



# Contract Award Notification

<b>Title</b>	:	<b>Group 50211 – Recycled Copy Paper (Less Than Truckload Lots) (Statewide)</b> <b>Classification Code(s): 14</b>
<b>Award Number</b>	:	<b><u>23078-GR-RS</u></b> (Replaces Award 22478-GR-RS)
<b>Contract Period</b>	:	<b>September 1, 2017 to August 31, 2022</b>
<b>Bid Opening Date</b>	:	<b>May 17, 2017</b>
<b>Date of Issue</b>	:	<b>July 20, 2017</b>
<b>Specification Reference</b>	:	<b>As Incorporated In The Invitation for Bids</b>
<b>Contractor Information</b>	:	<b>Appears on Page 2 of this Award</b>

## Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
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**Procurement Services values your input.  
Complete and return "Contract Performance Report" at end of document.**

## Description

**NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. THE CONTRACT RESULTING FROM SOLICITATION 23078 HAS BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACT. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED MAY 8, 2017.**

Recycled Copy Paper (Less Than Truckload Lots) for All Zones. This Award contains paper that is recycled and processed chlorine free.

Items 1-4: 100% post-consumer recycled content and processed chlorine free. These Items are compliant with Executive Order No. 4.

Items 5-8: 30% post-consumer recycled content and processed chlorine free.

See individual contract items for additional details.

This Contract Award Notification contains MWBE goals of 15% MBE and 15% WBE.

<u>CONTRACT #</u>	<u>CONTRACTOR &amp; ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED. IDENT. # / NYS VENDOR #</u>
PC67805	W.B. MASON CO. INC. 59 Centre Street Brockton, MA 02301	888-926-2766 x 1825 Christopher Szczesiul Email: christopher.szczesiul@wbmason.com	04-2455641 1000011030

For complete Contractor contact and pricing information for this award, please go to the OGS website at:  
<https://ogs.ny.gov/purchase/spg/awards/5021123078CAN.HTM>

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
**(See "Contract Payments" and "Electronic Payments" in this document.)**

**AGENCIES SHOULD NOTIFY THE NEW YORK STATE PROCUREMENT PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES.**

**SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:**

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

**RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:**

Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

**NOTE TO AUTHORIZED USERS:**

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

**ORDER OF PRECEDENCE**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #23078 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated April 14, 2017, April 24, 2017, May 8, 2017 and May 9, 2017 (previously provided);
4. Invitation for Bids #23078 (Revised May 8, 2017) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor’s Bid Prices as stated in Attachment 1 – Pricing; and
6. Contractor’s Bid.

**OVERVIEW**

This Contract provides Authorized Users less than truckload lots of recycled copy paper in various sizes who require a large volume of paper and whose stockroom facilities can accommodate a maximum of 600 cartons of paper at a time.

**SCOPE**

This Contract is for the procurement of less than truckload lots of Recycled Copy Paper for New York State Agencies, Political Sub-Divisions, and others authorized by New York State law who require a large volume of paper and whose stockroom facilities can accommodate a maximum of 600 cartons of paper at a time. Unless otherwise specified by the order, all deliveries are to be inside deliveries to the ordering Authorized User’s stockroom in accordance with the *Product Delivery* section.

New York State has been divided by county into four zones: (1) Western, (2) Central, (3) Northeast, and (4) Downstate/New York City Metropolitan in accordance with the Section 3.1, *Zones*. Authorized Users will place orders with the Contractor who holds the contract for the Zone to which the type of paper is to be shipped.

<b>Item</b>	<b>Zone</b>	<b>Item Description</b>
1	1 – Western NY	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 100% Post Consumer Fiber, in various sizes
2	2 – Central NY	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 100% Post Consumer Fiber, in various sizes
3	3 – Northeast NY	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 100% Post Consumer Fiber, in various sizes
4	4 – Downstate/ New York City Metropolitan Area	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 100% Post Consumer Fiber, in various sizes
5	1 – Western NY	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 30% Post Consumer Fiber, in various sizes
6	2 – Central NY	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 30% Post Consumer Fiber, in various sizes
7	3 – Northeast NY	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 30% Post Consumer Fiber, in various sizes
8	4 – Downstate/ New York City Metropolitan Area	Recycled White Bond, Multipurpose Office Paper, Sub. 20, 30% Post Consumer Fiber, in various sizes

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**ESTIMATED QUANTITIES**

All quantities or dollar values listed in this Contract are estimates. No specific quantities or volumes are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities or dollar values actually ordered. The anticipated dollar value of the award for this Contract, based on historical purchases under previous awards was approximately \$2,900,000 annually. All quantities listed or dollar values listed for this Contract are estimates only based on previous usage. In the instance where the estimated quantity is unknown, an estimated quantity of sheets has been listed in bold italicized font. See Appendix B §28 *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

Numerous factors could cause the actual volume of the Contract(s) to vary from the historical value. Such factors include, but are not limited to, the following:

- 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 the 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 the Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially from the estimates provided in the IFB.

