



# Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) | 518-474-6717

## Solicitation

<b>BID OPENING</b> <b>DATE:</b> December 22, 2020 <b>TIME:</b> 11:00 A.M. EST  <b>SOLICITATION NUMBER:</b> 23198	<b>TITLE:</b> Group 22300, Voting Systems and Related Services and Accessories  <b>Classification Codes:</b> 43, 44, 45 & 46 <b>SPECIFICATION REFERENCE:</b> As incorporated in the Solicitation
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<b>CONTRACT PERIOD:</b> See "Contract Term" Clause
<b>DESIGNATED CONTACTS:</b> In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts. Katherine Dias, Allison White, Maureen Younkin, Michele Reale, Kylesha Davis E-mail Address: OGS.sm.PS_AA_Voting@ogs.ny.gov

<b>Bidder's Federal Tax Identification Number:</b> (Do Not Use Social Security Number)	<b>NYS Vendor Identification Number:</b> (See New York State Vendor File Registration Clause)			
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		

If applicable, place an "x" in the appropriate box(es) (check all that apply)			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> NYS Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE NOT BIDDING AT THIS TIME BECAUSE:
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### FOR PROCUREMENT SERVICES USE ONLY

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	_____	Documented by: _____

## Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 220 calendar days from the date of submission to the New York State ("NYS") Office of General Services ("OGS"), or for such longer period as is set forth in the Solicitation.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Solicitation.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

\_\_\_\_\_  
Print Legal Business Name of Bidder

By:

\_\_\_\_\_  
Signature of Person Authorized to  
Legally Bind the Bidder

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

**RETURN THIS PAGE AS PART OF BID**

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
: \_\_\_\_\_ SS.:  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_\_\_\_\_ maintains an office at \_\_\_\_\_, and further that:

**[Check One]**

- ☐ **If an individual):** \_\_\_\_\_ executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ **If a corporation):** \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ **If a partnership):** \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ **If a limited liability company):** \_\_\_\_\_ is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
**Notary Public**  
**Registration No.**

**RETURN THIS PAGE AS PART OF BID**

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## APPENDICES

Appendix A – *Standard Clauses for NYS Contracts* (October 2019)

Appendix B – *General Specifications* (April 2016)

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## ATTACHMENTS

Attachment 1 – *Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses in Contract Performance*

Attachment 4 – *Bidder's Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance*

Attachment 7 – *FOIL Redaction Request*

Attachment 8 – *Bidder Questions Form*

Attachment 9 – *Bidder Submission Checklist*

Attachment 10 – *Report of Contract Usage*

Attachment 11 – *How to Use*

Attachment 12 – *Company Ownership, Board Members and Stakeholders*

## **EXHIBITS**

Exhibit 1 – Link to NYS Election Law;

Exhibit 2 – Link to NYS Election Codes, Rules, and Regulations;

## SECTION 1 INTRODUCTION

### 1.1 OVERVIEW.

This Solicitation is issued by the New York State ("NYS") Office of General Services ("OGS") for the purchase of Voting Systems and Related Services and Accessories ("Voting Systems"), including voting systems, ballot marking or other voting devices accessible to individuals with disabilities, and related accessories, consumables, training, maintenance, and other related services as specified herein, for all NYS County Boards of Elections (hereinafter referred to as Authorized Users) to purchase through this Solicitation. Contracts will be awarded to established voting system manufacturers who are responsive and responsible and that meet the bidder qualifications, bid requirements, and terms and conditions of this Solicitation, as specified herein. Reseller participation is not allowed.

This Solicitation shall result in multiple non-competitively established Centralized Contracts to be awarded on a statewide basis. Authorized Users are not required to release an RFQ to purchase under these Contracts. The Contracts shall be awarded for up to five (5) years with the option of a one (1) year extension. This Procurement includes provisions for Periodic Recruitment.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a viable Bid. Bidders must read the language of this Solicitation thoroughly, pay strict attention to the Bid submission date and time, and precisely follow the instructions included in the Solicitation, attachments, and addendums, to ensure compliance with Bid requirements and prevent possible disqualification.

Attachment 11 – *How to Use* provides guidance to both Bidders and Authorized Users on utilizing any resulting Award.

### 1.2 SCOPE.

OGS is requesting proposals from established and qualified manufacturers of Voting Systems certified by the New York State Board of Elections ("SBOE").

### 1.3 ESTIMATED QUANTITIES.

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$75,000,000.00 for the Contract Term. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, *OGS General Specifications*.

The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

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

- Such Contracts may be non-exclusive Contracts.
- 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 each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract Term.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the Contract Term pursuant to the terms and conditions of the Contract.

- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the Contract Term could vary substantially from the estimates provided in this Solicitation.

#### 1.4 KEY EVENTS/DATES.

The list below outlines the schedule for important action dates. If OGS and SBOE find it necessary to change dates, notification will be accomplished through an addendum to this Solicitation. Dates after the submission deadline are tentative.

<b>Event</b>	<b>Date</b>	<b>Time</b>
Solicitation Release	October 19, 2020	N/A
Closing Date for submission of Bidder Questions	November 2, 2020	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	November 23, 2020 (tentative)	N/A
Deadline for Submission of Intent to Bid	December 8, 2020	5:00 PM ET
Bid Opening / Due date for Bids	December 22, 2020	11:00 AM ET
Contract Approval Date / Award Publish Date	May 1, 2021 (tentative)	N/A

#### 1.5 NYS CONTRACT REPORTER.

Bidders must register with the New York State Contract Reporter ("NYSCR") 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. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must "bookmark the ad" on the upper right hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select "send me notification updates" option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

**If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.**

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

#### 1.6 LETTER OF INTENT TO BID.

A Bidder is encouraged, though not required, to indicate its intent to bid by sending an e-mail titled "INTENT TO BID-[BIDDER NAME]" to [OGS.sm.PS\\_AA\\_Voting@ogs.ny.gov](mailto:OGS.sm.PS_AA_Voting@ogs.ny.gov) on or before the date and time indicated in Section 1.4 - *Key Events/Dates*. The e-mail should include the Bidder's company name and a contact name and contact information including address, telephone number and e-mail address. This e-mail should specifically reference the Solicitation number and state whether company intends to bid.

#### 1.7 BIDDER QUESTIONS.

All questions regarding this Solicitation should be submitted using Attachment 8, *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be e-mailed to [OGS.sm.PS\\_AA\\_Voting@ogs.ny.gov](mailto:OGS.sm.PS_AA_Voting@ogs.ny.gov) by the date and time indicated in the *Key Events/Dates* section. Questions

submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYSCR. Your company must select the "opt-in" option within the Contract Reporter ad to receive notification updates of this Solicitation.

Vendors with questions related to the SBOE's certification process should contact the Election Operations Unit of SBOE at [Election\\_Ops@elections.ny.gov](mailto:Election_Ops@elections.ny.gov) or 518-473-5086. All questions pertaining to the functional, security and challenge report requirements set forth by SBOE, or questions related to the certification process for Voting Systems will be forwarded to the SBOE for its reply and will not be addressed in the question and answer document posted to the OGS website.

## 1.8 BID DEVIATIONS.

Bids must conform to the terms set forth in the Solicitation. If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract but shall be deemed included for informational or promotional purposes only.

## 1.9 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 an 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, are identified on the first page of this Solicitation. 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 State Finance Law §139-j and §139-k. 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://ogs.ny.gov/acpl/>.

## 1.10 DEFINITIONS.

Capitalized terms used in this Solicitation shall be defined according to Appendix B, *Definitions*, or as below:

Term	Definition
Bidder Submission	The complete response to this Solicitation submitted by a Bidder to provide Products described in the Solicitation.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State Holidays or federal Holidays.
CBOE(s)	New York State County Boards of Election.

Term	Definition
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract Term	The initial term of the Contract and any renewals, or extensions, or both.
Critical Period	Thirty (30) days prior to and after the election in which Voting Systems and Related Services and Accessories are used.
Cyber Incident	An event occurring on or conducted through a computer network or system that actually or imminently jeopardizes the integrity, confidentiality, or availability of computers, information or communications systems or networks, physical or virtual infrastructure controlled by computers or information systems, or information resident thereon. For purposes of this Solicitation, a cyber incident may include a vulnerability in an information system, system security procedures, internal controls, or implementation that could be exploited by a threat source.
Data Breach	Acquiring of information by a person without valid authorization or through unauthorized acquisition
Days	Unless otherwise specified reference to days in this Solicitation shall mean Business Days, not calendar days.
Discount	An allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive.
Early Voting	An option available under NYS law which allows voters to cast their votes prior to Election Day in predetermined locations specified by an Authorized User.
Election Day	A day legally established for the election of public officials.
End-of-Life (EOL)	When a Product is no longer being marketed or sold.
Foreign person/national	Federally defined as a person who is NOT: <ul style="list-style-type: none"><li>• Granted permanent U.S. residence, as demonstrated by the issuance of a permanent residence card, i.e., a "Green Card",</li><li>• Granted U.S. citizenship,</li><li>• Granted status as a "protected person" under 8 U.S.C. 1324 b(a)(3), e.g., political refugees, political asylum holders, etc.</li></ul>
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Government Entity	A federal, State, municipal entity or tribal government located in the United States.
Hardware	The physical aspect of Voting Systems.
Mandatory	Refers to items or information that the State has deemed that a Bidder must submit as compulsory, required and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of "must," "will," or "shall".
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."
Minority and/or Woman-Owned Business (MWBE)	Businesses certified as such by Empire State Development's Division of Minority and Women's Business Development. NOTE: Businesses eligible to participate in the program must be owned and operated by women and/or minority group members who are citizens of the United States or permanent resident aliens. Generally they must have been in operation for at least one year.
Must	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Shall" and "Will."
New York State Legal Holidays (NYS Holidays)	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.
New York State Service-Disabled Veteran-Owned Business (SDVOB)	A NYS-certified Service-Disabled Veteran-Owned Business.  Please refer to New York Executive Law Article 17-B for additional details.

