Resources

Procurement Review Panel Order, Appeal by Advanced Imaging Systems, Panel Case No. 2013-7 (October 30, 2013)

CPO Decision, Protest of SourceCorp BPS, Inc., Case No. 2013-211 (posted August 1, 2013)

SC Compendium Clause 2A105 Responsiveness/Improper Offers (Jan 2004)

FAR 14.404-2 Rejection of individual bids.

FAR 15-404-1 Proposal Analysis Techniques

Former FAR 15.814 Unbalanced Offers.

FAR 52.214-10 [contract clause] Contract Award—Sealed Bidding (July 1990)

Memorandum RE Bid analysis and Unbalanced Bids, US Department of Transportation Federal Highway Administration, May 16, 1988

CPO Decision, Protest of South Carolina Safety Co., Inc., Case No. 2013-123 (posted August 26, 2013)

Reliable Trash Service, 79-2 CPD ¶107

Copy Graphics, 96-2 CPD ¶185

Sanford Cooling, 91-1 CPD ¶376

Crown Laundry & Dry Cleaners, 83-1 CPD ¶438

McKnight Construction Co., 94-2 CPD ¶177

DLAD 52.216-9013 Evaluation of Offers for Indefinite Delivery Type Solicitations

Food & meat IFB (Example 1) (link only)

MRO Supplies IFB (Example 2)

Electronic Key Control Systems IFB (Example 3)

University of Wisconsin IPP (Example 4)

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	
	)	
	)	ORDER
IN RE: Appeal by Advanced Imaging	)	
Systems, Inc.	)	Case No. 2013-7
	)	
	)	
IFB No. 5400005364	)	
Issued by the Information Technology	)	
Management Office for a state term	)	
Contract for Records Management Services	)	

This matter came before the South Carolina Procurement Review Panel (the Panel) pursuant to a request under section 11-35-4410(b) of the South Carolina Consolidated Procurement Code (the Procurement Code). Advanced Imaging Systems, Inc. (Advanced) appealed the August 1, 2013, decision of the Chief Procurement Officer (the CPO) for the Information Technology Management Office (ITMO) granting the protest of SourceCorp BPS, Inc. (SourceCorp) on the grounds that Advanced submitted materially unbalanced bids for Lots #3 and #4 of ITMO's invitation for bids (IFB) seeking to establish a state term contract for records management services. The Panel conducted a hearing on October 2, 2013. During the Panel hearing, M. Elizabeth Crum, Esquire; Amber B. Carter, Esquire; and Christopher M. Whelchel, Esquire, represented Advanced. Michael H. Montgomery, Esquire, represented SourceCorp, and William Dixon Robertson, III, Esquire, represented the CPO.

Findings of Fact

ITMO conducted this IFB to solicit records management services for interested agencies and/or governmental units to use under a state term contract. Record at PRP54. The desired services included "**Conversion, Imaging, Retrieval, Storage, and/or Destruction (Shredding)** of documents, regardless of the original format of the document." *Id.* (emphasis in original).

The desired services were broken into five lots, and each lot was further divided into numerous line items. *See generally*, Record at PRP67 – PRP73 and PRP89 – PRP111. Each line item specified the unit of measure and identified a quantity of one unit per line item.[1] *Id.* Thus, each line item carried the same weight for tabulation purposes, and each lot was evaluated based on the aggregate price of the line items. *See generally*, Bid Tabulation Sheets at PRP287 – PRP296. The IFB provided that awards would be made by lot and that the "State may award more than one (1) contract per lot." Record at PRP54; PRP75. Bidders were not required to bid on all five lots, but were required to bid all line items for each lot they did choose to bid. Record at PRP61, "Offering By Lot."

Lots #3 and #4 are relevant to the appeal before the Panel. Generally speaking, Lots #3 and #4 involve the conversion of paper records to a digital format.[2] Record at PRP71. Lot #3 specifically includes "[t]he confidential conversion of various paper documents to [TIF] / PDF image in black & white / grayscale, colored two-hundred (200) – three hundred (300) DPI format." Record at PRP73. Lot #4 specifically includes "[t]he confidential conversion of any type books, laboratory notebooks, maps, drawings, etc. that cannot be disassembled for scanning – (Flat Bed Scanner) – PDF / [TIF] image, colored and black & white / grayscale to electronic format." *Id.* The IFB also specifies that the contractor will meet, upon agency request, with the

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[1] The IFB did not provide usage estimates for any of the lots or line items. Moreover, the State declined to provide estimates when asked by vendors to do so during the question and answer period. *See, e.g.*, Amendment #1, Question 5 at PRP122; Question 10 at PRP123; Question 28 at PRP125; Question 54 at PRP129; Question 59 at PRP130; and Question 70 at PRP131. Thus, the Panel notes that the IFB seeks to establish an indefinite delivery, indefinite quantity contract.

[2] The IFB provides the following general requirement for Records Conversion/Indexing:

> Specific services may include, but are not limited to: the conversion of paper records to digital format for those governmental entities which desire conversion services only, the conversion of paper records to digital format for those governmental entities which currently have a[n] Electronic Document Management System (EDMS) in place and desire integration, the conversion of paper records to microfilm or microfiche, conversion of one (1) electronic format to another electronic format, pick-up and delivery of paper and/or electronic records, etc.

Record at PRP71.

agency desiring services upon to customize the services for the particular needs of that agency. Record at PRP72. The IFB specified a laundry list of tasks to be considered in an agency's needs assessment, such as the determination of an appropriate conversion / indexing format; the number of records to be converted; procedures for boxing documents for pick-up; and quality control procedures to ensure proper document preparation, scanning, and indexing.[3] Record at PRP72. The IFB also identified the following contractor responsibilities:

> Contractor personnel shall be responsible for document preparation, when requested; creating, classifying, adding and maintaining databases; selecting the storage destination; setting folder and document security privileges; quality review, to ensure each scanned document page has verified readability, de-skew, de-speckle, and preparation defects, and will rescan as necessary to correct issues; modifying database properties; adding annotations to images; burning CDs and DVDs;[4] ensuring best possible image capture; ensure best possible search and retrieve options; and running the database operation that updates full-text index.

Record at PRP72. Furthermore, some documents would need disassembly prior to scanning and reassembly after scanning. Record at PRP73. Once conversion had been completed, the IFB provided that

> Digital documents shall be shipped back and the files returned back to agencies, recycled or certified destroyed after agencies [sic] approval. The electronic file destruction procedures shall permanently delete the files from contractor's system(s), which shall completely remove all traces of agencies [sic] files and scrub contractor's hard drives to ensure that no file can be restored by data recovery utilities.

Record at PRP73.

The IFB also required the contractor to provide pick-up and delivery services for Lots #3 and #4. Record at PRP71 ("Specific services may include . . . pick-up and delivery of paper and/or electronic records . . . ."). Such services are further described elsewhere in the IFB:

> **DATA ACCESS / INFORMATION REQUEST** – Agencies must have access to information twenty-four (24) hours a day, seven (7) days a week, three-hundred

[3] The Panel notes that these tasks are but a sample of the list contained in the IFB.

[4] Amendment #1 added USB drives as a possible removable medium.

sixty-five (365) days a year for both hard copy and electronic data, at no additional cost. Agencies should provide a request for documents to be reviewed and or retrieved to the Contractor by either fax and / or email. Those records will then be pulled and faxed, emailed or delivered to the customer for review.

DATA ACCESS / RETRIEVAL – Agency personnel shall upon proper identification and request be escorted by contractor personnel to secured areas for data retrieval.

NORMAL RESPONSE TURNAROUND – Contractor shall provide pick-up and delivery of both hard copy and electronic data with twenty-four (24) hours of agency request / notification.

RUSH / EMERGENCY / AFTER HOURS / WEEKENDS / HOLIDAYS TURNAROUND – Contractor shall provide pick-up and delivery of both hard copy and electronic data, at the minimum, within four (4) hours of agency request / notification for emergency / rush / after hours / weekends / holidays responses.

Record at PRP63 – PRP64. As previously noted, the State did not provide usage estimates for any line items included in Lots #3 and #4. Furthermore, the State implicitly acknowledged great variability in the use of this service from agency to agency:

35. Price Schedule Item 97 thru 102, Page 56 - - The "Item description" is Paper file pick-up/delivery service area. Is this for the On-Demand Retrieval service of documents/files that in the possession at the Vendor's offsite facility? Or, are these services for pick-up and delivery of documents/files from the Client's site?

Answer: Could be either way.

36. Price Schedule Item 110 thru 115, Page 59 - - The "Item description" is Paper file pick-up/delivery service area. Is this for the On-Demand Retrieval service of documents/files that are in the possession at the Vendor's offsite facility? Or, are these services for pick-up and delivery of documents/files from the Client's site?

Answer: Could be either way.

Record at PRP125 – PRP126 (answering vendor questions in Amendment #1 to the IFB). Donna J. Potts, the ITMO procurement manager in charge of this IFB, testified before the Panel that no

vendors submitted follow-up questions to the answers provided in Amendment #1.[5] Amendment #1 also revised the bidding schedules for Lots #3 and #4. The Panel has attached copies of the revised bidding schedules from the Record and incorporates them herein by reference. Record at PRP144 – PRP149; PRP157 – PRP164 (Panel Attachment A).

In addition to the specifications discussed above, the IFB contained the following provision regarding unbalanced bidding:

> (e) Unbalanced bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

Record at PRP59. The IFB does not further define unbalanced bidding, nor does Amendment #1. Moreover, Ms. Potts testified that she had not received any training from the State regarding evaluating bids for material unbalancing. Norma Hall, currently acting as the State Information Technology Procurement Officer, also testified before the Panel and admitted that she had not personally conducted any unbalanced bid training for procurement officers.

When the bids were opened on May 15, 2013, twelve bidders had bid on Lot #3, and nine bidders had bid on Lot #4. Record at PRP287 – PRP296. Ms. Potts testified before the Panel that four of the bidders who submitted bids for Lot #3 and three of the bidders who submitted bids for Lot #4 were ineligible for award because of reasons of non-responsiveness or non-responsibility or because they withdrew their bid. Although SourceCorp submitted bids on Lots #3 and #4, it was one of the ineligible bidders, having been found non-responsible because it had

[5] However, the Panel notes that nothing in Amendment #1 alerted the vendors that they could ask follow-up questions. Indeed, the front page of the amendment noted that the deadline for submitting questions had already passed. Record at PRP119.

been administratively dissolved by the South Carolina Secretary of State.[6] On June 7, 2013, ITMO posted an intended award notice of Lots #3 and #4 to Advanced. Record at PRP299, PRP301 – PRP304. SourceCorp protested the intended awards on June 18, 2013. Record at PRP314 – PRP315.

William Lombard, III, SourceCorp's Senior Director of Business Development, testified before the Panel. Mr. Lombard testified that he prepared SourceCorp's protest letter after reviewing Advanced's bid. Mr. Lombard explained that Advanced's "no charge" or low bids for pick-up and delivery services were too low based on his experience with projects in South Carolina. In particular, Mr. Lombard identified Line Items 96 through 102 of Lot #3 and Line Items 110 through 115 of Lot #4 as problematic because these services have to cost Advanced something to provide. Mr. Lombard was also concerned that Advanced's scanning prices in Lot #3 and scanning and indexing prices in Lot #4 were too high. Mr. Lombard testified that, in his experience, the scanning and indexing line items would be used more frequently under this IFB and that the pick-up and delivery services would be used less frequently.[7]

The Panel also received the testimony of Matthew Solomon, Advanced's CEO, who explained that he prepared the document in the record comparing Advanced's pricing for the current IFB to its pricing for the last State contract. Record at PRP353. Mr. Solomon further explained that Advanced considered its current commercial list pricing, its pricing under the previous State contract, and its cost when preparing its bid for this IFB. Mr. Solomon testified

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[6] William Lombard of SourceCorp testified before the Panel and explained that the dissolution was related to state taxes and that the matter had been resolved. The Panel takes judicial notice that the Secretary of State's website notes that SourceCorp was administratively dissolved on June 30, 2011, and reinstated on June 26, 2013. *See* http://www.sos.sc.gov/index.asp?n=18&p=4&s=18&corporateid=486402 (last accessed on October 9, 2013). The Panel also notes that such reinstatement is retroactive to the date of dissolution pursuant to section 33-14-220(c). S.C. Code Ann. § 33-14-220(c) (2006). Although Advanced moved for dismissal of SourceCorp's protest on the grounds of non-responsibility before the CPO, it did not renew its motion before the Panel.

[7] The Panel finds this assertion regarding the relative frequency of scanning and indexing compared to pick-up and delivery services to be credible; a reasonable person would expect this result as part of common business practice in a State contract for these services.

that Advanced was able to offer discounts to the State as a large client and that Advanced could offset the lower government prices through different commercial pricing. Mr. Solomon denied that Advanced had deliberately tried to overprice high use line items and underprice low use line items in its bid. He explained that Advanced owns its own trucks and employs its own drivers, which allows it to keep pick-up and delivery costs down. Furthermore, Mr. Solomon testified that, with agency permission, Advanced is able to sell the paper documents it shreds for a profit.

Conclusions of Law

SourceCorp's original protest letter raised three grounds of protest. Record at PRP308. However, the CPO granted SourceCorp's protest on the third ground only, which alleged that Advanced engaged in unbalanced bidding "to manipulate the results in their favor." Record at PRP310. At the Panel hearing, the parties agreed that the only issue for the Panel to decide was the unbalanced bidding issue. Neither the Procurement Code nor its ensuing regulations contain any provisions defining a "materially unbalanced bid" or adopting procedures guiding how a procurement officer is to evaluate bids for unbalancing. Moreover, the Panel has never specifically addressed the issue.[8] Therefore, the Panel must first examine the unbalanced bid language in the IFB.

As noted above, the relevant language prohibiting materially unbalanced bidding is provided by the following clause in the IFB:

> (e) Unbalanced bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest

[8] Advanced argued that the Panel did previously encounter the concept of bidding anticipated higher quantity items at a higher price and anticipated lower quantity items at a lower price in the case of *Protest of Win Laboratories, Ltd.*, Panel Case No. 1992-14(II) (November 20, 1992). However, the Panel does not find the *Win* case applicable here because it involved the pricing of specific goods, not services, and because the IFB in *Win* did not include comparable language prohibiting unbalanced bidding.

> overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

Record at PRP59. Looking solely at this language,[9] the Panel finds that materially unbalanced bidding is an issue of responsiveness, not responsibility. The award in this solicitation is governed by section 11-35-1520(10) of the Procurement Code, which provides that an award will be made "to the lowest responsive and responsible bidder[ ] whose bid meets the requirements set forth in the [IFB]." S.C. Code Ann. § 11-35-1520(10) (2011). Responsiveness is determined at the time the bids are opened on the basis of the information contained in the bid. S.C. Code Ann. § 11-35-1520(6) (2011). As the party challenging Advanced's responsiveness, SourceCorp bears the burden of proving its claim of materially unbalanced bidding by a preponderance of the evidence. *Appeal by Heritage Community Services*, Panel Case No. 2013-1 (Revised) (May 6, 2013) (citing *Protest by Blue Bird Corp.*, Panel Case No. 1994-15 (December 16, 1994)).

In conducting a *de novo* review of Advanced's responsiveness under section 11-35-4410(1)(a) of the Procurement Code, the Panel must next determine the proper legal test to apply in deciding whether or not a bid is materially unbalanced. Looking again at the language of the IFB clause quoted above, the Panel finds that the following elements must be proven in the instant case to establish a materially unbalanced bid: (1) there must be evidence showing that

[9] The CPO found that the source of this language is section 52.214-10(e) of the Federal Acquisition Regulation (FAR) and looked to federal law for guidance. Although the Panel acknowledges that the quoted IFB language is almost identical to FAR section 52.214-10(e), the Panel is not convinced that merely quoting that language without also adopting the corresponding federal framework for analyzing bids for unbalancing warrants such dependence on federal law. Specifically, the Panel first notes that, unlike the federal system, the state system does not require procurement officers to estimate quantity and price prior to soliciting an indefinite delivery, indefinite quantity contract. FAR § 16.504. Second, unlike the federal system, the state system does not have a mechanism for obtaining certified cost or pricing data with which to perform a detailed cost or price analysis such as those described in FAR section 15.401-1. Thus, the Panel finds that the federal regulatory provisions and Comptroller General decisions cited by the parties to be inapplicable. The Panel urges the State Budget and Control Board, which is the body charged with the responsibility of adopting policies and promulgating regulations in accordance with the Procurement Code, to exercise caution when borrowing concepts from the federal scheme and to ensure that the state system has in place the procedures necessary to perform similar analyses if such concepts are adopted.

some prices are significantly less than cost for some line items; (2) there must be evidence showing that some prices are significantly more than cost for some line items; and (3) there is a reasonable doubt that the bid will result in the lowest overall cost to the State despite being the low evaluated bid.[10]

During the Panel hearing, Mr. Lombard testified that he prepared SourceCorp's original protest letter after noting that Advanced bid "no charge" or very low prices for several line items in Lots #3 and #4. SourceCorp identifies the following line items in Advanced's bid for Lot #3 as being "significantly less than cost": Item 96, which is for "Paper files Contractor / in-house destruction shredding" per cubic foot, and Items 97 through 102, which are for "Paper files pick-up / delivery service" under defined delivery service areas and times per cubic box. For Item 96, Advanced bid "no charge," which was the lowest bid for that line item. The next low bid for Item 96 was $0.15, while the high bid was $10.00.[11] Record at PRP287. The bids for Items 97 through 102 are summarized in the table below:

Lot #3 Item No.	Advanced Bid	High Bid	Next Low Bid
97: Pick-up / delivery service area normal	$0.75	$12.50	$2.00
98: Pick-up / delivery outside area normal	$0.75	$87.63	$3.00
99: Pick-up / delivery service area rush	$0.75	$30.00	$3.25
100: Pick-up/ delivery outside rush	$0.75	$87.63	$3.50
101: Pick-up/ delivery service area emergency	$0.75	$100.00	$3.75
102: Pick-up/ delivery outside area emergency	$0.75	$250.00	$4.25

[10] Because SourceCorp did not allege and the CPO did not find that Advanced's bid was tantamount to an advanced payment, the Panel has not included that alternate to the third element in its discussion.

[11] For the purposes of its analysis, the Panel has only considered the bids of responsive and responsible bidders in reaching the "high" and "next low" bids for comparison.