**DEFINITIONS**

Unless otherwise noted, capitalized terms used in the IFB shall be defined in accordance with Appendix B, Definitions, or as below.

1. **“Bid Deviation”** shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.
2. **“Business Day”** shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.
3. **“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.
4. **“NYS Holidays”** refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.
5. **“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
6. **“Preferred Source Products”** shall refer to those Products that have been approved in accordance with State Finance Law § 162.
7. **“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).
8. **“Procurement Services”** shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSP”) and Procurement Services Group (“PSG”).

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

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

1. “**May**” denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.
2. “**Must**” denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
3. “**Shall**” denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
4. “**Should**” denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

**PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS**

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

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

**ZONES**

New York State has been divided by county into four zones: (1) Western, (2) Central, (3) Northeast, (4) Downstate/New York City Metropolitan. Authorized Users will place orders with the Contractor who holds the contract for the Zone to which the paper is to be shipped. For example, an Albany Authorized User who wants paper delivered to the New York City area must order from the New York City area Contractor in Zone 4.

The following is a breakdown of zones by County:

<u><b>Zone 1</b></u> <b>(Western NY)</b>	<u><b>Zone 2</b></u> <b>(Central NY)</b>	<u><b>Zone 3</b></u> <b>(Northeast NY)</b>	<u><b>Zone 4</b></u> <b>(Downstate/NY City Metro)</b>
Allegany	Broome	Albany	Bronx
Cattaraugus	Cayuga	Clinton	Dutchess
Chautauqua	Chemung	Columbia	Kings
Erie	Chenago	Delaware	Nassau
Genesee	Cortland	Essex	New York
Livingston	Jefferson	Franklin	Orange
Monroe	Lewis	Fulton	Putnam
Niagara	Madison	Greene	Queens
Ontario	Oneida	Hamilton	Richmond
Orleans	Onondaga	Herkimer	Rockland
Steuben	Oswego	Montgomery	Suffolk
Wyoming	St. Lawrence	Otsego	Westchester
Yates	Schuyler	Rensselaer	
	Seneca	Saratoga	
	Tioga	Schenectady	
	Tompkins	Schoharie	
	Wayne	Sullivan	
		Ulster	
		Warren	
		Washington	

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**PRICE**

Price shall include all customs duties and charges and be net F.O.B. destination any point in the New York State Zone in which an Item is awarded as designated by the Authorized User including all transportation charges and inside delivery. See Section *Zones* for a breakdown of NYS Counties by Zone. See Section *Product Delivery* for potential special delivery requirements of Authorized Users of the Contract. No additional delivery charges will be allowed.

Prices for blanket orders, if accepted by the Contractor, will be governed by the price applicable to each scheduled shipment. For example, a blanket order for 200 cartons to be shipped 40 cartons per month will take the 40 carton price, not the 200 carton price. Current contract pricing at the time of order submission shall be the pricing which is invoiced by the Contractor regardless of when product is delivered.

**PRICE UPDATES**

The paper prices set forth in this contract, excluding deductions for dock or sidewalk delivery, shall be adjusted every six months following the first six months of the contract in accordance with the provisions of this clause. There shall be no price adjustments during the first six months of the contract.

The paper prices shall be adjusted on the basis of the “Pulp & Paper Week” Price Watch Paper index for 20-lb repro bond, 30% PCW grade paper, published monthly by Resource Information Systems, Inc. (RISI). For all paper items listed in this Invitation for Bids and resulting Contract Award Notification, a price change (either upward or downward) will be established by OGS every six months following the first six months of the contract.

