



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

New York State Contract #

PC70890

Master Contract #

011723-VCE

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 Volvo Construction Equipment North America LLC (hereinafter "Contractor" or "Vendor" or "Offerer"), with its principal place of business at 312 Volvo Way, Shippensburg, PA 17257. 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-VCE 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-VCE.

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.

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

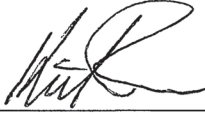
This Piggyback Contract and the referenced appendices and attachments constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or 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

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

Signature: 

Printed Name: Krister Persson


Title: Vice President, Finance & Commercial Management N.A.

Date: 9/30/2025

Company Name: Volvo Construction Equipment North America LLC

Federal ID: 382496821

NYS Vendor ID: 1100260175

Signature: 

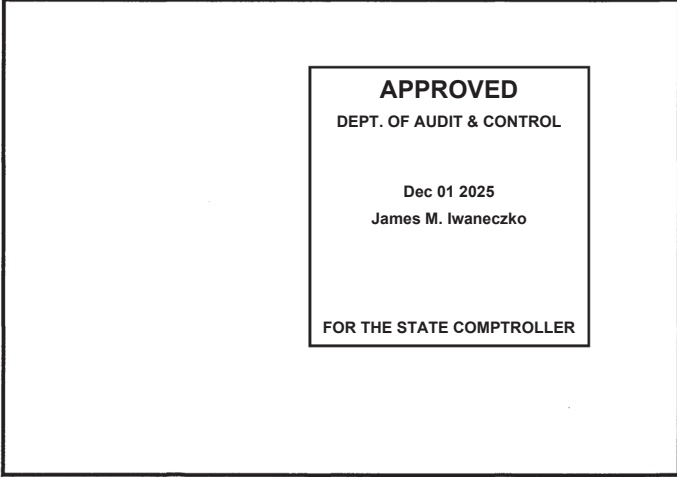
Printed Name: Ruth K. Quezada

Title: Assistant Director

Date: 10/8/2025

Office of General Services

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



INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF Pennsylvania }

:
COUNTY OF Franklin }
ss:

On the 30 day of September in the year 2025, before me personally appeared Krister Persson, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at

304 Volvo Way, Shippensburg, PA 17257
and further that:

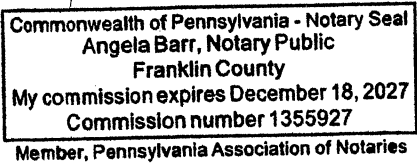
[Check One]

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: he is a duly authorized member of Volvo Construction Equipment North 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.



Angela Barr
Signature of Notary Public

Notary Public Registration No. 1355927 State Pennsylvania

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.

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- 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, Volvo Construction Equipment North 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 Krister Persson

Title of Official Vice President, Finance & Commercial Mgmt. North America Date: April 14, 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: VOLVO CONSTRUCTION EQUIPMENT
NORTH AMERICA LLC

NEW YORK STATE CONTRACT #: PC70890

MASTER CONTRACT HOLDER: SOURCEWELL

MASTER CONTRACT #: 011723-VCE

AS OF DATE: DECEMBER 1, 2025

WEBSITE TO VIEW MASTER CONTRACT PRICING:

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

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:	Volvo Construction Equipment North America, LLC
D/B/A – Doing Business As (if applicable):	
Address:	312 Volvo Way, Shippesburg PA 17257
Company Website	www.volvoce.com/united-states/en-us/
Federal Tax ID #:	38-2496821
NYS Vendor ID #:	1100260175
Contact for Contract Administration issues:	
Contract Administrator Name:	Kathy Tedone
Title:	Government Contract Manager
Address (if different from above):	
Email:	kathy.tedone@volvo.com
Phone:	828-337-3722
Toll Free Phone:	
Contact for Contract Sales/Billing (if different from above)	
Contact Name:	
Title:	
Address:	
Email:	
Phone:	
Toll Free Phone:	
Business hours (Specify M-F, Sat, Sun):	
Contact for Emergencies	
Contact Name:	Kathy Tedone
Title:	Government Contract Manager
Address:	312 Volvo Way, Shippesburg PA 17257
Email:	kathy.tedone@volvo.com
Phone:	828-337-3722
Cell Phone:	828-337-3722
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:	Please see Reseller Information for Invoicing Information
Federal Tax ID #:	
NYS Vendor ID #:	
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>	

**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:	Volvo Construction Equipment North 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.newycontracts.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
ALTA CONSTRUCTION EQUIPMENT NY LLC					85-3975009	1100260877	Yes	X	X	X	M-F 8:00AM - 5PM	5985 COURT ST RD	SYRACUSE	13206	ONONDAGA	ANNE JACKSON	315-729-0747		ANNE JACKSON@ALTG.COM	
ALTA CONSTRUCTION EQUIPMENT NY LLC					85-3975009	1100260877	Yes	X	X	X	M-F 8:00AM - 5PM	4554 WEST SAILE DR	BATAVIA	14020	GENESEE	ANNE JACKSON	315-729-0747		ANNE JACKSON@ALTG.COM	
ALTA CONSTRUCTION EQUIPMENT NY LLC					85-3975009	1100260877	Yes	X	X	X	M-F 8:00AM - 5PM	17 NORTHWAY LANE	LATHAM	12110	ALBANY	ANNE JACKSON	315-729-0747		ANNE JACKSON@ALTG.COM	
Hoffman International, Inc. d/b/a Hoffman Equipment Co.					22-2176843	1000008736	Yes	X	X	X	M-F 7:00AM - 3:30PM	1144 Zerega Ave	Bronx	10462	Bronx	Patrick Stroh	718-822-1180		patrick.stroh@hoffmanequip.com	
Hoffman International, Inc. d/b/a Hoffman Equipment Co.					22-2176843	1000008736	Yes	X	X	X	M-F 7:00AM - 3:30PM	22 Peconic Ave	Medford	11763	Suffolk	Alvin Hasenfue	631-207-2900		alvin.hasenfue@hoffmanequip.com	
Hoffman International, Inc. d/b/a Hoffman Equipment Co.					22-2176843	1000008736	Yes	X	X	X	M-F 7:00AM - 3:30PM	1440 Route 9W	Marlboro	12542	Orange	Dan Shafer	845-236-3000		dan.shafer@hoffmanequip.com	



Solicitation Number: RFP #011723

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and **Volvo Construction Equipment North America, LLC**, 312 Volvo Way, Shippensburg, PA 17257 (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 Sourcwell 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 Sourcwell 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.

Sourcewell 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 Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell 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 Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell 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 solely from any willful or gross negligent 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 a claims-made 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 claim 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

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specific above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Supplier's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Supplier will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract.

- C. If insurance is terminated for any reason, Supplier shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

Retroactive Date and Extended Reporting Period: If any insurance required here is to be issued or renewed on a claims-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the project and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least 36 months.

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

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 that make a purchase under this Contract, 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 authorized dealers or distributors. 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

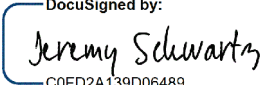
Intentionally omitted.

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.

