigned by a jury panel of top European journalists specializing in farm equipment.</p> <p>Other awards include Innovative Iron for our DL550 Compact Dozer loader in 2022, Top 100 in 2022 for DL550 Compact Dozer loader, TV620B CTL, E. Series Excavators. Top 50 award in 2022 for TV620B CTL. This is just to name a few. Please see entire list in attached documents.</p>

20	What percentage of your sales are to the governmental sector in the past three years	<p>Case Construction -</p> <p>2021 –14%</p> <p>2020 –15%</p> <p>2019 –20%</p> <p>New Holland Construction -</p> <p>2021 – 9%</p> <p>2020 – 10%</p> <p>2019 – 20%</p>	*
21	What percentage of your sales are to the education sector in the past three years	CNH Industrial Construction brands does not have the capability to pull out the educational percentage, but it is calculated into our sales to the government below.	*
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>New Holland Construction (CE) Contract Sales</p> <p>Sourcewell CE Contract</p> <p>2019 \$2,906,112</p> <p>2020 \$2,125,345</p> <p>2021 \$3,851,787</p> <p>Michigan CE contract no sales from 2019-2021</p> <p>Pennsylvania CE</p> <p>2019 <\$200,000</p> <p>2020 <\$300,000</p> <p>2021 < \$400,000</p> <p>Ohio CE</p> <p>2019 \$158,736</p> <p>2020 \$206,926</p> <p>2021 \$98,665</p> <p>Iowa CE</p> <p>2019 \$59,043</p> <p>2020 \$104,200</p> <p>2021 <\$100,000</p> <p>State of Louisiana</p> <p>2019 \$330,000</p> <p>2020 \$0</p> <p>2021 <\$100,000</p> <p>State of Georgia</p> <p>2019 \$0</p> <p>2020 \$170,000</p> <p>2021 <\$100,000</p> <p>NASPO</p> <p>2019 \$303,000</p> <p>2020 \$150,000</p>	*

		2021 \$351,000 BuyBoard 2019 \$938,000 2020 \$547,000 2021 \$331,000 HGAC – No Activity Case Construction Contract Sales Sourcewell Case Construction contract 2019 \$24,000,000 2020 \$18,000,000 2021 \$11,000,000 State of Michigan Case CE 2020 \$ 176,027 2021 \$ \$82,070 2022 \$ \$321,663 NASPO Case Construction Contract 2019 \$1,200,000 2020 \$1,600,000 2021 \$2,240,000	
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	CNH Industrial Construction brands do not hold any of these contracts.	*

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Erie Water Works	Ann Whipple	814-870-8016	*
State Procurement Standards Analyst, OH	Stephanie Klingler	614-387-1130	*
Central Procurement-Enterprise Sourcing – MI	Yvon Dufour	517-249-0455	*

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *		Dollar Volume Past Three Years *	
na	Government	Indiana - IN	Mowing	YR	QTY	2019	\$ 112,418
				2019	1	2020	\$3,064,492
				2020	21	2021	\$2,083,958
				2021	11		
na	Government	New York - NY	Mowing	YR	QTY	2019	\$4,405,899
				2019	25	2020	\$5,039,273
				2020	28	2021	\$ 0
				2021	0		
na	Government	BC - British Columbia	Mowing/snow removal	YR	QTY	2019	\$1,510,557
				2019	10	2020	\$ 951,797
				2020	6	2021	\$1,353,325
				2021	6		
na	Non-Profit	ON - Ontario	Mowing/snow removal	YR	QTY	2019	\$3,647,150
				2019	16	2020	\$ 0
				2020	0	2021	\$ 137,142
				2021	1		
na	Government	South Carolina - SC	Mowing	YR	QTY	2019	\$2,391,487
				2019	19	2020	\$1,064,046
				2020	8	2021	\$ 771,893
				2021	6		

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
26	Sales force.	CNH Industrial field sales force is comprised of employees of the company as well as third party employees of our dealer network who cover the entire US and Canada. Our Field Sales Force are fully focused on the sale of CNH Industrial through our Dealer Networks to our end user. The New Holland Construction Field Sales team is comprised of 5 Region Sales Directors, 44 Territory Business Managers, 5 Business Sales Specialists, 5 Dealer Development Managers, 8 Regional Product Specialists and 40 Technical and Specialty Field Managers. Case Construction is made up of 3 Regional Sales Directors, 21 Field Sales Specialist, 10 Business Managers, 6 Sale Support Managers, and 2 Product & Application Training Specialist. Each independent CNH Industrial dealer supports its local customer base with its own sales, product support and service personnel.

27	Dealer network or other distribution methods.	<p>Case Construction and New Holland Construction has a dedicated dealer network strategically located across North America, and we are continually looking to see where new locations can be opened. Our dealer locations are fully trained and dedicated to sell and support Case Construction and New Holland Construction products covered in this RFP. Many of the principals, their staff and customers hold positions on their local city, village, township, county boards, school boards and positions within their churches, non-profit camps and Fair Boards and non-profit organizations such as Scouts, 4-H, Ducks Unlimited, etc. The efforts and plans of GST to engage New Holland construction dealers from the top down carries the value of our Sourcewell contract through to these community officials who need to purchase equipment efficiently.</p> <p>Our company supports our dealer network with professional Field Service Managers. Each dealership is staffed with parts and service personnel trained to support the products in their area of responsibility. Our company supports the entire United States, along with Hawaii, Alaska, and Canada. Our dealer service personnel are factory trained as well as have access to "Assist," a technical database that helps technicians quickly diagnosis failures through CNH Industrial technical advisors and fellow dealers. We have further support by the Customer Care contact phone numbers: New Holland Construction 1-888-365-6423 and Case Construction 1-866-542-2736.</p>	*
28	Service force.	<p>Our Field service force is comprised of employees as well as third party employees of our dealer network that covers the US and Canada. All employees must meet annual service training requirements provided on-site by our company, including our service school and online technical training program. Our Field Service force are fully focused on the service of CNH Industrial through our Dealer Networks to the end user. Each one of our independent dealer supports its local customer base with its own sales, product support and service personnel. We value their position as the local support to the members and provide them with the tools, training and support they need so they are a well- rounded team when it comes to the members.</p>	*
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	<p>CNH Industrial ordering process will be handled by our dealer network. The members will go directly to their local dealership when the PO is approved. Their local dealer will then place the order through the eEquipment program which then is sent to the plant and our Order Management department. From there it will be placed into a production schedule. Dealers can monitor the orders from eEquipment to see when the product will be scheduled and when it will be shipping.</p>	*
30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>Customer service begins with our dedicated dealer network. Each one of our dealerships is fully trained and supported by CNH Industrial so they are committed to immediately addressing all customer needs. Each one of our brand dealerships is supported by the Corporate Customer Service team, "Assist" and factory training.</p> <p>CNH Industrial interacts with and assists its customers to give them an experience that meets their expectations. The Company's Customer Care departments specialize in developing, managing, and promoting customer service solutions, fostering long-lasting relationships, and satisfying customer needs and expectations. Customers may request information or report an issue via the brands' websites, toll-free numbers, smartphone applications, or via email – 24 hours a day, 7 days a week. Customer Care staff manage the entire process, from initial customer contact to final feedback to the customer, ensuring resolutions in the timeliest manner.</p> <p>New Holland Construction's incentive program is the Dealer Standards Program. CASE Construction Equipment's incentive program is the Partnership Program. These programs are designed to assess dealers and reward best-in-class performance across a wide range of operational and performance criteria.</p> <p>Case Construction provides the Tomahawk Customer Center which has been serving its customers for more than 60 years. Sitting on more than 500 acres in Wisconsin's Northwoods, the CASE Tomahawk Customer Center is a premier year-round demonstration facility and business retreat. Enjoy a fully interactive experience with personalized training, state-of-the-art product demonstrations, hands-on equipment operation, and a healthy dose of our trademark hospitality. Like our company and our dealers, our Tomahawk staff is here to provide you with expert guidance and education to help you make informed operating and maintenance decisions</p>	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	<p>CNH Industrial has been selling and servicing members in the United States through our Sourcewell contract for 12 years. We offer a full array of Construction products and services through our network of local dealers.</p>	*

