



**Office of  
General Services**

# **IT Umbrella Contract: Changes for 2<sup>nd</sup> Periodic Recruitment**

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# Summary of IT Umbrella Contract Usage

- **\$2.2B** in sales over the life of the contract, representing 86 million items sold
  - **\$212M** for MWBEs
  - **\$71M** for SDVOBs
  - **\$596M** for SBEs
- **\$1.4B** in sales over the last 3 years, representing 60 million items sold
  - **\$156M** for MWBEs
  - **\$63M** for SDVOBs
  - **\$527M** for SBEs
- This is the contract of choice for IT solutions among hundreds of municipalities across the state

# Presentation Guide

- For both current vendors and new potential vendors
  - Current vendors should use the Periodic Recruitment Question and Answer process to address any issues with new or modified terms and conditions. These will be the terms offered to you at your extension.
  - New Vendors will get an exciting look at the contract's maturing terms and conditions and OGS' rationale. This is NOT a substitute for reading all terms and conditions. Please use the questions and answers period to address any confusion.

# Presentation Guide

- General Discussion
  - Responsive to issues raised by Vendors and Authorized Users
  - No specific contract language in this presentation. Specific language will be released in the document only
  - If this presentation conflicts with any terms and conditions, the terms and conditions in the document will control.
  - While we will answer a few general questions today, you MUST use the questions and answers period to address any concerns
  - Remember the NYS Contract reporter is the source for official documents, where all questions will be answered and for any solicitation amendments.

# Data Storage & Access Outside of CONUS

# Storage of Data Outside of CONUS

- **Feedback:** Vendors want authorized users (AUs) to be able to decide if they want to store their data outside of the continental United States (CONUS)
  - While most AUs probably want to keep their data inside CONUS, there may be some situations where they are amenable to storing their data outside of CONUS
- **Response:** AUs will now have the ability to allow their data to be stored outside of CONUS

# Access to Data Outside of CONUS

- **Feedback:** Vendors would like the ability to have Follow the Sun support, or the ability to allow their employees outside of CONUS to have temporary access to the data to perform any services, if necessary
- **Response:** Helpdesk, online, and support services (including Follow the Sun support) that require accessing data from outside of CONUS are now allowed, provided that the AU agrees to it

# Contractual Definition of Data

- **Feedback:** Vendors believe that the contractual definition of the term “Data” could be revised, which would help clear up any confusion regarding allowable access to data per the terms and conditions of the contract
- **Response:** OGS believes that allowing data to be stored outside of CONUS (with the consent of the AU) resolves this issue such that revising the definition of “Data” is not necessary



# Catastrophic Events and CONUS

- **Feedback:** If a catastrophic event occurs, a vendor may need to move data outside of CONUS, but this action is prohibited by the contract
- **Response:** This should no longer be a concern, as contractors may now access and store data outside of CONUS with the permission of the AU

# Indemnification & Limitation of Liability

# Vendor Responsibility Regarding Resellers

- **Feedback:** Vendors don't feel they should be responsible for all of the actions of their resellers, especially in cases where they can't control or have nothing to do with what is provided to the AU
- **Response:** Per the contract, manufacturers must take full responsibility for the actions of the resellers/subcontractors they have placed on their authorized reseller list
  - This does not bar manufacturers from entering into their own agreements with their resellers to ensure Reseller compliance and redistribute liability
  - The manufacturer will warranty all work performed

# Indemnity Language

- **Feedback:** Vendors view the indemnity language as too broad
  - Vendors were concerned that they were responsible for indemnifying regardless of whether they were actually at fault
- **Response:** Revisions were made to the contract language in order to clarify that vendors would only be responsible for damages that are assessed against them

# Usage of “Hold Harmless”

- **Feedback:** Vendors view the usage of the term “hold harmless” as either problematic or confusing
- **Response:** Revisions were made to the contract language that OGS believes will clarify the State’s intent in using this term

# Statement Regarding “All Other Claims”

- **Feedback:** Vendors view the statement in the contract that says “*And all other claims resulting from this contract*” as negating the limitation of liability, or at least weakening it
- **Response:** The language regarding “all other claims” has been moved to its own sentence within the contract to make clear that unlimited liability only applies to death or personal injury or damage to real or personal tangible property