Record at PRP288; PRP290. Similarly, SourceCorp identified Advanced's "no charge" bids for Items 110 through 115 of Lot #4 as being too low. Items 110 through 115 are for the pick-up and delivery of "Books / Notebooks / Maps / Drawings" under defined delivery areas and times. The bids for Items 110 through 115 are summarized in the table below:

Lot #4 Item No.	Advanced Bid	High Bid	Next Low Bid
110: pick-up / delivery service area normal	N/C	$50.00	$2.75
111: pick-up / delivery outside area normal	N/C	$100.00	$3.25
112: pick-up / delivery service area rush	N/C	$75.00	$3.25
113: pick-up / delivery outside rush	N/C	$150.00	$3.50
114: pick-up / delivery service area emergency	N/C	$100.00	$3.75
115: pick-up / delivery outside area emergency	N/C	$250.00	$4.25

Record at PRP291; PRP294.

It is readily apparent from the bid tabulation that the bid prices received for these line items varied drastically from bidder to bidder and should have been a preliminary indication when the bids were opened that at least some bidders were engaging in unbalanced bidding. However, because the problem was not recognized at the time of opening, the Panel finds that the CPO acted properly in examining all of the bids once SourceCorp raised the issue of unbalancing in its protest. Considering that the State does not have a mechanism for obtaining verified cost or pricing data and that a responsiveness determination is to be made based on the information provided at bid opening, the Panel finds that the most reasonable method for determining whether bid prices are "significantly less than cost" is to compare Advanced's low

bid price to the next lowest bid price to determine the percentage difference[12] between the two. Those percentage differences for both Lots #3 and #4 are summarized in the table below:

Item No.	Advanced Bid	Next Low Bid	Percentage Difference
Lot #3: 96	N/C ($0.00)	$0.15	200%
Lot #3: 97	$0.75	$2.00	90.9091%
Lot #3: 98	$0.75	$3.00	120%
Lot #3: 99	$0.75	$3.25	125%
Lot #3: 100	$0.75	$3.50	129.4118%
Lot #3: 101	$0.75	$3.75	133.3333%
Lot #3: 102	$0.75	$4.25	140%
Lot #4: 110	N/C ($0.00)	$2.75	200%
Lot #4: 111	N/C ($0.00)	$3.25	200%
Lot #4: 112	N/C ($0.00)	$3.25	200%
Lot #4: 113	N/C ($0.00)	$3.50	200%
Lot #4: 114	N/C ($0.00)	$3.75	200%
Lot #4: 115	N/C ($0.00)	$4.25	200%

Therefore, in light of the fact that there is at least a 90% difference between Advanced's price and the next lowest price for each of these line items, the Panel finds that the first element of the unbalanced bidding test has been proven in this case.

Conversely, Mr. Lombard stated that other prices in Advanced's bid were "excessive" compared projects that SourceCorp had performed in South Carolina. In particular, Mr. Lombard testified that Advanced's scanning and indexing prices were "significantly more than cost" and that these particular services were likely to be used more frequently under the contract. In Lots #3 and #4, the scanning and indexing line items requested pricing per page and established page ranges (e.g., from 0 to 100,000 pages; from 500,001 to 1,000,000 pages) for different digital formats (e.g., TIF image; PDF image). Record at PRP144 – PRP146; PRP160 – PRP164. For purposes of price comparison, the Panel has summarized Advanced's bid, the low

[12] The Panel utilized the Percentage Difference Calculator at www.calculatorsoup.com/calculators/algebra/percent-difference-calculator.php to "find the percent difference between two numbers." (Website last accessed October 23, 2013).

bid, and the high bid for the line items in one Lot #3 digital format – the scanning of documents to a "[TIF] image – Black & White / Grayscale" – in the table below.[13]

Lot #3 Item No. (Scanning Per Page)	Advanced Bid	Low Bid	High Bid
80: 0 to 100,000 pages	$0.05	$0.03	$0.55
81: 100,001 to 500,000 pages	$0.05	$0.03	$0.07
82: 500,001 to 1,000,000 pages	$0.04	$0.03	$0.45
83: 1,000,001 pages and up	$0.04	$0.02	$0.06

Record at PRP287; PRP289. The pricing for the other digital formats is similar. Record at PRP287; PRP289.

The items to be converted to a digital format in Lot #4 include oversized documents, such as maps and blueprints, as well as books which cannot be disassembled for scanning. Record at PRP73. For purposes of price comparison, the Panel has summarized, in the table below, Advanced's bid, the low bid, and the high bid for the "[s]canning and indexing [of] any type books . . . PDF / [TIF] image . . . black & white / grayscale to electronic format."

Lot #4 Line Item (Scanning/Indexing Per Page)	Advanced's Bid	Low Bid	High Bid
344: 0 to 100,000 pages	$0.35	$0.19	$5.00
345: 100,001 to 500,000 pages	$0.33	$0.17	$5.00
346: 500,001 to 1,000,000 pages	$0.31	$0.15	$5.00
347: 1,000,001 pages and up	$0.29	$0.13	$5.00

Record at PRP292; PRP295.

While the pricing variations for the scanning in Lot #3 and the scanning and indexing in Lot #4 are not as large as those noted in the pick-up and delivery services discussed above, they are still indicative of unbalanced bidding. Like the analysis above for the first element of

[13] As previously noted, *supra* note 9, the Panel has only considered the bids of responsive and responsible bidders to determine the "high" and "low" bids for these line items.

unbalanced bidding, the Panel compares Advanced's bid price to the low bid price for the line items in the two tables above to determine if Advanced's bid prices are "significantly more than cost" based on the percentage difference between Advanced's bid and the low bid. The comparisons are summarized in the table below:

Item No.	Advanced Bid	Low Bid	Percentage Difference
Lot #3: 80	$0.05	$0.03	50%
Lot #3: 81	$0.05	$0.03	50%
Lot #3: 82	$0.04	$0.03	28.5714%
Lot #3: 83	$0.04	$0.02	66.6667%
Lot #4: 344	$0.35	$0.19	59.2593%
Lot #4: 345	$0.33	$0.17	64%
Lot #4: 346	$0.31	$0.15	69.5652%
Lot #4: 347	$0.29	$0.13	76.1905%

With the exception of Line Item 82, the percentage difference between Advanced' bid and the low bid for the line items in the table above is at least 50%. Therefore, the Panel finds that the second element of unbalanced bidding has been proven.

Turning to the third element of unbalanced bidding, the question of whether there is a reasonable doubt that Advanced's bid will result in the lowest overall cost to the State, the Panel has summarized comparisons of the costs of Advanced's bid to the low bid for scanning services under Lot #3, Line Items 81 through 83, with an assumption that the minimum number[14] of pages has been ordered, in the table below:

Lot #3 Item No.	Advanced's Bid	Low Bid
81	100,001 pages x 0.05 = $5,000.05	100,001 pages x 0.03 = $3,000.03
82	500,001 pages x 0.04 = $20,000.04	500,001 pages x 0.03 = $15,000.03
83	1,000,001 pages x 0.04 = $40,000.04	1,000,001 pages x 0.02 = $20,000.02
Total for 3 line items	$65,000.13	$38,000.08

[14] The Panel is troubled, as was the CPO, that the bid schedules in this IFB were structured in such a way that gave each line item an equal weight of one despite their descriptions indicating multiple pages at a per page price. The Panel agrees that this type of structure especially lends itself to bid unbalancing.

Thus, for these three Lot #3 line items, an award to Advanced would result in a $27,000.05 higher cost to the State. Likewise, the table below summarizes cost comparisons between Advanced's bid and the low bid for scanning and indexing services under Line Items 345 through 347 of Lot #4:

Lot #4 Item No.	Advanced's Bid	Low Bid
345	100,001 pages x 0.33 = $33,000.03	100,001 pages x 0.17 = $17,000.17
346	500,001 pages x 0.31 = $155,000.31	500,001 pages x 0.15 = $75,000.15
347	1,000,001 x 0.29 = $290,000.29	1,000,001 x 0.13 = $130,000.13
Total for 3 line items	$478,000.93	$222,000.45

Thus, for these three Lot #4 line items, an award to Advanced would result in a $256,000.48 higher cost to the State. Clearly, these examples from Lots #3 and #4 demonstrate that there is a reasonable doubt that an award to Advanced would result in the lowest overall cost to the State. Therefore, the Panel finds that the third element of unbalanced bidding has also been proven.

Having found that SourceCorp has met its burden of proof, the Panel hereby affirms the decision of the CPO granting SourceCorp's protest and remanding Lots #3 and #4 to ITMO for award, if possible, in accordance with the Procurement Code.[15]

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: C. Brian McLane Sr.

C. BRIAN MCLANE, SR., CHAIRMAN

This 30th day of October, 2013.

Columbia, South Carolina

[15] The Panel would like to emphasize that its finding of materially unbalanced bidding should in no way be seen as a finding that Advanced acted in bad faith.

Panel Attachment A

PRP144

LOT #3 – RECORDS CONVERSION / ELECTRONIC DOCUMENT IMAGING – PAPER FILES - ITEMS #78 THROUGH ITEM #103 ON-LINE NUMBERING REMAINS THE SAME – WITH THE EXCEPTION OF #103 BEING DELETED ON-LINE

Item	Quantity	Unit of Measure	Unit Price	Extended Price
78	1.000	hour		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Document preparation in accordance with criteria outlined in scope of work (see page twenty-seven (27)).				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
79	1.000	hour		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Document reassembly in accordance with criteria outlined in scope of work (see page twenty-seven (27)).				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
80	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 0 to 100,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
81	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 100,001 to 500,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
82	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 500,001 to 1,000,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
83	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 1,000,001 pages and up				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
84	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 0 to 100,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
85	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 100,000 to 500,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
86	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 500,001 to 1,000,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
87	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – Tiff image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 1,000,001 pages and up				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
88	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image – Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 0 to 100,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
89	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image – Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 100,001 to 500,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
90	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image – Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 500,001 to 1,000,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
91	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image – Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 1,000,001 pages and up				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
92	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 0 to 100,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
93	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 100,001 to 500,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
94	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 500,001 to 1,000,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
95	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning Documents – PDF image - Colored – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 1,000,001 pages and up				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
96	1.000	cubic foot		
Product Catg.: 96227 - Document Shredding Services				
Item Description: Paper files Contractor / in-house destruction shredding				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
97	1.000	Cubic box		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Paper files pick-up / delivery service area normal				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
98	1.000	Cubic box		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Paper files pick-up / delivery outside area normal				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
99	1.000	Cubic box		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Paper files pick-up / delivery service area rush				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
100	1.000	Cubic box		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Paper files pick-up / delivery outside rush				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
101	1.000	Cubic box		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Paper files pick-up / delivery service area emergency				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
102	1.000	Cubic box		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Paper files pick-up / delivery outside area emergency				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
103	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: CD / DVD creation – DELETED SEE NEW ITEM SET-UP IN ADDITION TO LOT #3 BELOW				

LOT #4 – RECORDS CONVERSION / ELECTRONIC DOCUMENT IMAGING – BOOKS / NOTEBOOKS / MAPS / DRAWINGS - ITEMS #104 THROUGH ITEM #116 – ON-LINE NUMBERING REMAINS THE SAME – WITH THE EXCEPTION #106, #107, #108 AND #116 DELETED ON-LINE

Item	Quantity	Unit of Measure	Unit Price	Extended Price
104	1.000	hour		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Document preparation in accordance with criteria outlined in scope of work (see page twenty-seven (27)).				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
105	1.000	hour		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Document reassembly in accordance with criteria outlined in scope of work (see page twenty-seven (27)).				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
106	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), black & white / grayscale to electronic format – per each page – DELETED SEE NEW ITEM SET-UP IN ADDITION TO LOT #4 BELOW				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
107	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), colored to electronic format – per each page - DELETED SEE NEW ITEM SET-UP IN ADDITION TO LOT #4 BELOW				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
108	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Large format (A – E Size) – Black & White, Grayscale and Colored 200 or 300 DPI – per each page – DELETED SEE NEW ITEM SET-UP IN ADDITION TO LOT #4 BELOW				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
109	1.000	cubic-foot		
Product Catg.: 96227 - Document Shredding Services				
Item Description: Books / Notebooks / Maps / Drawings - Contractor / in-house destruction shredding				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
110	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Books / Notebooks / Maps / Drawings pick-up / delivery service area normal				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
111	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Books / Notebooks / Maps / Drawings pick-up / delivery outside area normal				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
112	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Books / Notebooks / Maps / Drawings pick-up / delivery service area rush				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
113	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Books / Notebooks / Maps / Drawings pick-up / delivery outside rush				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
114	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Books / Notebooks / Maps / Drawings pick-up / delivery service area emergency				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
115	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Books / Notebooks / Maps / Drawings pick-up / delivery outside area emergency				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
116	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: CD / DVD creation – DELETED SEE NEW ITEM SET-UP IN ADDITION TO LOT #4 BELOW				

ADDITION TO LOT #3 - ITEMS #317 THROUGH ITEMS #326 – NUMBERING SEQUENCE OUT OF LINE DUE TO ON-LINE SYSTEM

Item	Quantity	Unit of Measure	Unit Price	Extended Price
317	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: CD creation				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
318	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: DVD creation				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
319	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: USB drive creation				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
320	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Optical Character Recognition (OCR)				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
321	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: File Transfer Protocol (FTP)				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
322	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input two (2) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
323	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input three (3) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
324	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input four (4) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
325	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input five (5) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
326	1.000	Hours		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Rendering of preparation and capture services performed on-site at Agencies facility.				

ADDITION TO LOT #4 - ITEMS #327 THROUGH ITEMS #360 NUMBERING SEQUENCE OUT OF LINE DUE TO ON-LINE SYSTEM

Item	Quantity	Unit of Measure	Unit Price	Extended Price
327	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: CD creation				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
328	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: DVD creation				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
329	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: USB drive creation				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
330	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Optical Character Recognition (OCR)				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
331	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: File Transfer Protocol (FTP)				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
332	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input two (2) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
333	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input three (3) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
334	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input four (4) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
335	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Storage data input five (5) key words indexing				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
336	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents -- twenty-four by eighteen (24 x 18) – black & white to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
337	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents twenty-four by eighteen (24 x 18) – blue line to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
338	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents twenty-four by thirty-six (24 x 36) – black & white to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
339	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents twenty-four by thirty-six (24 x 36) – blue line to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
340	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents twenty-eight by forty (28 x 40) – black & white to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
341	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents twenty-eight by forty (28 x 40) – blue line to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
342	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents thirty by forty-two (30 x 42) – black & white to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
343	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing blueprints / large format documents thirty by forty-two (30 x 42) – blue line to electronic format – per each page				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
344	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), black & white / grayscale to electronic format – Per each page from 0 to 100,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
345	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), black & white / grayscale to electronic format – Per each page from 100,001 to 500,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
346	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), black & white / grayscale to electronic format – Per each page from 500,001 to 1,000,000 pages				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
347	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), black & white / grayscale to electronic format – Per each page from 1,000,0001 pages and up

Item	Quantity	Unit of Measure	Unit Price	Extended Price
348	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), colored to electronic format – Per each page from 0 to 100,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
349	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), colored to electronic format – Per each page from 100,001 to 500,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
350	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), colored to electronic format – Per each page from 500,001 to 1,000,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
351	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (8 ½ x 11" up to 11" x 17"), colored to electronic format – Per each page from 1,000,001 pages and up

Item	Quantity	Unit of Measure	Unit Price	Extended Price
352	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), black & white / grayscale to electronic format – Per each page from 0 to 100,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
353	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.).

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), black & white / grayscale to electronic format – Per each page from 100,001 to 500,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
354	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), black & white / grayscale to electronic format – Per each page from 500,001 to 1,000,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
355	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), black & white / grayscale to electronic format – Per each page from 1,000,001 pages and up

Item	Quantity	Unit of Measure	Unit Price	Extended Price
356	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), colored to electronic format – Per each page from 0 to 100,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
357	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), colored to electronic format – Per each page from 100,001 to 500,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
358	1.000	each		

Product Catg.: 95882 - Records Management (Incl. Document etc.)

Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), colored to electronic format – Per each page from 500,001 to 1,000,000 pages

Item	Quantity	Unit of Measure	Unit Price	Extended Price
359	1.000	each		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Scanning and indexing any type books, laboratory notebooks, etc. that cannot be disassembled for scanning - (Flat Bed Scanner) – PDF / Tiff image (less than 8 ½ x 11"), colored to electronic format – Per each page from 1,000,001 to pages and up				

Item	Quantity	Unit of Measure	Unit Price	Extended Price
360	1.000	Hours		
Product Catg.: 95882 - Records Management (Incl. Document etc.)				
Item Description: Rendering of preparation and capture services performed on-site at Agencies facility.				

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	BEFORE THE CHIEF PROCUREMENT OFFICER
	DECISION
In Re: Protest of SourceCorp BPS, Inc.	CASE NO.: 2013-211
Protest of Intent to Award to Lots 3 and 4 to Advanced Imaging Systems, Inc. Solicitation No. 5400005364	POSTING DATE: August 1, 2013 MAILING DATE: August 1, 2013

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation for a state term contract for Records Management Services to encompass, Conversion, Imaging, Retrieval, Storage and Destruction (Shredding) was issued by the Information Technology Management Office. SourceCorp BPS, Inc. (SourceCorp) protests the intended award of a contract for Lots 3 and 4 to Advanced Imaging Systems. The Chief Procurement Officer held a hearing on this matter on July 19, 2013. Present at the hearing were representatives of SourceCorp, Advanced Imaging Systems (Advanced), and the ITMO.

Findings of Fact

Solicitation Issued	March 22, 2013
Amendment 1 Issued	April 26, 2013
Intent to Award Issued	June 7, 2013
Protest Of Palmetto Received	June 12, 2013
Amended Protest of Palmetto Received	June 13, 2013
Protest of Iron Mountain Received	June 14, 2013
Protest of SourceCorp Received	June 17, 2013
Lot 1 Award Suspended	June 18, 2013
Lot 2 Award Suspended	June 18, 2013
Lot 3 Award Suspended	June 18, 2013
Protest of FivePoint Received	June 21, 2013

Background

This Invitation for Bids (IFB) was issued by ITMO for a state term contract for Records Management Services to encompass, Conversion, Imaging, Retrieval, Storage and Destruction (Shredding), on March 22, 2013. There was one (1) amendment issued to the solicitation on April 26, 2013, which clarified solicitation requirements and revised the opening/closing date to May 15, 2013 and the intent to award date to May 30, 2013. The intent to award was issued on June 7, 2013; awarding all five (5) lots.

SourceCorp raises three issues of protest.

A) The State failed to specify the exact service to be rendered for the line items 97 through 102 and Line Items 110 through 115. This lack of specificity and clarity on type of services resulted in SOURCECORP being excessively priced for line items 97 through 102 and Line Items 110 through 115, in comparison to the Intent to Award Vendor.