32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	CNH Industrial has been selling and servicing members in Canada through our Sourcewell contract for 12 years. Our company offers a price book series in Canadian dollars. We also offer a full array of Construction products and services through our network of local dealers. Our financing and leasing teams live in Canada. This ensures the members are working within the regulations of the Canadian rules. With the assistance of Sourcewell and Canoe Procurement Group and GST, we are expanding our marketing and training efforts and dealer presence throughout Canada. There is a scheduled webinar with Canoe Procurement Group in March 2023.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	CNH Industrial will be serving all locations of the United States and Canada.	*
34	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	CNH Industrial will be serving all Sourcewell and CANOE Procurement Group of Canada members.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	CNH Industrial will service all of Hawaii, Alaska, US, and Canada in all market segments. Shipping and delivery expense calculation method will be used for offshore transactions, Alaska, and Hawaii.	*

Table 7: Marketing Plan

Line Item	Question	Response *	
36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	We will promote Sourcewell to our sales team and government dealers of over 1,000 to our customers. Our sales teams will attend regional training, webinars or in-person training. They will then help to promote and work through a potential sale through the Sourcewell contract with the local dealership. Our dealers will be trained by CNH Industrial government sales manager or their territory business manager. On-insight training, webinars or phone calls can be completed for training. We also have a partnership with Government Solutions Team for New Holland Construction that will also conduct webinars and on-sight training. We want our dealers to have a vast amount of support and success while being trained on the contract. All training is free to the dealers and goes through our Web University for tracking and awarding the teams for their participation. We work with Sourcewell and Canoe Procurement Group to provide marketing materials to the dealers. This material is also used by the dealers for customer visits, shows and other events where our brands and the contract are being promoted. New Holland Construction is also in the process of updating the Buyer's Guide that promotes our products to our government customers. We list our cooperative contracts at the back of the guide. This guide will be distributed to our dealers which in turn will provide to their customers. I have provided a picture of the back page for reference.	*
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	CNH Industrial incorporates several uses of technology, digital data, social media, and data to drive market awareness, target prospective sales, train our teams and customers, and perform community outreach. CNH Industrial has a dedicated website for our products and services. New Holland's website allows prospects to build equipment to their specifications, locate dealers and have direct contact information to each government representative. Case Construction website allows prospective customers to locate dealers. Our social media presence spans from Instagram, Facebook, Twitter and LinkedIn. We follow, like and share Sourcewell media along with other industry leaders to promote a full support system to our teams, dealers, and the community. By doing this, it keeps our brands at the top of our prospects' minds. We also utilize data from the Association of Equipment Manufacturers (AEM) on governmental and non-profit sales. The data shows sales activities and high-density sales areas. This also allows us to understand our effectiveness in the marketplace compared to our competitors. We also have a governmental bid service. By investing in this service it allows for an advantage over our competitors and directs opportunities to the Sourcewell contract. This also allows us to see the future requirements of a member so our dealers can reach out and build a relationship with them and offer the Sourcewell as a solution to their bid process. We also conduct training and post videos online to reach a maximum audience and to keep our teams "in the know" as soon as possible. We want to get the information out quickly, so our members have the most current information. New Holland Construction government sales managers along with GST work with our teams daily through these trainings, videos, and emails to help them understand their market and the opportunities that exist.	*

38	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	<p>We expect Sourcewell to promote the contract through social media, digital media, shows and events. Also, to allow members to easily locate our contracts on the landing page on Sourcewell's website and keep the member's list current. Communicating how the contracts are adopted and by whom is another significant role Sourcewell can provide. The H20 conference is an excellent tool where vendors can come together and share lessons learned, wins and best practices. When members contact Sourcewell, we expect them to directly thank them, answer any questions they have, and provide our contract information to the members. We would like our contract manager to follow up with an email or call to us on who called and their contact information and what was needed. This will allow us to continue the sales process by reaching out to them and showing them, we have a team with Sourcewell and CNH Industrial.</p> <p>We will continue to train our Territory Business Managers and dealers at our sectional and regional CNH dealer and sales meetings on this contract. We will continue to educate our dealers through webinars, phone calls and in-person training. When the contract is awarded, we will be sending out a letter with the new matrix to our dealers letting them know of the newly awarded contract. New Holland Construction will also be utilizing the GST team to train our members on the contract. They have a novel approach on touch points with the dealers during training. Our dealers are notified in several diverse ways through mail, email, and phone calls which then leads up to training. The focus does not stop after the training. GST continues to contact them after that process, so we do not lose touch with them. GST provides our dealers with a listing of Sourcewell members located in their area.</p> <p>This contract is particularly important to each one of our brands and is highly expressed to our CNH Industrial employees and dealers. Therefore, we have continued to grow the contract even through the Covid period. We plan to stay the course and continue with our message to our employees and dealers which is, "you should not have to bid for low dollars or a product you do not want, use Sourcewell and get what you deserve."</p>
39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	<p>Not now. Our contract is awarded through our dealer level, and this places too many variables. We have had conversations with NASPO to see if there is a way to work on an industry standard. Some of the states have already started going to the e-procurement system but with our highly configured products, it is difficult to work within their perimeters. We are willing to work with Sourcewell and the team you have put together to produce a process for e-procurement, whether this be through an EDI system or finding a company that has already created a process.</p>