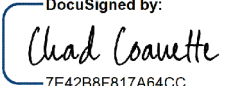
Sourcewell

Volvo Construction Equipment North America, LLC

DocuSigned by:

 By: C0FD2A139D06489...
 Jeremy Schwartz
 Title: Chief Procurement Officer
 Date: 5/3/2023 | 10:29 PM CDT

DocuSigned by:

 By: DFFF633231D54CB...
 Krister Persson
 Title: Head of Finance & Commercial Management
 Date: 5/3/2023 | 1:49 PM EDT

Approved:
 DocuSigned by:

 By: 7E42B8F817A64CC...
 Chad Coquette
 Title: Executive Director/CEO
 Date: 5/4/2023 | 9:56 AM CDT

RFP 011723 - Heavy Construction Equipment with Related Attachments and Technology

Vendor Details

Company Name: Volvo Construction Equipment North America

Does your company conduct business under any other name? If yes, please state: Pennsylvania

Address: 304 Volvo Way
Shippensburg, PA 17257

Contact: Kathy Tedone

Email: kathy.tedone@volvo.com

Phone: 828-337-3722

Fax: 828-337-3722

HST#:

Submission Details

Created On: Tuesday November 15, 2022 06:52:10

Submitted On: Tuesday January 10, 2023 09:00:46

Submitted By: Kathy Tedone

Email: kathy.tedone@volvo.com

Transaction #: 8ffac7d2-63e9-4d27-accd-1e0715ece830

Submitter's IP Address: 165.1.224.156

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")	Volvo Construction Equipment North America, LLC
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	None
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Volvo Construction Equipment; Volvo CE, VCE
4	Provide your CAGE code or Unique Entity Identifier (SAM):	1X0J7
5	Proposer Physical Address:	312 Volvo Way, Shippensburg, PA 17257
6	Proposer website address (or addresses):	https://www.volvoce.com https://www.volvoce.com/united-states/en-us
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):	Krister Persson Head of Finance & Commercial Management Volvo Construction Equipment North America LLC 312 Volvo Way, Shippensburg, PA 17257 717-530-6286 Krister.persson@volvo.com
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Kathy Tedone Government Sales – State & National Buying Contract Management Volvo Construction Equipment North America LLC 312 Volvo Way, Shippensburg, PA 17257 Mobile: +01.828.337.3722 Kathy.tedone@volvo.com
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Stephanie McCall Head of Key Accounts, Sales North America Volvo Construction Equipment North America LLC 312 Volvo Way, Shippensburg, PA 17257 717-530-6160 Stephanie.mccall@volvo.com

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
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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>Volvo Construction Equipment (VCE) is part of Volvo Group. Volvo Group offers trucks, buses, construction equipment, power solutions for marine and industrial applications, financing and service that increase our customers' uptime and productivity. Volvo Group contributes to the development of electrified and autonomous solutions for the benefit of customers, society and for the environment. Volvo Group employs 100,000+ people world-wide, with production in 19 countries, in 190 markets, with world-wide service networks and dealerships. Visit: https://www.volvoce.com/global/en/this-is-volvo-ce/about-us/volvo-group and see Volvo Group Corporate Presentation addendum under Additional Docs.</p> <p>Under the Volvo Group, VCE is a world leading manufacturer of premium construction equipment, offering sustainable transport and infrastructure solutions. VCE offers a wide range of services, contributing to our customers success supported by a world-wide footprint and distribution network. VCE was founded in 1832 in Eskilstuna, Sweden and is now headquartered in Gothenburg, Sweden and employs 14,600 people world-wide, with production facilities in 9 countries, with 265 dealers in 180 countries. https://www.volvoce.com/global/en/this-is-volvo-ce/about-us and see VCE's Corporate Presentation addendum under Additional Docs.</p> <p>Volvo Construction Equipment North America is headquartered in Shippensburg, PA and covers the markets of the United States and Canada. These two important markets cover an area that contains 400 million+ people and boasts the world's largest economies. VCE has been present in this Region since the 1980's and continues to be a strong player in the North American market. Today, the site employs about 800 employees representing nearly 20 nationalities working in Operations, Technology, and Sales and Marketing. https://www.volvoce.com/global/en/this-is-volvo-ce/about-us/our-locations/shippensburg/</p> <p>VCE strives to Build Tomorrow, by Building the World We Want to Live In.</p> <p>Our Mission: Drive Prosperity through transport and infrastructure solutions Our Purpose: To Build the world we want to live in Our Vision: Be the most desired and successful transport and infrastructure solution provider in the world Our Values: Customer Success, Trust, Passion, Change, Performance</p> <p>From its humble beginnings as an engineering workshop in Sweden two centuries ago to the globally-renowned industry leader it is today, the growth of VCE is far from ordinary. It is a story of two centuries of innovation where today it stands proud as one of the world's major manufacturers of construction equipment products and services and a pioneer for a more sustainable way of working. VCE's heritage provides the strong foundation on which it is able to build the world we want to live in.</p> <p>For a more depth link at VCE's history, please visit: https://www.volvoce.com/global/en/this-is-volvo-ce/our-history</p>
11	What are your company's expectations in the event of an award?	<p>VCE has had great success with our Sourcewell Heavy Equipment Sourcewell contract over the past two terms. It is VCE's goal to continue to meet and exceed the needs and expectations of our governmental customer base nationally (including Hawaii and Alaska) and in Canada. Our Sourcewell contract has proven to play a fundamental role in VCE's overall government sales strategy and growth and provides us with the opportunity to offer our governmental customers our high-quality products and services at our most competitive government pricing available.</p> <p>VCE is committed to the continued growth of the contract with on-going and expanding dealer trainings, marketing resources, outreach and promotion.</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>Volvo Group and VCE Third Quarter 2022 Review - See addendum "Volvo Group Q3 2022 Financial Review" or visit: https://www.volvogroup.com/en/news-and-media/events/2022/oct/third-quarter-2022.html</p> <p>Link to Volvo Group Credit Rating and Info: https://www.volvogroup.com/en/investors/debt-information/credit-rating.html</p> <p>Link to Volvo Group Debt Info: https://www.volvogroup.com/en-en/investors/debt-information.html</p> <p>Link to Financial Information: https://www.volvogroup.com/en/investors.html</p>
13	What is your US market share for the solutions that you are proposing?	<p>VCE considers this information proprietary, but please refer to Volvo Group Q3 2022 Financial Review addendum for more information about VCE's presence in North America.</p>
14	What is your Canadian market share for the solutions that you are proposing?	<p>Same as above.</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>VCE is a manufacturer with its' North American headquarters in Shippensburg, PA. This site is shared with Operations, Global Technology, Customer Solutions and Sales and Marketing. The Shippensburg facility has been part of the local community for over 40 years, and, in 2007, was acquired by VCE. Since then, two product lines have been localized, a multi-million dollar Customer Center created, and the Sales and Marketing team relocated to Shippensburg to create the multi-functional North American hub.</p> <p>The Shippensburg factory currently manufactures soil and asphalt compactors and wheel loaders. Operations include welding, large machining, paint, and assembly. The state-of-the-art Customer Center is used for training and machine demonstration for customers and dealer staff.</p> <p>VCE divides North America into three sales and customer support Districts. Within each District, VCE has field-based employees to be closer to dealers and customers. These field teams consist of District Sales Managers, District Product Managers, District Customer Support Managers and Field Technical Support Specialists</p> <p>VCE's Sales and Product Managers focus on dealer business growth, retail sales, product sales competency and customer meetings. These positions are dealer and customer facing to grow sales and assist in enhancing the customer experience.</p> <p>VCE's Customer Support Managers and Technical Support Specialists focus on the after-market side of the business. These positions are dealer and customer facing which involve dealer product support activities with parts ordering and stocking levels, technician training and competency development, customer service response times and assistance in troubleshooting and repairing new or complex service issues.</p> <p>Please see section Proposer's Ability to Sell and Service Nationwide for more detailed description of VCE's relationship with sales/service field teams and the dealer network.</p>	*
17	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>VCE achieved a worldwide certification complying with ISO 9001 (quality), ISO 14001 (environmental care) and ISO 45001 (occupational health and safety). This means all of the company's sites and functions are working in a correct and consistent manner fulfilling all requirements in these standards.</p> <p>The three standards align with Volvo's core values of quality, safety and environmental care. With the achievement of the worldwide certification, we prove we are a unified organization, under one process model, fully aligned across all sites around the world.</p> <p>Please visit https://www.volvoce.com/global/en/this-is-volvo-ce/about-us/worldwide-certification/ for more information regarding these certifications and to view certificates.</p>	*
18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	None	*