B) The Intent to Award Vendor failed to provide reasonable pricing for line items 97 through 102 and Line Items 110 through 115.

C) The Intent to Award Vendor provided unbalanced bidding by submitting a bid based on significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work.

Motions

The State and AIS moved to dismiss SourceCorp's first issue of protest because it was not filed within the time limits prescribed in the law. SourceCorp claims that the State failed to specify the exact service required in the solicitation. Section 11-35-4210(2)(b) prohibits the protest of the solicitation after the award.

> 11-35-4210(2)(b)Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; <u>except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.</u> *(emphasis added)*

This motion to dismiss Issue A is granted.

The State moved to dismiss SourceCorp's second issue of protest that the apparent successful bidder failed to provide reasonable pricing, as untimely filed. This motion is denied.

AIS moved to dismiss SourceCorp's second issue of protest as untimely filed stating that "*Clearly, Ground B arises from the alleged lack of clarity in the State's reply to Questions 35 and 58.*" This motion is granted only to the extent that this issue of protest alleges that the solicitation was vague.

AIS also moves to dismiss SourceCorp's second issue of protest on the grounds that the protest is vague and does not put the parties on notice of the issue with sufficient specificity. This motion is denied.

AIS also moved to dismiss this issue of protest on the grounds that it fails to state a claim. This motion is denied.

SourceCorp's third issue of protest claims that the awarded bid was unbalanced. AIS moved to dismiss this issue on the grounds that it fails to state a claim. This motion is denied.

The State moved to dismiss SourceCorp's protest on the grounds that at the time of bid submission, SourceCorp was not a responsible bidder and thus not eligible for award. SourceCorp did not request award of the contract, only that the award to Advanced be vacated. This motion is denied.

Discussion

Price Unreasonableness

SourceCorp's second issue of protest is that the price bid by Advanced for line items 97 through 102 and 110 through 115 does not reflect the actual cost of providing the services required and should be deemed unreasonable. Line items 97 through 102 and 110 through 115 are for the pick-up and delivery of cubic boxes of documents between an agency location anywhere in the State and the contractor's location. The solicitation puts bidders on notice that "[a]ny offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070]." (Solicitation, page 13, Price Reasonableness) The Procurement Officer did not make such a determination.

The quoted language from the solicitation, and Regulation 19-445.2070(E), are drawn from the federal acquisition regulations. FAR § 14.404-2, like the South Carolina regulation, is titled "Rejection of individual bids." Section 14.404-2(f) provides:

> Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

Decisions interpreting the FAR consistently hold, in the context of a bid protest, that the contracting officer's evaluation for price reasonableness under FAR § 15.402(a) of an offer provided by a bidder "focuses primarily on whether the offered prices are higher than warranted ... below-cost pricing is not prohibited." *All Phase Envtl., Inc.*, Nos. B–292919.2–B–292919.7, 2004 WL 437450, at *7 (Comp.Gen. Feb.4, 2004); *accord CSE Constr.*, No. B–291268.2, 2002 WL 31835783 (Comp.Gen. Dec.16, 2002), at *4; *see also Rodgers Travel, Inc.*, No. B–291785, 2003 WL 1088876 (Comp.Gen. Mar.12, 2003), at *2 n. 1 (stating that the purpose of a price reasonableness determination is to ensure that the prices offered are not higher, as opposed to lower, than warranted). A bidder, for various reasons, in its business judgment may decide to submit a below-cost bid. For example, the bidder may be attempting to buy-in to the market, might have excess inventory, or the products solicited might be at end-of-life. The Code does not prohibit the State from accepting below-cost bids from responsible bidders. Regulation 19-445.2070 does authorize the contracting officer to reject unreasonably

priced bids, but a bid is not unreasonable simply because it is below-cost. Whether the awardee can perform the contract at the price offered is a matter of responsibility. This procurement is for the replacement of a state term contract for similar services and as a contractor on the previous contract, Advanced performed with similar pricing. The Code requires a determination of responsibility prior to making an award and Advanced was determined to be a responsible bidder. SourceCorp's protest that Advanced's bid should be rejected simply because the prices are, in its opinion, too low is dismissed. .[1]

Unbalanced Bidding

Advanced's unusually low prices for transporting records are central to SourceCorp's third issue of protest, a claim that Advanced's bid is materially unbalanced. The solicitation warned bidders that their bids could be rejected if they appeared to take advantage of the bid schedule to artificially create a "winning" offer:

> (e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

Solicitation, page 13. Similar to the price unreasonableness provision, this clause finds its origin in the FAR. There are no reported decisions in South Carolina dealing with unbalanced bidding. Since our quoted solicitation language is identical to the contract language found at FAR § 52.214-10(e), the CPO looks to federal law for guidance.

FAR § 14.402(g) provides for rejection of bids "if the prices for any line items or subline items are materially unbalanced." That regulation cross-references § 15.404-1, "Proposal analysis techniques."[2] Section 15.404-1(f) requires that "unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost…." It prohibits "[a]ny method of distributing costs to line items that distorts the unit prices." Section 15.404-1(g) defines unbalanced pricing, and describes the risks associated with it:

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[1] This is not to suggest that a procurement officer should ignore extraordinarily low bid prices. She evaluates whether prices are too low, though, only to the extent that she is concerned that the contractor will not be able to perform the contract at that price. *See, e.g., CSE Constr.*, B–291268.2, 2002 WL 31835783. This is a matter of responsibility, not price reasonableness. *E.g., Diemaster Tool, Inc.*, B-238877, 90-1 CPD ¶375, 1990 WL 277910.

[2] In the federal scheme, contracting officers must prepare estimates of quantity and price before soliciting bids. Section 15-404-1 describes several methods of varying complexity for evaluating bids in relation to the contracting officer's estimates and other comparisons. South Carolina has no equivalent requirement; however, our procurement officers are trained to design evaluation criteria that will result in award to bidders who provide contract pricing most advantageous to the State.

(1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. **Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated** as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

(emphasis supplied).

The Federal Highway Administration of the U.S. Department of Transportation released an informative memorandum on May 16, 1988 expanding on the issue of unbalanced bids and the CPO adopts portions of that memorandum as follows:

In discussing unbalanced bids, it is best to define two terms: mathematically unbalanced and materially unbalanced. An unbalanced bid may be only mathematically unbalanced or the bid may be mathematically and materially unbalanced.

A mathematically unbalanced bid is one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which he/she anticipates for the performance of the items in question.

A Comptroller General's opinion further defined a mathematically unbalanced bid as follows:

"A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work; that is, each element of the bid must carry its proportionate share of the total cost of the work plus profits." Matter of: Howell Construction, Comp. Gen. B-225766 (1987)

> There is no prohibition per se against a contractor submitting a mathematically unbalanced bid unless an SHA has adopted a specific contract requirement precluding such submittal.
>
> While mathematically unbalanced bids are not prohibited per se, evidence of a mathematically unbalanced bid is the first step in proving a bid to be materially unbalanced. A materially unbalanced bid has been defined as:
>
> "A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the Government. Consequently, a materially unbalanced bid may not be accepted." Matter of: Crown Laundry and Dry Cleaners, Comp. Gen. B-208795.2, Apri1 22, 1983.
>
> … There are numerous reasons why a bidder may want to unbalance his/her bid on a contract. One reason is to get more money at the beginning of the project. The bidder does this by overpricing the work done early in the project. …
>
> Another reason is to maximize profits. The bidder does this by overpricing bid items he/she believes will be used in greater quantities than estimated in the proposal and underpricing items he/she thinks will be used in significantly lesser quantities. [3]

To prevail on its claim that the Advanced bid is materially unbalanced, then, SourceCorp must show both (1) the unit prices do not reflect Advanced's actual costs, plus overhead and profit (mathematically unbalanced); and (2) there is a reasonable doubt that awarding the contract to Advanced will result in the lowest ultimate cost to the State. (materially unbalanced) *E.g.*, *Reliable Trash Service*, B-194760, 79-2 CPD ¶107, 1979 WL 12196; *Westbrook Industries, Inc*., B-245019, 92-7 CPD ¶30, 71 Comp. Gen. 139, 140, 1992 WL 29799.

The first part of SourceCorp's claim of unbalanced bidding challenges pricing for pickup and delivery of documents; shredding; and electronic indexing. Lot 3 solicited Electronic Document Imaging for Paper Files and included 35 line items. Each of the 35 line items was assigned an anticipated purchase quantity of one. Bidders were required to enter a unit price for each line item. The total price for each line item was calculated by multiplying the unit price times the quantity. The total price for each line item was added together to arrive at the bid price for the Lot.[4]

The solicitation set out several requirements for pick-up and delivery services:

> **DATA ACCESS / INFORMATION REQUEST** – Agencies must have access to information twenty-four (24) hours a day, seven (7) days a week, three-hundred sixty-five

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[3] http://www.fhwa.dot.gov/programadmin/contracts/051688.cfm (last viewed July 30, 2013).

[4] Assigning a uniform quantity of one for all 35 line items meant that expensive, labor intensive line items received the same weight as very inexpensive line items and ignored the fact that some line items will be purchased in greater quantity than other line items. This made it possible for bidders to overprice bid items they believed would be used in greater quantity and underprice items they believed would be used in significantly lesser quantities.

(365) days a year for both hard copy and electronic data, at no additional cost. Agencies should provide a request for documents to be reviewed and or retrieved to the Contractor by either fax and / or email. Those records will then be pulled and faxed, emailed or delivered to the customer for review. (Solicitation page 17)

Further,

DATA ACCESS / RETRIEVAL – Agency personnel shall upon proper identification and request be escorted by contractor personnel to secured areas for data retrieval.

NORMAL RESPONSE TURNAROUND – Contractor shall provide pick-up and delivery of both hard copy and electronic data with twenty-four (24) hours of agency request / notification.

RUSH / EMERGENCY / AFTER HOURS / WEEKENDS / HOLIDAYS TURNAROUND - Contractor shall provide pick-up and delivery of both hard copy and electronic data, at the minimum, within four (4) hours of agency request / notification for emergency / rush / after hours / weekends / holidays responses. (Solicitation page 18)

Further,

RECORDS TRANSPORT - All records in transit to and from Agency to Contractors facility should be supported by consistent security procedures including, chain of custody documentation, inventoried before loading and unloading, material handling, integrity audits, be provided by bonded customer approved couriers, be transported in climate controlled vehicles, and have strict confidentiality and security of records during transit, vehicles and / or cases should be locked at all times. (Solicitation page 19)

LOT #3 THROUGH LOT #5 - RECORDS CONVERSION / INDEXING – REQUIREMENTS GENERAL
…pick-up and delivery of paper and / or electronic records, etc. (Solicitation page 25)

Amendment 1

35. Price Schedule Item 97 thru 102, Page 56 - - The "Item description" is Paper file pick-up/delivery service area. Is this for the On-Demand Retrieval service of documents/files that are in the possession at the Vendor's offsite facility? Or, are these services for pick-up and delivery of documents/files from the Client's site?
    Answer: Could be either way.

36. Price Schedule Item110 thru 115, Page 59 - - The "Item description" is Paper file pick-up/delivery service area. Is this for the On-Demand Retrieval service of documents/files that are in the possession at the Vendor's offsite facility? Or, are these services for pick-up and delivery of documents/files from the Client's site?
    Answer: Could be either way.

49. III page 18, Rush/Emergency/After Hours, The invitation to bid states that contractors shall provide pickup and delivery of both hard copy and electronic data at the minimum within four (4) hours of the agency request/notification for

emergency/rush/afterhours/weekends/holiday responses. Can this four hour requirement be altered to account for the distance of the storage/staging location from the agency location?
Answer: No.

58. Page 57, Lot 3 Items 97- 103, Please confirm if the unit of measure for paper files pick up is by page, file or cubic box?
Answer: Cubic box.[5]

59. Page 57, Lot 3 Items 97- 103, If the unit of pages is per paper file, how many estimated pages are in each file?
Answer: Unknown.

60. Page 57, Lot 3 Items 99- 102, Please provide additional information on the difference between rush and emergency delivery?
Answer: Both terms define quick response needs by the State.

61. Page 57, Lot 3 Items 99- 102, Please provide additional information as to what is considered in the delivery service area and outside the delivery service area?
Answer: Service area is defined as within thirty (30) miles of the using Agency.

Advanced bid $.75 for items 97 through 102, paper files pick-up and delivery. Considering the cost of vehicles, fuel, drivers, maintenance, and repair the price bid by Advance for the pick-up and delivery services does not accurately reflect the cost of providing those services, and is mathematically unbalanced. Advanced also bid $0 for item 96 – the shredding of paper files. It is reasonable to assume that Advanced would incur some expense in performing this function, if no more than the cost of the equipment needed. Advanced also bid $0 for line item 321 which requires the input of two (2) key words when storing the State's data. It is reasonable to assume that there is a cost to provide this service. Since this pricing does not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which it anticipates for the performance of the items in question, Advanced's bid for Lot 3 meets the first test of being mathematically unbalanced. *Copy Graphics*, B-273028, 96-2 CPD ¶185, 1996 WL 657708. In *Copy Graphics* the apparent low bidder used the same pricing strategy as Advanced did:

> The contracting officer determined that some of Copy Graphics's prices were excessive and others were nominal. Of particular concern to the contracting officer were, on the one hand, Copy Graphics's "no charge" (NC) entries for 9 of the 13 line items, including all of the most significant cost items relating to printing and binding and, on the other hand, Copy Graphics's prices for each of the remaining 4 items relating to the packing and mailing of the publications, which were significantly higher than those of any other bidder. For example, while Copy Graphics bid $150 to band/shrink-film 100 packages, the other seven bids ranged from a high of $25 to a low of $10, with two $15 bids, a $12 bid and one "no charge" bid. Similarly, while Copy Graphics bid $150 for palletizing, three vendors bid $10, one bid $20,

[5] A standard 1.5 cubic foot box (10" x 12" x 15") holds between 2000 and 2500 pages.

> one bid $25 and two bid "no charge." Copy Graphics's remaining two line items were also significantly enhanced. While Copy Graphics bid $35 for individual mailing containers and $60 for packaging single or multiple copies over 200 leaves up to 40 pounds, no other bid was greater than $1 for the individual mailing containers or $1.25 for the packaging of single/multiple copies up to 40 pounds. Based on this analysis, the contracting officer determined that Copy Graphics's bid was mathematically unbalanced.

Id.

A bid must be both mathematically and materially unbalanced before it can be rejected. *Sanford Cooling,* B-242423, Apr. 15, 1991, 91-1 CPD ¶376. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the Government. There were 35 line items included in Lot 3 and Advanced submitted the lowest bid of $.75 for items 97 through 102, and $0 for items 96 and 321. Advanced did not submit the low price for any of the remaining 27 line items. Some Advanced line item prices were considerably higher than the low bid. For example:

> Line item 318 was for the creation of a DVD.
> Advanced submitted the high bid of $25.00
> the lowest bid was $2.00, a difference of 1150%.
>
> For line item 80, Scanning Documents – Tiff image - Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 0 to 100,000 pages,
> Advanced bid $.05
> the lowest bid was $.03, a difference of 66%.
>
> For line item 83, Scanning Documents – Tiff image - Black & White / Grayscale – 200 – 300 DPI (8 ½" x 11" up to 11"x 17") – Per each page from 1,000,001 pages and up,
> Advanced bid $.04
> the lowest bid was $.02, a difference of 100%.
>
> For line item 322, Data Storage with 2 key words, Advanced bid $.07
> the lowest bid was $.01, a 600% increase.

Advanced's line item prices were higher for all line items except the 8 it bid $.75 or $0 and in many cases much higher. If the 8 items the Advanced bid $.75 or $0 were eliminated, the low bid price would change significantly as would the order of finish as shown below:

	All Items	W/O $0 bid items
Advanced	$115.55	$111.05
Palmetto Micro	$139.29	$103.14
Softdocs	$223.45	$174.45
Patterson Pope	$222.57	$171.07
SourceCorp	$236.76	$ 56.60

Typically, an agency would have a series of documents scanned and indexed with one to five key words at the time of scanning so the documents can be retrieved later. There is a charge for the scanning and a charge for indexing which would be added together for the price per page. In comparing Advanced's pricing with the pricing of two of its competitors, Palmetto Microfilm and FivePoint Solutions, in a typical scenario where 100,000 pages are delivered, scanned, and indexed with three key words the total cost to the State is as follows:

Proposed Scanning and Indexing Price Comparison

Advanced Pricing

	Pricing of # Indexes Beyond One				Total Price With Indexes Beyond One Index			
Scanning	**2**	**3**	**4**	**5**	**2**	**3**	**4**	**5**
$0.05	$0.07	$0.10	$0.14	$0.17	$0.12	$0.15	$0.19	$0.22
$0.05	$0.07	$0.10	$0.14	$0.17	$0.12	$0.15	$0.19	$0.22
$0.04	$0.07	$0.10	$0.14	$0.17	$0.11	$0.14	$0.18	$0.21
$0.04	$0.07	$0.10	$0.14	$0.17	$0.11	$0.14	$0.18	$0.21

Palmetto Microfilm Systems, Inc. Pricing

	Pricing of # Indexes Beyond One				Total Price With Indexes Beyond One Index			
Scanning	**2**	**3**	**4**	**5**	**2**	**3**	**4**	**5**
$0.07	$0.02	$0.02	$0.03	$0.03	$0.09	$0.09	$0.10	$0.10
$0.07	$0.02	$0.02	$0.03	$0.03	$0.09	$0.09	$0.10	$0.10
$0.06	$0.02	$0.02	$0.03	$0.03	$0.08	$0.08	$0.09	$0.09
$0.06	$0.02	$0.02	$0.03	$0.03	$0.08	$0.08	$0.09	$0.09

FivePoint Solutions Pricing

	Pricing of # Indexes Beyond One				Total Price With Indexes Beyond One Index			
Scanning	**2**	**3**	**4**	**5**	**2**	**3**	**4**	**5**
$0.08	$0.01	$0.02	$0.02	$0.02	$0.09	$0.10	$0.10	$0.10
$0.07	$0.01	$0.02	$0.02	$0.02	$0.08	$0.09	$0.09	$0.09
$0.06	$0.01	$0.02	$0.02	$0.02	$0.07	$0.08	$0.08	$0.08
$0.05	$0.01	$0.02	$0.02	$0.02	$0.06	$0.07	$0.07	$0.07

Delivery	Scannning (Line Item 80)	Indexing with 3 key words (Line Item 323)	Total
Advanced delivery - $ .75	Advanced - $ .05 x 100,000 = $5,000	Advanced - $ .10 x 100,000 = $10,000	$15,000.75
Palmetto delivery - $2.75	Palmetto - $ .07 x 100,000 = $7,000	Palmetto - $ .02 x 100,000 = $2,000	$9,002.75
FivePoint delivery - $8.00	FivePoint - $ .08 x 100,000 = $8,000	FivePoint - $ .02 x 100,000 = $2,000	$10,008.00

In the scenario described above, Advanced's unbalanced bid will not result in the lowest price to the State. Advanced's bid for Lot 3 is materially unbalanced.