Table 8: Value-Added Attributes

Line Item	Question	Response *
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>We hold product training and customer experience events throughout the year. Any dealer current customer or potential customer can attend these events.</p> <p>At the corporate training facilities or the servicing dealer level, Operator and Maintenance training can be specifically structured for the customer. The servicing dealer provides base machine operation and maintenance training as part of the purchase and delivery. Additional training can be purchased through the local dealership.</p>

41	Describe any technological advances that your proposed products or services offer.	<p>New Holland Construction has announced the E15X first electric vehicle which has no air or sound pollution.</p> <p>New Holland Construction included an 8" LCD Multifunction Display in the 300 Series Skid Steer Loader and Compact Track Loader products. This brings the operator input and functionality to another level over what we had in the past. Particularly, the addition of a factory fit reverse camera, and improved EZ EH control adjustability.</p> <p>Meet the CASE Minotaur™ DL550 — an all-new, industry-first equipment category: the compact dozer loader. The integrated C-frame delivers true dozer performance and the agility and finesse of a loader. CASE Construction Universal Machine Control allows you to use the precision construction technology you prefer*. It's compatible with hundreds of attachments, and the addition of an industry-exclusive fully integrated ripper makes this machine one-of-a-kind. It has the strength, attitude and intelligence to stake a claim as the industry's most versatile and powerful compact machine.</p> <p>Minotaur demonstrates CASE Construction's commitment to delivering real-world innovation rooted in customer need. With 29 patents**, more than 10,000 field test hours, multiple customer clinics, countless operator evaluations, product refinements and even more evaluations after that — we've put this machine to the test to deliver you the highest standard in quality.</p> <p>THE INDUSTRY'S FIRST FULLY ELECTRIC BACKHOE LOADER — THE CASE 580 EV The CASE 580 EV (electric vehicle) delivers backhoe power and performance equivalent to its diesel counterpart while also providing instant torque, lower jobsite noise, lower daily and lifetime operating costs, reduced maintenance demands and absolutely zero emissions. This will be anticipated to launch in 2024.</p> <p>The CASE 580 EV Delivers Ultimate Power and Sustainability</p> <ul style="list-style-type: none"> - Zero Emissions: Lower your carbon footprint and achieve incentives/greater consideration for new projects with electrified additions to your fleet. - All the Performance: The battery separately powers the drivetrain and hydraulic motors, resulting in hydraulic breakout forces equal to diesel-powered machines and improved performance during simultaneous loader and drivetrain operation. - Long-Lasting Power: The machine's lithium-ion battery provides enough power for the typical 8-hour workday. - Lower Operating Costs: Save as much as 90 percent in annual vehicle, fuel, and maintenance costs. - Classic CASE Performance: The 580 EV retains the precision and efficiency of diesel-powered CASE backhoes with features such as ProControl, which allows for extremely precise boom movement and placement, as well as Comfort Steer, which significantly improves steering while working in tight quarters or in truck loading operations. <p>The CASE CX15 EV (Electric Vehicle) is a 2,900-pound mini excavator powered by a 16-KW electric motor — it features retractable tracks that get machine width down to about 31 inches for going through doors and working in confined spaces. It can also work close to structures and obstacles with a minimum swing radius design. The 21.5 kWh lithium-ion battery is charged either by the 110V/220V on-board charger, or via an external rapid charger that can have the machine charged extremely fast, typically within 90 minutes. Depending on the type of work, unit will provide enough power to work through a full eight-hour workday.</p>
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>In compliance with its Environmental Policy, CNH Industrial is committed to minimizing the environmental impact of its ICT activities by using energy-efficient products and solutions. Indeed, the Company implemented the Green ICT plan precisely to reduce energy consumption and CO2 emissions. In 2021, approximately 8,200 personal computers and 1,083 technical workstations were replaced with new equipment featuring more efficient power supply units, optimizing the consumption of electricity drawn from the grid. The Company also replaced around 1,100 computer monitors with new units that comply with environmental requirements regarding product energy consumption and efficiency, the use of hazardous substances, recyclability, packaging materials, and low-impact manufacturing methods.</p> <p>Within the scope of Brands4Sustainability3, CNH Industrial supported a project called Capri Circolare - A Sustainable Tourism Model, an in-depth analysis of potential areas of intervention to position the island of Capri at the forefront of environmental sustainability. The goal is to turn Capri into a green destination by developing a model that promotes a circular economy and the implementation of good practices to protect the local region, resources, and biodiversity. In Córdoba (Argentina), IVECO created an Ecological Island where carpenters use recycled materials to make parts that are then used in various plant production and logistics processes. In broad terms, the company applied the 5Rs of waste management (refuse, reduce, reuse, recycle, recover) to enable the reuse of approximately 4,800 kilos of reclaimed wood and around 3,600 kilos of corrugated plastic per year.</p> <p>The Company also contributed to creating policies in support of alternative fuels – and a circular economy – in the agriculture sector, particularly promoting the use of biomethane and Agriculture 4.0 programs through specific initiatives in many countries. As a long-</p>

standing member of the European Automobile Manufacturers' Association (ACEA), while also holding a seat on its board, the Company has actively contributed to the debate on EU (European Union) policies to lower CO2 emissions and achieve net-zero emissions in the future. Moreover, with a seat on the association's Commercial Vehicles Board, IVECO actively contributed to the discussions on how manufacturers can help achieve the EU's 2050 Greenhouse Gas Emissions (GHG) goal, highlighting the role that both liquid and gas renewable fuels can play in the transition towards net-zero CO2 emissions in transport. As regards light-duty vehicles, IVECO is actively involved in the ongoing discussions and advocacy activities regarding the revision of the post-2020 CO2 emission standard for cars and vans.

