



Bid Solicitation Information

Subject: Continuous Recruitment Award 22898

DATE: December 19, 2017

IFB/RFP: 22898 BID OPENING DATE | TIME: Any time prior to November 13, 2019

GROUP | TITLE: 40451 | LIGHT DUTY VEHICLES (Statewide)

OGS DESIGNATED CONTACTS:

Carol Neelis	CMS 1	518-474-3695	NYSPro.VehicleMarketPlace@ogs.ny.gov
Ronald Brown	CMS 2	518-474-7648	NYSPro.VehicleMarketPlace@ogs.ny.gov

1. TO PROSPECTIVE CONTRACTORS:

The Office of General Services ("OGS") has established centralized contracts for the acquisition (purchase and lease) of Light Duty Vehicles (Class 1 and Class 2) and related Options and Aftermarket Components as defined below in Section 3 *Contract Scope*. Vehicles provided under the contracts shall be new, (i.e., the equitable or legal title to which has never been transferred by a manufacturer, distributor or Dealer to an ultimate purchaser). Vehicle acquisition shall include both Pre-Existing Inventory Vehicles and Vehicles Built to Specifications, as defined in the Contract Template. "Demos" and "Used" Vehicles are excluded from the contract scope. The current award is posted on the OGS website at <http://www.ogs.ny.gov/purchase/spg/awards/4045122898CAN.HTM>.

The contracts are backdrop Contracts for the Vehicle Manufacturer's Product Line(s) with the minimum NYS Discount(s) set forth by the Bidder in Attachment 2: *Bid Documents (Electronic)*, Section C: *Vehicle Discounts*,

Vehicle acquisition from the backdrop contracts are on an as-needed basis by NYS Authorized Users via a competitive Mini-Bid process utilizing the Vehicle Marketplace website established by Procurement Services (see Contract Template Section II.12 *Procurement Method*). The Vehicle Marketplace is located on the OGS website at <http://vehicles.nyspro.ogs.ny.gov>.

This is a continuous recruitment contract open to Light Duty Vehicle Dealers only. Vehicle Dealers may also offer Lease Vehicles (see Contract template, Appendix D: *Lease Vehicles*). This solicitation was initially advertised in the Contract Reporter on September 25, 2014, with a bid opening on October 17, 2014 and contracts awarded on November 14, 2014. Vendors that missed this initial bid opening date may submit bids at any time prior to November 13, 2019.

Bidders must submit the bid documents in accordance with Section 9 *Bid Submission Information*. The bid documents and Contract Template are available on the OGS website at <http://www.ogs.ny.gov/purchase/biddocument/22898CRB2bid.asp>.

2. CONTRACT PERIOD AND RENEWALS

The Contract shall be in effect from the date of OGS execution and approval of the Contract through and including November 13, 2019, unless terminated in accordance with the contractual provisions. All Light Duty Vehicle Contracts awarded under solicitation 22898 will terminate simultaneously on November 13, 2019, five (5) years from the date of OGS approval of the first contract awarded.

2.1 SHORT TERM EXTENSION

In the event that 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 one month upon notice to the Contractor with the same terms and conditions as the original Contract. With the concurrence of the Contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should a replacement contract be issued in the interim.

3. CONTRACT SCOPE:

The resultant backdrop contracts shall include the following:

- A. **Light Duty Vehicles**. Light Duty Vehicles shall mean a mobile machine that is primarily used to transport passengers and cargo (e.g., cars, vans, SUVs, pickup trucks), with a GVWR less than or equal to 10,000 pounds, (i.e., Class 1 through Class 2 Vehicles, as designated by the U.S. Department of Transportation). Low Speed Vehicles (i.e., a limited use automobile or truck that has a maximum speed greater than 20 miles per hour (mph) but not more than 25 mph and has a gross vehicle weight rating less than 3,000 pounds), are excluded from the definition of Light Duty Vehicles.
- B. **Options**. Options shall refer to an accessory, equipment, or feature that are available from the OEM and that can be added to, or deleted from, a Vehicle.
- C. **Aftermarket Components**. Aftermarket Components shall mean any accessory, equipment, or feature that is manufactured by an OEM other than the Vehicle OEM, and is not included in the OEM Product Line, and that may be installed on the Vehicle by the Contractor, or third-party.

4. ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of contracts awarded under this solicitation, based on historical and anticipated needs, is approximately \$40,000,000.00 annually. The individual value of each Contract is indeterminate. See Appendix B §30 *Estimated/Specific Quantity Contracts* and §27 *Participation in Centralized Contracts*.

Numerous factors could cause the actual volume of Product purchased under the Contract to vary substantially. Such factors include, but are not limited to, the following:

- Such Contracts will be nonexclusive Contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each 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 any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Services' experience, depending on the price of a particular Product, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially.

5. METHOD OF AWARD OF CONTRACT

Award shall be made to the responsive and responsible Bidder(s) who meet the minimum requirements listed in Section 8 *Requirements for Contract Eligibility*, below. Because of the nature of the Products involved, and recognizing that no one Bidder will be able to supply all of the Products required by Authorized Users, award shall be made to more than one Bidder.

6. SOLICITATION INQUIRIES / DESIGNATED CONTACTS

All inquiries concerning this solicitation shall be addressed to the Procurement Services Designated Contact(s) listed below.

Primary Contact: Carol Neelis, Contract Management Specialist 1 Telephone No. (518) 474-3695 E-mail: carol.neelis@ogs.ny.gov	Secondary Contact: Ronald Brown, Contract Management Specialist 2 Telephone No. (518) 474-7648 E-mail: NYSPro.VehicleMarketPlace@ogs.ny.gov
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You must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications about this solicitation. Navigate to the "I want to find contracts to Bid on" page to register for your free account.

7. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

8. REQUIREMENTS FOR CONTRACT ELIGIBILITY:

This contract area is open to **LIGHT DUTY VEHICLE DEALERS** who meet the following minimum qualifications:

- A. Are registered with the NYS Department of State as an entity authorized to conduct business in New York State (registration may be confirmed at http://www.dos.ny.gov/corps/bus_entity_search.html), or if not incorporated in New York State, can provide a Certificate of Good Standing from the applicable state where the business was formed or incorporated.
- B. Offer at least one Vehicle Manufacturer's Product Line, with a minimum discount from MSRP for the base Vehicle and Options;
- C. Are a Dealer of the Vehicle OEM(s) to be offered under the Contract, and upon request by OGS or an Authorized User, shall provide proof of that status in a format that is acceptable to the entity that made the request;
- D. Agrees to offer the complete or partial Product Line of the Original Equipment Manufacturer(s) that they are an Authorized Dealer for.
- E. Agree to, and are able to meet, the terms and conditions set forth in the Contract (see Contract Template);

- F. Provide proof of insurance coverage requirements, as described in Contract Template Appendix C: *Light Duty Vehicles Documents*, Number 3: *Insurance Requirements*, with their Bid and throughout the Contract term, as requested by Procurement Services.

If your company is a Light Duty Vehicle Dealer and meets the qualifications listed above, and you want to be considered for a Light Duty Vehicle Contract, you may obtain a copy of the bid documents and Contract Template on the OGS website at <http://www.ogs.ny.gov/purchase/biddocument/22898CRB2bid.asp>.

9. BID SUBMISSION INFORMATION

This section sets forth bid submittal information and instructions for this solicitation.