Lot 4 sought contractors to provide similar imaging services for larger format documents: books, notebooks, maps and drawings. There were 42 line items in Lot 4. Advanced bid $0 for items 109, Contractor / in-house destruction shredding; 110 through 115, pick-up / delivery service; and 331, File Transfer Protocol (FTP). As with Lot 3, this pricing does not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which it anticipates for the performance of the items in question. Consequently Advanced's bid for Lot 4 is mathematically unbalanced.

Again, to determine if Advanced bid for Lot 4 is materially unbalanced, there must be evidence that this bid will not result in the lowest price to the State. As in Lot 3, Advanced did not submit the low price for any of the remaining line items. Again, Advanced's line item prices were higher than the low bid for all line items except for the eight it bid $0. In many cases its bid was much higher.

If the eight items Advanced bid $0 were eliminated, the low bid price would change significantly as would the order of finish as shown below:

	All Items	W/O $0 bid items
Advanced	$129.77	$129.77
Palmetto Micro	$147.93	$111.78
SourceCorp	$242.76	$ 62.60
Melken Solutions	$333.31	$180.31
DataSavers	$467.44	$114.18

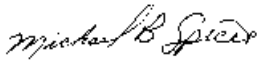
As with Lot 3, if an agency were to require scanning and indexing under line item 350 of 500,001 to 1,000,000 pages for example, it would pay Advanced $.31 per page instead of the low bid of $.13 per page to the low bidder. It is clear that awarding Lot 4 to Advanced will not result in the lowest cost to the State.

Determination

Advanced submitted mathematically and materially unbalanced bids for Lots 3 and 4. The protest of the award to Advanced Imaging Systems for Lots 3 and 4 on the basis that Advanced submitted unbalanced bids is granted and the awards for those Lots are cancelled. It is also apparent that a number of other bidders submitted mathematically and materially unbalanced bids for Lots 3 and 4. This was facilitated in large part by

the construction of the bid schedules that failed to recognize the appropriate quantities for each line item allowing the bidders to overprice bid items they believed would be used in greater quantities than estimated in the proposal and underprice items they thought would be used in significantly lesser quantities. Lots 3 and 4 are remanded to ITMO for award in accordance with the Code with the strong recommendation that they be re-solicited with revised bidding schedules reflecting the appropriate anticipated quantities in order to minimize the opportunities for unbalanced bidding.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

> (6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: http://procurement.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2013 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410…Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201

_____ _____
Name of Requestor Address

_____ _____
City State Zip Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:
_____
_____
_____

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

_____ _____
Notary Public of South Carolina Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

_____
Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

RESPONSIVENESS/IMPROPER OFFERS (JAN 2004): (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.
(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]
(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].
(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.
[02-2A105-1]

FAR 14.404-2 Rejection of individual bids.

(a) Any bid that fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) Any bid that does not conform to the applicable specifications shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Any bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation shall be rejected.

(d) A bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder—

(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;

(2) Fails to state a price and indicates that price shall be "price in effect at time of delivery;"

(3) States a price but qualifies it as being subject to "price in effect at time of delivery;"

(4) When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;

(5) Requires that the Government is to determine that the bidder's product meets applicable Government specifications; or

(6) Limits rights of the Government under any contract clause.

(e) A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(f) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

(g) Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see 15.404-1(g)).

(h) Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made (see Subpart 9.4).

(i) Low bids received from concerns determined to be not responsible pursuant to subpart 9.1 shall be rejected (but if a bidder is a small business concern, see 19.6 with respect to certificates of competency).

(j) When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, the bid shall be rejected, except as otherwise provided in 28.101-4.

(k) The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

(l) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer shall reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by 41 U.S.C. 15 or 31 U.S.C. 3727.

FAR 15.404-1 Proposal analysis techniques.

(a) General. The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis shall be used when certified cost or pricing data are not required (see paragraph (b) of this subsection and 15.404-3).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness or cost realism when a fair and reasonable price cannot be determined through price analysis alone for commercial or non-commercial items.

(5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the certified cost or pricing data or data other than certified cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Reference Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. They are available via the internet at http://www.acq.osd.mil/dpap/cpic/cp/contract_pricing_reference_guides.html.

(b) Price analysis for commercial and non-commercial items.

(1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Unless an exception from the requirement to obtain certified cost or pricing data applies under 15.403-1(b)(1) or (b)(2), at a minimum, the contracting officer shall obtain appropriate data, without certification, on the prices at which the same or similar items have previously been sold and determine if the data is adequate for evaluating the reasonableness of the price. Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor when there is no other means for determining a fair and reasonable price. Contracting officers shall obtain data other than certified cost or pricing data from the offeror or contractor for all acquisitions (including commercial item acquisitions), if that is the contracting officer's only means to determine the price to be fair and reasonable.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

(i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes a fair and reasonable price (see 15.403-1(c)(1)(i)).

(ii) Comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. This method may be used for commercial items including those "of a type" or requiring minor modifications.

(A) The prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.

(B) The prior price must be adjusted to account for materially differing terms and conditions, quantities and market and economic factors. For similar items, the contracting officer must also adjust the prior price to account for material differences between the similar item and the item being procured.

(C) Expert technical advice should be obtained when analyzing similar items, or commercial items that are "of a type" or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes

(iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v) Comparison of proposed prices with independent Government cost estimates.

(vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(vii) Analysis of data other than certified cost or pricing data (as defined at 2.101) provided by the offeror.

(3) The first two techniques at 15.404-1(b)(2) are the preferred techniques. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

(4) Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b)(2) of this section.

(c) Cost analysis.

(1) Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

(i) Verification of cost data or pricing data and evaluation of cost elements, including—

(A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(B) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(C) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and

(D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(ii) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(iii) Comparison of costs proposed by the offeror for individual cost elements with—

(A) Actual costs previously incurred by the same offeror;

(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(C) Other cost estimates received in response to the Government's request;

(D) Independent Government cost estimates by technical personnel; and

(E) Forecasts of planned expenditures.

(iv) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31 and, when applicable, the requirements and procedures in 48 CFR Chapter 99 (Appendix to the FAR looseleaf edition), Cost Accounting Standards.

(v) Review to determine whether any cost data or pricing data, necessary to make the offeror's proposal suitable for negotiation, have not been either submitted or identified in writing by the offeror. If there are such data, the contracting officer shall attempt to obtain and use them in the negotiations or make satisfactory allowance for the incomplete data.

(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see 15.407-2).

(d) Cost realism analysis.

(1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(2) Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(i) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the best value.

(ii) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

(e) Technical analysis.

(1) The contracting officer should request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, equipment or real property, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(3) The contracting officer should request technical assistance in evaluating pricing related to items that are "similar to" items being purchased, or commercial items that are "of a type" or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes.

(f) Unit prices.

(1) Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate price competition is expected (10 U.S.C. 2304 and 41 U.S.C. 254(d)(5)(A)(i)). Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such

items should be considered for breakout. The contracting officer should require such information in all other negotiated contracts when appropriate.

(g) Unbalanced pricing.

(1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

Former regulation, removed in 1997:

15.814 Unbalanced offers.

(a) Offers shall also be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the relationship of the price for first article tests or test items to the price for the production units, and in evaluating the prices for options in relationship to the prices for the basic requirement.

(b) An offer is mathematically unbalanced if it is based on prices which are significantly less than cost for some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced, and if--

  (1) There is a reasonable doubt that the offer would result in the lowest overall cost to the Government, even though it is the lowest evaluated offer; or

  (2) The offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment.

(c) Offers that are materially unbalanced may be rejected.

(d) Depending on the nature of the acquisition, contracting officers shall use either price analysis or cost analysis techniques, or a combination of the two techniques, to determine if offers are materially unbalanced. The following are examples of techniques that can be used to determine if an offer is unbalanced. Although these examples specifically relate to first article testing, they may also be used for other procurements where unbalanced offers may be of concern.

  (1) Compare all offers to determine if the offerors have significantly higher prices for the first articles than for the production units. The comparison should consider whether the Government or the contractor will perform the first article test.

  (2) For an individual offer, compare the relationship of first article prices to prices for production items. The cost to the offeror for first articles may be estimated (i) By comparing the total price offered, including the first article to an alternate proposal by the same offeror which does not include first article testing (see 9.306 (d)); or (ii) if cost data has been submitted, by reviewing certain elements of cost to determine, for instance, whether manufacturing and special tooling, and test equipment costs, are prorated among the first articles and the production units, or are only applied to the first articles. If cost data are not available, it may be necessary for contracting officers to estimate contractor cost.

FAR 52.214-10 Contract Award—Sealed Bidding.

As prescribed in 14.201-6(e), insert the following provision:

Contract Award—Sealed Bidding (July 1990)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may—

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

US Department of Transportation
Federal Highway Administration

Memorandum

Washington, D.C. 20590

Subject Bid Analysis and Unbalanced Bids

MAY 16 1988

From Associate Administrator for Engineering and Program Development

HHO-32

To Regional Federal Highway Administrators
Direct Federal Program Administrator

As a result of a recent Office of Inspector General field audit in Region 6, we have been requested to issue additional guidance on the subject of bid analysis and unbalanced bidding. We offer the following for your information and use in administering the Federal-aid highway program.

Policy:

The FHWA policy on analysis of contract bids is found in FHPM 6-4-1-6, paragraph 11.c. It requires the evaluation of the unit bid prices for reasonable conformance with the engineer's estimate. Bids with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, should be thoroughly evaluated by the State highway agency (SHA) and FHWA. If the award of the contract would result in an advantage to the contractor with a corresponding disadvantage to the SHA and FHWA or if the competitive bidding process is jeopardized, then appropriate steps must be taken by the SHA or Division Administrator to protect the public interest.

Accuracy of Estimated Quantities:

When items are bid unusually high or low in relationship to the engineer's estimate, the accuracy of the estimated quantities should be checked. If, after examination, the estimated quantities are determined to be a reasonably accurate representation of actual anticipated needs, then the low bid should be further evaluated for unbalancing.

On the other hand, in cases where it is concluded, after examination, that the estimated quantities are not a reasonably accurate representation of actual anticipated needs, the SHA and division office should consider rejecting all bids, correcting the quantities, and readvertising. However, an error in estimated quantities should not cause an automatic rejection of bids. Two factors need to be considered: (1) whether the public interest would be best served by making the award and (2) whether any bidder would be treated in an unfair manner if the award were made.

The bids should be rejected if: (1) the public interest would be best served in cancelling the defectively estimated proposal or (2) awarding the contract to the apparent low bidder using a corrected quantity estimate would be unfair to the other bidders who had relied on the original quantity estimate to develop their bid. (Attached is an example.)

Unbalanced Bids:

In discussing unbalanced bids, it is best to define two terms: mathematically unbalanced and materially unbalanced. An unbalanced bid may be only mathematically unbalanced or the bid may be mathematically and materially unbalanced.

A mathematically unbalanced bid is one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which he/she anticipates for the performance of the items in question.

A Comptroller General's opinion further defined a mathematically unbalanced bid as follows:

> "A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work; that is, each element of the bid must carry its proportionate share of the total cost of the work plus profits." Matter of: Howell Construction, Comp. Gen. B-225766 (1987)

There is no prohibition per se against a contractor submitting a mathematically unbalanced bid unless an SHA has adopted a specific contract requirement precluding such submittal.

While mathematically unbalanced bids are not prohibited per se, evidence of a mathematically unbalanced bid is the first step in proving a bid to be materially unbalanced. A materially unbalanced bid has been defined as:

> "A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the Government. Consequently, a materially unbalanced bid may not be accepted." Matter of: Crown Laundry and Dry Cleaners, Comp. Gen. B-208795.2, April 22, 1983.

To determine whether a bid is unbalanced, it needs to be evaluated for reasonable conformance with the engineer's estimate. There are no specific parameters, such as amount or percent of variance from the engineer's estimate, that constitute an unbalanced bid. However, any evaluation process should undertake to determine why the bid is unbalanced, what effect the unbalancing will have on the contract, and if there is an effect, will it be to the detriment of the SHA and/or FHWA. When evaluating for detrimental effects, contract administration and competitive issues should be included along with cost.

There are numerous reasons why a bidder may want to unbalance his/her bid on a contract. One reason is to get more money at the beginning of the project. The bidder does this by overpricing the work done early in the project. This is called "front loading" the contract. The leading case in the "front loading" area is Matter of: Riverport Industries, 64 Comp. Gen. 441 (1985). Here the Comptroller General held that if the bid is front loaded, regardless if it is the lowest bid, it "should be viewed as materially unbalanced since acceptance of the bid would result in the same evils as an advance payment. An advance payment is prohibited by law." The "front loading" may also be materially unbalanced due to the cost of money that must be paid out early versus over the normal construction of the project.

Another reason is to maximize profits. The bidder does this by overpricing bid items he/she believes will be used in greater quantities than estimated in the proposal and underpricing items he/she thinks will be used in significantly lesser quantities. Care should be exercised to ensure that mobilization bids do not mask unbalancing. If bidders are bidding too high on mobilization, the SHA should be encouraged to alter its specifications to reduce any accelerated payment for mobilization or to limit mobilization to a fixed percentage of the contract.

An unbalanced bid may be an attempt by the bidder to simplify the bidding. The SHA may have created bid items that lend themselves to unbalancing. As an example, a specification may call for specific items to be paid for by the hour, such as a roller for compacting embankment and water to aid compaction to be paid for by the gallon. In this case, it may be better to set up the bid item as "Embankment, Compacted," paid by the cubic yard. The roller and water usage would be necessary but incidental to the bid item. Another example which may encourage unbalancing is the establishment of bid items for equipment hours or activity hours which in all likelihood will not be needed. When unbalancing on these types of bid items occurs, agreement should be reached with the SHA to rewrite the specifications to provide bid items which will cover likely work activities. Only items for work and equipment that are expected to be used on the project should be included in the proposal.

One method which an SHA may want to consider to avoid the problems of unbalanced bids is to insert into its contract specifications a specific clause prohibiting unbalanced bidding. Bids subsequently shown to be mathematically unbalanced would be rejected as non-responsive. It is important that such a clause contain clear and explicit language as courts have noted that "contractors are entitled to know how their bids will be evaluated; they cannot effectively compete when the standards for judgment exist only in the contracting officer's head," North Virginia Van Company v. U.S., 3 Cl. Ct. 237 (1983).

All SHA's, as a minimum, should be encouraged to adopt the AASHTO Guide Specifications for Highway Construction provision found in Section 102.07(e) or similar language:

> "**102.07 Irregular Proposals.** Proposals will be considered irregular and may be rejected for any of the following reasons: . . .
>
> (E) If the Department determines that any of the unit bid prices are significantly unbalanced to the potential detriment of the Department."

Use of the AASHTO Guide Specifications or similar provisions will facilitate the rejection of bids which are deemed to be materially unbalanced. States implementing unbalancing provisions should advise the bidders in the bid proposal that, when bid prices are not commensurate with the work involved, justification may be required and may involve delay in the award of the contract or possible rejection of the bid.

When a low bid contains token bid prices (i.e., penny unit bids), front loadings, or bid prices with large variations from the engineer's estimate, it should be considered a mathematically unbalanced bid and further evaluated. Engineers performing bid analysis should be aware that signs of apparent unbalancing in bidding may be an indication of more serious criminal activities such as collusion and bid rigging. Studies of collusion and bid rigging show that such activities are often accompanied by suspicious bidding patterns such as "unbalanced bids," "token bids," "front loading," "identical bidding," and "complimentary bidding."

Bid Analysis:

An analysis of unbalanced bids may be aided by the use of one of several computer software packages now available in many SHA's such as the Bid Analysis and Management System (BAMS) or Highway Collusion Detection System (HCDS) programs. However, the final analysis should not preclude the use of engineering judgment.

In analyzing bids, the following should be considered:

1. Is the bid mathematically unbalanced? Are the unit bid prices in reasonable conformance with the engineer's estimate and other bids?

2. If awarded, what effect will unbalanced bid items have on the total contract amount?

3. If quantities are incorrect, will the contract cost be increased when the quantities are corrected?

4. On items where the quantities may vary, will the lower bidder remain as low bidder?

5. If the bid is unbalanced, will the unbalance have a potential detrimental effect upon the competitive process or cause contract administration problems after award?

Where obvious unbalanced bid items exist, the SHA's recommendation to award or reject a bid needs to be supported by written justification. The justification should include the detrimental effect or lack of detrimental effect. A bid found to be mathematically unbalanced to some degree but not found to be materially unbalanced may be awarded if the SHA's specifications permit. However, prior to concurrence in the award of any mathematically unbalanced bid which is not materially unbalanced, the Division Administrator should determine the reason for the unbalancing and, when warranted, take appropriate steps to protect the Federal interest such as conditioning Federal participation.

When a low bid is determined to be mathematically and materially unbalanced, the Division Administrator must take appropriate steps to protect the Federal interest. This action may take the form of concurrence in an SHA's decision not to award the contract to the submitter of the unbalanced low bid. If on the other hand, the SHA decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action could range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

Finally, if unbalancing is found to be caused in part by questionable SHA specifications or procedures, the division office should work with the SHA to facilitate appropriate and timely revisions.

ORIGINAL SIGNED BY
RONALD E. HEINZ

Ronald E. Heinz

Attachment

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	BEFORE THE CHIEF PROCUREMENT OFFICER
In the Matter of Protest of: South Carolina Safety Company, Inc. Materials Management Office IFB # 5400006063 Purchase & Service of Fire Extinguishers Statewide Term Contract	DECISION CASE NO.: 2013-123 POSTING DATE: AUGUST 26, 2013 MAILING DATE: AUGUST 26, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by South Carolina Safety Company, Inc. (SCSC) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to a statewide term contract for the purchase and service of fire extinguishers. After evaluating the bids received, on July 18, 2013, MMO posted its intent to award to SimplexGrinnell (Simplex). On July 22, 2013, Patrick Black of SCSC protested MMO's intent to award.