CNH Industrial is also a member of the Committee for European Construction Equipment (CECE) and of the European Agricultural Machinery Association (CEMA), trade associations for construction equipment and agricultural machinery manufacturers, respectively. Throughout 2021, the Company collaborated with the associations' committees and project teams to bring forward EU legislation on the safety and environmental aspects of off-road machinery. Following the European Green Deal plan presented by the European Commission, CNH Industrial contributed to further discussions within CECE's and CEMA's High-Level Groups on CO2 concerning ways to reduce GHG emissions and decarbonize both the agriculture and construction sectors in Europe.

CNH Industrial is also a board member of the European Association of Internal Combustion Engine Manufacturers (EUROMOT). In 2021, particularly through its brand FPT Industrial, the Company contributed to the association's activities centered on Non-Road Mobile Machinery (NRMM) exhaust emissions, proposing the creation of a new working group within the association focused on alternative powertrains and advanced energy resources. The aim was to further promote alternative and more sustainable powertrain solutions within non-road sectors as well (such as marine applications or mobile equipment) considering the EU's most recent sustainability and climate goals. The Company holds a seat on the board of the Natural & biogas Vehicle Association (NGVA Europe), which advocates and fosters the use of natural gas and biomethane for transport in Europe. In 2021, in collaboration with several other national associations for natural gas, IVECO and FPT Industrial promoted debate in Europe on natural gas strategy (considering the EU's targets for 2030 and beyond) and its advancement in Europe, in line with EU legislation on the development of natural gas infrastructures.

CNH Industrial is member of the board of Hydrogen Europe, representing the hydrogen and fuel cell industry, national associations, and research centers in Europe, and of the Hydrogen Council, a global initiative among leading energy, transport, and industry enterprises that focuses on the contribution and potential of hydrogen in the transport sector while contributing to policymaking and the ongoing debate, working towards the future commercialization of fuel cell vehicles. In this regard, the Company also participates in the European Clean Hydrogen Alliance, an initiative by the European Commission and Hydrogen Europe that brings investors together with governmental, institutional, and industrial partners, aimed at steering and coordinating the ambitious plan to deploy hydrogen technologies by 2030, and at rapidly upscaling clean hydrogen production and use in Europe.

New Holland Agriculture was one of the main stakeholders at the event Seeding the Future of Sustainable Farming: Advanced Farm Machines & Solutions to Deliver on the European Green Deal, a summit organized by the European Agricultural Machinery Association (CEMA) in Brussels (Belgium). The focus was on how digital farming tools, modern farm machines, and farm data management systems will drive the European agriculture sector in taking on the double challenge of producing sufficient quality food and safeguarding biodiversity.

The importance of sustainable planning to the Company lies not only in time and cost efficiencies, but also in emissions reduction, resource use, packaging management, and, not least, in their indirect impact on human health and traffic congestion. To coordinate its efforts effectively towards improvements in this area, CNH Industrial published its Green Logistics Principles, available on the Company's website; intended to coordinate the Company's initiatives on promoting sustainable behaviors, they help both corporate functions and suppliers effectively monitor their performance and meet improvement targets.

In North America, the Agriculture and Construction segments continued to engage their logistics partners in the SmartWay transport program. Launched in 2003, the program is sponsored by the Environmental Protection Agency (EPA) to improve efficiency, reduce greenhouse gas, and air pollutant emissions along the transport chain. SmartWay provides its partners with a set of EPA-tested tools that help make informed transportation choices, measure, and report CO2 emissions, and improve supply chain efficiency and environmental performance.

More information can be found on our 2021 Sustainability Report

43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	<p>Several CNH Industrial plants continued to implement initiatives to reduce packaging waste, according to the 5 Rs11 of waste management (in particular, the Reuse principle). Improvement measures involved several plants, including New Holland (USA), Annonay (France), Zedelgem (Belgium), Córdoba (Argentina), and Curitiba, Piracicaba, and Sorocaba (Brazil), reducing overall packaging waste by more than 1,000 tons and saving approximately \$650,000. As per existing guidelines on packaging-waste compactors, aimed at mitigating the environmental impact and management costs associated with waste, CNH Industrial plants continued to reduce the volume of stored waste, thus requiring less frequent collection and disposal services by third-party providers. For example, the plant in Rorthais (France) installed a cardboard compactor, saving over \$9,200.</p> <p>New Holland Agriculture was one of the main stakeholders at the event Seeding the Future of Sustainable Farming: Advanced Farm Machines & Solutions to Deliver on the European Green Deal, a summit organized by the European Agricultural Machinery Association (CEMA) in Brussels (Belgium). The focus was on how digital farming tools, modern farm machines, and farm data management systems will drive the European agriculture sector to take on the double challenge of producing sufficient quality food and safeguarding biodiversity.</p> <p>See all the green initiatives stated on #43. We continue to support conservation efforts with third parties.</p>	*
44	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	<p>CNH Industrial is proud to partner with Small Business, Veteran Owned, Women or Minority Owned, Native American Owned and other Disadvantaged Business Enterprises.</p> <p>Monroe Tractor 1001 Lehigh Station Road, Henrietta, NY 14667 – WBE Certified noted on website www.monroetractor.com</p> <p>Yukon Equipment in AK is Native Owned. It was established under the Alaska Native Claims Settlement Act of 1971. https://yukoneq.com/about-us/</p>	*
45	What unique attributes does your company, your products, or your services offer to Sourcwell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcwell participating entities?	<p>We are dedicated to our Clean Energy Leader® strategy, launched in 2006, which promotes the use of renewable fuels, systems to reduce emissions, technological tools, and sustainable agricultural practices. We recognize today as a global leader in powerful, reliable, and highly efficient equipment that helps our members meet the challenges of modern-day tasks. We have numerous models in several product lines which speak to understanding member needs and proving them with the correct solution. This is accomplished by our strong dealer network and our field teams working together to help our members define their needs. Our dealers are measured on technical, financial and sales performance levels and maintain certifications to back up these performance levels. Our focus is to align with what our members' needs are while controlling costs. We also have our unique demo/rental program available to members under this proposal. A member can use the product in advance and receive additional discounts if they choose to purchase the equipment. This allows the member to make sure they are getting the right product for the job. New Holland Construction partnership with Government Solutions Team (GST) will continue to have an impact on the members through the education and speaking opportunities they are afforded during our meetings and events as well as during events taking place at all levels throughout North America which they are invited to attend. Their vast array of knowledge and experience working with members in this sector compliments our team in the field with getting the Sourcwell contract utilized and talked about. Their ability to speak to the members as a third party has been of great value in successfully helping members understand how to utilize the contract.</p>	*