Term	Definition
New York State Small Business Enterprise (SBE)	A company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).
New York State Statewide Financial System (SFS)	The NYS Enterprise Resource Planning (ERP) System.
New York State Vendor Identification (NYS Vendor ID)	The ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Non-State Agencies	Political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in Centralized Contracts in accordance with Appendix B, §25(b), Non-State Agency Authorized Users and §25(c), Voluntary Extension and State Finance Law Section 163(1)(k).
Part/Stock Number	A unique identifier assigned to an individual Product and/or Service or part by the Contractor for that Product and/or Service; usually includes a combination of alpha and/or numeric characters or may be a unique product name or unique product description. Part/Stock Numbers must be unique and cannot be the same as any other Part/Stock Number on the price list.
Procurement Services	A business unit of OGS responsible for establishing centralized contracts.
Shall	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Must" or "Will."
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."
Small Business	Please refer to State Finance Law section 160(8) for the definition of "small business concern" or "small business."
Software	Shall have the same definition as found in 9 CRR-NY 6209.1.
User Data	Any information, formula, algorithms, or other content that the Authorized User may directly or indirectly provide to the Contractor pursuant to the resulting Contract.
Will	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Must" or "Shall."
Written / Written Communication	Written Communication makes use of the written word. Examples of Written Communications include e-mail, Internet websites, letters, proposals, and Contracts.

## 1.11 APPENDICES AND ATTACHMENTS.

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

### APPENDICES

Appendix A – *Standard Clauses for NYS Contracts* (October 2019)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Contract Modification Procedure*

### ATTACHMENTS

Attachment 1 – *Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses in Contract Performance*

Attachment 4 – *Bidder's Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance*

Attachment 7 – *FOIL Redaction Request*

Attachment 8 – *Bidder Questions Form*  
Attachment 9 – *Bidder Submission Checklist*  
Attachment 10 – *Report of Contract Usage*  
Attachment 11 – *How to Use*  
Attachment 12 – *Company Ownership, Board Members and Stakeholders*

#### EXHIBITS

Exhibit 1 – Link to NYS Election Law;  
Exhibit 2 – Link to NYS Election Codes, Rules, and Regulations;

### **1.12 CONFLICT OF TERMS AMONG SOLICITATION DOCUMENTS.**

Conflicts among these Solicitation documents shall be resolved in the following order of precedence:

1. Appendix A, *Standard Clauses for New York State Contracts*;
2. This Solicitation document;
3. Appendix B, *General Specifications*;
4. All other appendices and attachments to the Solicitation.

This provision is separate and independent from the Conflict of Terms provision found in Section 8.5 of this document, which pertains to any Contract resulting from this Solicitation.

## **SECTION 2 BIDDER QUALIFICATIONS**

### **2.1 GENERAL QUALIFICATIONS.**

1. Bids will be accepted only from established voting system manufacturers.
2. Bidders must be capable of processing and shipping large numbers of orders to various destinations within New York State.
3. Bidders must maintain service facilities and have trained personnel available to service the Products furnished to the Authorized Users.
4. Bidders must guarantee in writing to keep the Voting Systems in good working order for at least five years from the date of purchase without additional cost and will satisfactorily perform their training and service obligations under the Contract.
5. Bidders must be able to provide training and support by trained personnel.
6. Bidder must have adequate financial and other resources to implement a statewide contract to all Authorized Users.
7. Bidder must be a member of the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC).
8. Bidder must demonstrate that it meets all other requirements of the Solicitation.

### **2.2 NEW YORK STATE BOARD OF ELECTIONS CERTIFICATION.**

In accordance with NYS Election Law, Section 7-201, the SBOE has established an examination and certification process with minimum security standards and requirements for Voting Systems. A Bidder must obtain such certification for any Voting System included in its Bid and must include proof of certification with its Bid to qualify for



Contract award under this Solicitation. A Bidder that has not provided proof of certification from the SBOE for a Voting System shall be ineligible for Contract award in relation to that Voting System.

### **2.3 VOTING SYSTEM EXAMINATION.**

Bidders should be aware that in order to obtain certification of a Voting System, an application fee of \$5,000, and the cost of examination of the Voting System, as estimated by SBOE at time of application must be paid by the Bidder, unless such requirements are waived by the SBOE.

When any change is made in the operation or material of any feature or component of any Voting System which has been certified pursuant to the provisions of this section, such Voting System must be submitted for re-examination and re-certification as the SBOE deems necessary.

If at any time after any Voting System has been certified pursuant to the provisions of the Election Law, the SBOE has any reason to believe that such Voting System does not meet all applicable requirements, Contractor must immediately resubmit the Voting System for re-examination as prescribed herein. If the opinions in the report of such examinations do not state that the Voting System can safely and properly be used by voters during elections, the SBOE shall rescind its certification. After the date on which the certification of any Voting System is rescinded, those machines or devices cannot be used or purchased for use in this State. The SBOE may, at its discretion, examine all Voting Systems of such type which were previously purchased, to determine if they may continue to be used in elections in this State.

### **2.4 ADMINISTRATIVE REQUIREMENTS.**

Each Bidder must disclose the following, using Attachment 12, *Company Ownership, Board Members and Stakeholders*:

- a) all countries in which it operates.
- b) the corporate structure (e.g., publicly traded corporation, privately held partnership, nonprofit).
- c) all board members (if applicable).
- d) any ownership of the company by foreign person/national, of 10% or more ownership percentage.

All personnel that work on the Contract should have at least a national agency check and should be U.S. citizens. If some employees are not U.S. citizens, Bidder should detail risk management procedures and provide results of background checks on those staff members or contractors.

A "foreign person/national" is federally defined as a person who is NOT:

- Granted permanent U.S. residence, as demonstrated by the issuance of a permanent residence card, i.e., a "Green Card",
- Granted U.S. citizenship,
- Granted status as a "protected person" under 8 U.S.C. 1324 b(a)(3), e.g., political refugees, political asylum holders, etc.

It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

In January 2017, the Department of Homeland Security (DHS) designated the election infrastructure used in federal elections as a component of U.S. critical infrastructure. SBOE is collecting this information for reference by it or Authorized Users.

Failure to disclose this information may result in Bidder being ineligible for award.

### **2.5 PRICING.**

Bidder must provide proposed pricing as specified in Section 3, *Pricing* and in accordance with the instructions tab listed within Attachment 1, *Pricing*.

## **SECTION 3 PRICING**

### **3.1 PRICING REQUIREMENTS.**

Pricing must be provided at the time of Bid Submission.

New York State's determination of acceptable price lists shall be final. In the event Bidder is awarded a Contract, all approved NYS Contract price lists will be posted on the OGS Procurement Services website.

### **3.2 PROPOSED PRICE LIST.**

Bidder shall complete Attachment 1, *Pricing*. A price must be provided for each Product listed in Bidder's Attachment 1, *Pricing*. The prices shown on the Bidder's proposed price list shall reflect the complete cost of the Products. Price lists shall state whether prices include the cost of travel, meals and lodging, where applicable.

All NYS Net Prices must include all applicable shipping, handling, insurance, and associated delivery charges (F.O.B. Destination the dock/delivery location of the Authorized User). See Appendix B, *Shipping/Receipt of Product*.

A Part/Stock Number is to be provided for every Product on Attachment 1, *Pricing* and for all future offerings. Each Part/Stock Number must be unique. A Part/Stock Number may be equal to the Product's Name. Part/Stock Numbers must be included in the "Part/Stock Number" Column for that Product on Attachment 1, *Pricing*. OGS will review Products listed on Attachment 1, *Pricing* as part of the review process.

OGS retains the right to modify the Attachment 1, *Pricing* to create a price list for the resulting Contract. Only Products listed on such price list shall be sold under any resulting Contract. OGS reserves the right in its sole discretion to remove any Products deemed to be out of scope of the Solicitation from Attachment 1, *Pricing* and from the Contract price list at any time during the term of the resulting Contract, upon notice to the Contractor.

Bidder's Attachment 1, *Pricing* shall only contain plain text. Bidder's Attachment 1, *Pricing* shall not include any marketing language or marketing materials. Bidder's Attachment 1, *Pricing* shall not include any additional terms and conditions.

#### **3.2.1 Monetary Values.**

All monetary values shall be in U.S. Dollar amounts and will be two decimal points (For Example - \$1.12).

#### **3.2.2 Discount Percentage Values.**

All Discount percentage values shall not exceed two decimal places (For Example - 20.25222% will be rounded to nearest one hundredth 20.25%). A Discount Percentage value cannot be expressed as a range (For Example - 10%-20%, or "varies").

#### **3.2.3 Volume Discounts.**

Bidder is encouraged to offer volume Discounts on its submitted Attachment 1, *Pricing*.