# Limitation of Liability

- **Feedback:** Vendors were concerned about the amount that they would be liable for
- **Response:** The contract has been revised to change the limitation of liability amount to two times the amount paid or required to be paid during the prior 12-month period
  - Contractors are liable for either that amount or for \$1M for Lots 1 and 2, \$2M for Lot 3 – Low Risk and Lot 4, \$5M for Lot 3 – Moderate Risk, and \$10M for Lot 3 – High Risk, whichever amount is greater
  - The liability amounts did not change for Lot 3 as OGS is now allowing non-CONUS and did not create a separate category for Lot 3 non-CONUS liability
  - All non-CONUS liability would be covered under the current liability thresholds

# Liability for Data in the Cloud

- **Feedback:** Vendors view the data that the State puts in the cloud as their liability and their risk
- **Response:** Revisions to the indemnification language make it clearer that the contractor is only responsible for damages that they are responsible for
  - Contractors are not held responsible if the fault lies with the AU
  - Risk level and the elements of the data representing that risk level are included in the RFQ
  - There is no requirement that contractors bid on every transaction



# Product Acceptance

# Additional Acceptance Provisions

- **Feedback:** Vendors object to additional acceptance provisions and state they are not necessary
  - Because there are warranties, acceptance doesn't need a separate term and condition
- **Response:** OGS has included acceptance timelines in the contract to protect both the AU and the vendor
  - Timeframes allow complex organizations to receive hardware or software and stage for implementation while still ensuring reasonable timeframes for vendor payment

# Acceptance Provisions for Cloud

- **Feedback:** Vendors want deemed acceptance provisions to exist for each lot
  - There is misperception for when cloud services are accepted
- **Response:** Acceptance for Lot 3 – Cloud has been changed from 30 calendar days after the date of delivery to “upon first activation after purchase order acceptance”
  - This change better aligns with how cloud services are actually delivered and used

# Definition of Acceptance

- **Feedback:** Vendors believe a testing period is different from acceptance
- **Response:** OGS considers a testing period to be the same as proof of concept, which would happen prior to purchase and acceptance

# Ownership/Title to Project Deliverables

# Intellectual Property Rights

- **Feedback:** Vendors believe that the contractor would have to transfer/give up intellectual property rights to the State when providing custom deliverables
- **Response:** Language has been added to the contract that would allow the AU to negotiate ownership with the contractor if they choose to do so
  - This would give contractors the opportunity to retain the rights to anything custom they develop but would ensure that AUs obtain appropriate compensation for having financed the custom build

# Verifiable Sales

# Verifiable Sales Requirement

- **Feedback:** Vendors want alternate ways to demonstrate verifiable sales
  - Some vendors wanted to eliminate verifiable sales altogether
  - Confidentiality was also a concern for some vendors
- **Response:** Several sections of the solicitation have been revised to allow the use of either direct OR indirect sales to meet the requirement, and vendors are no longer prohibited from submitting indirect sales if they also have direct sales
  - In addition, vendors who have previously held technology contracts with the State that are in scope of this contract may submit sales reports from those contracts to meet the verifiable sales limits
- OGS believes the verifiable sales requirement is a fair and equitable way for contractors to demonstrate that they have the capacity and experience necessary to fulfill the needs of the AUs under this contract



# Modification of Contract Terms

# Pre-Approved Terms and Conditions

- **Feedback:** Some vendors want to have their own terms and conditions that are preapproved by OGS
- **Response:** The number of the vendors on the contract makes it impossible for OGS to review every single contractor's terms and conditions for pre-approval
  - Different AUs have different needs, and one of the advantages of the contract is that it allows for AUs to customize the terms and conditions based on their individual requirements
  - It is not possible for OGS to pre-approve one set of terms and conditions that would meet every AU's needs

# Changes to Product or Service Offerings

# Changes to Cloud Offerings

- **Feedback:** Vendors indicate that cloud services are routinely updated and should be treated differently for changes
- **Response:** Language was added to the contract stating that rules regarding changes to product or service offerings apply to Lots 1, 2, and 4 only

# Remedies for Contract Breach

# Timeframe to Remedy a Breach

- **Feedback:** Vendors would like to increase the time to cure a breach from 15 days to 30 days
  - They also suggest the distinction between administrative breach and a catastrophic breach
- **Response:** Any disrupted services are likely to cause a disruption of public service, which we cannot prolong unnecessarily
  - AUs may negotiate shorter timeframes for critical applications, but OGS feels these are the maximum timeframes that should be allowed on a website handling public-facing services

# Cap on Cover Costs

- **Feedback:** Vendors want a monetary cap on cover costs
- **Response:** OGS revised the contract to cap cover costs at amounts that are specific for each lot, unless increased by the AU