In order to resolve the matter, the CPO conducted a hearing August 15, 2013. Appearing before the CPO were: Mr. Black of SCSC, Matt Burtnett of Simplex, and John Stevens, State Procurement Officer.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On April 18, 2013, MMO published IFB #5400005770, the original solicitation for purchase and service of fire extinguishers.

2. On May 7, 2013, MMO issued Amendment #1 to IFB #5400005770.

3. On May 8, 2013, MMO issued Amendment #2 to IFB #5400005770.

4. On May 15, 2013, MMO published IFB # 5400006063[1]. [Ex. 1] The IFB allowed for questions to be raised by prospective bidders by May 22, 2013.

5. On May 15, 2013, MMO modified the IFB with Amendment #1. [Ex. 2] Amendment #1 announced, "Solicitation number 5400005770 has been replaced with solicitation 5400006063" and "The bid schedule has been completely modified under solicitation 5400006063." It also provided answers to a few residual questions from IFB #5400005770. [Ex. 2, p. 2]

6. On May 24, 2013, MMO issued Amendment #2. The only material adjustment made in Amendment #2 was to move the bid opening date to June 13, 2013, which is not material to the protest. [Ex. 3]

7. On June 16, 2013, MMO issued Amendment #3 moving the bid opening date to June 28, 2013 and answered a few questions from prospective bidders. Neither the questions nor the answers are relevant to the protest. [Ex. 4]

8. On June 28, 2013, MMO opened the bids received.

9. On July 18, 2013, MMO posted its Intent to Award. [Ex. 6]

10. The CPO received the protest letter from SCSC on July 22, 2013.

11. On July 24, 2013, the CPO initiated an administrative review by requesting Simplex's response to the protest.

DISCUSSION

Under Scope of the Solicitation, MMO wrote, in relevant part:

> The State of South Carolina, Materials Management Office is soliciting a statewide term contract for the service and purchase of new portable fire extinguishers that meet the criteria listed in the Scope of Work. The solicitation has been separated into 5 regions (lots) as indicated under the bid schedule, which will enable the solicitation to be awarded by varying regions in the State.

[Ex. 1, p. 4]

The bidding schedule was exhaustive. Lot #1 asked bidders to bid itemized prices for twenty-two different types of fire extinguishers. [Lines 3-24] Lot 2 asked bidders to bid itemized

[1] IFB 5400006063 replaced IFB 5400005770 due to a system failure.

prices for servicing fire extinguishers in the Coastal Region, including: inspection (2 line items for inspecting all types of extinguishers); recharging (25 line items for certain types of extinguishers), and hydrostatic testing (25 line items for certain types of extinguishers). [Line items 29-80] Lots 3-6 repeated the line items for servicing fire extinguishers as listed in Lot 2 for the Piedmont Region [Lines 82-133], the Sandhills Region [Lines 135-186], the Pee Dee Region [Lines 188-239], and the Columbia Region. [Lines 241 – 292].

Regarding award, the IFB read, "Award will be made by complete lot(s)." [Ex. 1, p. 21, Award by Lots] "Lot one will be awarded to one contractor for the purchase of fire extinguishers. The remaining lots will be awarded to one contractor for servicing of fire extinguishers per lot." [Ex. 1, p. 21, Calculating the Low Bid]

After evaluating the bids received, MMO posted an Intent to Award all lots to Simplex. [Ex. 6] On the Intent to Award, MMO listed Simplex's awarded contract prices for:

- Each type fire extinguisher [Lines 3-24]
- $18.00 each for inspecting fire extinguishers [Lines 29 and 30] and zero for maintaining and recharging fire extinguishers [Lines 31-80] in the Coastal Region
- $18.00 each for inspecting fire extinguishers [Lines 82 and 83] and zero for maintaining and recharging fire extinguishers [Lines 84-133] in the Piedmont Region
- $18.00 each for inspecting fire extinguishers [Lines 135 and 136] and zero for maintaining and recharging fire extinguishers [Lines 137-186] in the Sandhill Region
- $18.00 each for inspecting fire extinguishers [Lines 188 and 189] and zero for maintaining and recharging fire extinguishers [Lines 190-239] in the Columbia Region
- $18.00 each for inspecting fire extinguishers [Lines 241 and 242] and zero for maintaining and recharging fire extinguishers [Lines 243-292] in the Pee Dee Region

SCSC protests the intent to award alleging:

> In reference to solicitation # 5400006063, Purchase & Service of Fire Extinguishers, you are awarding to Simplex Grinnell LP on an incomplete bid package.
>
> The way in which Simplex Grinnell bid the package, there is an $18.00 per fire extinguisher fee for the inspection. What will they charge for any additional service? Will that service be included in the $18.00 or will the extinguisher in need of service be replaced with a new extinguisher under the Purchase Contract.

> We would have loved to have had the opportunity to submit a bid as they did but we do not operate that way.
>
> Furthermore, we would like to think our State tax money would be handled more appropriately than leaving a huge open window for the State to be charged unnecessary fees. Why did you go through all the trouble to make an itemized bid package just to accept an incomplete one?

SCSC's ARGUMENT

In a follow up email to the CPO, dated July 25, 2013, Mr. Black of SCSC wrote, "We do not feel the bid for service from Simplex-Grinnell was complete. A complete bid would have been to bid on all service prices as requested. All bidders did have the same amount of time to ask questions and had the opportunity to attend the pre-bid meeting. During the pre-bid meeting and up until the contract was awarded we were not notified this was an all-inclusive pricing on inspections and to ignore the remainder of service prices. Simple math would indicate the State will pay more for service at the price of $18.00 per unit (over the contract 5 years) than breaking down the service as the bid was formatted."

SIMPLEX'S RESPONSE

On July 24, 2013, Matthew Burtnett of Simplex responded to the protest writing:

> There were many pages and many, many line items on the bid. Fortunately there were also many weeks of opportunity for all of us to ask questions, review our costs, consider our options and make decisions on how to place our individual bids. I'm satisfied that all bidders had an equal opportunity to submit their best pricing.
>
> We / I spent a great deal of time calculating costs specifically for this bid. I finally decided on an **"all inclusive"** price, which incorporated all line item charges for extinguisher service, maintenance and parts into one inspection price. It is clear to see, that with all inclusive pricing **there is no "open window"...each inspection is $18.00...period, everything included, no additional charges.**
>
> In review for the sake of clarity... **I completed every line of the bid and submitted $0.00 for all service charges.**

> Inspections are **$18.00 for each extinguisher and is "all inclusive" of required periodic service, maintenance and parts. There are no hidden charges or "open windows".**
>
> With regard to extinguisher replacement; the only extinguishers that are ever replaced are those that are **identified as obsolete, condemned due to damage, corrosion or fail periodic testing... as required by NFPA 10 and the applicable CGA (Compressed Gas Association) Standards.**

[Emphasis Mr. Burtnett's] Simplex also included the following text in its on-line bid, under "remarks:"

> PLEASE NOTE: ALL LINE ITEMS in EVERY LOT have been priced in the SCEIS / SAP system. ALL LINE ITEMS in Every Lot that appear unpriced or are priced $0.00 were intentionally priced at NO CHARGE. (Not to be confused with "NO BID")

[Exhibit 8] [capitalization in original]

CONCLUSIONS OF LAW

Lots 2-6 each included 52 line items for inspection, recharging, and hydro-static testing various fire extinguishers. For Lots 2-6, Simplex submitted bids of $18.00 each to inspect 50 or more extinguishers and $18.00 each to inspect 50 or less extinguishers. Simplex submitted actual bids of zero (no charge) for all fifty other items each for lots 2-6. Regarding award of an invitation for bids, the Consolidated Procurement Code reads, "notice of an award or an intended award of a contract [must be given] to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." [11-35-1520(10) Award] SCSC alleged MMO's intent to award was not made to the actual lowest responsive bidder in that Simplex did not actually bid all line items to service fire extinguishers and that Simplex will levy additional charges for the other services specified.

Simplex responded that its $18.00 price for inspections was "all inclusive."

During the hearing, SCSC accused Simplex of "unbalanced bidding", which is prohibited by the IFB which read:

> The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

[Ex. 1, Responsiveness/Improper Offers, (e) Unbalanced Bidding, p. 10]

Simplex bid a price of $18.00 for inspecting each fire extinguisher, zero dollars ($0.00) for recharging each extinguisher and zero dollars ($0.00) for hydro-static testing each extinguisher. Therefore, Simplex's bid is responsive on its face, in that Simplex actually submitted a bid for every line item. However, the prospect of unbalanced bidding is troubling.

Typically, unbalanced bidding occurs in one of two situations: (1) When a bidder attempts to frontload costs for a multi-year contract during the initial period of the contract requiring the State to overpay early or (2) On a multiple line item bid, when a bidder artificially understates the prices of items known to be seldom purchased and artificially inflates the prices of items bought most often. In both cases, absent careful analysis of the bids, one may unknowingly award the contract to an apparent low bidder who is not, in fact, low.

In decisions regarding allegations of unbalanced bidding, the U.S. Comptroller General has written:

> Turning to the question of whether Peach State's bid is unbalanced, our office has recognized the two-fold aspects of unbalanced bidding. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect - material unbalancing - involves an assessment of the cost impact of a mathematically unbalanced bid. **A bid is not materially unbalanced unless there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will not result in the lowest ultimate cost to the government. Consequently, only a bid found to be materially unbalanced may not be accepted.**

Reliable Trash Service, B-194760, 79-2 CPD ¶107, 1979 WL 12196 [2] (emphasis added). Whether a bid is materially unbalanced "is a factual determination which varies depending on the particular circumstances of each procurement," *Howell Construction, Inc.*, B-225766, 87-1 CPD ¶455, 66 Comp. Gen. 413, 1987 WL 96939. "[C]omparison of a competitor's prices with one's own prices is not by itself sufficient to establish price enhancement or that a bid is unbalanced," *OMSERV Corporation*, B-237691, 90-1 CPD ¶271, 1990 WL 277810 (internal citations omitted).

Simplex's bids of zero [$0.00] for recharging and hydro-testing each extinguisher are obviously less than the actual cost of the work. Therefore, there can be no dispute that Simplex's bid is mathematically unbalanced. However, as the protestant, SCSC must also prove by the preponderance of evidence that there is a reasonable doubt Simplex's bid will not result in the lowest cost to the state. As proof of material unbalancing, SCSC demonstrated that its price for inspection and maintenance for the Department of Transportation section shed in Sumter was barely half what Simplex would have charged, based on the Simplex bid. Simplex, on the other hand, offered a calculation of the price for 1000 hypothetical fire extinguishers' service and inspection. That calculation purportedly shows Simplex's price was about three-quarters what SCSC would have billed.

The Procurement Review Panel has maintained for years that the protestant bears the burden of proving its allegations. The Panel reaffirmed its position recently, writing "Heritage bears the burden of proving its claims by the preponderance of the evidence." *Appeal by Heritage Community Services*, Panel Case No. 2013-01 (internal citations omitted).

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[2] Decisions of the U.S. Comptroller General are not controlling in S.C. State Government protests. It does not appear the Panel has directly and definitively addressed the issue of unbalanced bidding. In cases like this, federal procurement decisions are enlightening.

SCSC offered only a comparison of its bid prices to Simplex's prices, for a single office of one agency of the State. Simplex countered with calculations showing its pricing was more favorable. On this evidence, the CPO cannot conclude there is a reasonable doubt that Simplex's bid will cost the state more money.

INSTRUCTIONS TO MMO

The CPO is concerned, however, that since the current procurement does not evaluate weighted individual line items to reflect the State's anticipated spend, it promotes unbalanced bidding. This weakness in the solicitation was unavoidable because the current contract did not require the contractor to report detailed usage data to MMO. As a statewide term contract, the awarded contract will be available to state agencies, as well as, political subdivisions. This IFB does require the awarded contractor to file reports with MMO of the actual work performed. Reporting of actual usage would be most useful in solving the problem and make it possible for MMO to evaluate the multiple aspects of future bids in a weighted fashion rather than merely evaluating the sum total of itemized prices. The solicitation guarantees the successful bidder a contract for a minimum term of one year. [Ex. 1, Term of Contract, Effective Date/Initial Contract Period, p. 33] Remaining years are available to the successful bidder at the state's option; they are not guaranteed.

Therefore, the CPO directs MMO to review the contract actual spend after one year of performance. During that year, MMO shall require Simplex to report actual and accurate usage data in the same format specified in the IFB for all products and services it provides state and local agencies under the contract. MMO is directed to use Simplex's reports to measure the actual usage of service elements of the contract and issue a rebid that weighs the various price factors based upon actual work.

DETERMINATION

For the foregoing reasons, the protest is denied. MMO shall proceed in accordance with this decision.

R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

8/26/13
Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

> (6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: http://procurement.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2013 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201

_____ _____
Name of Requestor Address

_____ _____
City State Zip Business Phone

---

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

_____

_____

_____

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

_____ _____
Notary Public of South Carolina Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

_____
Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

South Carolina Safety Company, Inc.

Fire Extinguishers & Systems
2535 Tahoe Drive
Sumter, South Carolina 29150

July 22, 2013

Chief Procurement Officer
Materials Management Office
protest-mmo@mmo.sc.gov

Reference: This is a protest.

In reference to solicitation # 5400006063, Purchase & Service of Fire Extinguishers, you are awarding to Simplex Grinnell LP on an incomplete bid package.

The way in which Simplex Grinnell bid the package, there is an $18.00 per fire extinguisher fee for the inspection. What will they charge for any additional service? Will that service be included in the $18.00 or will the extinguisher in need of service be replaced with a new extinguisher under the Purchase Contract. We would have loved to have had the opportunity to submit a bid as they did but we do not operate that way.

Further more, we would like to think our State tax money would be handled more appropriately than leaving a huge open window for the State to be charged unnecessary fees. Why did you go through all the trouble to make an itemized bid package just to accept an incomplete one?

We request a written response within 48 hours.

Thank you,

Patrick Black
Project Manager
803-905-3473
scsafety@ftc-i.net

B-194760, AUG 9, 1979

DIGEST: ALTHOUGH LOW BID ON SERVICE CONTRACT FOR 3-MONTH BASE PERIOD AND THREE 1- YEAR OPTIONS IS MATHEMATICALLY UNBALANCED, BID MAY BE ACCEPTED SINCE (1) GOVERNMENT HAS KNOWN REQUIREMENT AND IS REASONABLY CERTAIN FUNDS WILL BE AVAILABLE TO EXERCISE OPTIONS, AND (2) MATERIAL UNBALANCING (REASONABLE DOUBT THAT AWARD WOULD NOT RESULT IN LOWEST ULTIMATE COST) IS NOT PRESENT.

RELIABLE TRASH SERVICE:

RELIABLE TRASH SERVICE (RELIABLE) PROTESTS THE AWARD OF A CONTRACT TO PEACH STATE SANITATION COMPANY, INC. (PEACH STATE), UNDER INVITATION FOR BIDS (IFB) F09650-79-B-0016 ISSUED BY ROBINS AIR FORCE BASE, GEORGIA.

THIS PROTEST IS ALSO THE SUBJECT OF RELATED LITIGATION (SHAYNE V. STETSON, ET AL., CIVIL ACTION NO. 79-1402 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA IN WHICH THE PRESIDING JUDGE GRANTE THE PROTESTER'S MOTION FOR AN ORDER REQUESTING THE COMPTROLLER GENERAL'S CONSIDERATION OF THIS MATTER. THEREFORE, SINCE THE COURT HAS EXPRESSED AN INTEREST IN A DECISION BY OUR OFFICE, WE WILL CONSIDER THE PROTEST ON THE MERITS. SEE DYNATREND, INC., B-192038, JANUARY 3, 1979, 79-1 CPD 4.

THE IFB WAS ISSUED ON MARCH 9, 1979, AS A TOTAL SMALL BUSINESS SET ASIDE FOR REFUSE COLLECTION AND DISPOSAL AT ROBINS AFB. THE BASIC CONTRACT TERM IS FOR A 3-MONTH PERIOD FROM JULY 1 THROUGH SEPTEMBER 30, 1979, WITH OPTION PROVISIONS FOR THREE ADDITIONAL PERIODS, EACH PERIOD TO RUN 1 YEAR. THE FIRST OPTION PERIOD BEGINS ON OCTOBER 1, 1979, AND EXTENDS THROUGH SEPTEMBER 30, 1980. BIDS WERE RECEIVED FROM FIVE FIRMS. THE AIR FORCE EVALUATED THE PRICES OFFERED FOR THE OPTION PERIODS WHEN DETERMINING TO WHOM TO MAKE THE AWARD AND FOUND PEACH STATE THE LOW BIDDER AND RELIABLE NEXT LOW RELIABLE NOW PROTESTS THAT PEACH STATE'S BID IS NONRESPONSIVE AND SHOULD BE REJECTED BECAUSE IT IS "PATENTLY AND GROSSLY UNBALANCED IN THE BIDDER'S FAVOR AND AGAINST THE BEST INTERESTS OF THE GOVERNMENT." HOWEVER, FOR THE REASONS INDICATED BELOW, WE DENY RELIABLE'S PROTEST.

THE BIDS SUBMITTED BY PEACH STATE AND RELIABLE ARE AS FOLLOWS:

INITIAL

3-MONTH 1ST 2D 3D

PERIOD OPTION OPTION OPTION TOTAL

PEACH STATE $295,415 530,468 277,904 275,904.08 $1,379,691.08

RELIABLE $113,351 453,404 453,404 453,404 $1,473,563.00

RELIABLE ARGUES THAT PEACH STATE HAS "FRONT-LOADED" INTO THE 3-MONTH BASE PERIOD AND THE 12-MONTH OPTION PERIOD THAT FOLLOWS MOST, IF NOT ALL, THE EQUIPMENT COSTS FOR THIS CONTRACT. IT NOTES THAT PEACH STATE'S BASE BID EXCEEDS RELIABLE'S BY 273 PERCENT AND THE AVERAGE BID OF THE THREE BIDDERS NEXT IN LINE BY 263 PERCENT. IN RELIABLE'S OPINION, THEREFORE, PEACH STATE'S BID IS CLEARLY UNBALANCED AND BY ITS ACCEPTANCE THE GOVERNMENT OBLIGATES ITSELF TO FUND PEACH STATE'S EQUIPMENT COSTS AND THEREAFTER HAS NO CHOICE BUT TO CONTINUE WITH PEACH STATE FOR ALL OF THE OPTION PERIODS OR ELSE IT WILL RECEIVE LITTLE OR NO BENEFIT FROM THE CONTRACT. THIS, SAYS RELIABLE, IS NOT IN THE GOVERNMENT'S BEST INTEREST AND PEACH STATE'S BID SHOULD THEREFORE BE REJECTED AS NONRESPONSIVE.