#### **3.2.4 Discounts.**

All Discounts shown on the Bidder's Attachment 1, *Pricing* shall not be decreased by the Contractor during the resulting Contract Term or through any Purchase Orders issued pursuant to any Contract resulting from this Solicitation.

Discounts shown on the Bidder's Attachment 1, *Pricing* may be increased by the Contractor at any time during the resulting Contract Term or through any Purchase Orders issued pursuant to any Contract resulting from this Solicitation.

### **3.3 GSA ASSOCIATED DISCOUNTS.**

Where the NYS Net Price is based upon an approved GSA supply schedule then New York State shall be entitled to all associated Discounts enumerated in the GSA supply schedule (including, but not limited to Discounts for additional sites and volume Discounts), as well as any other pricing or Discount terms as are expressly enumerated in this NYS Contract or GSA supply schedule, when calculating the NYS Net Price.

Bidder shall submit all associated Discounts enumerated in the GSA supply schedule via Attachment 5, *Bidder Information Questionnaire, General Questions* tab.

### **3.4 GSA INDUSTRIAL FUNDING FEE.**

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". If the Bidder provides GSA pricing it shall identify the amount of the IFF.

Bidder shall submit all associated IFFs via Attachment 5, *Bidder Information Questionnaire, General Questions* tab.

### **3.5 PROMPT PAYMENT DISCOUNTS.**

If a Bidder offers a Discount for prompt payment, it shall include the terms of the Discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the number of days for which the prompt payment Discount offer applies. Bidder will submit its prompt payment Discount percentage and time frame to OGS via Attachment 5, *Bidder Information Questionnaire, General Questions* tab.

### **3.6 REASONABLENESS OF PRICE.**

NYS Net Pricing offered in Attachment 1, *Pricing* will be reviewed by OGS to assess reasonableness of price. Bidders are encouraged to offer their best possible pricing. Bidders shall submit copies of existing contracts or price lists with other entities to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers. Subject to OGS' reserved rights in the Solicitation, the Contract price lists referenced below will be accepted as documentation of reasonableness of price. Bidders should carefully read the instructions to Attachment 1, *Pricing* to be sure that all information requested therein is provided and that proposed pricing is equal to or better than the applicable price list referenced below.

To determine reasonableness of price for a Product, OGS will compare the price of the Part/Stock Number listed on Attachment 1, *Pricing* with the price of the same Part/Stock Number (handwritten or otherwise) found on one of the acceptable forms of documentation listed in Section 3.6.1 below. Bidder shall complete Columns N through R using the information from the reasonableness of price documentation for each Part/Stock Number submitted on Attachment 1, *Pricing*. The price of the Part/Stock Number listed on Attachment 1, *Pricing* must be equal to or less than the price of the same Part/Stock Number (handwritten or otherwise) as found on the reasonableness of price documentation. Any Part/Stock Number not meeting reasonableness of price may be removed from Bidder's Attachment 1, *Pricing*.

OGS reserves the right to conduct additional research and request additional information to assess the reasonableness of price. If reasonableness of price is not demonstrated to OGS' satisfaction, the Bidder Submission may be deemed non-responsive and ineligible for Contract award. Additionally, OGS reserves the right to require the Bidder to lower its offered pricing to that which OGS has determined to be reasonable in price and to remove items from Bidder's price list for which pricing is determined not to be reasonable.

All required information contained in reasonableness of price documentation should be free of restrictions on confidentiality or claims of confidentiality. OGS will not enter into a Non-Disclosure Agreement (NDA) for Bidders who assert that information contained in their reasonableness of price documentation is confidential.

Any Contract modifications or Price List updates requested by the awarded Contractor throughout the Contract term will also require reasonableness of price documentation.

### **3.6.1 Acceptable Reasonableness of Price Documentation .**

Acceptable reasonableness of price documentation include, but are not limited to:

#### **1. FEDERAL CONTRACT PRICE LIST**

- a. Contract must have been executed by the Government Entity;
- b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
- c. If contract has expired, the expiration date of the contract shall be no more than 1 year prior to the Bid Submission due date; and
- d. Contract and contract price list (both in searchable PDF or Excel spreadsheet) will be included with Bidder Submission.

#### **2. OTHER GOVERNMENT ENTITY OR NYS CONTRACT PRICE LIST**

- a. Contract must have been executed by NYS or the Government Entity;
- b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
- c. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the Bid Submission due date; and
- d. Contract and contract price list (both in searchable PDF or Excel spreadsheet) will be included with Bidder Submission.

#### **3. PAID INVOICES OR RECEIPTS FROM GOVERNMENT ENTITIES**

1. Product(s) invoices must be paid (i.e. amounts have been paid and funds have been collected by the Government Entity);
2. Paid invoices are to be provided in searchable PDF;
3. Sufficient information must be included on the invoice to identify the Product(s), including the following:
  - a) Government Entity;
  - b) Description of Product(s);
  - c) Part/Stock Number or unique Product name, or unique detailed description of Product; and
  - d) Net price of each Product;
4. Invoice date must be no more than 12 months prior to the Bid Submission due date; and
5. All paid invoices will be included with Bidder Submission.

#### **4. NYS CENTRALIZED CONTRACT PRICE LIST OR SALES REPORTS**

1. Contract must have been executed by NYS;
2. Contract price list will be the most currently approved or the price list in effect at contract expiration;
3. An itemized sales report for an OGS Centralized Contract would be accepted in lieu of the price list as well;
4. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the Bid Submission due date;
5. Contract and either the contract price list or the sales report (both in searchable PDF or Excel spreadsheet) will be included with Bidder Submission.

#### **5. MANUFACTURER SUGGESTED RETAIL PRICE (MSRP) PRICE LIST**

1. Only acceptable if proof from options 1 – 4 is not available for the Product(s);
2. MSRP (or equivalent) must be available to Bidder's commercial customers;
3. MSRP price list must be submitted as a searchable PDF;
4. OGS retains the right to reject MSRP as justification of price.

### **3.7 BIDDER'S INSURANCE REQUIREMENTS.**

Bidder is to procure at its sole cost and expense and provide electronically with its Bidder Submission all proof of required insurance as detailed in Attachment 4, *Bidder's Insurance Requirements*, and maintain in force at all times during the Contract Term, policies of insurance pursuant to the requirements outlined.

### **3.8 DESIGNATED PERSONNEL / CONTACT INFORMATION.**

The Bidder will provide the following Designated Personnel for the duration of the resulting Contract at no charge to the State. Information regarding the Designated Personnel will be set forth in Attachment 5, *Bidder Information Questionnaire*, *General Questions* tab. Duplicated contact information is not recommended but will be accepted. The Emergency Contact information must be unique.

During the resulting Contract Term and until the end of any related Purchase Orders, Contractor must notify OGS within five (5) Business Days if its Designated Personnel change and provide interim contact personnel until the position is filled. Contractor may submit a Designated Personnel change request electronically via e-mail in accordance with the instructions contained in Appendix C, *Contract Modification Procedure*. The Designated Personnel must have the authority to act on behalf of the Contractor.

The Authorized User may require the Contractor to conduct background checks on certain Contractor staff at no charge to the Authorized User, and may require the separation of job duties, and that Contractor staff knowledge of User Data be limited to that which is absolutely needed to perform job duties.

#### **3.8.1 Contract Administrator.**

The Contract Administrator shall be responsible for the updating and management of the resulting Contract on a timely basis. The Contract Administrator shall serve as the Single Point of Contact (SPOC) for the Authorized User for all issues regarding Products. The Contract Administrator must also serve as the SPOC for any additional Products that may be added to the resulting Contract.

#### **3.8.2 Account Manager.**

The Account Manager shall be responsible for the overall relationship with the State during the Contract Term and shall act as the central point of contact.

#### **3.8.3 Sales Manager.**

The Sales Manager shall be responsible for the overall relationship with the Authorized Users for matters relating to Purchase Orders.

#### **3.8.4 Billing Contact.**

The Billing Contact shall be responsible for serving as the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing and payment.

#### **3.8.5 Emergency Contact.**

The Emergency Contact shall be responsible for being available 24 hours a day, 365 days per year for emergencies occurring during and after business hours Monday through Sunday, Eastern Time, including New York State or federal holidays. OGS reserves the right to determine whether the contact information provided is sufficient.

#### **3.8.6 Toll Free Number.**

Contractor shall provide a toll-free telephone number for use by Authorized Users. Contractor shall staff this toll-free number as outlined in Section 8.43.1 – Minimum Cures. This number shall be provided at no cost to the State.

## **SECTION 4 BIDDER SUBMISSION**

### **4.1 NOTICE TO POTENTIAL BIDDERS.**

Receipt of Bid does not indicate that Procurement Services has pre-determined a Bidder's qualifications to receive a Contract award. Such determination shall be based on the evaluation of a Bid compared to the specific requirements and qualifications contained in this Solicitation.