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	New Holland Construction and Case Construction covers all products, parts and labor. This is defined in our Warranty and Limitation of Liability agreements for both brands. For Case Construction this is defined in the Dealer Operating guide.	*

47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	<p>Both New Holland Construction and Case Construction have items that are not covered such as:</p> <ul style="list-style-type: none"> • Repairs arising from storage deterioration, failure to maintain the equipment, negligence, alteration, improper use of the equipment, collision or other accident, vandalism, or other casualty, or operation beyond rated capacity or specification. • Repairs arising from abuse or neglect, including but not limited to: operation without adequate coolant or lubricants, adjustments to the fuel system outside equipment specifications, over-speeding, improper storage, starting, warm-up, or shutdown practices, incorrect fuel or contaminated fuel, oil or other fluids. • Normal maintenance services, such as engine tune-ups, engine fuel system cleaning, checks, adjustments, shimming, etc. • Replacement of non-defective wear items expected to be replaced during the warranty period, including but not limited to light bulbs, spark plugs, brake or clutch linings, slip clutches, belts, chains, knives, bucket cutting edges and teeth, crawler track pads and track components, crop processing and cutting components, external drive sprockets and chains, soil engaging tools and accessories. <p>For other items please see the Warranty and Limitation of Liability agreements for both brands.</p>	*
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Case Construction does reimburse on some Heavy Construction products.	*
49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Both New Holland Construction and Case Construction dealer network provide technicians for repair and the network covers the entire of North America.	*
50	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	We will cover certain items made by other manufacturers. Certain items are covered by some OEM's such as engines manufactured by Deutz, Kubota, Yanmar, etc. We do not cover warranty for items made by other manufacturers. Coverage detail is provide in the Warranty and Limitation of Liability agreement form which the customer signs at the time of delivery.	*
51	What are your proposed exchange and return programs and policies?	<p>CNH Industrial's responsibilities include, but are not limited to:</p> <ul style="list-style-type: none"> - Deliver a unit that is free of defects in material and workmanship - Reimburse for costs for repairs that are the result of defects in material and workmanship - Provide warranty payment to dealers per policy in a timely manner - Provide service information to dealers via the Technical Help Desk - Identify product deficiencies and corrective action by Product Improvement Programs - Make determinations of premature wear - Provide operators manuals <p>If for some reason defects/failures arise, CNH Industrial will take corrective action under the warranty policy. Returns/Exchanges are not allowed.</p>	*
52	Describe any service contract options for the items included in your proposal.	We do provide services under ProCare Program for Heavy Construction equipment; where a customer receives Extended Warranty coverage, and it includes planned maintenance for 3 years & SiteWatch subscriptions.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *
53	Describe your payment terms and accepted payment methods.	Payment terms are Net 30, after receipt of invoice. Acceptable payment methods would be at the local dealer's discretion, but most would accept cash, ACH, Check and P-Card.
54	Describe any leasing or financing options available for use by educational or governmental entities.	Financing options and leasing solutions are available from CNH Industrial Capital America LLC. Sourcwell members should contact the local CNH brand construction equipment dealer to see what options are available.
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	CNH Industrial will administer a matrix that will be published on our Dealer Portal and/or sent to our dealers notifying them of the contract period, products awarded, and discounts off list price so they can quote equipment to members. The sample matrix will be uploaded for your reference. We provide the dealers with a matrix which provides the Sourcwell member with the product, discount off list and pricing available to them.
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcwell participating entities for using this process?	Acceptance would be at the local dealer's discretion.

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcwell Price and Product Change Request Form.

Line Item	Question	Response *
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcwell discounted price) on all of the items that you want Sourcwell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	<p>We are offering discounts off the product category. The total purchase price will include a discount off the list with freight, setup, surcharge, and any other extra costs associated with the final sale on separate line items.</p> <p>CNH Industrial Discounts off List price:</p> <p>Skid Steer Loaders 35%</p> <p>Compact Track Loaders 32%</p> <p>New Holland Tractor Loader Backhoe 35%</p> <p>Case CE Tractor Loader Backhoe 37%</p> <p>Tractor Loader 32%</p> <p>Compact Wheel Loader 32%</p> <p>Crawler Excavator 32%</p> <p>Rough Terrain Forklifts 32%</p> <p>Compact Dozer Loader 32%</p> <p>Crawler Dozer 37%</p> <p>Heavy Wheel Loader 37%</p> <p>Heavy Excavator 32%</p> <p>Motor Grader 32%</p> <p>Compaction 32%</p>
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	CNH Industrial discounts are off list price ranging from 32% to 37%.

59	Describe any quantity or volume discounts or rebate programs that you offer.	CNH Industrial does not offer any additional discounts currently. Our local dealers are authorized at their discretion to provide additional discounts.	*
60	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	The proposed pricing for sourced equipment or services will be "open market." CNH Industrial will provide a quote for each request. Dealers may provide additional discounts at their discretion on the unit in question.	*
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Additional cost that maybe associated with each transaction that dealers may include: -Set-up/pre delivery inspection -Surcharges if applicable -additional manuals -freight -training	*
62	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Freight, both from manufacturing facilities, distribution points, or transfers from other dealers' inventory will be added as a separate line item. This cost is FOB, but CNH Industrial often subsidizes it to remain competitive in the marketplace.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Shipping and delivery expenses calculation method will be used for offshore delivery as well as Alaska, Hawaii, and Canada.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	We do offer the option for equipment to be coded "will call." This allows the customer to pick up the equipment from the manufacturing/distribution points. This can lower the cost of the transaction.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

Table 13: Audit and Administrative Fee

Line Item	Question	Response *
66	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	Our dealers are required to upload documents when they purchase equipment. They will upload the customer's purchase order, dealer's invoice to customer, and authorization letter. Each month Government Sales Manager audits the Sourcewell documents and verifies membership, pricing, discount, etc. Each quarter a report is generated on all Sourcewell sales and sent to the buyer.
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	Market Share is important to our business. Each month we run reports from AEM to understand our position in the marketplace. This report includes total government sales, and from the percentage of government sales going into Sourcewell is determined. Our goal is to continue to grow this matrix in the percentage of government sales to increase Sourcewell sales. We also are looking at our year over year and quarter-over-quarter results in sales volume dollars. This will show us if we are on target for growth vs that of last year's quarter.
68	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	CNH Industrial agrees to continue to pay Sourcewell a 0.75% contract fee. Our contract has continued to grow, which results in profit for all parties involved.