The adjustment shall be established as follows. Following the first six months of the contract, a price adjustment shall be effected beginning with the first month following the first six months of the contract (i.e. March 2018) and then every six months of the contract thereafter. The adjustment shall be based on the average percentage of increase or decrease in the average delivered price of 20-lb repro bond, 30% PCW grade in the six months ending one month prior to the date in which price adjustments are to be effected. For example, if price adjustments are scheduled to be effected on March 1st, they will be based on the average percentage of increase or decrease in the average pricing of 20-lb repro bond, 30% PCW grade from the preceding August through January as published in “Pulp & Paper Week”. The resulting percentage of increase or decrease shall be applied to the paper prices to arrive at the new contract pricing. Each succeeding six months will follow this format. Price increases shall not exceed 5%.

Should the referenced Pulp & Paper Week index become discontinued during the course of the contract, it will first be replaced by another Pulp & Paper Week index that is deemed acceptable for recycled copy paper, or otherwise replaced by an appropriate Producer Price Index (PPI) for recycled copy paper published by the U.S. Department of Labor, Bureau of Labor Statistics, and adjustments will be calculated based on the latest six months of data available in the month preceding the effective date of the price adjustments.

The Office of General Services will notify all interested parties of effected price adjustments by way of a Contract Award Notification Update.

**ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4**

On April 26, 2008, Governor David A. Paterson signed Executive Order No. 4 (EO 4), “Establishing A State Green Procurement and Agency Sustainability Program”. Pursuant to EO 4, commencing no later than July 1, 2008, all copy paper, janitorial paper and other paper supplies purchased by each State agency or authority shall be composed of 100% post-consumer recycled content to the maximum extent practicable and all copy paper and janitorial paper shall be process chlorine free to the extent practicable, unless such products do not meet required form, function or utility, or the cost of the product is not competitive. Furthermore, EO 4 requires that as of July 1, 2008, all State agency and authority publications shall be printed on 100% post-consumer recycled content paper. Where paper with 100% post-consumer recycled content is not available, or does not meet required form, function and utility, paper procurements shall use post-consumer recycled content to the extent practicable. Non-recycled content shall be derived from a sustainably-managed renewable resource to the extent practicable, unless the cost of the product is not competitive. It is the intent of the Office

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of General Services to apply these standards for the purposes of this contract. EO 4 may be viewed at the following URL address: <http://ogs.ny.gov/EO/4/Default.asp>.

### PRODUCT DELIVERY

Unless an order specifies “DOCK or SIDEWALK” delivery, all deliveries are to be inside deliveries to the ordering Authorized User's storeroom. If no elevator is available at the delivery site, Contractor will only be required to deliver inside to a street level (no steps) ground floor location.

For inside deliveries, Authorized Users should specify the exact inside delivery location (building, floor, room number, etc.), the availability of a freight elevator at the delivery site, and any size or weight limitations of the elevator on the Purchase Order.

Authorized Users should specify on their orders the availability of a loading dock or loading zone, materials handling equipment, and any size or weight limitations for skids or pallets. Indicate any height, size, weight limitations of the receiving facility. Authorized Users whose receiving facilities cannot accommodate a 45 ft. over the road trailer with a height of 13'-6" must specify on their purchase order - any length, height, and/or weight limitation of their receiving facility, and any other pertinent facts to ensure trouble free delivery, such as the necessity for hydraulic liftgate, etc. Authorized Users should indicate whether skids or pallets cannot be moved from the delivery truck to the Authorized User's storeroom without being unloaded first.

Delivery shall be expressed in number of calendar days required to make delivery after receipt of a purchase order.

Delivery of orders should be made within thirty (30) consecutive calendar days after receipt of order. State your earliest delivery if this cannot be met.

Deliveries will not be accepted after 3:30 P.M.

Contractor shall notify authorized end-users 48 hours in advance of an anticipated delivery.

It shall be the Contractor's responsibility to see that the delivering driver (or helper) unloads the truck. Authorized Users who have ordered a quantity large enough to warrant skid or pallet delivery must have at their disposal materials handling equipment which they must allow the delivering driver to use, if requested, capable of moving skids and/or pallets from the delivery truck to the dock.

**Security precautions at all State facilities and many other governmental sites have been increased causing delays in making deliveries. Contractors are advised that these additional delays should be taken into consideration. No additional freight or delivery charges will be allowed.**

### PRODUCT REQUIREMENTS

#### Items 1 – 4

RECYCLED COPY PAPER – WHITE WITH 100% POST CONSUMER RECYCLED CONTENT - PROCESSED CHLORINE FREE. For use on high speed copiers, laser and ink-jet printers, plain paper facsimile machines, and offset duplicators.