THE AIR FORCE, ON THE OTHER HAND, MAINTAINS THAT THE ISSUE IMPLICIT IN THIS TYPE OF PROTEST IS THE PROPRIETY OF THE USE AND EVALUATION OF OPTION YEARS IN MAKING THE AWARD OF THE CONTRACT. IT ARGUES THAT IT WAS JUSTIFIED IN EVALUATING OPTION YEARS BECAUSE THE REQUIREMENT IS ONGOING AND, WHILE FUNDS ARE NOT PRESENTLY AVAILABLE, IT IS REASONABLY CERTAIN THAT FUNDS WILL BE AVAILABLE TO PERMIT EXERCISE OF THE OPTIONS. THE AIR FORCE POINTS OUT THAT IN SECTION D-1 OF THE IFB BIDDERS ARE ADVISED: "BIDS WILL BE EVALUATED ON THE BASIC 3-MONTH PERIOD PLUS ALL THREE OPTION YEARS ON AN 'ALL OR NONE' BASIS."

AT THE OUTSET, WE NOTE THAT RELIABLE HAS RAISED THE ISSUE THAT PEACH STATE WAS PRIVY TO BID INFORMATIO AND ADVICE THAT WAS NOT MADE AVAILABLE TO THE OTHER BIDDERS. SPECIFICALLY, RELIABLE BELIEVES THAT THE PROCUREMENT OFFICIALS AT ROBINS AFB IN SOME MANNER INFORMED PEACH STATE THAT IT DID NOT HAVE TO

SUBMIT A STRAIGHT-LINE (BALANCED) BID. RELIABLE NOTES THAT PEACH STATE WAS THE ONLY BIDDER THAT DID NO SUBMIT A STRAIGHT- LINE BID. HOWEVER, THE AIR FORCE HAS ADVISED US THAT THE PROCUREMENT OFFICIALS INVOLVED DENY PROVIDING PEACH STATE WITH ANY INFORMATION OR ADVICE NOT GIVEN TO THE OTHER BIDDERS. MOREOVER, NOTHING IN THE RECORD INDICATES THAT THIS OCCURRED. IN LIGHT OF THIS, THEREFORE, WE DO NOT BELIEVE THERE IS ANY BASIS TO CONCLUDE THAT THE PROCUREMENT OFFICIALS IN QUESTION TREATED PEACH STATE DIFFERENTLY FROM THE WAY THEY TREATED ALL OTHER BIDDERS.

TURNING TO THE QUESTION OF WHETHER PEACH STATE'S BID IS UNBALANCED, OUR OFFICE HAS RECOGNIZED THE TWO-FOLD ASPECTS OF UNBALANCED BIDDING. THE FIRST IS A MATHEMATICAL EVALUATION OF THE BID TO DETERMINE WHETHER EACH BID ITEM CARRIES ITS SHARE OF THE COST OF THE WORK PLUS PROFIT, OR WHETHER THE BID IS BASED ON NOMINAL PRICES FOR SOME WORK AND ENHANCED PRICES FOR OTHER WORK. THE SECOND ASPECT - MATERIAL UNBALANCING - INVOLVES AN ASSESSMENT OF THE COST IMPACT OF A MATHEMATICALLY UNBALANCED BID. A BID IS NOT MATERIALLY UNBALANCED UNLESS THERE IS A REASONABLE DOUBT THAT AWARD TO THE BIDDER SUBMITTING A MATHEMATICALLY UNBALANCED BID WILL NOT RESULT IN THE LOWEST ULTIMATE COST TO THE GOVERNMENT. CONSEQUENTLY, ONLY A BID FOUND TO BE MATERIALLY UNBALANCED MAY NOT BE ACCEPTED. PROPSERV INCORPORATED, B-192154, FEBRUARY 28, 1979, 79-1 CPD 138; MOBILEASE CORPORATION, 54 COMP.GEN. 242 (1974), 74-2 CPD 185.

IN EVALUATING THE BIDS SUBMITTED FOR THIS PROCUREMENT, THE AIR FORCE EVALUATED THE TOTAL PRICE OFFERED - THAT IS, THE PRICES FOR THE BASIC 3 MONTH CONTRACT PERIOD AND THE 3 OPTION YEARS. THIS WAS AUTHORIZED BY ARMED SERVICES PROCUREMENT REGULATION/DEFENSE ACQUISITION REGULATION (ASPR/DAR) SEC. 1-1504 (1976 ED.) AS WELL AS BY SECTION D-1 OF THE IFB. AFTER MAKING THE EVALUATION, THE AIR FORCE CONCLUDED THAT PEACH STATE'S BID OFFERED THE LOWEST ULTIMATE COST TO THE GOVERNMENT. ON ITS FACE, THE AIR FORCE DECISION IS SUPPORTED BY THE FACT THAT PEACH STATE'S TOTAL BID IS $93,871.92 LOWER THAN THE NEXT LOW BID, SUBMITTED BY RELIABLE.

HOWEVER, RELIABLE MAINTAINS THAT UNLESS THE AIR FORCE EXERCISES ALL THE OPTION PERIODS, PEACH STATE'S BID WILL NOT PROVIDE THE LOWEST ULTIMATE COST TO THE GOVERNMENT. SINCE THERE IS ALWAYS THE POSSIBILITY THAT THE AIR FORCE WILL NOT EXERCISE ALL THE OPTIONS BECAUSE IT CAN GET A BETTER PRICE BY RESOLICITING OR THAT PEACH STATE MAY BE TERMINATED FOR DEFAULT, RELIABLE BELIEVES THAT A REASONABLE DOUBT IS RAISED WHETHER PEACH STATE'S BID OFFERS THE LOWEST ULTIMATE COST TO THE GOVERNMENT, THEREBY MAKING THE BID MATERIALLY UNBALANCED AND THUS NONRESPONSIVE.

IN REPLY, THE AIR FORCE ARGUES THAT IT HAD WANTED TO SOLICIT BIDS FOR A MULTIYEAR CONTRACT, BUT WAS UNABLE TO DO SO. NEVERTHELESS, IT POINTS OUT THAT THE REQUIREMENT FOR REFUSE COLLECTION AND DISPOSAL IS CERTAIN TO EXIST DURING THE OPTION PERIODS PROVIDED IN THE IFB AND THERE IS A REASONABLE EXPECTATION THAT FUNDS WILL BE AVAILABLE TO EXERCISE THOSE OPTIONS BY NATURE OF THE SERVICE INVOLVED. THUS, BECAUSE THE AIR FORCE EXPECTS TO EXERCISE THE OPTIONS, IT EVALUATED THE BIDS AND AWARDED THE CONTRACT BASED ON THAT EXPECTATION. ACCORDINGLY, THE AIR FORCE DOES NOT BELIEVE THAT THERE IS ANY REASONABLE DOUBT THAT PEACH STATE'S BID OFFERED THE LOWEST ULTIMATE COST TO THE GOVERNMENT. IN LIGHT OF THIS, IT CONCLUDES THAT, EVEN IF MATHEMATICALLY UNBALANCED, PEACH STATE'S BID WAS NOT MATERIALLY UNBALANCED.

WE AGREE. WHILE IT IS TRUE THAT PEACH STATE'S BID IS OUT OF LINE WITH THE OTHER BIDS FOR THE FIRST 15 MONTHS OF PERFORMANCE, ITS OVERALL BID OFFERS THE GOVERNMENT THE LOWEST ULTIMATE COST. ALL BIDDERS WERE NOTIFIED THAT BIDS WOULD BE EVALUATED ON THE BASIS OF BOTH THE BASIC CONTRACT PERIOD AND THE 3 OPTION YEARS, AND THIS IS WHAT WAS DONE. ALTHOUGH THE PRESENT RECORD DOES NOT ADEQUATELY EXPLAIN THE EXACT REASONS WHY PEACH STATE ALLOCATED ITS COSTS AS IT DID, IT DOES INDICATE THAT PEACH STATE DECIDED TO FORMULATE ITS BID IN SUCH A MANNER AS TO MINIMIZE ITS RISKS. OUR OFFICE WILL NOT LOOK BEHIND BID IN ATTEMPT TO ASCERTAIN THE BUSINESS JUDGMENTS THAT WENT INTO ITS PREPARATION. SEE, E.G., S.F. & G., INC., DBA MERCURY, B-192903, NOVEMBER 24, 1978, 78-2 CPD 361. THEREFORE, IF WE ASSUME THAT PEACH STATE'S BID IS MATHEMATICALLY UNBALANCED, WE NEVERTHELESS DO NOT FIND IT TO BE MATERIALLY UNBALANCED SINCE, AFTER BEING EVALUATED IN ACCORDANCE WITH THE IFB WHICH REPRESENTS THE AIR FORCE NEEDS AND FUNDING EXPECTATIONS, IT OFFERED THE LOWEST ULTIMATE COST TO THE GOVERNMENT.

PROTEST DENIED.

BNUMBER: B-273028
DATE: November 13, 1996
TITLE: Copy Graphics

****

Matter of:Copy Graphics

File: B-273028

Date:November 13, 1996

Edward W. Stivers for the protester.
Kerry L. Miller, Esq., Government Printing Office, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's low bid was properly rejected as unbalanced where it contained mathematically unbalanced prices and the agency had a reasonable doubt, in light of the uncertainty associated with solicitation estimates, that award on the basis of the protester's bid would result in the lowest overall cost to the government.

DECISION

Copy Graphics protests the rejection of its low bid as unbalanced under invitation for bids (IFB) 717-S, issued by the United States Government Printing Office (GPO) for the printing and distribution of general wage determination reports of the Department of Labor. Copy Graphics argues that its low bid was improperly rejected.

We deny the protest.

The IFB contemplated the award of a fixed-price requirements contract for the production of the reports. Price entries were required for three groups of items: (1) printing and binding; (2) packing--including bulk shipments and mailing; and, (3) additional operations. The printing and binding group contains two individual items, with two prices each and the packing group contains four items under bulk shipments and three items under mailing. The additional operations group has two items: upgrading the mailing list and handling undeliverable packages. The IFB listed estimated requirements to produce 1 year's production for each of the 13 item prices required.[1] As to packing specifications, while the IFB specified, among other things, a maximum weight of 40 pounds per container and the use of pallets when shipping to GPO, it did not specify a minimum weight per container or a minimum or maximum number of containers to be shipped per pallet.[2] Additionally, while the RFP specified the type of shrink-film wrap required, it did not specify any parameters for the number of pages to be included in each shrink-film wrapped package. The contract was to be awarded to the bidder who submitted the lowest total price, calculated by multiplying the unit prices offered by the estimated quantities and adding each of those subtotals.

Of the eight bids received, Copy Graphics's bid of $310,346 represented the lowest evaluated overall price as follows:

I. PRINTING AND BINDING:

	Makeready and/or Setup (1)	Running Per 1,000 copies (2)
(a) Weekly Updates per page	$NC	$NC
(b) Annual Report. per page	$NC	$NC

II. PACKING:

1. Bulk shipments (other than by mail):

(a) Packing and sealing shipping container . . . per containers$NC

(b) Banding/shrink-film packaging . . . . per 100 packages$150.00

(c) Individual mailing containers per containers$35.00

(d) Palletizing.....per pallet.....$150.00

2. Mailing (prices must include affixing labels):

(a) Single copy in kraft envelope (up to 200 leaves) per envelope.....$NC

(b) Multiple copies in kraft envelope (up to 200 leaves) per envelope.....$NC

(c) Single or multiple copies over 200 leaves up to a maximum gross weight 18 kg (40 lbs) per container$60.00

III. ADDITIONAL OPERATIONS:

(a) Updating mailing list per address change/update$NC

(b) Undeliverable packages per package.....$NC

The contracting officer determined that some of Copy Graphics's prices were excessive and others were nominal. Of particular concern to the contracting officer were, on the one hand, Copy Graphics's "no charge" (NC) entries for 9 of the 13 line items, including all of the most significant cost items relating to printing and binding and, on the other hand, Copy Graphics's prices for each of the remaining 4 items relating to the packing and mailing of the publications, which were significantly higher than those of any other bidder. For example, while Copy Graphics bid $150 to band/shrink-film 100 packages, the other seven bids ranged from a high of $25 to a low of $10, with two $15 bids, a $12 bid and one "no charge" bid. Similarly, while Copy Graphics bid $150 for palletizing, three vendors bid $10, one bid $20, one bid $25 and two bid "no charge." Copy Graphics's remaining two line items were also significantly enhanced. While Copy Graphics bid $35 for individual mailing containers and $60 for packaging single or multiple copies over 200 leaves up to 40 pounds, no other bid was greater than $1 for the individual mailing containers or $1.25 for the packaging of single/multiple copies up to 40 pounds. Based on this analysis, the contracting officer determined that Copy Graphics's bid was mathematically unbalanced.

The agency also determined that there was a reasonable doubt that Copy Graphics's bid would result in the lowest overall cost to the

government. Specifically, since Copy Graphics was the incumbent, the contracting officer was concerned that the knowledge it had gained in performing the contract had given it particular insight which led Copy Graphics to enhance its prices on those line items over which the contractor, not the government, had control. In particular, because the IFB did not specify a minimum weight per container, the contractor has the right under the solicitation to package relatively few copies, many copies (up to 40 pounds), or some quantity in between, in its containers. Further, the IFB did not specify a minimum quantity of packages to be packed on pallets. Thus, the contractor, rather than the government, controls how many containers or pallets are used. Since Copy Graphics could control the number of packages and pallets to be used in performing the contract and since the company's prices for packaging and palletizing were significantly inflated, the contracting officer concluded that the government might not receive the lowest overall cost under Copy Graphics's apparently low bid.

In making this determination, the contracting officer reviewed Copy Graphics's bid and the actual billings submitted for Copy Graphics's current contract for the same services. The contracting officer found that while the government's estimate of Copy Graphics's price for the contract term (52 orders) totaled $299,443, the agency had actually paid $395,836 for 42 orders. In particular, while the agency had estimated the need for 1,842 containers for the contract term for multiple copies over 200 leaves, Copy Graphics billed for 4,379 containers for 36 orders, an increase of approximately 238 percent over the estimate. Based on this analysis, the contracting officer determined that Copy Graphics's bid might not result in the lowest cost to the government and awarded the contract to Goodway Graphics, the second low bidder.

An examination of bid unbalancing has two aspects. First, the bid must be evaluated mathematically to determine whether each item carries its share of the cost of the work plus overhead and profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. Unbalancing typically arises either between base period prices and option period prices, or, in a requirements-contract solicitation, between line items for different goods or services.

If a bid is found to be mathematically unbalanced, it must be evaluated to determine the cost impact of the price skewing. Where there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid would result in the lowest ultimate cost to the government, the bid is materially unbalanced and may not be accepted. Federal Acquisition Regulation sec. 52.214-10; Westbrook Indus., Inc., 71 Comp. Gen. 139 (1992), 92-1 CPD para. 30.

In requirements contracts, the accuracy of the solicitation estimates is critical, since the unbalanced bid will become less advantageous than it appears if the government ultimately requires a greater quantity of the overpriced items and/or a lesser quantity of the underpriced ones. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD para. 126. Where an agency has reason to believe that its actual needs may deviate significantly during performance from the solicitation estimates, it may reasonably view a mathematically unbalanced bid as not clearly representing the lowest cost to the

government and therefore as materially unbalanced. Custom Envtl. Serv., Inc., B-252538, July 7, 1993, 93-2 CPD para. 7; Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD para. 248.

Here, the contracting officer had a reasonable basis to find Copy Graphics's bid mathematically unbalanced. Copy Graphics's "no charge" price entries for items which include the core and most expensive contract requirements are obviously below cost, while Copy Graphics's prices for packaging, palletizing, and shrink-film wrapping are significantly higher than those of any other bidder. Copy Graphics does not dispute that its prices for these items are enhanced, and merely argues that it bid in a similar manner under the previous solicitation and that it believes that its bid offers the lowest cost to the government.[3]

The critical question in the determining if there is material unbalancing here is whether the actual mix of line items provided is likely to be substantially different from that set forth in the IFB estimates, and, in particular, if it is likely that the awardee will deliver proportionately more containers, shrink-film wrapping and palletizing, for which Copy Graphics bid an enhanced price, than what was indicated in the IFB estimates. The record makes clear that the actual mix is unpredictable even though the estimates appear to be based on the best available information, because the solicitation placed no minimum on the weight of each container, the number of pallets a contractor could use or the number of pages contained in a shrink-film wrapped package. As a result of the specifications, the awardee is placed in the position of exercising control over the quantities delivered and the agency can neither foresee nor control the actual ratio of underpriced work (the printing and binding) to the overpriced work (the packaging and shipping). Accordingly, because the amount of packaging, shrink-film wrapping and palletizing vary significantly from the IFB estimates, the agency properly rejected Copy Graphics's mathematically unbalanced bid on the basis that there was reasonable doubt that the bid would ultimately prove to represent the lowest cost to the government.[4]

The protest is denied.

Comptroller General
of the United States

1. For example, the agency estimated 61,776 pages for makeready and/or setup for the weekly updates and 10,711 pages for makeready and/or setup for the annual report. Similarly, the agency estimated that the contractor would pack and seal 6,728 containers, update the mailing list 132 times and have 25 undeliverable packages.

2. The RFP specified only a minimum of 2-container layers per pallet.

3. The fact that Copy Graphics's similar bid was accepted under a prior procurement is irrelevant to the determination of whether its bid was properly rejected under the current procurement; each procurement stands on its own. Discount Machinery & Equip., Inc., B-248321, July 22, 1992, 92-2 CPD para. 44.

4. As noted above, the uncertainties concerning the estimates in this

IFB result because the IFB specifications place the awardee in the position of exercising control over the quantity of containers and pallets used and the amount of shrink-film wrapping performed. In this respect, the agency explicitly acknowledges that in administering this contract under these specifications, the government has been vulnerable to the overuse of pallets and packing and the resulting "overbilling." This problem can be alleviated if in future procurements the agency imposes some control over what the contractor can supply.

H3642

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sanford Cooling

File: B-242423

Date: April 15, 1991

William M. MacNeil for the protester.
David G. Dugan for J&D Services Corporation, an interested party.
Vicki E. O'Keefe, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that low bid must be rejected as nonresponsive because it is unbalanced is denied where despite disagreement concerning the correct estimates of the work to be performed, the low bid remains low in all cases and thus is not materially unbalanced.