### **4.2 NYS VENDOR FILE REGISTRATION.**

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder 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. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

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](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: <https://osc.state.ny.us/vendors/>

### **4.3 FORMAT OF BID SUBMISSION.**

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations susceptible to disqualification may include:

- E-mail Bid submissions are not acceptable
- Absent price pages (Attachment 1, *Pricing*) are not acceptable
- Bids that contain material deviations, See Section 1.8, *Bid Deviations* for additional information.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

#### 4.4 CONTENT OF BID SUBMISSION.

A complete Bid consists of three (3) complete copies of each of the following forms and any additional required documents specified in each form, in the format(s) specified:

#	Bid Document	File Format	Electronic (USB)	Original (Hard Copy)
1.	Pages 1, 2, and 3 of the Solicitation	PDF	X	X
2.	Proof of SBOE approval of Voting System configurations, consisting of approval notification from SBOE	PDF	X	
3.	Completed Attachment 1, <i>Pricing</i>	Excel	X	
4.	Reasonableness of price documentation of (per Section 3.6)	PDF	X	
5.	Completed Attachment 2, <i>NYS Required Certifications</i>	PDF	X	X
6.	Completed Attachment 3, <i>Encouraging Use of NYS Businesses in Contract Performance</i>	PDF	X	
7.	Proof of compliance with Attachment 4, <i>Bidder's Insurance Requirements</i>	PDF	X	
8.	Completed Attachment 5, <i>Bidder Information Questionnaire</i>	Excel	X	
9.	Completed Attachment 6, <i>Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance</i>	PDF	x	
10.	Completed Attachment 7, <i>FOIL Redaction Request</i>	PDF	x	
11.	Completed Attachment 9, <i>Bidder Submission Checklist</i>	PDF	X	X
12.	Completed Attachment 12, <i>Company Ownership, Board Members and Stakeholders</i>	PDF	X	
13.	Completed ST-220CA, Contractor Certification, notarized with original ink signatures (see Section 8.33 NYS Tax Law Section 5-A)	PDF	X	X
14.	Completed Form EEO 100, Equal Employment Opportunity Staffing Plan (see Section 8.22 Contractor Requirements...)	PDF	X	X
15.	Standard Vendor Responsibility Questionnaire or certification that a Questionnaire has been completed online (see Section 8.32 NYS Vendor Responsibility)	PDF	X	Not required if submitted online
16.	Addenda acknowledgements issued for this Solicitation	PDF	X	

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

#### 4.5 BID DELIVERY.

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in Section 1.4, *Key Events/Dates*:

New York State Office of General Services

Procurement Services  
Corning Tower - 38th Floor Reception Desk  
Empire State Plaza  
Albany, NY 12242

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

#### **4.6 IMPORTANT BUILDING ACCESS PROCEDURES.**

Bidders are hereby advised that due to COVID 19, OGS Procurement Services will not be accepting hand-delivered bids (mail services are still allowed to access the building), nor granting access to any visitors to attend the Bid Opening. See Electronic Bid Opening Results clause.

#### **4.7 ELECTRONIC BID OPENING RESULTS.**

OGS Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two Business Days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>.

#### **4.8 BID LIABILITY.**

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

#### **4.9 FIRM OFFER.**

Bids must remain an effective offer, firm and irrevocable, for at least 220 calendar days from the date the Bid was received by OGS, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 220 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

#### **4.10 RESERVED RIGHTS.**

##### **4.10.1 NYS Reserved Rights.**

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements 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 a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all 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 in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Reject a Voting System and/or Related Services that have not been approved by the SBOE.
- X. Add templates for use by the Authorized User, such as a How-to-Use document.

#### **4.10.2 Authorized User Reserved Rights.**

The Authorized User shall have the above rights when requesting a quote.

## **SECTION 5 SPECIFICATIONS**

### **5.1 NYS ELECTION CODES, RULES, AND REGULATIONS.**

Each Voting System must be provided in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Code and Regulations (<https://www.elections.ny.gov/ElectionLaw.html>).

### **5.2 TRAINING.**

Contractors shall provide for sufficient training of Authorized User personnel in the following:

1. training prior to delivery of Voting Systems and equipment on procedures for unpacking, inspecting, installing, assembling and acceptance testing of such Voting Systems and equipment
2. adjusting and aligning the Voting Systems and equipment
3. proper use of such Voting Systems and equipment including maintenance, storage and transportation procedures
4. the use of the Contractor's voting system's supporting software
5. procedures to be used to accomplish ballot face layout and ballot programming, and all other features of the software
6. operating the Product (including layout and interconnection diagrams and schematic and wiring diagrams)
7. preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable)

8. voter education instruction materials on the use of the Voting System and any accessibility devices (including methods to be used by eligible voters to mark a ballot, cast a vote and have that vote counted)
9. procedures to be followed by inspectors at polling places
10. the training of all elections personnel (including election inspectors) during the first two elections, to include a general election, in which the Voting System or equipment is used. Such assistance relating to the number of people and the hours of assistance shall be identified in the executed contract

At the time the Bid is submitted, the Bidder shall provide detailed information regarding in-person training as follows:

1. The maximum number of participants per training session.
2. The duration of training based on Contractor-recommended roles and responsibilities.
3. The cost and terms for training to include both regionalized and on-site county training.
4. The cost and terms for training in the procedures to be used to accomplish ballot configuration and ballot programming

Within ten Business Days of acceptance by the Contractor of a Purchase Order, the Contractor and the Authorized User shall agree upon mutually-acceptable training dates. Training must include live instruction by qualified personnel sufficient to ensure that the product is operating correctly and may be operator-maintained so as to perform to the full extent of its design capabilities. The Authorized User shall designate personnel to receive training.

### **5.3 TRAINING MATERIALS AND OPERATIONS MANUALS.**

Within ten (10) Business Days of the SBOE's certification of a Voting System and prior to the commencement of any training of Authorized Users, the Contractor shall furnish to the SBOE five (5) complete sets of instruction materials (video, graphics, audio or text) for each product and component supplied to the Authorized Users.

The Contractor shall provide complete operations manuals (including operations manuals for any auxiliary features, programming, hardware, telecommunications systems and central vote tabulating systems) upon delivery of voting systems equipment to a jurisdiction. Such manuals shall include one copy of procedures to be followed by inspectors at polling places. The Contractor shall permit this copy to be reproduced and distributed by the Authorized User at its training school for election inspectors or the Contractor shall supply as many copies of the procedures as required by the Authorized User for such distribution.

All training materials shall also be provided, at no additional cost, to the SBOE and the Authorized Users in an electronic version to enable the SBOE and the Authorized Users to incorporate the training materials into their training procedures, manuals and outreach materials. This requirement is separate from, and in addition to, any materials otherwise provided with the Bid.

The vendor shall permit the SBOE and Authorized Users to duplicate these materials for wide distribution, including posting to their websites, for use in public education and training programs.

These instruction materials and any other documents provided to the SBOE or an Authorized User shall not bear confidential or proprietary labels of any sort.

### **5.4 SERVICE PROVISIONS.**

1. The Contractor must promptly rectify any problems identified through testing any or all of the Voting Systems equipment delivered to the Authorized User.
2. The Contractor shall, without additional cost, provide to the Authorized User a five-year guarantee of parts and service, that such voting equipment shall be kept in good working order and that other statutory requirements are met. Shipping costs for any factory repairs or part replacement will be incurred by the Contractor.
3. The Contractor shall provide to the Authorized User of said Voting Systems equipment a detailed listing of proper maintenance, storage and transportation procedures to be carried out by each Authorized User.

4. The Contractor and the Authorized User shall agree in writing as to the proper maintenance procedures to be implemented on each piece of equipment and shall further agree in writing as to the obligations of each party for servicing and maintenance procedures.
5. The Contractor must correct any problems or defects in the voting equipment or Voting Systems within a commercially reasonable time period. If the time for resolving problems or defects is insufficient to allow for adequate resolution prior to use in an election, an alternate machine or unit shall be provided by the Contractor, and such machine or unit shall be subjected to the acceptance testing requirements of 9 CRR-NY 6209.
6. The Contractor shall provide the Authorized User with the criteria necessary for the proper operation of the voting system or equipment at a polling place.

## **5.5 POLLING SITE SURVEY.**

The Contractor, together with the Authorized User, shall survey the present polling places in a jurisdiction to which its Voting System or equipment has been sold, to determine whether or not such polling places meet environmental conditions for the proper operation of the voting system or equipment. This provision shall apply to those polling places which are in use at the time of the proposed sale. If any polling places are not compatible, the Contractor shall advise the jurisdiction purchasing the voting system or equipment on the methods or procedures that the said jurisdiction may use to remedy any such problem.

## **5.6 AFFIRMATIONS.**

Bidder shall affirm that:

1. The submitted Voting System complies with all applicable rules adopted by the SBOE, and with all applicable 2005 Federal Voting System Guidelines.
2. The Bidder will quote and provide a statewide, uniform price for each unit of the Voting System's equipment.
3. The submitted Voting System's Software does not contain any code, procedures or other material (including but not limited to 'viruses,' 'worms,' 'time bombs,' and 'drop dead' devices that may cause the voting system to cease functioning at a future time), which may disable, damage, disarm or otherwise affect the proper operation of the Voting System, any hardware, or any computer system or other property of the SBOE or Authorized User, and any submitted Voting System provides methods through security seals or device locks to physically secure against attempts to interfere with correct system operations. Such physical security shall guard access to machine panels, doors, switches, slots, ports, peripheral devices, firmware, and software.
4. Upon award, the Bidder shall have fifteen (15) business days to forward to OGS a performance bond or letter of credit to cover any and all expenses, costs, and damages, including but not limited to all costs of inspecting or testing a Voting System that does not meet the standards contained in 9 CRR-NY 6209 and all costs incurred in conducting any new election resulting from any breach of the warranties and representations required to be made anywhere in 9 CRR-NY 6209, or in the NYS Election Law. The amount of said performance bond or letter of credit has been set by the SBOE in the amount of 0.5% of the total estimated value of the Contract, \$75,000,000.00. See Section 8.8 of this Solicitation.
5. For purposes of the initial purchases of voting machines and systems, pursuant to the Federal Help America Vote Act of 2002, and the State Election Reform and Modernization Act of 2005, all contracts entered by the SBOE or Authorized User with Contractors must comply with OGS regulations on purchasing procedures and purchases from preferred sources, found in NYCRR Title 9, Subtitle G, Subchapter A, Part 250, section 250.0 through and including section 250.11.