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	See attached VCE Awards addendum uploaded under Additional Docs folder for a list of VCE awards included but not limited to.	*
20	What percentage of your sales are to the governmental sector in the past three years	VCE considers this information proprietary however assures Sourcwell that our government channel is a critical part of our business model in North America which will be demonstrated throughout this RFP response.	*
21	What percentage of your sales are to the education sector in the past three years	Same as above	*
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>VCE OEM managed National Co-operative Purchasing Contracts: Sourcewell: 2020 (136 units) / 2021 (217 units) / 2022 (282 units) HGAC: 2020 (13 units) / 2021 (5 units) / 2022 (4 units)</p> <p>VCE OEM managed Federal Contracts:</p> <ul style="list-style-type: none"> Defense Logistics Agency Heavy Equipment Purchasing Program (HEPP Program) – The Heavy Equipment Program provides COMMERCIAL-TYPE heavy equipment for our military and other government agencies. Located in Philadelphia PA - 86 units. Defense Logistics Agency Disposition Services – Located in Battle Creek MI. DLA Disposition Services disposes of excess property received from the military services. A 5 year Contract to provide Excavators, Wheeled Excavators and Wheel Loaders to DLADS - 59 units <p>State Contracts: VCE's dealership network holds a myriad of State and DOT contracts where dealership is the prime contract holder.</p>	*
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?	VCE holds a Supply Agreement with our partner American Material Handling, Inc. (AMH), Watkinville GA. Estimated 50 units annually.	*

Table 4: References/Testimonials

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

Entity Name *	Contact Name *	Phone Number *	
Colorado Department of Transportation	Robert Brogdon	720-951-812	*
City of Toronto	Jugal Parikh	416-396-7213	*
Maryland Environmental Services	John Mirabile	410-729-8200	*

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 *	
Colorado DOT	Government	Colorado - CO	31 Wheel Loaders & EW160E 10 YRS of CDOT Contracts for Wh Ldrs. In 2022, CDOT purchased 13 L90s through Sourcewell Contract for 1st time	Varies YOY	\$6.8M	*
New York City Department of Sanitation	Government	New York - NY	24 Medium Sized Wheel Loaders 5 Large Wheel Loaders 1 Large Excavator	Varies YOY	\$8.3M	*
City of Toronto	Government	ON - Ontario	13 Large Wheel Loaders 1 Articulate Hauler 1 Large Excavator These purchases made through Sourcewell/Canoe contract	Varies YOY	\$6.6M	*
Maryland Environmental Services	Government	Maryland - MD	2 Articulated Haulers 2 Long Reach Large Excavators 1 Large Wheel Loader 1 Compact Wheel Loader through Sourcewell contract	Varies YOY	\$1.7M	*
Lancaster County Solid Waste Authority	Government	Pennsylvania - PA	5 Large Wheel Loaders 2 Large Excavators Articulated Hauler	Varies YOY	\$2.1M	*

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.	<p>VCE's Sales Force at the OEM level have over 75 employees, based out of Shippensburg, PA, supporting its dealership network dedicated to the following areas:</p> <p>VCE Field Sales: VCE's field-based sales team consists of District Vice Presidents and District Sales Managers. DSMs work with the dealership network on annual dealer business planning, performance, growth, retail sales programs and activities, product sales competency training and participate in customer meetings. These sales positions are dealer and customer facing to develop dealer business initiatives to support sales growth and assist in enhancing the customer experience.</p> <p>VCE Sales Support: The field Sales Support Managers are product and market segment specialists. They assist with development of sales competency training, dealer product sales trainings, customer product training events, assist in sales application opportunities, and are product liaisons from the sales region to the factory and engineering group and viewed as the 'product experts' on their assigned products.</p> <p>VCE Government Sales: The dedicated Government Sales team is comprised of a State & National Buying Contract Manager and a Federal Contract Manager as well as support staff. This team manages all government contracts at the OEM level and directly supports the VCE Field Sales team and dealers by providing training on all VCE government programs, contracts, initiatives and policies. Government Sales has developed an extensive training and support program for our dealers which include sales and marketing strategies in the municipal and state markets, with a strong focus on our Sourcewell contract.</p> <p>VCE Commercial Management / Inside Sales Support: The internal Commercial Management / Inside Sales team develop the commercial annual sales strategies and retail programming for the field. This team consolidates the monthly dealer forecasts for new machine orders and aligns with factory forecast and production requirements. This team assists the field sales team in efficiently managing dealer inventory levels by coordinating lead times on new factory orders for customer retail orders and general inventory.</p> <p>The Inside Sales team interface daily with the VCE field team, Government Sales team, and dealers to coordinate product order availability, ensure on time delivery and other sales support activities to increase sales and provide a high level of customer satisfaction.</p>
27	Dealer network or other distribution methods.	<p>In addition to VCE's direct employees listed above and below, VCE's dealership network is responsible for and provides world-class sales and aftermarket support.</p> <p>The dealership network is broken into three districts in North America and consists of 37 independently owned dealerships (including a dealership in Hawaii, four in Canada, two in Puerto Rico) and one company owned dealership in California with 235 branch locations representing VCE products and support in all 50 States, all Canadian provinces and the Caribbean.</p> <p>Within the VCE dealer network, there are over 520 sales people focused on Volvo equipment sales. The dealers have over 170 Customer Support Representatives (CSR) that focus on aftersales customer support. VCE dealers have over 1,650 Volvo trained service technicians at the 235 dealer locations to service and repair the products.</p> <p>Please see VCENA Dealer Directory addendum under Additional Docs folder, for specific branch locations.</p>