9.1 IMPORTANT NOTICE TO POTENTIAL BIDDERS

A Bidder should take note of the following:

- A. Receipt of these Bid documents does not indicate that Procurement Services has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the Bid opening and will be based on evaluation of Bid submissions compared to the specific requirements and qualifications contained in these Bid documents.
- B. To be considered responsive, a Bidder must submit a Bid that satisfies and addresses all requirements stated in this solicitation. **EXCEPT AS OTHERWISE PROVIDED IN THIS SOLICITATION, A BID THAT FAILS TO CONFORM TO THE REQUIREMENTS OF THE SOLICITATION MAY BE CONSIDERED NON-RESPONSIVE AND MAY BE REJECTED.**
- C. The Commissioner of OGS will receive Bids pursuant to the provisions of Article XI of the State Finance Law. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.
- D. If a Bidder wishes to make more than one Bid, such Bid(s) are to be submitted separately and are to be listed as "alternate" Bids. "Alternate" Bids must satisfy and address all requirements stated in this solicitation, and will be evaluated as separate Bids.
- E. Portions of the successful Bidder's bid shall be incorporated into a final Contract, executed by the Contractor and OGS. Therefore, the bid must be signed by a partner, corporate officer, or other person authorized to commit its firm to all provisions of this solicitation and its bid as submitted. Once the Contract resulting from this solicitation is executed and approved, it will be posted on the OGS website.

9.2 BID FORMAT AND CONTENT

This section sets forth bid format and content information for this solicitation.

- A. The complete bid for the backdrop contract consists of the following documents. In order to be a responsive bidder, a potential bidder must submit all documents in the manner and format set forth (i.e., **paper** or **electronic**) below.

Note: A Contract Template is posted with the solicitation documents on the OGS website at <http://www.ogs.ny.gov/purchase/biddocument/22898CRB2bid.asp>. Do not submit the Contract Template with your bid. The Contract Template is intended to familiarize Bidders with the terms and conditions that will be included in the resultant Contracts from this solicitation. The Contract Template is not the final Contract. Upon the completion of any negotiations, tentative awardees will be provided with a final Contract for execution. Bidders are encouraged to review this Bid Solicitation Information memo for a full understanding of what needs to be submitted at the time of Bid submission, and the Contract Template for the terms and conditions that will be in the resultant Contract(s) from this solicitation.

1. Standard Vendor Responsibility Questionnaire (SVRQ). Completed and certified **online**, OR a **paper** version of the SVRQ, completed and with original ink signature and notarized (see Section 16 *New York State Vendor Responsibility Questionnaire for Profit Business Entity*). Complete online at the OSC website at <http://www.osc.state.ny.us/vendrep/index.htm>. Click on "Forms" and download the "Non-Construction, For-Profit Questionnaire" to complete the paper version;
2. NY State Taxation and Finance forms ST-220-CA and ST-220-TD. A **paper** version of form ST-220-CA, completed and with original ink signature, and notarized. *Note: Form ST-220-TD, completed and with original ink signature, and notarized, must be submitted directly to the NYS Tax Department (see Section 17 Tax Law §5-A)*. Forms are available on the Tax Department website here: https://www.tax.ny.gov/forms/form_number_order_st_y.htm;
3. Form EEO-100. A **paper** version of form EEO-100 (Equal Employment Opportunity Staffing Plan), completed and with original ink signature (See Section 19 *Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Member and Women*). The form is available on the OGS website here: <http://www.ogs.ny.gov/MWBE/Docs/EEO100.docx>;
4. Proof of Insurance (General, Automobile and Garage Liability). A **paper** version of proof of compliance with general, automobile and garage liability insurance requirements, as specified in Contract Template Appendix C-3: *Insurance Requirements*. Please review the documents prior to submittal to ensure that the documents conform to all requirements set forth in Appendix C-3, including:
 - a) ACORD Certificate of Liability Insurance that includes:
 - 1) The full legal company name of the Bidder in the "Insured" box;
 - 2) The company name and NAIC number of the insurer(s) affording coverage;
 - 3) Policy expiration dates that are current; and
 - 4) The New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Albany, New York 12242 listed as the Certificate Holder.
 - b) Additional requirements applicable to all insurance:
 - 1) "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 the Contract and their officers, agents, and employees " named as additional insured (a separate endorsement); and
 - 2) A waiver of subrogation granted in favor of the additional insureds.
5. Proof of Insurance (Workers' Comp). A **paper** version of proof of compliance (e.g., NYS form C-105-2 or U-26.3) with NYS Workers Compensation insurance requirements, as specified in Contract Template Appendix C-3: *Insurance Requirements*. Forms are available on the Workers' Compensation Board website here: <http://www.wcb.ny.gov/>;
6. Proof of Insurance (Disability). A **paper** version of proof of compliance (e.g. NYS form DB-120.1) with NYS Disability insurance requirements, as specified in Contract Template Appendix C-3: *Insurance Requirements*. Forms are available on the Workers' Compensation Board website here: <http://www.wcb.ny.gov/>;
7. Attachment 1: Bid Documents (Paper), Section A. A **paper** version of Attachment 1: *Bid Documents (Paper), Section A: Cover Sheet and Acknowledgements*, completed and with original ink signature, and notarized.
8. Attachment 1: Bid Documents (Paper), Section B. A **paper** version of Attachment 1: *Bid Documents (Paper), Section B: New York State Required Certifications*, completed and with original ink signature;