## SECTION 6 METHOD OF AWARD

### 6.1 METHOD OF AWARD.

OGS intends to award statewide Contracts to all qualified, responsive, and responsible Bidder(s) who offer a Voting System that meets all the requirements of this Solicitation, and whose pricing indicates that Products offered shall be delivered at a reasonable price as determined by OGS ("Awardee").

Contracts will be awarded on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation. Bidder Submissions which do not require the submission of clarifying information or documentation from the Bidder will be awarded first. Bidder Submissions which require clarification will be awarded as issues are resolved.

The State reserves the right to make "NO AWARD" on individual listings or sub-items.

#### 6.1.1 Certified Voting Systems.

The following Voting Systems are already deemed certified by BOE and therefore, can be included in a Bidder's Submission without going through a new SBOE certification process in connection with this procurement:

##### ES & S Precinct-based Voting System:

DS200(i) 2.16.0.1, DS200(i) Hardware Revision 1.3, AutoMark 1.8.3.0, VAT Preview 1.8.3.0, EMS/EVS Suite 5.6.0.1, EMS/EVS Suite 5.6.0.2  
Event Log Service 1.5.7.0, Removable Media 1.4.7.0, DS 200 Power Management v 1.2.8.0

##### ES & S Central Count Voting System:

DS 850 v. 2.4.0.1, DS 850 v. 2.13.0.0

##### DOMINION Precinct-based Voting System:

EMS Suite 4.9.17 ImageCast scanner 4.9.10, ImageCast scanner v 4.9.10/BMD 4.9.6, ImageCast scanner v 4.9.12, ImageCast scanner v 4.9.12/BMD 4.9.6, ImageCast Evolution scanner v 4.14.25, ImageCast Evolution scanner v 4.14.27, BCU v 4.9.18.0

##### DOMINION Central Count Voting System: (ICC) v.4.9.14, 4.14.18,

##### CLEARBALLOT Central Count Voting System:

ClearCount v. 1.0, ClearCount v 1.6.0

OGS reserves the right in its sole discretion to add or remove Voting Systems from the scope of any Contract resulting from this Solicitation following any approval or the rescinding of a prior approval of a Voting System by the SBOE at any time during the term of any contract resulting from this solicitation, upon notice to the Bidder/Contractor.

### 6.2 REVIEW OF BIDS.

After OGS' receipt of a Bid, each Bid will be reviewed for conformance with the stated Bidder Qualifications, as set forth in Section 2, *Bidder Qualifications*, completeness of the Bid Submission including adherence to required formats, and price reasonableness. Any Bid not meeting any of the Bid requirements may be denied further consideration for Award.

Bids will be reviewed to ensure that the Bidder has provided all required documents and/or Attachments, completed in full, and in original hard copy where requested, as set forth in Section 4.4, *Content of Bid Submission*. Failure by a Bidder to provide properly completed documents and/or attachments may result in their Bid being deemed non-responsive and denied further consideration for Award.

Bidders may be requested by Procurement Services to clarify the contents of their Bids during bid review.

### **6.3 NOTIFICATION OF AWARD.**

Tentative Award of the Contract shall consist of Written notice, via e-mail, by OGS to selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible and has fulfilled all requirements of this Solicitation.

Non-awardees will also be notified that their Bid was not selected for award.

### **6.4 INCORPORATION.**

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

### **6.5 OSC APPROVAL**

Pursuant to the Memorandum of Understanding ("MOU") dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo ("Executive"), New York State Comptroller Thomas P. DiNapoli ("OSC"), the State University of New York ("SUNY"), the State University of New York Construction Fund ("SUCF"), the City University of New York ("CUNY"), and the City University of New York Construction Fund ("CUCF"), procurement documents and Contracts awarded under this Solicitation shall have no force and effect and the State bears no liability unless such procurement documents and Contracts awarded under this Solicitation are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

## **SECTION 7 EVALUATION METHOD**

A Bidder responding to this Solicitation is advised that each Bid will undergo an initial administrative review for completeness. In order for a Bid to be evaluated, it must include all required documents for a complete Bid (see Section 4.4, *Content of Bid Submission*.)

Evaluation of Bidder Submissions shall consist of two (2) separate parts: (1) Administrative Review and (2) a Financial Review.

### **7.1 ADMINISTRATIVE REVIEW (PASS/FAIL).**

Bidder Submissions will undergo an initial administrative review for completeness. For the evaluation of a Bidder Submission to proceed beyond the initial administrative review, all required information, forms, and signatures must be included. See Section 4, *Bidder Submission* for additional information.

### **7.2 FINANCIAL REVIEW (PASS/FAIL).**

The Bidder Submission shall include a completed Attachment 1, *Pricing* document, with all necessary fields completed in accordance with the instructions. All prices submitted are subject to a reasonableness of price evaluation as outlined within Section 3.6, *Reasonableness of Price*. Prices that are determined by OGS to not be reasonable may result in a failure to meet the financial requirements and therefore an unresponsive Bid.

## **SECTION 8 TERMS AND CONDITIONS**

### **8.1 CONTRACT TERM AND EXTENSIONS.**

It is the intention of the State to enter into a Contract for a term of five years except that the commencement and termination dates appearing on the Request for Proposals may be adjusted forward unilaterally by the State for any resulting contract for up to two calendar months, by indicating such change on the Contract Award Notification.

The contract dates may be adjusted forward beyond two months only with the approval of a successful Bidder. If, however, a Bidder is not willing to accept an adjustment of the contract dates beyond the two-month period, the State reserves the right to proceed with an award to another Bidder.

The parties may renew the contract, upon approval of the NYS OGS and SBOE, upon expiration of the original term for an additional one (1) year term. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

## **8.2 PERIODIC RECRUITMENT**

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

## **8.3 CANCELLATION FOR CONVENIENCE.**

The State of New York retains the right to cancel any Contract resulting from this Solicitation, in whole or in part without reason provided that the Contractor is given at least sixty (60) calendar days' notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the Contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Purchase Orders, which are subject to the same 60-day discretionary cancellation or cancellation for cause by the respective Authorized Users.

## **8.4 SHORT TERM EXTENSION.**

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 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.

## **8.5 CONFLICT OF TERMS - CONTRACT.**

Conflicts among the Contract documents shall be resolved in the following order of precedence:

- Appendix A, *Standard Clauses for New York State Contracts*;
- Contract;
- Appendix B, *General Specifications*;
- All other appendices and attachments to the Contract.

This provision is separate and independent from the Conflict of Terms Among Solicitation Documents provision found in Section 1.12 of this document, which pertains to this Solicitation.

## **8.6 PRICE LIST UPDATES.**

Contractor may update its price list as provided in this Section. All price list modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedures*.

Contractor may submit a request for Product addition, change, and/or deletion at any time following the commencement date of the Contract, and on an as-needed basis during the Contract Term. The Discount offered on any new Products added to the Contractor's price list shall be no lower than the minimum established product category Discount. Contractors shall submit all requests to the OGS Procurement Services Contract administrator in the form and format contained in Appendix C, *Contract Modification Procedures* for the review and written approval of OGS. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

Commencing at a minimum after the first anniversary of the date that the Contractor's Bid was opened by OGS, and annually thereafter, the Contractor may update the price list to reflect Contractor price changes, once every 365 calendar days per Product. Price Increase updates are subject to all Contract update provisions included within Appendix C, *Contract Modification Procedures*.

Contractors may submit requests for price adjustments no sooner than 30 calendar days prior to the anniversary of the date that their Bid was opened by OGS, but no price adjustments shall become effective until approval by OGS on or after the anniversary date. Contractors may request subsequent price adjustments annually thereafter. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who needs to submit Sales Reports, Proof of Insurance or any other documentation that is required under the resulting Contract.

Contractors shall be permitted to reduce their pricing any time during the Contract Term.

The Discount offered on any new Products added to price lists shall be no lower than the minimum established product category Discount. Contractors shall submit their updated price list to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved price list updates shall apply prospectively upon approval by OGS. Total price increases for price list updates in a single year of the Contract shall not exceed the maximum price increase cap as set forth in the *Maximum Price Increase* subdivision, below. All percentage Discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract Term.

#### **8.6.1 Price list Format.**

Contractors are required to submit Contract price list updates electronically in an unprotected Microsoft Excel (2019 or lower version) spreadsheet on USB flash drive or via e-mail to the OGS Procurement Services contract administrator. The price list must be dated and the format shall be consistent with the format of the Contractor's approved Contract price list. The price list shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

#### **8.6.2 Contractor's Submission of Contract Updates.**

In connection with any Contract price list update, OGS reserves the right to:

- Request additional information;

- Reject Contract updates;
- Remove Products from Contracts;
- Remove Products from Contract updates; and
- Request additional Discounts for new or existing Products.