28	Service force.	<p>To support its dealer network described above, VCE has field-based customer support personnel within the three districts. This product support team consists of District Customer Support Managers and Technical Service Managers that focus on the after-market side of the business to ensure the best possible customer satisfaction experience. These positions work directly with dealers and customers and involve dealer product support activities with parts ordering and stocking levels, technical training and competency development, customer service response times and assistance in troubleshooting and responding to new or complex service issues.</p> <p>Additionally, at the corporate level, VCE has a Product Management & Productivity team and an Uptime & Customer Support team.</p> <p>VCE's Product Management & Productivity Team is responsible for competency development, technical training and has expert product managers responsible for each product category offering, including attachments.</p> <p>VCE's Uptime & Customer Support Team has the sole responsibility of ensuring machine uptime owning all quality and technical issues that may arise.</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>VCENA's entire dealer network is included in this proposal, please see VCENA Dealer Directory addendum under Additional Docs folder, for verification purposes.</p> <ul style="list-style-type: none"> • Dealer creates quote to customer using standardized Sourcewell Quote Form/Tool created by VCE Contract Manager - see Sourcewell Quote Tool addendum • Dealer forwards to VCE Government Contract Manager for review to ensure contract pricing/discounts being used and VCE Government Contract Manager logs as active quote • Dealer provides customer with contract quote • Customer issues purchase order to dealer • Dealer submits copy of customer purchase order to VCE Government Contract Manager who keeps on file (for internal auditing purposes). • Dealer also maintains copies of customer quote and purchase order • Dealer places order with VCE • Dealer delivers machine to customer • Dealer invoices customer (forwards copy to VCE Government Contract Manager) • VCE Government Contract Manager submits quarterly report, along with check for administrative fees, on a quarterly basis on behalf of all dealers for units that delivered in that quarter. • VCE Government Contract Manager audits dealers on a monthly basis to follow up on pending quotes, orders and machine delivery to ensure all contract sales are reported. Additionally, VCE has an internal Retail Report and Open Orders report that is cross-referenced monthly. <p>In addition, if a local agency has additional terms and conditions to this contract or wishes to enter into a Participating Addendum, VCE may propose the agreement be entered between the VCE dealer and said entity.</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 Success is one of Volvo's core values and one that it takes very seriously. Customer Service is provided directly through VCE's dealer network, with the assistance of VCE's Uptime and Customer Support Team and field teams described above. It is up to each dealership to meet the expectations of its customers' needs; processes and procedures vary from dealership to dealership however VCE provides guidelines which establish best practices a dealership is encouraged to meet to satisfy the expectations of our customers, and to maintain a customer experience which is both consistent and positive. VCE's District Sales Managers conduct quarterly progress reviews with each dealership on their annual business goals and commitments. These reviews measure individual dealerships' performance to ensure they are meeting customer service needs to VCE expectations.</p> <p>VCE and our dealers are committed to responding to customer service needs within four hours. VCE has expectations that our dealerships:</p> <p>Retain CSRs (Customer Support Representatives)</p> <ul style="list-style-type: none"> • Actively promote the use of CSAs (Customer Support Agreements) • Stock and sell genuine Volvo parts • Employ an adequate number of service technicians • Have an adequate number of trained service technicians • Have an adequate number of properly equipped service vehicles for the products sold and serviced in the territory. • When required by the market, dealers should have a 24-hour support program • Have a documented service enquiry handling process to respond to customer needs/concerns • Have a documented warranty process

Additionally, VCE administers the Volvo Iron Mark program which is a dealer incentive program focusing on three areas, one of which is customer Uptime Support. The goal of this program is to reward high-performing dealers in these areas by increasing dealer incentives against the afore-mentioned expectations. The program creates a benchmark to help measure against high-performing peers and to share best practices. Below is a snapshot of part of the Scorecard used in measuring Customer Support and Uptime:

- Service Work Order Survey feedback process in place
- Parts Availability
- Uptime Solution Systems/Operational Management
- Dealer Competence Development (Technical & Sales)
- Product Updates
- Safety Campaigns
- Warranty Administration and Claim Quality

PHONE SUPPORT:

VCE administers an all-hour phone support line for all dealers in all time zones, coast to coast.

REAL TIME TECH SUPPORT:

Having expert support close by and available when dealers need it most is vital when it comes to keeping the downtime of a customer's operation to a minimum. That's where Real-time Tech Support comes in, which provides a live video feed to enable dealer field technicians access to expert help in real time, all while on-site. The result is faster fault tracing and less travel, all with the single mission to maximize machine uptime.

CHAIN:

VCE has in place an on-line automated technical support helpline to support dealer field service technicians who are in the field responding to machine technical issues. This support line provides immediate information and support to assist them in resolving technical issues quickly and efficiently. CHAIN cases have global visibility and also serve as an extensive database and library of information regarding machine diagnostics, product bulletins, and service tips. Within CHAIN there are different categories that the field tech can select based on urgency and the need for problem resolution.

PARTs Distribution Centers:

The Volvo Group's Byhalia Central Distribution Center located within the Gateway Global Logistics Park in Byhalia, MS (Memphis area) opened in 2014 and represents a \$70 million investment in our North American parts distribution footprint. The facility is over 1,000,000 sq. ft. and employs approximately 625 employees. Volvo Group continues to invest in its parts distribution footprint in North America that now includes three parts warehouses/distribution centers. The newest parts distribution center is in Toronto, Ontario, Canada. This 650,000 square foot state of the art facility allows for shorter response times for Canadian dealers. In 2020 the Reno, NV warehouse expanded from a Supporting Warehouse to a full-fledged Regional Warehouse thereby expanding breadth and depth of parts. This has again reduced lead times for dealers sourcing parts. We are currently working to expand again our North America footprint.

VCE has incorporated a Premium Service option for dealers called Dedicated Delivery Service (DDS) which allows for dealers in a certain proximity to our main distribution center (Byhalia) to receive parts next day before 8am. This has resulted in increased productivity for the dealer as they now can dispatch Service Technicians sooner getting machines up quicker than before.

The North American logistics footprint:

- Major global transportation hub
- Global transportation hub creates opportunities for quicker back-order recovery
- Optimized stock order transport for NA and exports markets - due to consolidation/central location between brands
- Reduced order processing time & Improvement in on-time shipments
- Reduction in error rates – fewer SKUs representing 98% of the volume
- Increased availability - through shared inventory between brands in the Volvo Group in one location

31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	VCE has held the Sourcewell Heavy Equipment contract for two four-year terms now. During this period, extensive dealer trainings have been conducted throughout the United States and Canada, both at dealership locations and with on-going webinars and one-on-one trainings given by VCE's Government Contract Manager. VCE is pleased to say with confidence that its entire North American dealership network is now trained and engaged with how to promote the contract and sell off it, abiding by VCE's strict policies to ensure contract compliance. VCE, along with its dealership network look forward to continued contract growth in North America.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Same as above	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	None	*
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?	VCE is able to support all these sectors.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	None	*

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.	<p>VCE is committed to the promotion and marketing of the Sourcewell contract. These are just a few examples:</p> <ul style="list-style-type: none"> • Volvo CE Government dedicated website that highlights Sourcewell: https://www.volvoce.com/united-states/en-us/about-us/government-sales/ • Volvo CE has marketing material available for the dealer to co-branded with VCE and Sourcewell/Canoe Procurement Group. These pieces are designed for print or electronic use. see attached examples under Marketing Material folder • Volvo CE Government Marketing Campaign for Electric Equipment. VCE has a robust marketing campaign specifically for the government sector for introducing our fully electric equipment. This is all encompassing with demos being conducted with government agencies around the country, along with an on-line portal to put decision makers in direct contact with an expert that may answer questions. Our Sourcewell contract is a prominent aspect of this marketing campaign. see attached examples under Marketing Material folder • Customer Success Stories and Press Releases. Volvo CE is in the process of putting together two customer success stories to be released Q1-Q2 2023 with Sourcewell members who recently purchased our full electric compact and other equipment (two in the U.S and one in Canada). Video, pictures and interviews will be conducted with the SW member and dealership. These stories and videos are very well-done, professional pieces and will be on VCE's websites and social media outlets, circulated to heavy equipment publications, and will be a part of the Sourcewell and Canoe newsletters when completed.
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	<p>VCE, as part of the large Volvo Group family globally, has a very strong web presence, both internationally and at home in the U.S. and Canada. https://www.volvoce.com and https://www.volvoce.com/united-states/en-us/</p> <p>These main sites provide our customer base with critical information needed to make purchasing decisions, everything from very specific product info, parts, and service information; along with detailed information regarding VCE's history, mission, values, and state of the art videos.</p> <p>Additionally, customers can access information on our products and services through our blog: www.volvoceblog.com, through our app: Volvo CE Insider (on the Google and App stores) and through our social channels:</p> <ul style="list-style-type: none"> • Facebook: https://www.facebook.com/volvocena • YouTube: https://www.youtube.com/user/volvocena • Instagram: https://www.instagram.com/VolvoCE_NA • Twitter: https://twitter.com/volvoce_na
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>It is VCE's view that Sourcewell does an excellent job in promoting itself as a government entity serving the needs of the U.S. and Canada's municipalities, tribes, and education sectors; Sourcewell's message is very much in line with VCE's core values.</p> <p>Sourcewell's dedicated legal team, marketing material (electronic and print) along with its training resources and tradeshow participation illustrates the organization's dedication, willingness, and proactive approach to the education and promotion of co-operative purchasing. The time and cost savings a Sourcewell contract offers are in the best interests of all parties involved: our governmental customers, tax-payers and manufacturers/service providers. It allows VCE as the manufacturer and its dealers to focus on quality, service, uptime and building relationships with our governmental customers based on their specific needs/applications and financing constraints.</p> <p>As demonstrated throughout this RFP response, our Sourcewell awarded contract is a fundamental part of our government sales process and is integral in growing VCE's governmental market share. This is recognized by VCE's executive management and other VCE departments and communicated to its dealer network.</p> <p>It is VCE's desire that the efforts on the part of Sourcewell, and VCE, continue to develop and expand the contract usage, collaboratively.</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.	Not at this time.