COLOR: White

WEIGHT: Sub. 20 ± 5%

GRAIN: Long

OPACITY: Minimum of 89

CALIPER: Minimum of 3.9 mils to maximum of 4.7 mils.

BRIGHTNESS: Minimum of 90

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**Items 5 – 8**

RECYCLED COPY PAPER – WHITE WITH 30% POST CONSUMER RECYCLED CONTENT – PREFERRED PROCESSED CHLORINE FREE. For use on high speed copiers, laser and ink-jet printers, plain paper facsimile machines, and offset duplicators.

COLOR: White

WEIGHT: Sub. 20 ± 5%

GRAIN: Long

OPACITY: Minimum of 89

CALIPER: Minimum of 3.9 mils to maximum of 4.7 mils.

BRIGHTNESS: Minimum of 90

**RECYCLED CONTENT**

As defined by the Environmental Protection Agency (EPA) <https://www.epa.gov/smm/definitions-specifications-and-other-guidance-about-comprehensive-procurement-guideline-program>. The minimum recycled content requirement for the Items in this contract are:

Items 1 – 4 shall be 100% post-consumer fiber

Items 5 – 8 shall be 30% post-consumer fiber

**RECYCLED CERTIFICATION**

Any one of the following shall be acceptable:

- a Paper Manufacturer's Affidavit of Recycled Content for the proposed paper verifying a 100% post-consumer fiber and 30% post-consumer fiber (See "Recycled Content" requirements) as defined by the Environmental Protection Agency (EPA) is on file with the New York State Office of General Services; or,
- The New York State Office of General Services is able to ascertain through readily available sources, such as trade publications or mill literature that the proposed paper complies with New York State's recycled requirements.

**PROCESSED CHLORINE FREE**

For Items 1 – 4, proposed products must be Processed Chlorine Free (PCF) and must either be certified as such through an appropriate third party certification program, which requires as part of its certification criteria that the product be PCF; or substantiated with literature published by the manufacturer or through a signed statement by a corporate officer of the manufacturer. OGS reserves the right to request technical documentation for verification purposes.

For Items 5 – 8, the Office of General Services prefers to award bids on products that are Processed Chlorine Free (PCF).

**SIZES**

8-1/2" x 11", 8-1/2" x 14" and 11" x 17". All three sizes must be made available. Paper furnished shall be flat, precision trimmed-square on four sides, with clean smooth edges, and evenly jogged. Tolerance of ± 1/32 inch allowed. Successive sheets within any package shall not differ from each other by more than 1/64 inch.

**CURL**

Paper shall lie flat before and after processing through a xerographic type copier, laser or ink-jet printer, or fax machine with either no tendency to curl or with a curl which can be overcome under reasonable working conditions.

**TESTS**

OGS reserves the right to conduct such tests as may be deemed necessary to determine the quality, uniformity and workmanship of the products offered and/or delivered and also as to the quality and economy of the work performed by such product.

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**PHYSICAL SURFACE CHARACTERISTICS**

Paper shall be free from: lint, fuzz, wrinkles, waviness, folds, holes, tears, slime spots, wrapper glue, turned-over corners, damaged edges, any scraps of foreign material and/or other defects.

**FEED CHARACTERISTICS**

Paper must be free of static electricity and have sufficient stiffness and tensile strength to insure efficient feeding and transport through a xerographic type copier. Paper furnished must run consistently trouble-free through high speed copiers, laser and ink-jet printers, plain paper faxes, and offset duplicators, and be capable of being printed on two sides without excessive curling or otherwise jamming the copier and/or other equipment.

**GUARANTEE**

All copy paper furnished must be unconditionally guaranteed to provide trouble-free operation when used on xerographic type copiers - both regular speed and high-speed machines, laser and ink-jet printers, plain paper faxes, and offset duplicators. If requested, Contractor must submit a letter from the paper mill manufacturing the stock bid on, unconditionally guaranteeing that the stock furnished will operate trouble free.

**STOCK**

Contractor may offer to furnish more than one brand but shipments to an agency shall not consist of mixed brands. Substitution of brands shall not be permitted unless prior written permission is obtained from OGS. Authorized Users should not specify any particular brand on their purchase order. Where a Contractor offers more than one brand for an item at the specified price, the Contractor at their discretion may ship the brand of their choice.