### 8.6.3 Maximum Price Increase.

In a single year of the Contract, the maximum price increase for each individual item on contract shall not exceed the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at [www.bls.gov](http://www.bls.gov).

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
<u>Result multiplied by 100</u>	<u>0.022 x 100</u>
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract price list update request is received; "CPI for previous period" shall be the index in effect when the Contract price list was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only.

### 8.7 BEST PRICING OFFER.

During the Contract Term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, State or local Government Entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

### 8.8 PERFORMANCE BOND OR LETTER OF CREDIT.

**PERFORMANCE BONDS:** Upon award, the Contractor has fifteen (15) business days to forward a performance bond or letter of credit in the amount of 0.5% of the total estimated value of the Contract, \$75,000,000.00, to OGS. If the performance bond or letter of credit is not received by the close of business on the 15th day, the award may be cancelled. The Performance Bond must be issued annually for five years unless said term is extended after agreement by both parties. OGS has the right to recover damages from the performance bond pursuant to the terms and conditions of the Contract on behalf of the State where standard arrangements for the refund of monies cannot be recovered by a credit issued by the Contractor against present or future payments due, or under circumstances where the Contractor has refused credits to the State where such credits are due under the terms of the Contract. The SBOE may permit substitution of a performance bond of a lesser value during the Contract Term. If the Contractor provides additional security deposit in the form of a performance bond as required herein, the Contractor shall renew the performance bond at least seven (7) calendar days prior to the cancellation date of the performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for performance under the Contract. If the credit rating of any bonding company that has provided the Contractor with a performance bond provided as security hereunder has fallen below "B", OGS will provide Written notice to the Contractor that the Contractor must provide a replacement bond within fifteen (15) calendar days of OGS's Written notice. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for the Contractor's performance under the Contract. Notwithstanding anything contained in the



Contract to the contrary, the State shall be authorized to draw down the full amount of any letter of credit or take action on any performance bond provided by the Contractor as security hereunder if the Contractor defaults on its performance under the Contract, as required herein.

The State and the Contractor agree that recovery against the performance bond will be subject to the following conditions:

(1) FOR AMOUNTS LESS THAN \$1,000,000

- (a) signed and dated certification from an authorized representative of the State indicating that:
  - (i) as applicable, Contractor has failed to issue credits under Contract No. ;
  - (ii) the State and Contractor have attempted, through good faith dispute resolution efforts undertaken at the Contractor's Vice-Presidential levels and equivalent State senior executive management levels, to 'resolve' such matters to the parties' satisfaction, and such attempts have not been successful;
  - (iii) after the conclusion of such dispute resolution efforts, the State notified Contractor, as applicable, by either overnight express mail with verifiable delivery or by certified mail, return receipt requested, of the unresolved matters, and, in such notice, gave Contractor 30 calendar days from receipt of such notice to remedy such matters.
  - (iv) as applicable, Contractor did not satisfactorily remedy such matters; and
  - (v) the State has calculated the amount of the damages requested in the draft in accordance with the provisions of the Contract and the laws governing the Contract.

(2) FOR AMOUNTS MORE THAN \$1,000,000

- (a) signed and dated certification from an authorized representative of the State containing the statements set forth in paragraphs 1(a)(i) through 1(a)(v) above, and
- (b) such certification shall have attached a certified copy of a final order of a court of competent jurisdiction finding that as applicable, Contractor materially breached and defaulted under the Contract, and that Contractor is liable to the State in the amount requested in the draft. Partial drafts will be permitted.

(3) FOR ALL AMOUNTS

- (a) any notice of the issue or the material breach will be specific as to the nature of the issue or the material breach claim and the remedy sought to satisfy such claim;
- (b) drafts shall be drawn periodically upon confirmation of the claim by the State and the Contract with partial drafts will be permitted; and
- (c) all drafts must reference the number and issue date of the performance bond and have attached the certified letter of notice of identifying either the issue or the material breach that was sent to Contractor, as applicable. Draft(s) must clearly specify that they are drawn under the performance bond and must be presented to the issuer not later than thirty (30) calendar days after expiration of the Contract term.

LETTERS OF CREDIT: The State may, but is not obligated to, draw on a letter of credit, as applicable, upon the occurrence of any one of the following events:

- (a) The Contractor owes the State undisputed charges under the Contract that are more than thirty (30) calendar days past due; or
- (b) The Contractor admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

If the State draws on a letter of credit, upon request by OGS, the Contractor will provide a replacement or supplemental letter of credit or performance bond conforming to the requirements of this section.

The fact that a letter of credit is requested by the State shall in no way relieve the Contractor from timely compliance with all obligations under this Contract.

At least seven (7) calendar days prior to the expiration of any letter of credit provided by the Contractor as security under the Contract, the Contractor shall renew such letter of credit or provide OGS with evidence that it has obtained a suitable replacement for the letter of credit in the form of a performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to draw down the full amount of such letter of credit and utilize the cash proceeds as security for performance under the Contract. If the Contractor provides additional security deposit in the form of a performance bond as required herein, the Contractor shall renew the performance bond at least seven (7) calendar days prior to the cancellation date of the performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for performance under the Contract. If the credit rating of any bonding company that has provided the Contractor with a performance bond provided as security hereunder has fallen below "B", OGS will provide Written notice to the Contractor that the Contractor must provide a replacement bond within fifteen (15) calendar days of OGS's Written notice. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for the Contractor's performance under the Contract. Notwithstanding anything contained in the Contract to the contrary, the State shall be authorized to draw down the full amount of any letter of credit or take action on any performance bond provided by the Contractor as security hereunder if the Contractor defaults on its performance under the Contract, as required herein.

#### **8.9 ORDERING.**

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering or e-mail 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. 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).

#### **8.10 PURCHASING CARD ORDERS.**

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

#### **8.11 MINIMUM ORDER.**

Minimum order shall be \$100.00. Contractor may elect to honor orders for less than the minimum order. For such orders, at the Contractor's option, shipping costs from the Contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the Authorized User.

#### **8.12 INVOICING AND PAYMENT.**

Contractor and the distributors/resellers designated by the Contractor and approved by the State, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal acceptance notice for the specified Product by the November 2020

Authorized User's Purchasing Official. Such notification shall not be unreasonably withheld. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

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

Billings for Authorized Users that are State entities must contain all information required by the Contract and the State Comptroller. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with OSC's procedures to authorize electronic payments. Authorization forms are available at the OSC website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by OSC if it does not comply with OSC's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

For the following Voting Systems, payment shall be made in accordance with the following Payment Schedule: 80% upon acceptance by the Authorized User and 20% upon use in a successful election.

ES & S Precinct-based Voting System:

DS200(i) 2.16.0.1	DS200(i) Hardware Revision 1.3	AutoMark v 1.8.3.0
VAT Previewer v 1.8.3.0	EMS/EVS Suite 5.6.0.2	
Event Log Service v.1.5.7.0	Removable Media v 1.4.7.0	DS 200 Power Management v 1.2.8.0

ES & S Central count system:

DS 850 v. 2.4.0.1

DOMINION Precinct-based Voting System:

EMS Suite 4.9.17	ImageCast scanner 4.9.10	ImageCast BMD 4.9.6
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DOMINION Precinct-based Voting System:

(ICC) v.4.9.14

For all other voting systems, the payment schedule is as follows: 70% of the initial Pollsite Voting System (PVS) order shall be paid upon acceptance by the Authorized User, 15% upon use of the PVS in an election and 15% after use of the PVS in a successful election conducted throughout the jurisdiction (including at least one general election).

### **8.13 PRODUCT DELIVERY.**

Delivery must be made as ordered to each Authorized User according to the specific details included in the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Contract, delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor and shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the SBOE. Said procedures shall comply with §6209.10 and the guidelines established by the SBOE. The Authorized User and the Contractor shall mutually agree to a delivery

schedule as required by §6209.9(A)(4)(a) of the SBOE Regulations. Said agreed-upon delivery schedule shall be adhered to by the Contractor.

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

#### **8.14 CONTRACT ADMINISTRATION.**

Contractor shall provide and maintain the following personnel: Contract Administrator, Account Manager, Sales Manager, Billing Contact, and Emergency Contact. Contractor must provide OGS at least five (5) Business Days notice prior to making changes to its designated Contract Administrator, Account Manager, Sales Manager, Billing Contact, or Emergency Contact. In addition, Contractor must provide an experienced temporary interim contact person until the position is permanently filled, to ensure no gap in coverage for any of the contacts. Notification of changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### **8.15 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://ogs.ny.gov/procurement/emarketplace>

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 may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

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

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. 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.

#### **8.17 AMERICANS WITH DISABILITIES ACT (ADA).**

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

#### **8.18 N.Y. STATE FINANCE LAW § 139-L.**

Pursuant to N.Y. State Finance Law § 139-L, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-L, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 2, *NYS Required Certifications*, which Bidder must submit with its Bid.

#### **8.19 INSURANCE.**

The Contractor shall maintain in force at all times during the Contract Terms, policies of insurance pursuant to the requirements outlined in Attachment 4, *Bidder's Insurance Requirements*.

#### **8.20 REPORT OF CONTRACT USAGE.**

Contractor shall submit Attachment 10, *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 calendar days after the close of each calendar quarter*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *quarterly* report.