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>VCE understands that reducing costs, while increasing productivity and safety, is a test that customers face every day. Reliable and efficient machines play an important part in achieving this, but it is the performance of the operator that really makes the difference. With a comprehensive package of training initiatives, VCE supports operator development to help them unlock the full capability of the Volvo machines.</p> <p>VCE offers Machine Operator Training, Advanced Operator Training, and Simulator Operator Training programs. These trainings are optional, not standard, and are fee based. Dealers may quote training programs up front or Sourcewell members/customers may arrange training after purchase. Some dealerships have staffed VCE certified trainers and these dealerships can perform this level of training at either the dealer or customer location upon request. VCE also has a staff of trainers able to perform training at customer locations or at our VCENA Customer Center in Shippensburg, PA.</p> <p>Please visit https://www.volvoce.com/united-states/en-us/services/volvo-services/fuel-efficiency-services/operator-training/ for a more in-depth look at VCE's training programs and what they offer.</p> <p>VCE's Customer and Training Center in Shippensburg, PA Headquarters:</p> <p>VCE's commitment to training to both its dealership network and customer base is demonstrated by its continued investment in its training facilities, most recently with a \$7 million expansion of Volvo CE's Customer Center at the company's North American headquarters in Shippensburg, PA. Opened in 2014, the Customer Center sits on 40 acres with a full machine demonstration area used for dealer and customer events.</p> <p>The \$7 million expansion includes the addition of several new machine bays, classrooms and a virtual lab used for creating and hosting virtual trainings. Training will primarily be for Volvo dealer technicians, but it will benefit customers who visit Shippensburg by providing a holistic view of what the company is doing to support their operations with training for operators and technicians, plant tours, the ability to interact with Volvo CE experts and more.</p> <p>This world-class training center will include technical courses on equipment as well as productivity and uptime services, such as the Volvo Assist programs and ActiveCare Direct managed telematics program. There will also be training and demonstrations on electric machines, automation and connectivity. The virtual lab will allow for the use of video, augmented reality and other technologies to support dynamic virtual training courses for dealers throughout the U.S. and Canada.</p>

41	Describe any technological advances that your proposed products or services offer.	<p>FULL ELECTRIC EQUIPMENT VCE is committed to driving the transformation to a more sustainable future with goals of offering the broadest range of electric machines in the industry. VCE's goal is to have 30% of our product offering to be fully electric by 2030. These machines are more efficient, low noise, and zero emissions.</p> <p>VCE is pleased to have launched its full electric compact offering in 2022 to include five models, all available on Sourcewell contract with a contract discount, so our governmental customers are receiving most competitive pricing available on these units. VCE has established relationships with Preferred Suppliers for direct current fast chargers and mobile solar array chargers. Sourcewell members may purchase direct from dealers through Volvo's Extended Offer program simplifying the buying process. These options will be quoted as "Sourced" goods.</p> <p>Please visit: https://www.volvoce.com/united-states/en-us/products/electric-machines/ for a closer look at this equipment offering.</p> <p>ELECTRIC MACHINE MANAGEMENT APPLICATION The latest advancement in telematics from VCE. Offers systems management through an on-line application. Basic features include machine status, hours, battery level and location with advanced features including charge reminders, charge interruption alerts, monitoring of mobile charging stations, annual batter consumption.</p> <p>PRODUCTIVITY SERVICES One area that sets VCE apart is its commitment to customer productivity and efficiency.:</p> <p>CO-PILOT and VOLVO ASSIST SOLUTIONS Volvo Co-Pilot is a state-of-the-art touchscreen tablet that powers all VCE's Assist platforms, using on-board machine data and high precision sensors to more easily complete tasks in less time. Simple and intuitive, the operator can set up projects in just a few touches by selecting the required job parameters. The operator can then monitor progress of the job as it gets underway and stay safe, with on-screen alerts that indicate when pre-set parameters are met. Here are just some of the benefits VCE's Co-Pilot offers:</p> <ul style="list-style-type: none"> • Compact Assist (Soil and Asphalt Compactors): Machine indication system that goes on compactor that maps passes, temperature, and density in REAL TIME to help ensure proper compaction. Real time mapping is an industry exclusive. • Load Assist (Wheel Loaders): An on-board scale system that weighs the material in the attachment of the wheel loader to allow proper loading of trucks, crushers or hoppers. • Dig Assist (Excavators): Machine indication system that informs that operator how far up or down his attachment is as well as showing the operator to dig to pre-set targets or designs displayed on the screen. • Haul Assist (Articulated Haulers): An on-board scale system that weighs the material in the bed of an articulated hauler to allow for the tracking of material management and productivity data. <p>For a more in-depth look at Volvo's Assist solutions and capabilities please visit: https://www.volvoce.com/united-states/en-us/services/volvo-services/productivity-services/</p> <p>1000 HOUR ENGINE OIL INTERVALS Advancements in Volvo CE lubricant technology, coupled with our new high-performance engine filters, cut engine drain intervals and costs on heavy equipment by up to 50%. Volvo's new VDS 4.5 15W-40 and 10W-30 lubricants are formulated to better suspend contaminants and maintain viscosity. These oils are proven to resist sludge formation over the full 1000-hour drain interval. High-performance engine oil filters combined with these revolutionary oils are the key to this new engine oil interval offering from Volvo. Lengthening the time between drain intervals gives customers tangible cost savings in labor and materials, all while increasing machine uptime. For more info, please visit: https://www.volvoce.com/united-states/en-us/services/volvo-services/uptime-services/1000-hour-engine-oil-intervals/</p>
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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>To have a future, we must do business sustainably. Volvo Group and VCE are dedicated to a sustainable future. To succeed we have taken an active role in a number of progressive projects, most notably WWF Climate Savers: www.volvoce.com/global/en/this-is-volvo-ce/what-we-believe-in/sustainability/wwf-climate-savers/ and Construction Climate Challenge: www.volvoce.com/global/en/this-is-volvo-ce/what-we-believe-in/sustainability/construction-climate-challenge and we're confident our efforts will lead us to a more prosperous, fair and environmentally sound future.</p> <p>Creating a carbon-free future is a vision we share with many of our customers. VCE is committed to its position as a driver of change within the construction industry and has set its own strict target to reach net zero value chain greenhouse gas emissions by 2040, along with a 50% reduction in CO2 emissions across our own operations and a 30% reduction in CO2 emissions across product use as early as 2030.</p> <p>We understand that our customers are also setting their own ambitious targets to urgently reduce their carbon footprint which is why we believe in working closely with our customers to accelerate the green transition.</p> <p>For more information regarding Volvo's commitment to sustainability please visit:</p> <p>Volvo's Sustainability Strategy: www.volvogroup.com/en/sustainability.html</p> <p>Volvo's Concept lab link: https://www.volvoce.com/global/en/this-is-volvo-ce/what-we-believe-in/innovation/volvo-concept-lab-machines/</p> <p>VCE's Approach to Sustainability: www.volvoce.com/global/en/this-is-volvo-ce/what-we-believe-in/sustainability/</p>
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>Along with quality and safety, caring for the environment is one of Volvo's core values. This means that Volvo Construction Equipment works with an overall perspective of the products that extends throughout their entire life cycle. This includes engineering and design, material selection, manufacturing processes, use and recycling.</p> <p>Please see Environmental Declaration Addendums under Additional Docs file each of which indicates ISO certifications, recycling declarations, and other environmental information for VCE's various product offering.</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>VCE given its size is not eligible for these designations, however we have an internal program where we reach out and actively seek vendors and partners with veterans, women and minority owned small businesses.</p>
45	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	<p>VOLVO CE EXTENDED COVERAGE</p> <p>In March of 2022 VCE launched it's Extended Coverage program in order to provide more value for a lower cost at a higher level of customer service with our products. This is optional, after-market coverage available through VCE. Coverage is available through VCE's dealership network with a dedicated in-house Team provided by Volvo to support the program. There are 5 levels of coverage ranging from engine to complete machine with the ability to add TT&M to suit the customer's needs. By bringing the extended coverage program in house, VCE has been able to enhance upon the level of coverage offered to governmental customers, while offering a more competitive price – all being supported in-house by a Volvo Team.</p> <p>MACHINE PACKAGE OFFERING for COMPACT EQUIPMENT</p> <p>VCE is launching a compact machine package offering (including electric) in 2023 which will allow for quicker delivery times and better availability of compact equipment. These option bundles will allow VCE and its dealerships to have stocked inventory readily available based on most popular and in demand specifications. The core package focuses on a basic configuration and the advanced package is a premium version based on performance needs.</p> <p>FREIGHT from MANUFACTURING FACILITY/PORT TO LOCAL DEALER LOCATION INCLUDED in VCE LIST PRICING</p> <p>All machines are shipped from VCE to freight on board (F.O.B.) dealer location throughout U.S., Canada, Hawaii, and Alaska. List pricing for all VCE equipment includes freight from factory / port to the local dealer branch location specified. Only freight charge customer is responsible for is from dealer branch to customer location.</p> <p>FRAME LIFETIME LIMITED WARRANTY</p> <p>VCE is one of the only, if not the only in its industry to extend to its authorized dealers and end user customers who purchase a new Volvo machine a Lifetime Limited Frame</p>