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
69	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	<p>New Holland Construction Equipment: MEET YOUR CHALLENGES HEAD-ON New Holland's ongoing commitment to making the most dependable and innovative construction equipment brings you the 300 Series skid steer loaders. They provide enhanced productivity, comfort and ease, while still delivering outstanding lift and breakout force and rock-solid stability. Customize your machine for your specific demands with a wide array of versatile attachments and options. The patented Super Boom® vertical lift linkage delivers maximum reach at maximum height to allow you to place loads precisely in the center of high-sided truck boxes or hoppers. New Holland Tier 4 Final engines deliver powerful performance, use less fuel and are easy to maintain to decrease your operating costs. The reliable hydraulic system delivers fast cycle times. In-line hydraulic pumps produce less noise and provide extra-smooth operation. Add the optional high-flow hydraulics to run attachments hour after hour. The 300 Series dual-range transmission provides travel speeds of more than 11 mph to save time on and between job sites. It is standard on the L320, L321, L328, and L334. New Holland's long wheelbase gives you stability and smooth riding comfort. A new available creep mode (EH models only) gives you greater control for slow-speed operations like trenching.</p> <p>New Holland's 300 Series loaders make your workday more productive and comfortable with a compact track loader from New Holland. These 60 to 114 gross HP loaders are tough models that deliver incomparable performance and craftsmanship. Whether you are a farmer, contractor, or landscaper, the 300 Series loaders are built to support you and your operation. They hold fast to steep slopes and move easily through muddy or sandy terrain to complete jobs quickly and efficiently.</p> <p>New Holland's D Series loader backhoes represent a huge step forward in operator comfort and productivity while delivering Tier 4 Final emission compliance without compromise. A new cab design featuring 10% more space, new rear side windows, vastly improved clearance when turning the seat for backhoe operation, and hugely improved in-cab storage capacity guarantees an enhanced operator experience and increased operator productivity. Many customers need a loader that offers the versatility to do a lot more than just move bulk material, including grading and leveling as well as grabbing heavy items like tree trunks and concrete pillars. They also need a tractor unit offering the traction and power to push materials into place or out of the way. With a 4-in-1 bucket, a D Series loader backhoe delivers exceptional performance with just a single attachment. Choose a 6-in-1 bucket and you have the option to flip down adjustable pallet forks for handling palletized loads without a dedicated vehicle. The backhoe can be equipped with a wide choice of buckets to match excavation, water-course clearance, trenching and other demands. You can also fit post hole diggers, hydraulically extendable dipper and countless other tools. The long, nearly 23-ft. reach of both the standard and telescopic dipper allows digging depth comparable to many conventional dedicated excavators. Add the new updated cab featuring a new heated seat and up to ten LED lights and exterior side lights on the cab roof, and there are no performance compromises with a New Holland D Series loader backhoe.</p> <p>CLASS-LEADING POWER AT BUCKET AND HITCH The U80D tractor loader from New Holland delivers 74 gross horsepower of clean power with its Tier 4 Final certified engine. You get responsive power at both bucket and hitch, so the U80D pays its way by loading, stacking, scraping and leveling. Add the Glide Ride option, and the boom cylinders become the equivalent of giant shock absorbers to stabilize the load while traveling. The curved-arm loader linkage provided on the U80D tractor loader provides hydraulic bucket leveling for less spillback, as well as excellent reach at maximum dump height for truck loading. The unique reverse-mounted loader arm cylinders give you maximum bucket breakout force and superior dump speed on the bucket. Rugged Class II three-point hitch with controllable down pressure provides excellent scraping and leveling performance. The synchromesh transmission with power shuttle gives you smooth control and easy forward-reverse shuttling.</p> <p>New Holland compact wheel loaders do more than load. With dependable engine and hydraulic power and a choice of buckets and attachments, you can easily scrape, grade, haul and more. Z-Bar linkage design provides maximum breakout force, digging and lifting power for high-production load-and-carry applications. For applications where self-leveling is needed, like forklift work, consider the W50C TC Tool Carrier model. A stable compact design allows you to work and maneuver easily in restricted spaces. A lower machine height and lower center of gravity increases the stability of New Holland compact wheel loaders so you can lift and move larger loads, travel smoothly and quickly, and operate with more confidence.</p>

You can work next to buildings, foundations, and roads with greater confidence in a New Holland Construction C Series compact excavators. They combine power, performance, and versatility to make the very most of every minute of your day. C Series excavators deliver big digging and grading performance with SAE bucket breakout forces up to 8,490 lbf and dig depth up to 12.5 feet. Their compact design and zero/short tail swing mean you can dig, fill, and grade in the most confined, congested areas. You can offset the excavator boom left or right within the operating range to match the situation. The C Series also offers more ground clearance and excellent dozer blade lift height for maneuvering and working in tough conditions. With seven models from 1.7 to 6 tons, there is nothing small about the performance of New Holland compact excavators. All models offer an increase in horsepower compared to previous models, powered by quiet, fuel-efficient Tier 4 Final engines up to 66.9 horsepower. Ease and comfort equate with operator productivity, so the wide C Series cab is designed for spaciousness, all-around visibility, comfortable seating, and smooth control. New Holland's Auto Shift traveling system automatically downshifts when load increases to enhance travel torque on slopes and in difficult conditions, then shifts back up to secure a faster travel speed after the load decreases. The Auto Idle system activates when you are not using the operating levers to improve fuel efficiency.

Case Construction Equipment:

The CASE B Series skid steers build on more than 50 years of engineering and field experience to provide the most intuitive operator experience and comfortable working environment ever built into a CASE skid steer — including an eight-inch LCD multi-function display and simple electro-hydraulic controls. The design simplifies operation and puts more power and control into the hands of the operator. Match that with productivity-enhancing horsepower and torque, powerful auxiliary hydraulics, and industry-leading visibility — and CASE B Series skid steers allow you to get more done every day.