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

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

The report in Attachment 10, *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.

By using this Contract, an Authorized User consents to OGS receiving the information listed on Attachment 10, *Report of Contract Usage*.

## **8.21 FINANCIAL STABILITY.**

If requested, Bidder must document its ability to service a contract with dollar sales volume similar to scope of this Solicitation through submission of financial statements documenting past sales history. The Bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five business days. The State reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Solicitation.

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

### **I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), 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**

1. 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.
2. 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.
3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

### **III. Equal Employment Opportunity (EEO)**

1. 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.
  - a. 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.
  - b. 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.
2. 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.
3. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
  - a. 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](mailto: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.
  - b. Separate forms shall be completed by Contractor and any subcontractor.
  - c. 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.
4. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the

requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. Contract Goals**

1. 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.
2. **Good Faith Efforts**  
Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
  - a. 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.
  - b. 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.
  - c. 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.
  - d. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
  - e. 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.
  - f. 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:** <https://ogs.ny.gov/MWBE>

#### **8.23 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, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.



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

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

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

#### **8.24 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*.

#### **8.25 EPA ENERGY STAR PROGRAM.**

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from contract selected products as mandated by any NYS energy legislation that is enacted during the term of this contract. The Contractor shall have no recourse with the State for such discontinuance/deletion.

#### **8.26 GUARANTEE.**

1. The Contractor guarantees that the Voting Systems, equipment, all required accessories, associated products and all parts regularly used with the same are:
  - New - Standard new equipment, latest model of regular stock equipment, in production at the time of the bid opening. New assembled equipment is factory produced, has been assembled for the first time, and may contain new and/or recycled components that have been fully inspected, tested and fully meet product performance and reliability specifications. Equipment must be newly serialized and the Authorized User must be the first end user of the product.
2. Every new Product delivered must be warranted for five (5) years from the date of acceptance of the Products by an Authorized User. During the warranty period, the Authorized User will incur no charges for maintenance.
3. The Contractor will bear all material and labor costs for repair of defects and failures occurring during the warranty period from date of acceptance of the Products by an Authorized User. Service/maintenance during the warranty period will be no less than service requirements under a maintenance agreement. If a Voting System does not perform to the satisfaction of the Authorized User during the warranty period, the Contractor will, upon approval of the OGS and the SBOE, replace the Product with a like model. The replacement machine will have a new machine warranty identical to the original machine (not less than five (5) years from the date of acceptance of the Product by an Authorized User).

4. Contractor will also guarantee that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
5. Where accessories (options) are to be supplied, they must be compatible with the rest of the equipment.

#### **8.27 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.

#### **8.28 SURPLUS/TAKE-BACK/RECYCLING.**

1. 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.
2. 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.
3. 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>
4. 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.

#### **8.29 ENVIRONMENTAL ATTRIBUTE AND NYS EXECUTIVE ORDER NUMBER 4.**

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

### **8.30 CONSUMER PRODUCTS CONTAINING MERCURY.**

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

### **8.31 DIESEL EMISSION REDUCTION ACT.**

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

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

### **8.32 NYS VENDOR RESPONSIBILITY.**

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 OSC website at <http://www.osc.state.ny.us/vendors/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](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.

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

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

### **8.34 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 (<https://online.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.

### **8.35 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.

### **8.36 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. Authorized Users and SBOE shall not be required to provide credit references.

### **8.37 CENTRALIZED CONTRACT MODIFICATIONS.**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Voting Systems Updates," as defined in Appendix C, *Contract Modification Procedure*, are changes related to a SBOE approved Voting System. All such changes are subject to the prior approval of SBOE, proof of which must be provided by the Contractor along with the Appendix C, Contract Modification Form. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedure*. The Contractor shall submit all requests in the form and format contained in Appendix C, *Contract Modification Procedure*. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

#### **8.38 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.

#### **8.39 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.

#### **8.40 EMBEDDED SOFTWARE/FIRMWARE; UPDATES.**

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

#### **8.41 TRAVEL, MEALS AND LODGING.**

When provided for in the Purchase Order, Authorized User may reimburse travel expenses. Travel costs are limited to NYS rates approved by OSC. All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be paid for charges that exceeds the per diem rates provided at the above link. All travel will be paid only as specified within the Purchase Order and must be billed with the associated services on the same invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of a Purchase Order. Parking fees and/or parking tickets shall not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor is responsible for keeping adequate records to substantiate any claims for travel reimbursement.

All services provided under the resultant Purchase Order must be performed within CONUS.

#### **8.42 POOR PERFORMANCE.**

An Authorized User should notify OGS Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services  
New York State Procurement Services  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242  
Customer Services Coordination E-mail: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)  
Telephone: (518) 474-6717

## 8.43 REMEDIES FOR BREACH

In the event of a breach by the Contractor, it is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

1. **Minimum Cures:**

a. **Minimum cures:** Unless otherwise agreed to by the Authorized User, at a minimum, in order to be able to address a failure of Voting System(s) or a failure in the provision of support and/or services, from pre-election day 30 up to pre-election day 15, Contractor shall provide phone support which shall be available on each of said calendar days, from 7:00 am to 10:00 pm, Eastern Time. When a problem with Voting System hardware, or software manifests itself within this 15-day period, and same is unable to be resolved with phone support as provided by the Contractor, upon such notice by the Authorized User, on-site support/assistance must be provided by the Contractor within 24 hours of such when such notice is made. If after such on-site support/assistance, the failure still has not been resolved, upon notice of the Authorized User, new, replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice. For the period of pre- Election Day 15 to pre-Election Day 1, telephone support shall be provided 24 hours a day, seven days a week. In addition, Contractor shall provide, upon request, on-site support/assistance and/or equipment replacement as soon as requested, but in no event shall such on-site support/assistance be provided more than twenty-four (24) hours after request is made by Authorized User exceed the time set for the prior Critical Period, as defined Section 1.10 - Definitions. In the event that the Contractor discovers a problem, notice should be provided to the SBOE and the Authorized User and SBOE shall be advised of the resolution of the problem.

b. Beyond the State's statutory and regulatory requirements, for the period including Election Day minus 1, Election Day and Election Day plus 1, telephone support must be available during this entire 72-hour period. On Election Day, in addition to phone support as defined above, the Contractor, upon notice of the Authorized User, shall promptly provide on-site support.

c. For the post-election period, which is defined as Election Day plus 1 through Election Day plus 15, phone support shall be provided by the Contractor, on each of said calendar days, between the hours of 7:00 am until 10:00 pm, EST. If such phone support does not resolve the failure, on-site support must be provided within 24 hours of when notice is made, and if after such on-site support, the failure has not been resolved, the Authorized User shall advise the Contractor of the continuing failure and new replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice by the Authorized User.

d. In periods other than as set forth above (hereinafter the "Non-Critical Periods"), except during the conduct of quarterly maintenance processes, phone support shall be made available by the Contractor, on each business day (Monday – Friday), between the hours of 8:00 am and 6:00 pm, Eastern Time. If such phone support fails to resolve the voting equipment or system failure, the Contractor must provide for an on-site service call within 10 business days of when such notice is made by the Authorized User, and if the failure remains unresolved, Contractor must provide replacement within 30 calendar days of when such notice is made by the Authorized User, or by day 1 of the next ensuing Critical Period (as defined in Section 1.10 - Definitions) prior to an election, whichever is sooner.

**Cover/Substitute Performance** In the event a Contractor's material breach is not cured within the applicable notice and cure period, the Commissioner, in conjunction with the SBOE, and/or any Authorized User may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner and the SBOE, and/or any Authorized User, are unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product and Services of equal or comparable quality, the Commissioner and the SBOE, and/or any Authorized User, may acquire acceptable replacement Product and Services of equal or greater quality.

Such purchases may, in the discretion of the Commissioner and the SBOE, and/or any Authorized User, be deducted from the Contract quantity and payments due Contractor.

2. **Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner and the SBOE. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

3. **Bankruptcy** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise their right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction. In addition, any sums required to be expended by the Authorized User in order to carry out their statutory election responsibilities as a result of the Contractor's failure to timely deliver shall be reimbursed promptly by the Contractor or deducted by the Authorized User from payments due or to become due to the Contractor on the same or another transaction.

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

## **SECTION 9 VOTING SYSTEM SPECIFIC TERMS AND CONDITIONS.**

### **9.1 VOTING SYSTEM.**

During the term of the Contract, and any renewal or extension thereof, all Voting Systems offered by the Contractor pursuant to the Contract shall meet and maintain compliance with all applicable functional, security, and other report requirements promulgated by the SBOE and maintain certification from the SBOE. OGS reserves the right to remove any Voting System from a Contractor's NYS Price List following SBOE's removal of a Contractor's Voting System from the list of certified systems.

Authorized Users shall not implement any Voting System until certification for such system has been obtained from the SBOE.

### **9.2 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE.**

Contractor is responsible for providing physical and logical security for all User Data, infrastructure (e.g. hardware, network, physical devices), and Software related to the services the Contractor is providing under the Purchase Order.

All User Data security provisions agreed to by the Authorized User and Contractor within a Purchase Order may not be diminished for the duration of the Purchase Order without prior written agreement by the parties amending the Purchase Order.