Warranty for its entire product line as per the below grid. The warranty applies to the initial machine owner and is non-transferrable.

VCE or an authorized VCE dealer will repair or replace the frame, and where specified, other structural components on the machine which prove to be defective in material or workmanship during the period of initial ownership or for the life of the machine, whichever is less.

For a more in-depth look, see VCE's Frame Lifetime Limited Warranty Addendum under Warranty Folder or visit: <https://www.volvoce.com/united-states/en-us/services/volvo-services/uptime-services/lifetime-frame-and-structure-warranty>

FUEL EFFICIENCY

VCE's commitment to fuel efficiency sets it apart from others within the industry. Standing behind its commitment, VCE introduced its Fuel Efficiency Guarantee program in 2012, with the understanding that fuel is one of its customers' largest operating expenses. VCE is so confident in the money-saving fuel efficiency of its GPE excavators, articulated haulers, and wheel loaders that they offer a Fuel Efficiency Guarantee when a new Volvo machine is purchased and customer activate their free, standard four-year CareTrack subscription (referred to below). If machine's fuel efficiency and productivity do not meet the model-rated fuel efficiency levels, VCE will reimburse the customer the cost of the additional fuel. Saving fuel means lower emissions for the environment and cost-savings to our municipal and state customers. Please visit for more information: <https://www.volvoce.com/united-states/en-us/services/volvo-services/fuel-efficiency-services/>

CARETRACK and ACTIVECARE DIRECT

Customers' purchasing new Volvo machines may be enrolled in a complementary one-year ActiveCare Direct and four-year CareTrack subscription.

CareTrack Operation is VCE's telematics portal, which allows customers to optimize and maximize machine or fleet fuel consumption, machine utilization and excessive idling reports. Its machine specific reports highlight how each machine is used and how efficient operators are working, helping to identify training needs.

ActiveCare Direct (ACD) is unique to VCE and the only manufacturer to offer this direct to customers. ACD is a revolutionary new telematics monitoring and fleet utilization reporting service provided directly from Volvo on all GPE machines and compaction equipment. ACD offers 24/7/365 Active Machine Monitoring - there is no need to decipher raw data or react to a flood of alarm codes. VCE does this for the customer. ACD also provides Monthly Fleet Reports.

Rather than logging in to a telematics portal and sorting through mountains of data, the customer will get easy-to-understand monthly fleet reports that may be used to improve fleet utilization, identify opportunities for operator training, better manage service schedules, improve uptime and reduce operating costs.

For more information on ActiveCare Direct, please visit: <https://www.volvoce.com/united-states/en-us/services/volvo-services/uptime-services/activecare-direct/>

VOLVO CERTIFIED USED PROGRAM

VCE is pleased to offer access to our Volvo Certified Used Equipment program through our Sourcewell contract. Purchasing Volvo Certified Used Equipment may be a smart cost-savings investment for our Sourcewell customers/members as an alternative to purchasing new. Volvo Certified Used Equipment is OEM owned inventory housed at one of VCE's four Remarketing Centers around the country (Jacksonville, FL; Las Vegas, NV; Depford, NJ, and Shippensburg, PA HQ).

By purchasing Volvo Certified Used, customers will have the confidence they are receiving Volvo quality, performance and reliability in a machine that's thoroughly inspected by OEM trained personnel. Machines are tested and reconditioned using Genuine Volvo Parts and components and come with 6 months/1200 HRs PowerTrain extended coverage backed by OEM. Additional extended coverages are available.

Sourcewell members/customers may work through their local dealer in procuring a piece of equipment under the program. Sourcewell pricing and discount off retail price will be determined based on the machine condition, age, hours and other factors, all subject to OEM inventory availability.

Please see Volvo Certified Used Guaranteed Inspection and Volvo Certified Used brochure addendums under Additional Docs folder, to see what is included.