9. Attachment 1: Bid Documents (Paper), Section C. A **paper** version of Attachment 1: *Bid Documents (Paper), Section C: Encouraging Use of New York State Businesses*, completed, and with a list of NYS Businesses to be used in the performance of this Contract, if applicable;
10. Attachment 2: Bid Documents (Electronic), Section A. An **electronic** version of Attachment 2: *Bid Documents (Electronic), Section A: Bid Submittal Checklist*, completed;
11. Attachment 2: Bid Documents (Electronic), Section B. An **electronic** version of Attachment 2: *Bid Documents (Electronic), Section B: General Questions*, completed;
12. Attachment 2: Bid Documents (Electronic), Section C. An **electronic** version of Attachment 2: *Bid Documents (Electronic), Section C: Vehicle Discounts*, completed; and
13. Leasing Documents. (If Bidder intends to offer Lease Vehicles under the Contract):
 - a) A **paper** version of a completed, signed and notarized Appendix C: *Light Duty Vehicles Documents: Number 4: Contract Modification Procedures* (Check "Other Update" on the form); and
 - b) A **paper** version of a completed and signed Appendix D: *Lease Vehicles, Section B: Lease Provider Information*

Bidder is required to submit any document not submitted within five (5) business days of Procurement Services' written request for such document(s). Failure to submit a document within five (5) business days of Procurement Services' written request for such document(s) will delay award of the resultant Contract, and may render the bid non-responsive and result in the disqualification of the Bid.

- B. Each bid shall include separately bound original paper documents, and an email containing electronic files of the required documents specified above in Paragraph A.
 1. Paper documents shall include original signatures and notary, where applicable.
 2. Electronic media files shall be submitted via email to NYSPro.VehicleMarketPlace@ogs.ny.gov. The subject line of the email should contain the (1) business name of Bidder and (2) Solicitation Number 22898.
- C. In the case of discrepancies between the hard copy and the electronic media submission the electronic media submission shall take precedence over the hard copy submission.
- D. Bidder is responsible for ensuring that the most recently updated version of all required documents has been submitted. Any updated versions released after the initial bid release date will be posted at <http://www.ogs.ny.gov/purchase/biddocument/22898CRB2bid.asp>

9.3 BID DEVIATIONS

If your bid differs from the specifications explain such deviation(s) or qualification(s); and if necessary, attach a separate sheet. See Appendix B §8 *Extraneous Terms*.

9.4 BID DELIVERY

Bidders assume all risks for timely, properly submitted deliveries. Bids for the backdrop Contracts for award 22898 will be reviewed in the order in which they are received.

Bid Envelopes and Packages

An envelope and/or package containing a bid shall be clearly marked "**BID ENCLOSED**" and must state **Bid Number 22898**, and **Continuous Recruitment**. A Bidder who elects to hand-deliver its proposal must contact Procurement Services at NYSPro.VehicleMarketPlace@ogs.ny.gov to arrange for building access. Bids shall be delivered to:

Ronald Brown
NYS Office of General Services – Procurement Services
38th Floor Corning Tower, Empire State Plaza
Albany, NY 12242

FAX Transmittals

Facsimile transmittals are NOT acceptable for this solicitation.