DECISION

Sanford Cooling protests the award of a contract to either J&D Services Corporation or Fedserv Industries, Inc., the first and second low bidders, under invitation for bids (IFB) No. N62472-90-B-2119, issued by the Department of the Navy for a contractor to maintain and repair refrigeration and air conditioning equipment at Portsmouth Naval Shipyard, Maine. Sanford alleges that both bidders submitted bids that are materially unbalanced.1/

1/ Sanford also protested that both bidders submitted bids that were unreasonably low in price. In addition, Sanford raised a number of protest issues concerning the responsibility of each of the two low bidders, such as whether they had comparable experience and whether they submitted references. The Navy responded to all issues in its protest report and Sanford did not reply to the Navy's response in the comments it submitted. Accordingly, we regard these issues as abandoned and will not consider them. See Logitek, Inc., B-238773, July 6, 1990, 90-2 CPD ¶ 16.

We deny the protest.

The IFB was issued on August 17, 1990, for a contractor to provide maintenance and repair services for air conditioning and refrigeration equipment. The IFB consisted of Lot 1--definite quantity work--and Lot 2--indefinite quantity work. For Lot 1 bidders were to submit a fixed price to perform preventative maintenance services for 12 months at each of the 15 listed locations. Lot 2 was comprised of: line item 0003 for service work, including routine service calls (0003aa), urgent service calls during normal work hours (0003ab), and urgent service calls outside normal work hours (0003ac); line item 0004 for freon evolution; line item 0005 for labor hour work; line item 0006 for material costs and burden (MBR); and line item 0007 for equipment rental costs and burden (EBR). For line items 0003, 0004, and 0005, the IFB gave estimates of the number of orders the government expected to place for the requested service; the contractor was required to submit a unit and aggregate price to perform the service. For line items 0006 and 0007 the bidder was required to include a percentage of the amount specified for these line items by the IFB to cover its burden.

The contract was to be awarded to the responsible, responsive bidder who submitted the lowest bid for Lots 1 and 2 combined.

Nine bidders responded to the IFB. J&D submitted the low bid of $145,212, FedServ submitted the second-low bid of $152,835, and Sanford submitted the third-low bid of $162,785. Sanford protested to the contracting officer on October 9 that the two low bidders submitted bids that were unbalanced and unreasonable in price. After the contracting officer denied the protest, Sanford submitted a protest to our Office.

Concerning J&D, the low bidder, Sanford asserts that for Lot 1--the definite quantity portion of the contract--J&D's bid price of $48,012 is far in excess of the cost of actually performing this work. Sanford itself priced this work at $17,760. On the other hand, Sanford alleges that for the indefinite quantity work, J&D bid well below the cost of performing the work; for example, Sanford argues that it is impossible to perform a routine service call for $70, the amount J&D bid to provide this service. Sanford asserts that J&D intends to subsidize the indefinite quantity work with the excess profits it receives from performing the definite quantity work and thus that the bid is mathematically unbalanced because J&D bid an enhanced price to perform the definite quantity work and a nominal price to perform the indefinite quantity work. Sanford further alleges that J&D's bid is materially unbalanced because if the estimates in the IFB are revised and the Navy uses the actual number of orders

that were placed with Sanford during its performance the prior year (238 routine service calls, 5 emergency service calls during duty hours, 9 emergency service calls during non-duty hours, and 92 freon evolutions), Sanford is in fact the low bidder.

The Navy replies that J&D's bid is not mathematically unbalanced because there is no indication that it is based on nominal prices to perform some line items and enhanced prices to perform other line items. The Navy further argues that even if J&D's bid is mathematically unbalanced, an award to J&D will result in the lowest cost to the government and the bid is thus not materially unbalanced. In this regard, the Navy states that it analyzed the bids using blanket orders from last year. Blanket orders represent the number of orders the government expects to place in a given month and are different from the number of orders the government actually places in a given month. The Navy states that the blanket orders from last year represent the number of orders the Navy expects to place this year, which are: 345 routine service calls, 14 emergency service calls during regular work hours, 19 emergency service calls during off-duty hours, and 93 freon evolutions. According to the Navy, if these figures are used to analyze the bids, J&D remains the low bidder.

Before a bid can be rejected as unbalanced, it must be found both mathematically unbalanced and materially unbalanced. A bid is mathematically unbalanced where it is based on nominal prices for some of the line items and enhanced prices for other line items. Where there is a reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

Here, it does not appear that J&D's bid is based on nominal prices for some of the work and enhanced prices for other work. While Sanford argues that J&D's bid for the definite quantity work is enhanced because it will not cost $48,012 to perform the monthly maintenance, Sanford has not presented any information other than its own conclusory statement to support this allegation. With respect to Sanford's reliance on its own bid as determinative of a reasonable price, bid pricing involves subjective business judgments, and comparison of a competitor's prices with one's own prices is not by itself sufficient to establish price enhancement or that a bid is unbalanced. Id. Further, based on the nine bids received for the Lot 1 work ranging from $11,730 to $86,040, J&D's bid of $48,012 does not appear to be based on enhanced prices for performing the Lot 1 work. In any case, even if we were to conclude that J&D's bid was mathematically unbalanced, our analysis shows that J&D's bid is not materially unbalanced

because an award to J&D will result in the lowest overall cost to the government no matter which estimate is used.

The key to determining whether a bid is materially unbalanced--where a requirements contract is concerned--is the government estimate, for it is that estimate upon which bids are evaluated for cost impact. While there is no requirement that the estimates be absolutely correct, they must be based on the best information available. The estimates must be reasonably accurate representations of the government's anticipated actual needs. All Weather Contractors, Inc., B-217242, July 23, 1985, 85-2 CPD ¶ 71.

Here, in trying to demonstrate that J&D's bid will not result in the lowest cost to the government, Sanford charges that the Navy should have used Sanford's actual performance figures from last year to make this determination and that by using these figures, Sanford becomes the low bidder. In responding to the protest, the Navy used what it calls last year's blanket orders, which are based on the agency's anticipated needs for a specific month, even though the actual number of orders placed during that month could differ. The actual number of service calls as reported by Sanford are fewer than those stated in the blanket orders and neither of these estimates is the same as the estimates provided in the solicitation. Nevertheless, the agency reports that last year's blanket orders represent the quantities that the Navy expects to order this year.

Since the estimates in the IFB are different from those provided by either Sanford or the Navy, and since the Navy is arguing that the estimates it uses in responding to Sanford's protest are the estimated quantities that the Navy expects to order this year, it is clear that the estimates in the IFB are not the best estimates available. Despite this fact, we have analyzed the bids2/ using the estimates in the IFB, the estimates provided by Sanford, and the estimates provided by the Navy, and in each case, J&D's bid remains low. Accordingly, we conclude that the bid submitted by J&D is not materially unbalanced.

2/ We are providing our analyses of the bids of J&D and Sanford under all three estimates as an example of the analyses we performed in connection with determining whether J&D's bid is materially unbalanced. While we have not included all the analyses in the decision, we have in fact analyzed the bids of all nine bidders that responded to the IFB, under all three estimates, and we have found that J&D remains the low bidder in all cases.

The schedule for Lot II was a follows:

ITEM NO.	SUPPLIES/ SERVICE	PARAGRAPH REFERENCE	MAX QTY	UNIT	UNIT PRICE	EXTENDED AMOUNT	LINE ITEM TOTAL AMOUNT
LOT II	Price for labor and material to perform the unit priced tasks listed below as specified in Section C. The quantities listed below are maximum estimates provided for the purpose of bid evaluation. The price for Lot II is the total of Contract Line Items 0003AA through 0008.						
	SCHEDULE OF INDEFINITE QUANTITY WORK						
0003	SERVICE WORK	(Para C.6)					
0003AA	Routine Service Calls		300	EA	$_____	$_____	
0003AB	Urgent Service Calls (Normal Work Hours)		75	EA	$_____	$_____	
0003AC	Urgent Service Calls (After Normal Hours)		35	EA	$_____	$_____	
							$_____ (Item 0003)
0004	FREON EVOLUTION	(Para C.11)	250	EA	$_____		$_____ (Item 0004)
0005	LABOR HOUR WORK	(Para B.3 Para C.7)	500	HR	$_____		$_____ (Item 0005)
0006	MATERIAL COST AND BURDEN (MBR)	(Para B.3)	$30,000 + ($30,000 x __%) (MBR)				= $_____ (Item 0006)
0007	EQUIPMENT RENTAL COST AND BURDEN (EBR)	(Para B.3)	$10,000 + ($10,000 x __%) (EBR)				= $_____ (Item 0007)
0008	TECHNICAL DATA IN DD 1423 - Contract Data Requirements List - Exhibit A	(Para B.3)	1 LOT				Not Priced Separately _____ (Item 0008)

TOTAL PRICE FOR LOT II: $_____ (0003 thru 0008)

Our analysis shows the following: J&D's bid for the fixed-price work is $48,012. Using the estimated quantities in the IFB, J&D's bid for the indefinite quantity work is $97,200 and is broken down as follows:3/

line item 0003aa--routine service calls--$21,000 ($70 x 300);
line item 0003ab--urgent service calls during normal working hours--$5,250 ($70 x 75);
line item 0003ac--urgent service call outside normal working hours--$2,450 ($70 x 35);
line item 0004--freon evolutions--$10,000 ($40 x 250);
line item 0005--labor hour work--$14,500 ($29 x 500);
line item 0006--material costs and burden (MBR)--$33000 ($30,000 + ($30,000 x 10%)); and
line item 0007--equipment rental costs + burden (EBR)--$11,000 ($10,000 + ($10,000 x 10%)).

J&D's total bid using the IFB estimates thus is $145,212 ($97,200 indefinite quantity work + $48,012 definite quantity work).

Using the estimates provided by Sanford, J&D's bid for the indefinite quantity work becomes $79,820:

line item 0003aa--$16,660 ($70 x 238);
line item 0003ab-- $350 ($70 x 5);
line item 0003ac--$630 ($70 x 9);
line item 0004--$3680 ($40 x 92);
line item 0005--$14,500 ($29 x 500);
line item 0006--$33,000 ($30,000 + ($30,000 x 10%)); and
line item 0007--$11,000 ($10,000 + ($10,000 x 10%)).

Using Sanford's estimate J&D's bid thus becomes $127,832 ($79,820 indefinite quantity work + $48,012 definite quantity work).

3/ In our analysis here, the first number in the parentheses is the unit price bid by the bidder we are discussing and the second number is the IFB estimate of the number of orders to be placed for that line item.

Finally, if we use the estimates the Navy used to analyze the protest based on the blanket orders from last year, J&D's bid price is $88,680 for the indefinite quantity work, broken down as follows:

line item 0003aa--$24,150 ($70 x 345);
line item 0003ab--$980 ($70 x 14);
line item 0003ac--$1,330 ($70 x 19);
line item 0004--$3,720 ($40 x 93);
line item 0005--$14,500 ($29 x 500);
line item 0006--$33,000 ($30,000 + ($30,000 x 10%));
and
line item 0007--$11,000 ($10,000 + ($10,000 x 10%)).

J&D's total bid using the Navy's new estimates thus is $136,692 ($88,680 indefinite quantity work + $48,012 definite quantity work).

Sanford's bid price for the definite quantity portion of the IFB is $17,760. Sanford's bid price is $145,025 for the IFB indefinite quantity work based on the estimates in the IFB and is broken down as follows:

line item 0003aa--$49,500 ($165 x 300);
line item 0003ab--$7,500 ($100 x 75);
line item 0003ac--$5,775 ($165 x 35);
line item 0004--$18,750 ($75 x 250);
line item 0005--$12,500 ($25 x 500);
line item 0006--$40,500 ($30,000 + ($30,000 x 35%));
and
line item 0007--$10,500 ($10,000 + ($10,000 x 5%)).

Thus, based on the IFB as issued, Sanford's aggregate bid price is $162,785 ($17,760 definite quantity work and $145,025 indefinite quantity work), compared to J&D's bid of $145,212.

Using the estimates provided by Sanford, the firm's bid price becomes $111,655 for the indefinite quantity work:

line item 0003aa--$39,270 ($165 x 238);
line item 0003ab--$500 ($100 x 5);
line item 0003ac--$1,485 ($165 x 9);
line item 0004--$69,000 ($75 x 92);
line item 0005--$12,500 ($25 x 500);
line item 0006--$40,500 ($30,000 + ($30,000 x 35%));
and
line item 0007--$10,500 ($10,000 + $10,000 x 5%)).

Sanford's bid using its own estimate thus totals $129,415 ($17,760 definite quantity work and $ 111,655 indefinite quantity work), compared to J&D's bid of $127,832 using the same estimate.

Finally, using the revised estimates provided by the Navy, Sanford's bid price becomes $131,935 for the indefinite quantity work:

line item 0003aa--$56,925 ($165 x 345);
line item 0003ab--$1,400 ($100 x 14);
line item 0003ac--$3,135 ($165 x 19);
line item 0004--$6,975 ($75 x 93);
line item 0005--$12,500 ($25 x 500);
line item 0006--$40,500 ($30,000 + ($30,000 x 35%));
and
line item 0007--$10,500 ($10,000 + ($10,000 x 5%)).

Using the new estimates provided by the Navy, Sanford's bid price is $149,695 ($17,760 definite quantity work and $131,935 indefinite quantity work), compared to J&D's bid of $136,692.

Accordingly, under all three analyses, the bid submitted by J&D is lower than the bid submitted by Sanford. Specifically, by using the estimates in the IFB, Sanford's bid is $162,785 and J&D's bid is $145,212; using the estimates provided by Sanford, Sanford's bid is $129,415 and J&D's bid is $124,832; and using the revised estimates provided by the Navy, Sanford's bid is $149,695 and J&D's bid is $136,692. Since under all three estimates J&D's bid remains low and will result in an award at the lowest overall cost to the government, J&D's bid is not materially unbalanced and need not be rejected.

In reaching this conclusion, we reiterate that the IFB was not issued with the best estimates available, and it did not appear to pose any difficulty for the Navy to obtain better estimates based on historical data in response to the protest. Accordingly, while we are denying Sanford's protest because an award to J&D will result in the overall lowest cost to the government under all three estimates, we caution the Navy that in issuing solicitations for requirements contracts it has an affirmative duty to use the best estimates available.

Since we have concluded that the award to J&D is proper, we need not determine whether the second-low bidder, FedServ, submitted a materially unbalanced bid.

The protest is denied.

Ronald Berger
for James F. Hinchman
General Counsel

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

24949

FILE: B-208795.2; B-209311 **DATE:** April 22, 1983

MATTER OF: Crown Laundry and Dry Cleaners, Inc.

DIGEST:

The apparent low bid on a contract for a 1-year base period and 2 option years is materially unbalanced where there is reasonable doubt that acceptance of the bid--which has a substantially front-loaded base period price and does not become low until well into the last option year--will result in the lowest ultimate cost to the Government.

Crown Laundry and Dry Cleaners, Inc. protests the rejection by the Department of the Air Force of bids it submitted in response to invitations for bids Nos. F04609-82-B-0070 and F22608-82-B-0023. The invitations are for the rental and maintenance of laundry washers and dryers for a base period of 1 year and 2 option years at George Air Force Base, California and Columbus Air Force Base, Mississippi, respectively. The Air Force rejected both bids as unbalanced because Crown's base year prices far exceeded the option year prices for essentially the same services. Crown contends that the rejection was improper in that its bid prices for the base and option years, though ostensibly unbalanced, reflect its actual costs during those periods and, in any event, Crown's bids would provide the lowest cost to the Government over the entire contract period. We deny the protest.

George AFB

Solicitation No. F04609-82-B-0070 is for the rental of 71 washers and 64 dryers for dormitories at George AFB for a base year and two 1-year option periods. The solicitation specifies that award will be made to the bidder offering the lowest total price for the 3-year period and admonishes that materially unbalanced bids may be rejected as nonresponsive.

The Air Force received the following bid prices (rounded to the nearest dollar) in response to the solicitation:

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	Base Year	Option Year 1	Option Year 2	Total
Tri-County Appliances	$37,666	$37,666	$37,666	$112,998
Diffco (1% discount)	42,887	32,195	32,195	107,277
Crown (20% discount)	81,440	14,556	14,556	110,552
JLS Servco (2% discount)	35,472	35,472	35,472	106,416

The application of prompt payment discounts, which under the terms of the solicitation are to be considered in evaluating bids, had the following results:

	Base Year	Option Year 1	Option Year 2	Total
Tri-County Appliances	$37,666	$37,666	$37,666	$112,998
Diffco	42,458	31,873	31,873	106,204
Crown	65,152	11,645	11,645	88,442
JLS Servco	34,763	34,762	34,762	104,287

The contracting officer determined that Crown's apparently low bid was mathematically unbalanced based on the large differential between the base and option prices. The contracting officer also found the bid to be materially unbalanced, observing that Crown's price would not become low until well after the second option was exercised and that, therefore, a reasonable doubt existed that Crown's bid would ultimately be the most advantageous to the Government. On this basis, the Air Force rejected Crown's bid as nonresponsive.

Columbus AFB

Solicitation No. F22608-82-B-0023 is for the rental of 58 washers and 58 dryers at Columbus AFB. This solicitation also states that bids will be evaluated on the basis of total price for the 3-year period and warns that materially unbalanced bids may be rejected as nonresponsive.

The Air Force received the following bids in response to the solicitation:

	Base Year	Option Year 1	Option Year 2	Total
Ebony, Inc.	$29,580	$29,580	$29,580	$88,740
Crown (20% prompt payment discount)	65,672	16,110	16,110	97,892
Laundramatics (1% prompt payment discount)	33,408	25,056	20,880	79,344
Donqieux	31,320	31,320	31,320	93,960

As a result of prompt payment discounts, which the solicitation stated were to be evaluated, Crown's bid was low by $236:

	Base Year	Option Year 1	Option Year 2	Total
Ebony, Inc.	$29,580	$29,580	$29,580	$88,740
Crown	52,538	12,888	12,888	78,314
Laundramatics	33,074	24,805	20,671	78,550
Donqieux	31,320	31,320	31,320	93,960

The Air Force found Crown's front-loaded bid to be mathematically unbalanced and, on the basis that Crown's bid would not be low until the last month of the second option period, determined the bid to be materially unbalanced. The Air Force rejected Crown's bid and awarded the contract to Laundramatics.

Mathematical Unbalance

Our Office has recognized that unbalanced bidding entails two aspects. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the Government. Consequently, a materially unbalanced bid may not be accepted. Reliable Trash Service, B-194760, August 9, 1979, 79-2 CPD 107.