**PACKING**

All paper to be ream wrapped in moisture resistant wrapper. A laminated wrapper (to create a moisture barrier) is preferred. Each ream package must have a label affixed to one end indicating the brand, size, color, number of sheets, substance weight and grain. Each ream label must also have an arrow or other appropriate marking to indicate to copier operator the correct way the paper is to be loaded into the copier. This requirement can be eliminated only if the sheet proposed will operate trouble-free on either side.

Reams to be packed in corrugated cartons typically 5000 sheets/carton for 8-1/2" x 11" and 8-1/2" x 14" and 2500 sheets per carton for 11" x 17". Lid-type cartons preferred. Each carton to have a label or be marked on one end to identify the contents re: size, quantity, color. Corrugated cartons shall meet ICC standards for carton quality, with no loose sealing or strapping and must be free of bulges and distortion.

Cartons or pallet overwrap must be marked with contractor's name, the contract number and purchase order number.

**SKIDS/PALLETS**

All orders shipped under this contract must be delivered on skids or pallets. Skids or pallets furnished must be sturdily constructed so that they can properly support the weight of the cartons placed thereon without breaking. No tops required. Two way or four way entry pallets are acceptable. Pallets to be disposable and their cost included in the price per thousand sheets. No additional charges will be allowed for skids or pallets. Cartons should be carefully tier stacked to prevent damage. Skids or pallets to be shrink film wrapped or covered with water resistant paper to protect cartons against moisture damage in event delivery is made during inclement weather.

Any Authorized User who places an order under this contract must have a loading dock and materials handling equipment capable of moving skids and/or pallets from the delivery truck to the dock, which they must allow the delivering driver to use, if requested.

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**PUNCHING**

Round hole punching on paper may be required with three standard round holes per sheet (for use in a standard ring binder). Punched sheets must be free of "hole plugs" and must not interlock. (Bid price per 1,000 (M) sheets is to include paper and charge for punching.)

**MINIMUM/MAXIMUM ORDER**

- Minimum of 10 cartons Total
- Maximum of 600 cartons Total

Orders may consist of all one size or an assortment of all three sizes. No item less than one full carton shall be ordered. Broken cartons not allowed. The minimum order Contractor must accept is 10 cartons. Contractor may elect to honor orders for less than the minimum order; however, acceptance of orders for less than the minimum is at the Contractor's option, but if accepted, must be at the contract price and no additional charges will be allowed. Truckload quantities are outside the scope this Contract.

**CONTRACT PERIOD AND RENEWAL**

The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, Contract Creation/Execution). The Contract shall be in effect for five (5) years beginning on the date of approval of the first contract awarded as a result of the IFB, and shall end conterminously five (5) years from the approval of the first contract awarded as a result of the IFB. If mutually agreed between OGS and the Contractor, the Contract may be awarded under the same terms and conditions for additional period(s) for up to two (2) years. Price decreases or discount increases are permitted at any time.

**SHORT TERM EXTENSION**

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

**VOLUME DISCOUNTS**

Contractors are encouraged to offer volume discounts based on total dollars purchased. Other discounts including but not limited to electronic access ordering are also encouraged.

**NEW YORK STATE PURCHASING CARD (PROCUREMENT CARD)**

See "Purchasing Card" in Appendix B, §15. Contractor indicated if they will accept the NYS Purchasing Card (also referred to as the Procurement Card) for orders not to exceed \$50,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on the Contractor's Information page.

**ORDERS**

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).

**INVOICING AND PAYMENT**

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

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

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

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

#### **PRODUCT RETURNS AND EXCHANGES**

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

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

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

#### **CONTRACT ADMINISTRATION**

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

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

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### **NYS FINANCIAL SYSTEM (SFS)**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>. There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

### **WEB-BASED ORDERING**

As an option the Contractor (and any approved Resellers) may accept orders electronically via the Internet through a web-based ordering system on a dedicated NYS website. If a web-based ordering system is offered it must have the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User’s order. Contractor (and any approved Resellers) shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor’s (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor’s website.

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

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

In the event the Contractor utilizes Resellers under the resulting Contract, Contractor must provide on the landing page of its dedicated NYS website, a link to each Reseller’s website. All Resellers must provide a dedicated NYS website that mirrors that of the Contractor as set forth above.

### **ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY**

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

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speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

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

#### **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 4 – Insurance Requirements.

#### **REPORT OF CONTRACT USAGE**

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the close of each calendar semi-annual period. 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 semi-annual report.

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

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name. The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

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

##### **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.

##### **General Provisions**

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.

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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.

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.

**Equal Employment Opportunity (EEO)**

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.