RENT TO OWN (RPO)

As part of our Sourcewell contract, VCE is pleased to offer a "Rent to Own" option. If a Sourcewell member/customer is facing budgetary constraints or shortfalls but needs to get into a piece of equipment immediately to complete a necessary job, VCE is pleased to offer a rent to own option, through its dealerships. This gives the member the ability to get

	<p>a piece of equipment immediately, based on an agreed upon monthly rental payment and convert it to a purchase at the end of an agreed upon term (ie. 3,6, 9 or 12 months), all while locking in at current contract pricing and discounts.</p> <p>ACCESS to DEALER INVENTORY, PREVIOUS RENTAL or DEMO UNITS, or USED EQUIPMENT Additionally, in order to meet budgetary constraints of our Sourcewell members/customers, dealers may offer pieces of equipment in their inventory, or that have been in a rental or demo fleet or used equipment at a depreciated value based on any hours put on the machine. Dealers must quote units at the level of pricing at which they brought the unit in to their inventory and apply the depreciation value on the quote to customer. This gives Sourcewell members the ability to purchase at a much lower cost than the purchase of brand-new machine. This option has become quite popular among our Sourcewell customer base.</p> <p>VOLVO EXTENDED OFFER PROGRAM In 2019, VCE introduced the Extended Offer program, providing a channel for VCE dealers to purchase non-Volvo branded parts directly through the vendor. Since the launch, the number of vendors has continued to grow, offering a diverse range of products from rubber tracks to master pin pushers to shop supplies, and now also including our direct fast charging solutions for VCE's electric equipment. Extended Offer provides competitive pricing and impressive lead times that are passed on to our customers.</p>
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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?	<p>Yes - VCE's standard government warranty covers all products, parts and labor. The standard warranty shall include labor costs to accomplish the repair or replacement of the defective product or part provided that the repair or replacement was performed by an authorized VCE Dealer. Please see attached Standard Government Warranty addendum. Claims are filed electronically through servicing dealers on behalf of customers.</p> <p>VCE also provides the federally mandated emissions warranty (5 YR, 3000 HR) – see attached Federal Emission Control Warranty addendum. VCE also applies the US federal guidelines for emissions warranty in Canada.</p> <p>VCE's standard warranty for electric equipment included in the price of the machine is for 6 Years/5,000 HRs and includes coverage for batteries. See Electromobility Warranty addendum.</p> <p>VCE has an Inspection Program required with machine delivery. The "Inspection Program Delivery Instructions" is to be used for checking the machine with the customer/owner and for presenting the machine to the customer/owner at time of delivery. A Report Checklist of machine operation, safety and maintenance must be completed at time of customer delivery and the signed Delivery Instructions must be submitted as a pre-condition for a valid machine warranty. A copy of a Delivery Inspection Form can be provided upon request for every model. The warranty period commences immediately following the delivery of said product to customer/owner.</p>
47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	No restrictions other than those specified in the Standard Government Warranty in the attached Warranty Folder. *
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Travel time and mileage are not included in the standard government warranty, however customers may purchase VCE's Extended Coverage, the majority of which opt in for travel time and mileage. *
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?	One of VCE's strengths is that our dealership network has the ability to service and provide certified technicians to perform warranty repairs to all areas of the United States and Canada, including Hawaii and Alaska. *
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?	VCE does not cover other manufacturer items. *

51	What are your proposed exchange and return programs and policies?	Through the standard warranty program, VCE may request some parts and major components be returned for further inspection on failure analysis. If under warranty, VCE pays return shipping and replacement of part/component.	*
52	Describe any service contract options for the items included in your proposal.	<p>VCE through its dealers offer Repair and Preventative Maintenance agreements along with Customer Support Agreements. https://www.volvoce.com/united-states/en-us/services/volvo-services/uptime-services/repair/</p> <p>VCE offers 4 levels of Customer Support Agreements (CSAs) to include tools and service designed to meet our customers' specific needs. With each agreement customer has access to a factory trained Volvo technician that is trained on and knows that specific machine. Customers will come to trust this person with the maintenance of their investment and how to make the best use of their equipment for the maximum efficiency. Please refer to Volvo Customer Support Agreements addendum under Warranty folder or visit: https://www.volvoce.com/united-states/en-us/services/agreements/</p> <p>Customer Support Agreements increase efficiency and maximize uptime and includes:</p> <ul style="list-style-type: none"> • Maintenance according to Volvo Service Program • Service performed by a trained Volvo Service Technician • Genuine Volvo Parts • Volvo lubricants and Volvo coolants • Service history documentation • Fixed price of preventive maintenance and flexible payment solutions • Analysis tools and services like CareTrack, Oil Analysis and MATRIS can be included. These services monitor the status of the machine, providing early indications, which can help maximize the uptime potential of the machine. 	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	Payment under this contract is a transaction between the customer/member and the dealer. Dealers' payment terms are typically net 30, but may be extended at the discretion of the dealer. All dealers accept credit card payments	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	<p>VCE, through its dealership network, offers its governmental and education customers the ability to finance or lease its equipment and have partnerships with NCL Government Capital and Baystone Government Finance, a division of KS State Bank.</p> <p>NCL Government Capital has its own awarded Sourcewell contract and has specialized in government leasing and financing for over 20 years and has many programs available to customize every solution to meet the needs of government agencies, including the option to finance or lease VCE's electric equipment line-up.</p> <p>KS State Bank is a full-service community bank located in Manhattan, KS. Since 1987, they have originated and successfully funded millions of dollars in municipal obligations throughout the United States.</p>	*
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.	There are no standardized transaction forms set by VCE as all transactions (quotes, receipt of POs, invoicing, finance and leasing) are handled directly between dealer and customer/member. The only required form by VCE is the SW Quote Form/Tool – see addendum.	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	All dealers accept credit card payment and set their own localized policies accordingly.	*

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 Sourcewell 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 Sourcewell discounted price) on all of the items that you want Sourcewell 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>Volvo sets a nationalized government pricing and discount program in both the U.S. and Canada and offers a significant discount off list pricing by model to our government customers using Sourcewell. This discount off list applies to the machine and all standard and additional options on our price pages and Volvo attachments. To assist with best pricing on contract, VCE caps dealer margin to a certain percentage. Most importantly, VCE holds contract pricing firm for approximately one year and price protects this government pricing to the dealer/customer, regardless of delivery lead times and mid-year increases. This means the Sourcewell member is receiving best pricing throughout the course of the year into the next.</p> <p>Additionally, VCE offers to its' dealership network an additional Government Discount program allowing them to pass additional discounting on to its SW members based on regional demands, customer loyalty, and other considerations if deemed appropriate by the responding dealer.</p> <p>Please see attached Volvo CE SW 011723 Price Catalogue, bookmarked by Product Category and Model. The discount Off List price matrix is referenced on the second page. VCE's price pages begin with base list price for each model followed by all standard and additional options at list price. Sourcewell contract discount off list is applied to the machine and all VCE options/attachments and is applied to everything line itemed within the VCE price catalogue.</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.	<p>General Purpose Equipment (GPE): 27.1% - 43.6%</p> <p>SDLG Wheel Loaders: 11.7%</p> <p>Electric Compact: 37%</p> <p>Road Equipment: 34.6% - 37.6%</p>
59	Describe any quantity or volume discounts or rebate programs that you offer.	<p>VCE uses the guideline of an additional 1% discount on 2-5 units, an additional 2% on 6-10 units, an additional 3% discount on 10 units or more for government contracts.</p>
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.	<p>The ability to offer Sourced/Open Market products and services is a necessary component, in many cases, to provide a complete solution to members. Pricing for goods and services coming from other OEMs and suppliers will be negotiated at the time of quoting between the dealer and participating member. VCE's required Sourcewell Quote Form has a section devoted to Sourced/Open Market items. VCE encourages our dealers to quote fair market value with a mark-up they deem reasonable and fair to be negotiated with the participating member. Customers/Members may request a copy of other manufacturer quote/invoice from dealer at their discretion.</p>
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.	<p>Pre-Delivery Inspection (PDI) costs are associated with the local dealer to provide a required comprehensive inspection and preparation of the machine once it arrives at dealer location from manufacturing plant before delivery to the customer. Parameters are defined for our dealers as to what is appropriate PDI costs. These costs are not included in machine pricing and will be provided at time of quotation and are dependent upon the complexity of the machine.</p> <p>The dealer reserves right to include additional labor or installation charges for Sourced options and attachments and/or modifications.</p> <p>Additionally, training, Extended Offer program, CSA's, trade-ins, and miscellaneous items are line itemed separately on both the quote and the invoice to customer and are not subject to the Sourcewell discount or the Sourcewell administrative fee.</p>