The CASE skid steer lineup features the sizes, lift patterns, power, and emissions solutions to match any application. Five radial-lift and three vertical-lift skid steers across numerous horsepower and size classes ensure that you will find the right solution for your operation. CASE B Series skid steers also provide operators with the most feature-rich operator experience ever found in a CASE skid steer, including electro-hydraulic controls, "Creep Speed" functionality, an automotive-style information display with improved fault codes and troubleshooting, as well as Economy Modes with engine protection. The eight-inch LCD multi-function display serves as the command center for the machine and includes the industry's only backup camera visible in a split screen display with machine data.

The CASE B Series compact track loaders offer a completely re-imagined operator interface and environment to simplify operation and put more power and control into the hands of the operator — including an 8-inch LCD multi-function display and simple electro-hydraulic controls. Match that with industry-leading visibility, productivity-enhancing horsepower and torque, extreme attachment versatility, and lift geometries and size classes to meet every demand — and CASE B Series compact track loaders have the strength and performance to handle your toughest jobs. Jobsite productivity and awareness are driven by industry-leading visibility — further improved with the backup camera and a cab-wide rearview mirror. Operators have the industry's best perspective of the job through large front and side windows, a low entry threshold for greater visibility down to the bucket, a low sloping rear hood and 360-degree lighting.

CASE backhoe loaders – extra power when you want it, precise control where you need it and a sophisticated-yet-simple machine that needs less from you to get more done, more quickly. When your backhoe legacy dates to the world's first fully integrated production backhoe loader, you know they are expected to do everything. So, you engineer them to be stronger and more responsive, roading, loading, or digging. That is the Tier 4 Final N Series backhoe. Give your backhoe a shot in the arm. At the push of a button, Power Boost provides a temporary surge of power – up to 8% more breakout – without decreasing RPMs (Revolutions Per Minute) so you can quickly muscle through obstacles and tough or frozen ground. (Not available on 580N EP or 580N backhoes).

The CASE 570N EP tractor loader combines unbeatable lifting strength, ground speeds as fast as 24mph, and user-friendly features to provide contractors with a skip loader that is impressively cost effective, and incredibly easy to own and operate. It is available with a rear 540-RPM PTO (Power Take Off) or 3-point hitch, as well as a hydraulic front quick coupler for optimal versatility. The CASE 570N EP tractor loader has a full height lifting capacity of 6,503 LB., giving you more than three tons of lifting strength to move, load and stock more piles, palletes, and material. Loader arms have heavy-duty in-line parallel linkage with a solid thru-pin design, dual bucket cylinders and a standard material retention feature to evenly transfer bucket stress up and through full dump. It all works together to provide faster cycles with less spillage.

The enhanced CASE G Series wheel loaders simplify operation through a touchscreen display and give operators even greater control with adjustable electro-hydraulic controls, optimized power modes and programmable configurable buttons near the joystick. These buttons put your most common settings and functions mere inches away from the joystick, further simplifying operation. All while delivering — and improving — the power, productivity, and efficiency you already expect from CASE G Series wheel loaders. Extreme fuel efficiency, lower engine operating temperatures and a no DPF/no regen emissions solution are matched with features designed to shorten cycle times, increase uptime, and make you even more efficient. An optional, factory-integrated payload system drives greater accuracy and loading efficiency in operations from quarries and job sites to feedlots and supply yards — and makes the investment/deployment in a payload system entirely turnkey (no separate financing/installation/etc.).

C Series motor graders expand the CASE lineup with well-equipped models ideally suited for small-to-mid-size grading operations for municipalities, road maintenance and general construction. Their SCR-only Tier 4 Final engine solution delivers fuel-saving performance with minimal cost or maintenance from the operator and with the product assurance of ProCare, ownership and upkeep has never been easier. Models come standard with the productivity-boosting features operators want and are available as standard drive or AWD, and as machine control-ready for integrating into precision fleets. C Series graders deliver smooth, automatic shifting thanks to an Ergopower transmission and torque converter. And with the hydraulic differential lock and automatic power splitting, torque is instantly transferred from a slipping tire to one with more traction, providing constant traction without throttle adjustment necessary.

The CASE H Series rough terrain forklifts get it done smoother, easier, and faster. With fast lifting speeds, roading speeds of up to 24 mph (38.6 km/h), lifting capacities of up to 8,000 lbs. and a slew of unique features that keep loads level and forklift operators comfortable, these high-performance, Tier 4 Final forklifts truly do raise the bar. Rough terrain forklifts are designed for two things: lifting and moving loads. We have engineered the H Series forklifts to be the best at both. With lifting speeds of 107 feet per minute and roading speeds of 24 mph, you will be able to raise, haul and place quicker to finish the job faster.

The all-new E Series excavators build on that legacy with seven new models - including two new class sizes - designed from the ground up to revolutionize the operator experience through laser focus on the things operators care about most: reliability, cab comfort and performance. We give you a full line-up of solutions for every size and type of jobsite, whether you are trenching in open fields or working a single lane on the highway. And the growing list of OEM-fit machine control technologies available throughout the new E Series lineup shows our commitment to always delivering improved performance, precision, and profitability.

The CASE M Series dozers are among the most powerful and efficient — and now even more precise with factory-fit machine control. This makes it easier than ever to get into machine control and to experience its benefits: increased productivity, improved performance, and reduced wear-and-tear on your dozer fleet. Match that with industry leading power, extreme visibility to the work area, an intuitive operator interface/experience, and the full support of CASE and its dealer network — and CASE M Series Dozers will drive your success from heavy bulldozer work to fine grading. It is all about the drawbar pull — and the tractive effort and related pushing power it creates. CASE M Series dozers provide best-in-class drawbar pull (varies by model), and a powerful and robust undercarriage with a variety of track and extended life options to meet your pushing needs.

CASE Minotaur™ DL550 — an all-new, industry-first equipment category: the compact dozer loader. The integrated C-frame delivers true dozer performance and the agility and finesse of a loader. CASE Universal Machine Control allows you to use the precision construction technology you prefer*. It is compatible with hundreds of attachments, and the addition of an industry-exclusive fully integrated ripper makes this machine one-of-a-kind. It has the strength, attitude, and intelligence to stake a claim as the industry's most versatile and powerful compact machine.

Minotaur demonstrates CASE's commitment to delivering real-world innovation rooted in customer need. With 29 patents**, more than 10,000 field test hours, multiple customer clinics, countless operator evaluations, product refinements and even more evaluations after that — we've put this machine to the test to deliver you the highest standard in quality. Built mean for tough conditions and smart for precision grading, you can take it all on with confidence. Transform your operation with CASE Construction Equipment.