# Cover Costs and Cloud Offerings

- **Feedback:** Vendors feel that the concept of “cover” may not be applicable to cloud offerings
  - Replacing cloud is not the same as replacing hardware
- **Response:** While this is true for traditional cloud services, this may not be true for the full scope of cloud services, including managed print services or “hardware as a service” in which a physical device may be part of the solution and may impact worker productivity



# Pricelist Modifications

# Pricelist Modification Process

- **Feedback:** There is some general agreement that pricelists can be burdensome to update, especially for large companies that update their pricelist almost daily
- **Response:** Some changes to the process have been made to allow simple product adds, and OGS is currently rolling out a contract modification portal (COMeT) to help streamline the contract update process
  - COMeT will require less paperwork and should make it easier to submit modification requests and respond to clarifications
  - COMeT should eliminate much of the manual work (done by both OGS and the contractor) that was responsible for errors in the past

# New Offerings and Emerging Technology

- **Feedback:** The inability to offer new or emerging products and technologies severely limits the state's ability to be out front on technology
- **Response:** OGS believes the changes to the contract that will allow simple product adds will alleviate this issue
  - If a contractor establishes category discounts, they will now be able to add items with only MSRP
  - This will make it easier for new and emerging technology that has not made it onto another government contract pricelist to be added to the contract

# Searching Across Pricelists

- **Feedback:** Not being able to search for items across pricelists is a huge detriment
- **Response:** The COMeT portal that is being rolled out will allow AUs to search across pricelists for products and services they need
  - The addition of a “tags” column to the contractor pricelists will help AUs find products and services that meet their needs across multiple contractors

# MWBEs, SDVOBs, and SBEs

# Meeting Contractor Participation Goals

- **Feedback:** Manufacturers are responsible for meeting MWBE goals, but the way the contract is structured leaves them with little ability to control MWBE, SDVOB, and SBE involvement
- **Response:** OGS strongly suggests that manufacturers invest time and energy into training their MWBE, SDVOB, and SBE communities in skills and techniques to improve their business practices to make them more effective bidders and to make them more viable on more RFQs
  - Programs that offer discounted certification, that reimburse for licensing, or that improve general business acumen allow these businesses to become more effective bidders and thus help manufacturers meet their contract goals

# Reseller Thresholds

- **Feedback:** The contract's threshold for resellers is so high that it may limit a contractor's ability to add MWBE, SDVOB, and SBE resellers
- **Response:** OGS expects manufacturers to have rigorous vetting processes for all their resellers, including their MWBE, SDVOB and SBE communities
  - This ensures our customers receive the highest quality service, which is the goal of this contract
  - Manufacturers can address this potential barrier by investing additional time and energy into training their MWBE, SDVOB, and SBE communities to help them be more effective resellers, enabling them to reach the thresholds

# Third-Party Products



# Offering Third-Party Products

- **Feedback:** Contractors' inability to offer standalone third-party products is not ideal
- **Response:** OGS has added a section to the solicitation that will allow contractors to sell third-party products with their solution as long as they meet certain criteria
  - The contractor will be responsible for the performance during the life of the product use
  - Product must be priced, maintained, and warrantied by the contractor
  - OGS wants to maintain a manufacturer relationship to ensure products and services remain high quality and that the responsibility for performance is not degraded as it has been in the past

# RFQ Thresholds

# RFQ Thresholds

- **Feedback:** Vendors find small dollar RFQs more harmful than helpful, as completing the RFQ process is likely more costly than cutting a purchase order for a small purchase
- **Response:** Section 6b of State Finance Law § 163 indicates that any State organization should be aggregating their purchases of the same commodities and services on an annual basis
  - Vendors can remind AUs of this portion of State Finance Law if they believe that doing so would increase the size of the purchase order
  - Additionally, the ability to do mini-bids electronically in COMeT should become available in August, which should make the mini-bid process more efficient and less time-intensive

# Dos and Don'ts

# Dos

- Make sure that all documents are submitted in the name of the manufacturer (if you have multiple names/companies), and are included under the same name and federal ID number, including insurance documentation
- Use the checklist to ensure all required documents are submitted
- Set up the pricelists with all category discounts that will be needed, to facilitate future additions
- Review cyber hygiene and cyber security language
- Ensure that if there is a possibility your name will change prior to the contract being executed, you submit a bid under both names
  - No assignments can be made after the bid opening prior to the award
- Try to clearly delineate offerings instead of using descriptors like “various”

# Don'ts

- Change the format of the pricing page
- Submit every single product you offer on your pricelists, as products can be added any time once under contract
- Assume that an assignment can be made after award, as assigned awardee must still meet certain criteria