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 from manufacturing facility/Port to the local dealer location is included in VCE list pricing. All machines are shipped from VCE to freight on board (F.O.B.) dealer location throughout U.S., Canada, Hawaii, and Alaska. List pricing for all VCE equipment includes freight from factory / port to the local dealer branch location specified. Freight from dealer branch to customer – charged to customer. Dealer arranges local freight to the customer location from the dealership branch on customer's behalf, if requested. Customer is responsible for these freight costs unless otherwise negotiated with dealer.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	No difference in process to ship to these areas. In areas such as Alaska, occasionally equipment is shipped to remote areas by barge. This arrangement is worked out between dealer and customer.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	VCE has the ability to ship products wherever there is a dealer location throughout the U.S., Canada, Alaska, and Hawaii.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	<p>As a rule, VCE offers best pricing to government customers as a whole and stands behind best pricing offered in particular to our Sourcewell members, and other national co-op contracts, due to the following:</p> <ul style="list-style-type: none"> • VCE holds pricing firm for one year and caps dealer margin on Sourcewell contract • VCE does not extend this price protection or margin cap on municipal bids • VCE offers an additional Government Discount program allowing dealers to offer more aggressive discounts based on regional demands, customer loyalty, and volume purchases.

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 Sourcwell. This process includes ensuring that Sourcwell 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 Sourcwell. Provide sufficient detail to support your ability to report quarterly sales to Sourcwell as described in the Contract template.	<p>VCE's Government Contract Manager has a very close collaborative working relationship with the government sales personnel at the dealership level and has put in place a very clear and detailed quote and procurement process, that all dealers are held to account to adhere to. VCE has held hundreds of in-person dealer trainings and webinars over the past two contract terms and our network in its entirety, including Canada, is now fully engaged and trained. This position works one-on-one daily with dealership government sales managers and representatives to ensure processes, procedures, and the terms and conditions of the contract are being met. The Contract Manager conducts a periodic, internal quote and order audit to ensure the process is followed. VCE reserves the right to suspend any dealer from utilizing the contract if dealers are not upholding the contract requirements.</p> <p>As stated previously, VCE has a dedicated Sourcwell Quote Tool/Form that all dealers are required to utilize to ensure contract pricing/discounts are utilized. All quotes by the VCE dealer network must be forwarded to the Government Contract Manager for contract price/discount verification and logging/filing. This position keeps a detailed log of all quoting and confirmed order activity and requires copies of customer quotes, purchase orders, and invoices to customers on file as back up of transaction and for quarterly reporting purposes. This position submits the quarterly sales report to Sourcwell and pays fees on behalf of all VCE dealers.</p> <p>Additionally, VCE has an internal order management system where dealers place orders, manage inventory, and report their retail sales. In order for dealers to receive government price protection and discounts from VCE they must mark the sale as a contract sale, this incentivizes them to report accurately. VCE's Government Contract Manager reviews this system generated report monthly as a cross-reference to ensure all contract sales are being captured and reported.</p>
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.	<p>VCE's Government Contract Manager keeps a detailed log of all contract sales activity going back to the onset of its Cooperative Purchasing program in 2011. This sales data is compared annually to overall government market share data and VCE's government market share data.</p>
68	Identify a proposed administrative fee that you will pay to Sourcwell for facilitating, managing, and promoting the Sourcwell 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.)	<p>VCE proposes a 1% administrative fee to be charged against the Sourcwell machine price. This fee will assist us in maintaining the most competitive discounting off contract, by allowing our dealerships to receive a fair margin governmentally.</p>

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>VCE is a world leading company that engineers, manufactures, markets and sells premium equipment for construction, road and related industries. Our products are leaders in many world markets and include a comprehensive range of wheel loaders, hydraulic and wheeled excavators, articulated haulers, soil, asphalt and landfill compactors, compact track and wheel loaders and speciality-built products for the demolition, waste and recycling industry segments. VCE has also launched in North America its fully electric product offering of compact wheel loaders and excavators.</p> <p>VCE does not just sell machines, it offers a wide range of aftermarket products and services that enhance the customer's experience and satisfaction, called Customer Solutions. Customer Solutions is a key contributor to VCE's Business. Customer Solutions is the part of the organization that creates products and service offerings to engage customers throughout the entire machine lifecycle. Together, VCE's products and services enhance the customers' experience and satisfaction.</p> <p>As part of our Sourcwell contract, VCE will offer its entire product offering of new equipment, along with access to parts, service, extended coverage, leasing and financing, VCE Certified Used equipment, rent to own option, dealer inventory and used equipment.</p>
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	<p>VCE's product offering falls within the scope of this RFP and includes:</p> <p>Equipment:</p> <ul style="list-style-type: none"> • General Purpose Equipment (GPE) products: Wheel Loaders, Crawler and Wheeled Excavators, Articulated Hauler Trucks, High Reach Demolition Excavators and Landfill Compactor • Road Machinery (RM) products: Soil Compaction, Asphalt Compaction, Pneumatic Rollers • Compact (COE) products: Compact Excavators, Compact Wheel Loaders, Compact Track Loaders • eMOB Products: Full Electric Compact Wheel Loaders and Compact Excavators • VCE Attachments <p>Solutions:</p> <ul style="list-style-type: none"> • Telematics: CareTrack and ActiveCare Direct • Extended Offer Program: Access to extended offer parts and charging solutions • VCE Extended Coverage: VCE in house extended coverage plans • Customer Service Agreements • Volvo Certified Used Equipment and Dealer Owned Used Equipment

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 type="radio"/> Yes <input checked="" type="radio"/> No	
72	Motor Graders	<input type="radio"/> Yes <input checked="" type="radio"/> No	
73	Wheeled and tracked excavators	<input checked="" type="radio"/> Yes <input type="radio"/> No	
74	Bulldozers, compactors, scapers, articulated and rigid haulers	<input checked="" type="radio"/> Yes <input type="radio"/> No	
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	
77	Technology or services for the offering in #71-75 above	<input checked="" type="radio"/> Yes <input type="radio"/> No	

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	
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	
80	Motor Grader with a published maximum operating weight of at least 30,000 lbs.	<input type="radio"/> Yes <input checked="" type="radio"/> No	
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	

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:**

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. 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.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. 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](#) - Volvo CE SW 011723 2023 Pricing Catalog.pdf - Wednesday January 04, 2023 11:20:17
- [Financial Strength and Stability](#) - Volvo Group 03 2022 Financial Review Addendum.pdf - Friday December 09, 2022 12:50:08
- [Marketing Plan/Samples](#) - Marketing Material.zip - Monday December 12, 2022 08:18:10
- WMBE/MBE/SBE or Related Certificates (optional)
- [Warranty Information](#) - Warranties.zip - Tuesday December 13, 2022 08:19:54
- [Standard Transaction Document Samples](#) - Sourcewell Quote Tool.pdf - Tuesday December 20, 2022 10:55:12
- [Upload Additional Document](#) - Additional Docs.zip - Wednesday January 04, 2023 11:29:33

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. - Krister Persson, Head of Finance & Commercial Management, Volvo Construction Equipment North 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