*Machine control solution of your choice sold separately

**21 patents granted, 8 pending

		No two compaction jobs are the same. All three series of CASE vibratory rollers — double drum, single drum, and pneumatic tire — provide operators with the right combination of brute compaction force and precise control for all materials, lift profiles and jobsites. Double drum. Combi. Compact. Large Frame. CASE offers compaction solutions for every asphalt job, from driveways and bike paths to highways and commercial parking lots. Industry-leading climbing up to 67 percent grade matches with a design for powerful compaction while remaining versatile, easy to transport and fuel efficient. The PT240D provides the flexibility for both sub-base and asphalt compaction in large-scale paving projects, improving compaction quality and completing the work in fewer passes — all in a Tier 4 Final machine.
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	There are various subcategories of solutions that may describe our equipment these include earth moving equipment, agriculture, residential construction, utilities, quarry and aggregates, roads and bridges, landscaping, waste and scraping, non-residential construction, and snow removal. CNH INDUSTRIAL supports your municipality by optimizing equipment for productivity. That also means we are constantly striving to design machines that are simple to own. Our customers provide input to help guide machine enhancements, to improve serviceability, visibility, stability, power, ease of operation and transport, extended time between refueling, noise reduction and cold-weather starting – just to name a few. And when you buy equipment from CNH INDUSTRIAL our relationship does not stop at the transaction. CNH INDUSTRIAL dealer network is on-hand to help you build the right equipment for your jobsite, and after you buy, for advice on daily checks, operator environment configuration and help with planned maintenance.

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
71	Wheeled, tracked, and backhoe loaders	<input checked="" type="radio"/> Yes <input type="radio"/> No	Case construction provides (7) different TLB models ranging from 74 (HP) horsepower to 110 (HP)
72	Motor Graders	<input checked="" type="radio"/> Yes <input type="radio"/> No	Case Construction offers two classes of Motor Graders, the 836C (137 HP) and the 856C (173 HP).
73	Wheeled and tracked excavators	<input checked="" type="radio"/> Yes <input type="radio"/> No	Case construction offers seven different models of compact excavators, two types of midi excavators and sixteen diverse types of heavy excavators (full-size excavators).
74	Bulldozers, compactors, scapers, articulated and rigid haulers	<input checked="" type="radio"/> Yes <input type="radio"/> No	CNH INDUSTRIAL (Case New Holland Industrial) offers (6) Bulldozers ranging from 68 to 214 horsepower
75	Cranes	<input type="radio"/> Yes <input checked="" type="radio"/> No	
76	Accessories or attachments for the offering in #71-75 above	<input checked="" type="radio"/> Yes <input type="radio"/> No	CNH INDUSTRIAL (Case New Holland Industrial) provides hundreds of attachments specifically designed to meet your equipment needs. We will include brochures highlighting the vast array of attachments we provide that range from snow-pushers, augers, bale handlers, buckets, brooms, and much more.
77	Technology or services for the offering in #71-75 above	<input checked="" type="radio"/> Yes <input type="radio"/> No	CASE ProCare is the most comprehensive and standard-from-the-factory heavy machine support program in the industry. It comes with a 3-year/3000-hr full machine factory warranty, 3-year/2000-hr planned maintenance and 3-year Advanced SiteWatch subscription. With CASE ProCare, you receive complete factory-provided coverage on select new heavy machine orders.

Table 14C: Required Offering of Equipment

Indicate below if the proposer's proposal includes at least one (1) of the following listed types or classes of equipment. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered	Comments
78	Wheel loader with published net horsepower (HP) of at least 300 HP	<input checked="" type="radio"/> Yes <input type="radio"/> No	CASE Construction offers two Wheel Loader's with published net horsepower (HP) of at least 300 HP.
79	Wheeled or tracked excavator with a published net horsepower (HP) of at least 150 HP	<input checked="" type="radio"/> Yes <input type="radio"/> No	Case Construction provides (10) full-sized excavators with a published net horsepower (HP) of at least 150 HP.
80	Motor Grader with a published maximum operating weight of at least 30,000 lbs.	<input checked="" type="radio"/> Yes <input type="radio"/> No	Case construction has (1) Motor Grader with a published maximum operating weight of at least 30,000 lbs.
81	Rough terrain, all terrain, crawler, floating, lattice, or telescopic crane with a published maximum lifting capacity of at least 300 tons and a published maximum boom length of at least 150 feet	<input type="radio"/> Yes <input checked="" type="radio"/> No	CNH INDUSTRIAL (Case New Holland Industrial) does not have Cranes in its current offering.

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Documents**Ensure your submission document(s) conforms to the following:**

- Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
- Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
- Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
- If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
 - [Pricing](#) - CNHI Price pages.zip - Friday January 13, 2023 07:29:27
 - [Financial Strength and Stability](#) - CNHI Annual report & Sustainability report.zip - Friday January 13, 2023 07:37:31
 - [Marketing Plan/Samples](#) - Buyers Guide back page.docx - Friday January 13, 2023 07:21:33
 - WMBE/MBE/SBE or Related Certificates (optional)
 - [Warranty Information](#) - CNHI Warranty.zip - Friday January 13, 2023 07:32:04
 - [Standard Transaction Document Samples](#) - NH CE and Case CE matrix.zip - Thursday January 12, 2023 14:43:50
 - [Upload Additional Document](#) - CNHI awards, certificates & licenses & Brochures.zip - Friday January 13, 2023 09:54:58

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Amy Swett, Government & Fleet Sales Account Manager, CNH Industrial America LLC

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

Yes No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_5_Heavy_Construction_Equipment_RFP_011723 Tue January 10 2023 08:47 AM	<input checked="" type="checkbox"/>	1
Addendum_4_Heavy_Construction_Equipment_RFP_011723 Fri January 6 2023 09:51 AM	<input checked="" type="checkbox"/>	2
Addendum_3_Heavy_Construction_Equipment_RFP_011723 Thu December 29 2022 12:33 PM	<input checked="" type="checkbox"/>	2
Addendum_2_Heavy_Construction_Equipment_RFP_011723 Wed December 21 2022 01:49 PM	<input checked="" type="checkbox"/>	1
Addendum_1_Heavy_Construction_Equipment_RFP 011723 Thu December 15 2022 09:27 AM	<input checked="" type="checkbox"/>	1