### **9.3 SECURITY POLICIES AND NOTIFICATIONS.**



### **9.3.1 Security Policies and Procedures.**

New York State considers the protection of sensitive and confidential information and business systems to be of the utmost importance. The information collected and maintained by SBOE and Authorized Users is protected by a myriad of Federal, State and local laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents, for authorized purposes only.

The Contractor and its personnel shall review and be familiar with all Authorized User's security requirements (e.g. laws, policies, procedures and directives) currently existing or implemented during the term of the Contract. If required within the Purchase Order, Contractor will provide verification of compliance with Authorized User security requirements.

### **9.3.2 Security Incidents.**

Contractor must notify SBOE and Authorized User(s) within 48 hours of the Contractor's first notice of the incident, based on the criticality outlined below:

1. High-Intensity Incident: cyber-related incident that triggers reporting obligations, or one that is highly visible requiring response.
2. Medium-Intensity Incident: cyber-related incident resulting in the loss or compromise of User Data or Voting Systems, but no formal reporting obligations are triggered.
3. Low-Intensity Incident: cyber-related incident resulting in minor disruption that may not be visible to public.

Notifications must be submitted via e-mail to [CyberNY@elections.ny.gov](mailto:CyberNY@elections.ny.gov). Each notification must clearly indicate the criticality level of the security incident along with details of the security incident.

## **9.4 DATA BREACH.**

### **9.4.1 Required Contractor Actions.**

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

1. notify the SBOE and any potentially affected Authorized User by telephone as soon as possible, but in no event more than 24 hours from the time the Contractor confirms Data Breach;
2. consult with and receive authorization from the SBOE and, where applicable, Authorized User as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by the SBOE, Authorized User or statute;
3. coordinate all communication regarding the Data Breach with the SBOE and, where applicable, Authorized User (including possible communications with third parties);
4. cooperate with the SBOE and where applicable, Authorized User and any Contractor working on behalf of the SBOE and/or Authorized User in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches;
5. take such corrective actions that the Contractor deems necessary to contain the Data Breach. Contractor shall provide Written notice to the SBOE and, where applicable, Authorized User as to all such corrective actions taken by the Contractor to remedy the Data Breach. If Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Section 8.43, *Remedies for Breach* shall apply and (a) the SBOE and/or Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the SBOE and/or Authorized User, or until the SBOE or Authorized User has completed a new procurement for a replacement service System; (b) and the Contractor will be responsible for the reasonable cost of these services during this period; and

6. provide Written documentation to the SBOE and, where applicable, Authorized User, as to all such corrective actions taken by the Contractor to remedy the cause of the Data Breach and mitigate against a repeat of the Data Breach.

Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General, or other law enforcement agency having jurisdiction, to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

## **9.5 DATA OWNERSHIP, ACCESS AND LOCATION.**

### **9.5.1 Data Ownership.**

The Authorized User shall own all right, title and interest in User Data.

### **9.5.2 Authorized User Access to Data.**

The Authorized User shall have access to its User Data at all times, through the term of the Purchase Order, plus the applicable period as specified in Section 9.8, *Expiration, Termination or Suspension of Services*.

The Authorized User shall have the ability to import or export User Data in piecemeal or in its entirety at the Authorized User's discretion at no charge to the Authorized User. This includes the ability for the Authorized User to import or export User Data to/from other Contractors. This can, if specified within the Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools.

### **9.5.3 Contractor Access to Data.**

The Contractor shall not copy or transfer User Data unless authorized by the Authorized User. In such an event the User Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any User Data for any purpose other than fulfilling the service. Contractor is prohibited from data mining, cross tabulating, monitoring Authorized User's User Data usage and/or access, or performing any other analytics other than those required within the Purchase Order. At no time shall any User Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Authorized User be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of User Data. Documentation of back-up must be provided to the Authorized User upon request. Contractor must comply with any and all security requirements within the Purchase Order.

### **9.5.4 Source Code Escrow for Licensed Product.**

Contractor shall be required to comply with the source code escrow provisions of the NYS Election Law (Section 7-208) and NYS Election Codes, Rules and Regulations (Section 6209.6(F)(10) and as set forth by the SBOE.

## **9.6 TRANSFERRING OF DATA.**

### **9.6.1 General.**

Except as required for reliability, performance, security, or availability of the services, the Contractor will not transfer User Data, unless directed to do so in Writing by the Authorized User. All data shall remain in CONUS.

At the request of the Authorized User, the Contractor will provide the services required to transfer User Data from existing databases to physical storage Devices, to facilitate movement of large volumes of User Data.

## **9.7 REQUESTS FOR DATA BY THIRD PARTIES.**

Unless prohibited by law, Contractor shall notify the Authorized User in Writing within 24 hours of any request for User Data (including requestor, nature of User Data requested and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure Written acknowledgement of such notification from the Authorized User before responding to the request for User Data.

Unless compelled by United States law, the Contractor shall not release User Data without the Authorized User's prior Written approval.

## **9.8 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES.**

### **9.8.1 Return of Data.**

The Contractor shall return User Data in a format agreed upon within the Purchase Order or as agreed to with the Authorized User. The Contractor must certify all User Data has been removed from its System and removed from backups within timeframes established in the Purchase Order or as agreed to with the Authorized User.

### **9.8.2 Suspension of Services.**

During any period of suspension of service, the Authorized User shall have full access to all User Data at no charge. This can, if specified within the Purchase Order, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

### **9.8.3 Expiration or Termination of Services.**

Upon expiration or termination of a Purchase Order, the Authorized User shall have full access to all User Data for a period of 60 calendar days. Unless noted in the original Purchase Order, this period will be covered at no charge. This can, if specified within the Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

## **9.9 ACCESS TO SECURITY LOGS AND REPORTS.**

Upon request, the Contractor shall provide access to security logs and reports to the State or Authorized User in a format as specified in the Purchase Order.

## **9.10 MODIFICATION TO APPROVED VOTING SYSTEMS**

Changes of any size or scope to an approved Voting System, ballot marking or other voting device require SBOE approval prior to implementation. Proposed changes must first be provided to SBOE in the manner prescribed by the SBOE. Following approval of the changes, changes to any Voting System, ballot marking or other voting device included on the Contractor's NYS Price List must be submitted to OGS via Appendix C, *Contract Modification Procedures*.

## **9.11 LEGACY MAINTENANCE PLANS**

Pursuant to Contract Award 21231, contractors were required to provide a Project Warranty Period which warranted the voting systems set forth below for five years from the date of acceptance of the voting system set forth below by an Authorized User.

This warranty covered, among other things, modifications required by New York State law or regulation. After the expiration of the Project Warranty Period, Authorized Users had the option to purchase Extended Maintenance Plans and enter into an Extended Warranty Period. Some Authorized Users may not have purchased those Extended Maintenance Plans, and may now wish to purchase an Extended Maintenance Plan for Voting Systems purchased under a Contract awarded pursuant to Contract Award 21231. In such instances, Authorized Users shall be responsible for the cost of any parts and labor necessary, as a result of any damage or defects which

occurred or arose after the end of the Project Warranty Period, to bring the Voting System back to its current certified version, as determined by the SBOE. Contractors shall not charge for any other parts or labor costs as those costs are covered by the Project Warranty Period. Prior to the commencement of any work performed in accordance with this paragraph, Contractors shall submit a written proposal for any such charges to the Authorized User and must receive written acceptance of such proposal from the Authorized User prior to beginning any work or commencing any Extended Maintenance Plan.

In addition to the foregoing, during the term and any renewal or extension of the Contract, the SBOE may require Authorized Users to obtain maintenance services, which are not covered by the Project Warranty Period or the Extended Maintenance Plans, including those options made available by the Contractor in its normal course of business in order to maintain the voting systems in accordance with their current certification. These services may include on-site maintenance (Contractor will dispatch a Contractor representative to the Authorized User's site) and shall be subject to the charges included in the Contractor's price list attached to the Contract.

The voting machines that this provision applies to are:

ES & S Precinct-based Voting System:

DS200(i) 2.16.0.1, DS200(i) Hardware Revision 1.3, AutoMark 1.8.3.0, VAT Preview 1.8.3.0, EMS/EVS Suite 5.6.0.1, EMS/EVS Suite 5.6.0.2

Event Log Service 1.5.7.0, Removable Media 1.4.7.0, DS 200 Power Management v 1.2.8.0

ES & S Central Count Voting System:

DS 850 v. 2.4.0.1, DS 850 v. 2.13.0.0

DOMINION Precinct-based Voting System:

EMS Suite 4.9.17 ImageCast scanner 4.9.10, ImageCast scanner v 4.9.10/BMD 4.9.6, ImageCast scanner v 4.9.12, ImageCast scanner v 4.9.12/BMD 4.9.6, ImageCast Evolution scanner v 4.14.25, ImageCast Evolution scanner v 4.14.27, BCU v 4.9.18.0

DOMINION Central Count Voting System: (ICC) v.4.9.14, 4.14.18,

CLEARBALLOT Central Count Voting System:

ClearCount v. 1.0, ClearCount v 1.6.0

## **9.12 APPLICATION PROGRAM INTERFACE (API) OR SELF-SERVICE ELECTRONIC PORTAL.**

Except as otherwise provided for in this Section, Contractor may offer an API or self-service electronic portal for such purposes as allowing the Authorized User to access security logs, reports, and audit information, to import or export User Data, and for such other purposes as agreed to in the Purchase Order.