**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.

Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

Separate forms shall be completed by Contractor and all subcontractors.

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

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or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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 and conviction and prior arrest.

**Contract Goals**

OGS hereby establishes an overall goal of **30%** for MWBE participation, **15%** for Minority-Owned Business Enterprises (“MBE”) participation and **15%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. 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.

Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see below).

**MWBE Utilization Plan**

In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Bidder intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.

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OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

- (a) If a Bidder fails to submit a MWBE Utilization Plan;
- (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- (c) If a Bidder fails to submit a request for waiver; or
- (d) If OGS determines that the Bidder has failed to document good faith efforts.

If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in the Contract Goals of this Section.

Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**Request for Waiver**

Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.

In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

**Required Good Faith Efforts**

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

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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.

**Monthly MWBE Contractor Compliance Report**

In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month’s activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (“NYSCS”) to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor’s responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification (“audit notice”) indicating that a representative of its company needs to log-in to the NYSCS to report the company’s MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor’s responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: “**Introduction to the System for Vendors**” and “**Contract Compliance Reporting - Vendor Training**” to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>

As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “- **MWBE Contact**” after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.

If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

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It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause Breach of Contract and Liquidated Damages below.

**Breach of Contract and Liquidated Damages**

Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.

Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**Fraud**

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

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at:  
[http://www.ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)

Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

**ALL FORMS ARE AVAILABLE AT:**

[http://www.ogs.ny.gov/Core/SDVOBA.asp?\\_sm\\_au\\_=iVVjF227tLtF4JJH](http://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=iVVjF227tLtF4JJH)

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**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 Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Remanufactured, Recycled, Recyclable or Recovered Materials.

**BULK DELIVERY AND ALTERNATE PACKAGING**

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

**SURPLUS/TAKE-BACK/RECYCLING**

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.

If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

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>

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.

**CONSUMER PRODUCTS CONTAINING MERCURY**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any Products containing elemental mercury for any purpose under the Contract.

**OVERLAPPING CONTRACT PRODUCTS**

Products available under the resulting 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 maintain a procurement record documenting the basis for this selection.

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**PREFERRED SOURCE PRODUCTS**

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

**NYS VENDOR RESPONSIBILITY**

OGS conducts a review of prospective Contractors to provide reasonable assurances that the Contractor is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess a Contractor’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history.

OGS recommends that each Contractor file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the following link at the Office of the State Comptroller (OSC) website: [http://osc.state.ny.us/vendrep/info\\_vrsystem.htm](http://osc.state.ny.us/vendrep/info_vrsystem.htm).

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see Section 4.2, NYS Vendor File Registration. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Contractors opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the Contractor, the Contractor must complete and certify or recertify the Questionnaire every six (6) months. It is recommended that all Contractor(s) become familiar with all of the requirements of the Questionnaire.

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

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

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

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

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

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

**NYS TAX LAW SECTION 5-A**

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

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

**“OGS OR LESS” GUIDELINES**

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

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

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS**

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

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

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**EXTENSION OF USE**

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**RESELLERS**

**A. Definition**

“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 Attachment 9 – Reseller Directory at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller’s status occurs during the Contract term.

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

**C. Designation of Resellers**

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 9 – Reseller Directory. 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 semi-annual sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor’s sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User’s Contract activity with the Reseller.

**E. Applicability of Contract Terms**

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

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**CONTRACT ADVERTISING**

In addition to the requirements set forth in Appendix B, Advertising Results, 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 OGS prior to issuance. Contractor also cannot use, for any purpose, the New York State of Opportunity registered trademark or the State coat of arms without prior approval from the State.

**NEW ACCOUNTS**

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

**DRUG AND ALCOHOL USE PROHIBITED**

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

**TRAFFIC INFRACTIONS**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

**SAMPLES**

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

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

- B. Enhanced Samples: When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- C. Conformance with Samples: Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Contract. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Contract, the Commissioner cancel the Contract at the expense of the Contractor.
- D. Testing: All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Contract, samples consumed or rendered useless by testing will not be returned to the Contractor. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

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- E. Requests For Samples By Authorized Users: Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

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**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

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

**Contract No.:** \_\_\_\_\_ **Contractor:** \_\_\_\_\_

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

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

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

**CONTRACTOR**

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

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & return by email to [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) or mail to:**

OGS Procurement Services  
Customer Services, 38th Floor  
Corning 2<sup>nd</sup> Tower - Empire State Plaza  
Albany, New York 12242  
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