10. NOTIFICATION OF AWARD

The successful Bidder(s) shall be advised by OGS in accordance with Appendix B §26 *Contract Creation/Execution*. OGS also distributes email notification to registered Authorized Users announcing the resultant contract award(s). The email includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered Authorized Users. Authorized Users may register for the PNS at the following URL address: <http://ogs.ny.gov/PNS/default.asp> under Classification Code 25 and 46. All subsequent contract updates are also sent out via the PNS. Authorized Users of the contract submit Purchase Orders or other such order documents directly to the Contractor. See Appendix B §32 *Purchase Orders*.

11. DEBRIEFING

Unsuccessful Bidders shall be notified. A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's proposal or bid. After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such Bidder was not selected for a Contract award. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The debriefing should be requested in writing within 30 calendar days of notification of non-award.

12. 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 (the lead contracting 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.

12.1 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section 12 *Extension of Use*) which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

Any unilateral limitations/restrictions imposed by the Contractor on eligible Authorized Users will be grounds for rejection of the Bid or cancellation of the Contract.

13. OVERLAPPING CONTRACT ITEMS

Vehicles available in the resultant Contracts under Award 22898 may also be available from other New York State Awards. 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.

14. PERFORMANCE AND BID BONDS

There are no bonds required for the Contract resulting from this solicitation. In accordance with Appendix B §45 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the initial term, or any renewal term, for the resulting Contract.

15. NEW YORK STATE VENDOR FILE REGISTRATION

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

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:

http://www.osc.state.ny.us/vendor_management

16. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

OGS conducts a review of prospective Contractors ("Bidders") to provide reasonable assurances that the Bidder 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 Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website at

http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders 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.

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder 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.

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.

17. 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. The ST-220-TD can be found at 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.

18. NEW YORK STATE REQUIRED CERTIFICATIONS

A Bidder is required to submit the signed New York State Required Certifications (Attachment 1: *Administrative Submittal (Paper)*, Section B: *New York State Required Certifications*). Failure to submit this document may result in a Bid being considered non-responsive and may result in a Bid being rejected.

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

- 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. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

- i. 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.
- ii. Separate forms shall be completed by Contractor and all subcontractors.
- iii. 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 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.

- 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 and 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/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. 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

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>

20. 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 §27 *Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Customer Services at 518-474-6717.

21. NEW YORK STATE PROCUREMENT RIGHTS

New York State hereby reserves the right to:

- A. Reject any or all bids received in response to this solicitation;
- B. Withdraw the solicitation at any time, at the Agency’s sole discretion;
- C. Make an award under the solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the solicitation;
- E. Seek clarifications and revisions of bids;
- F. Prior to the Bid opening, amend the solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Prior to the Bid opening, direct Bidders to submit solicitation modifications addressing subsequent solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;

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- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
 - J. Waive any requirements that are not material;
 - K. Utilize any and all ideas submitted in the bids received;
 - L. Adopt all or any part of a Bidder's bid in selecting the optimum configuration.
 - M. Negotiate with the Bidder responding to this solicitation within the solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' bids;
 - N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's bid and/or to determine a Bidder's compliance with the requirements of the solicitation;
 - O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the solicitation requirements;
 - P. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of ninety (90) calendar days from the Bid opening; and
 - Q. Use bid information obtained through site visits, management interviews, and the state's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the solicitation.
 - R. OGS reserves the right to use an on-line process, such as reverse auction, to make acquisitions under the resulting contracts. Bidder agrees that if awarded a Contract, it will participate in the on-line process established by OGS.
 - S. The State reserves the right to exclude from award any Light Duty Vehicles that, at the sole discretion of the State, will not be approved for purchase by an Authorized User (e.g., Vehicles which are considered to be "luxury sports cars" or "exotic cars").
 - T. All bids shall become the property of OGS and shall not be returned.

22. DISPUTES

Disputes shall be handled in accordance with Contract Template Section II.30 *Amendments to Appendix B*.