Crown asserts that its bid, although front-loaded, is not mathematically unbalanced. Crown points out that the George AFB solicitation requires that the washers and dryers not be more than 2 years old at the start of the contract or at the start of either option period and that the Columbus AFB solicitation requires new machines at the start of contract period. Thus, the solicitations require the contractor to purchase new machines to perform the requirement. Crown claims it formulated its bid by amortizing the cost of new machines (including finance charges) over the first year of the contract. Moreover, Crown points out that installation and start-up costs are incurred in the first year. Crown has submitted an itemization of its projected costs and profits which, in Crown's view, demonstrates that its bid prices are reflective of its costs for each contract period.

We find, however, that the Air Force findings of mathematical unbalancing were correct.

Crown's George AFB price for the base period is 459 percent higher than its option year prices. Additionally, Crown's base price is 70 percent higher than the average price submitted by the other bidders and Crown's option price is less than 30 percent of the average option price submitted by other bidders. Similarly, Crown's Columbus bid for the base year is 308 percent higher than its option year price. Its base year price is 68 percent higher than the average base year price submitted by the other bidders and Crown's option year price is less than half of the average price for option year 1 submitted by the other bidders.

Thus, Crown's bids are extremely front-loaded and this structure is out of line with the pricing structure of the other bids submitted. Importantly, the scope and nature of the services is essentially the same for the base period and the option periods: rental and maintenance of washer and dryers. Although we have found that bids with base/option period price differentials of as much as 30 to 50 percent are not mathematically unbalanced, see Propserv Incorporated, B-192154, February 28, 1979, 79-1 CPD 138, where the differentials have approached the magnitude of Crown's differentials, we have uniformly found the bid to be mathematically unbalanced. See Reliable Trash Service, supra, (option year 1 price 90 percent greater than option year 2 or 3); Solon Automated Services, Inc., B-206449.2, December 20, 1982, 82-2 CPD 548 (base year price more than 350 percent higher than option year prices). We believe a finding of mathematical unbalance is warranted here.

Although Crown has offered business reasons for its price structure, we have consistently declined to look behind a bid to ascertain the business judgments that went into its preparation. See K.P. Food Services, Inc., 60 Comp. Gen. 1 (1982), 82-1 CPD 289; S. F. & G., Inc., dba Mercury, B-192903, November 24, 1978, 78-2 CPD 361. Rather, we believe it is proper to determine whether unbalancing exists by focusing on the pricing structure and the services to be rendered. Moreover, although business reasons for front-loading bids to such an extreme may well exist, we cannot ignore the fact that a bid such as Crown's enables the bidder to use during a base contract period Government funds more properly allocable to option periods and creates the prospect of a windfall if all options for

some reason are not exercised. Safemasters Company, Inc., 58 Comp. Gen. 225 (1979), 79-1 CPD 38. In this regard, we observe that the business reasons Crown offers for its bid, recoupment of all equipment costs in the first year even though it will own and use the equipment in subsequent years, assumes that it is proper to obtain Government funds in the base year even though the funds are more properly allocable to the option years.

Material Unbalance

As noted, a bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Government. The determination of whether reasonable doubt exists is a factual one which varies depending upon the particular circumstances of each procurement. Solon Automated Services, Inc., supra.

The Air Force determined that there was a reasonable doubt that it would realize the $15,845 price advantage represented by Crown's bid at George and the $236 advantage at Columbus. The Air Force points out that Crown's bid on the George requirement would not become low until the fourth month of the second option period. Crown's bid on the Columbus procurement would not become low until the last month of the second option period, the final month of the contract. Thus, if Crown were awarded either contract, the Government would assume a risk that if both options are not exercised, or if the contract is terminated, it will have paid Crown an inflated amount for the service. Relying on our decision Lear Siegler, Inc., B-205594.2, June 29, 1982, 82-1 CPD 632, the Air Force rejected Crown's bids as nonresponsive.

Crown argues that its bid will result in the lowest cost to the Government, because the Government reasonably expects that the requirement will exist and funds will be available during the option periods. Crown cites in support of its contention Jimmy's Appliance, B-205611, June 7, 1982, 82-1 CPD 542, in which we found that a similarly front-loaded bid was not materially unbalanced.

We find the bids to be materially unbalanced. In Jimmy's Appliance, the unbalanced bid was substantially lower than the next low bid (64,975.70 vs 115,708.30) and the Government would realize the price advantage during the first of 2 option years. In this case, Crown's advantage is not substantial in either procurement and, importantly, it is not until well into the second option period that either of Crown's bids become low. Therefore, Jimmy's Appliance is not controlling.

In any event, in Jimmy's Appliance and previous cases involving front-loaded bids, the material unbalancing analysis was limited to determining whether the Government reasonably expected to exercise the options. If the exercise was reasonably anticipated, we concluded that the bid was not materially unbalanced. In Lear Siegler, supra, we modified the material unbalance test somewhat. We held that even though the Army expected to exercise the options, since the bid in question was extremely unbalanced and would not become low until the 39th month of a possible 42-month contract, there was a reasonable doubt whether the unbalanced bid would ultimately provide the lowest cost to the Government. We recognized that despite the intent to exercise the options, intervening events could cause the contract not to run its full term (for example, troop levels at the installation could sufficiently decrease to make the exercise of the option unnecessary or uneconomical), resulting in an inordinately high cost to the Government and a windfall to the bidder.

Turning to the facts in this case, we find that both of Crown's bids are materially unbalanced and were properly rejected. The Columbus bid requires the Government to pay 67 percent of the total 3-year price in the first year and does not become low (and then only by $236) until the 36th month. Crown's bid at George AFB requires the Government to pay 74 percent of the total contract costs in the first year. The bid does not become low until the 28th month of the 36-month contract. We agree with the contracting officers that there is a reasonable doubt that Crown's bid would actually provide the lowest cost.

We additionally point out that Crown is the low bidder at both installations only by virtue of substantial (20 percent) prompt payment discounts. Although the evaluation of discounts by the Air Force was proper under the solicitation and then-current regulations, the discounts add to our concern that Crown's bids may not present the lowest cost, since the Air Force would have to take advantage of the discount nearly every month of both contract periods to realize the savings represented by Crown's bid. See Solon Automated Services, Inc., supra.

The protest is denied.

Harry R. Van Cleve
for Comptroller General
of the United States

Matter of: McKnight Construction Company File: B-257782 Date: November 7, 1994

Agency reasonably rejected a bid where the bidder, who requested correction of the allocation of prices among line items, was unable to provide clear and convincing evidence of the intended allocation, and the uncorrected bid was materially unbalanced

Attorneys

DECISION

McKnight Construction Company protests the rejection of its bid and the award of a contract to Conner Brothers Construction Company, Inc. under invitation for bids (IFB) No. DACA21-94-B-0059, issued by the Department of the Army, Corps of Engineers, for barracks renewal work at Fort Benning, Georgia. McKnight contends that the agency unreasonably denied its request to correct a mistake in its bid and then improperly rejected its bid as materially unbalanced.

We deny the protest.

The Savannah District of the Corps of Engineers issued the IFB on May 17, 1994. The solicitation included 10 line items for a "base bid" and 19 line items for "additives." The base bid line items covered a series of tasks in four buildings. Thus, line item 0001 covered asbestos abatement for buildings 9006, 9007, and 9024; line item 0002 covered the demolition of building 9024 line item 0004 covered the interior demolition and renovation of building 9006; and line item 0005 covered the interior demolition and renovation of building 9007. The additives entailed similar work in other buildings as well as other assorted tasks.[1]

Four bids were received by bid opening on June 20. The total amounts bid and the government estimate were as follows:

McKnight $16,850,000 Conner Brothers 16,969,000 Bidder C 17,213,000 Bidder D 17,298,422 Gov't estimate 18,115,491

McKnight's bid thus appeared to be low. On the day after bid opening, Conner Brothers submitted a written request that McKnight's bid be rejected as materially unbalanced due to the prices that McKnight bid for the four line items described above Specifically, for the asbestos abatement work, line item 0001; the four bids; and the government estimate were as follows:

McKnight $4,203,500 Conner Brothers 196,376 Bidder C 200,000 Bidder D 305,900 Gov't estimate 395,557

For line item 0002, the demolition of one building, the relevant prices were as follows:

McKnight $4,203,500 Conner Brothers 37,396 Bidder C 20,000 Bidder D 23,050 Gov't estimate 55,780

McKnight's price for these two items was thus far higher than the prices of the other bidders and the government estimate. Moreover, McKnight's pricing was identical for the two line items, while for the other bidders and the government estimate, the price for the demolition work was only 8 to 20 percent of the price of the asbestos abatement work.

For line item 0004, covering the interior demolition and renovation work in one building, the bids were as follows:

McKnight $ 250,000 Conner Brothers 4,303,584 Bidder C 3,334,000 Bidder D 4,230,759 Gov't estimate 4,114,668

For line item 0005, covering the identical work in another building, every bidder bid the same price it had offered for line item 0004.[2]

While the agency was considering Conner's challenge to the responsiveness of McKnight's bid, McKnight advised the agency on June 22 that there was a mistake in its bid. According to McKnight, due to the rush of bid preparation, it had inadvertently reversed its bid prices for line items 0001 and 0002 with the prices for line items 0004 and 0005. The bidder provided its workpapers to the agency; however, those papers provided no basis for the $250,000 figure that McKnight contended it had intended to bid for line items 0001 and 0002.

The agency concluded that, although there was clear and convincing evidence that McKnight had made a mistake, there was not clear and convincing evidence of the intended allocation of line item prices. On that basis, the agency denied McKnight's request for correction.

Having determined that correction was not permissible, the agency turned to consider whether to reject the uncorrected bid as materially unbalanced. The agency found that the prices bid by McKnight for line items 0001 and 0002 were grossly inflated, an

that the prices for line items 0004 and 0005 were grossly understated. Because the overpriced asbestos abatement work covered by line item 0001 will be performed before the underpriced interior demolition and renovation work covered by line items 0004 and 0005, the agency determined that the bid was materially unbalanced and rejected it on that basis. Award was then made to Conner Brothers, whose bid was next low, and this protest followed.

The general rule regarding the authority to permit correction of bids is that such authority is limited to bids that, as submitted, are responsive to the solicitation, and may not be used to permit correction of bids to make them responsive. Federal Acquisition Regulation (FAR) Sec. 14.406-3. Because a materially unbalanced bid is considered nonresponsive, FAR Sec. 52.214-10(e), the agency argues that we cannot reach the question of mistake correction if the bid, as submitted, is unbalanced. However, we have recognized an exception for situations, such as this one, where the alleged mistake involves only the allocation among line item prices and has no bearing on the ranking of bids for purposes of award. Satellite Servs., Inc., B-224412, Nov. 5, 1986, 86-2 CPD Para. 521. Here, correction of the mistake would not alter McKnight's overall price or the ranking of bids; it would simply change the allocation of line item prices within that total.

Accordingly, bid correction could be permissible in this case, but only if there were clear and convincing evidence of both the existence of a mistake and the intended allocation of prices. Id. See also FAR Sec. 14.406-3(a). The requirement for clear and convincing evidence reflects the need to protect the integrity of the sealed bid procurement process, where, except for narrowly defined circumstances, award should be made on the basis of the bids as submitted. See Black Diamond Energies, Inc., B-241370, Feb. 5, 1991, 91-1 CPD Para. 119. Whether, in fact, the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable basis. M. A Mortenson Co., B-254152, Nov. 19, 1993, 93-2 CPD Para. 296. Here, while there is no doubt of the existence of a mistake, the agency had a reasonable basis for its conclusion that the evidence of the intended allocation of prices was not clear or convincing.

McKnight contends that it simply reversed the prices for line items 0001 and 0002, on the one hand, with those for line items 0004 and 0005, on the other. Comparison of the government estimate and the other prices bid for line items 0004 and 0005, which represented the bulk of the work, supports McKnight's contention that the $4,203,500 price it submitted under line items 0001 and 0002 was intended to be the bid for line items 0004 and 0005. Nonetheless, recognition of this error does not necessarily establish that McKnight intended to bid $250,000 for line items 0001 and 0002. In contrast to the situation with line items 0004 and 0005, where the $4,203,500 figure bid by McKnight is consistent with the government estimate and other bids, bidding the identical amount ($250,000) for line items 0001 and 0002 is implausible on its face. As noted above, the government estimate and all other firms' bids indicated that line item 0002 (demolition work) would cost the government only 8 to 20 percent of the cost of line item 0001 (asbestos abatement). McKnight offers no support for the identical $250,000 figures for these two line items, other than to state that its subcontractors failed to submit quotes for either item by the time of bid opening and that McKnight, operating "under extreme time pressures," essentially made the $250,000 entries with no support in the workpapers.

McKnight argues that there is no other reasonable explanation other than the entries for line items 0001 and 0002 were simply reversed with those for line items 0004 and 0005. That argument, however, does not constitute clear and convincing evidence the intended bid, particularly in light of the absence of any direct evidence of its intended bid for line items 0001 and 0002. This is not an instance where the workpapers establish that the bidder merely misplaced a decimal point, erred in copying a number, or otherwise made a clerical error in preparing the final bid documents. Cf. J. Schouten Constr., Inc., B-256710, June 1994, 94-1 CPD Para. 353. We therefore find that the agency had a reasonable basis to deny the request for bid correction.

Accordingly, the agency needed to determine whether the uncorrected bid was acceptable. Apparently because this was the ground raised by Conner immediately after bid opening, the agency focused on whether McKnight's bid was materially unbalanced.

Determining whether a bid is materially unbalanced is a two-step process. There must first be a determination of mathematica unbalancing, and then a determination that the unbalancing is material. A bid is mathematically unbalanced if some line items are overpriced while others are underpriced. FAR Sec. 15.814. Here, it is undisputed that McKnight's uncorrected bid is mathematically unbalanced; the thrust of the protester's request for bid correction, in fact, is its concession that its bid overstated prices for some line items and understated prices for others.

The unbalancing in McKnight's uncorrected bid, with prices for the work to be performed early in performance is grossly out of proportion to the value of that work, it is so to the extreme that it would normally render the bid materially unbalanced. The protester does not dispute this, but argues that it will effectively be estopped, due to the representations made in connection with the request for bid correction and this protest, from requesting progress payments that would reflect the inflated prices the company mistakenly bid for the early work. In McKnight's view, this estoppel works to preclude the firm's bid from being

materially unbalanced. As noted above, however, material unbalancing is a matter of responsiveness, and the responsiveness of a bid must generally be ascertained from the bid documents, not from explanations made by the bidder after bids have been opened and prices exposed. PRO/DES, Inc., B-256541, June 30, 1994, 94-1 CPD Para. 395. A bidder thus cannot salvage an otherwise nonresponsive bid by post-bid opening representations or commitments such as those now offered by McKnight. Id. Accordingly, we find that the agency properly rejected McKnight's bid as materially unbalanced.

The protest is denied.

1. Because sufficient funds were available at bid opening for the award of the base bid and the first additive only, the "total" figures used in this decision refer to the amounts bid for that combination. Consideration of the other additives would have no bearing on the protest.

2. For reasons unexplained in the record, the government estimate for line item 0005 was slightly lower (by some $60,000) than the estimate for line item 0004.

52.216-9013 Evaluation of Offers for Indefinite Delivery Type Solicitations.

As prescribed in 16.506-92(a), insert the following provision:

EVALUATION OF OFFERS FOR INDEFINITE DELIVERY TYPE SOLICITATIONS (NOV 2011)

(a) When Federal Acquisition Regulation (FAR) clause 52.216-21 or one of its alternates is contained in this solicitation, this solicitation is for a requirements contract. Offers will be evaluated on the basis of the estimated annual quantity. If quantity increments are offered with various prices, the highest price offered will be used for evaluation.

(b) When FAR clause 52.216-22 is contained in this solicitation, this solicitation is for an Indefinite Quantity contract. Offers will be evaluated on the basis of the estimated annual quantity. Unless (c) is checked below, if quantity increments are offered with various prices, the highest price offered will be used for evaluation. If line items for both DLA direct and customer direct are included in the schedule, offers will be evaluated based on the total extended price for the DLA direct and customer direct line items.

(c) [ ] If checked, and subject to the terms and conditions of the solicitation relating to the evaluation of offers, the following procedures will be followed:

(1) When offers are requested on a quantity increment basis, each contract line-item (CLIN) will be evaluated for price by:

[ ] applying a weighted factor of 18% to the first quantity increment, 36% to the second increment, and 46% to the third increment to arrive at an average weighted unit price.

[ ] applying a weighted factor of 5% to the first quantity increment, 65% to the second increment, 25% to the third increment, and 5% to the fourth increment to arrive at an average weighted unit price.

This average weighted unit price will be multiplied by the estimated annual quantity that may be procured during the contract period to arrive at a total annual evaluated price for each CLIN. If the solicitation provides for separately priced option periods, average weighted prices will be calculated as described above in (1) for each option period and then added to the base contract period total to determine the total estimated price of that line item for the evaluation.

(2) When quantity increment prices are not requested, offers for each CLIN will be evaluated by multiplying the unit price by the estimated quantity that may be procured during the contract period to arrive at total price for each CLIN.

(3) Prices offered must be unit prices only which are clearly stated and which require no further interpretation by the Government to determine the actual offered price. Prices must not be stated as part of a pricing formula or as charges per lot. Unit prices offered must include costs of compliance with all solicitation requirements, with the exception of additive CLINs. For each item of supply for which a price is offered, prices must be offered for each quantity increment and year. Failure to submit proposed prices in accordance with these instructions may result in rejection of the offer.

(4) In the event first article testing and/or technical data are required for any or all of the CLINS, the cost of such testing and data will be added to the appropriate CLIN or prorated based on the ratio of the estimated quantity for each CLIN to the total estimated quantity of the various CLINs covering the same item or national stock number (NSN). In the event an offeror is low only on one CLIN (where there are several CLINs for the same item) (NSN), the cost of testing and data pertaining to that CLIN will be added for evaluation purposes.

(5) [ ] If checked, when free on board (f.o.b.) origin offers are authorized, transportation costs will be considered in evaluation and will be based on the best estimated quantity of each CLIN as specified elsewhere in this solicitation. Carload or truckload rates will be used to evaluate the cost of transportation for each CLIN unless the best estimated quantity would not constitute a carload or truckload. In such case, less than carload (LCL) or less than truckload (LTL) rates will be used for evaluation purposes.

(End of Provision)

Alternate I (APR 2008). As prescribed in 16.506(92)(a) Use ALT I when assigning the greatest weight to the quantity increment most likely to be procured for each delivery order. Replace paragraph (c)(1) with:

(c) [ ] If checked, and subject to the terms and conditions of the solicitation relating to the evaluation of offers, the following procedures will be followed:

(1) When offers are requested on a quantity increment basis, each CLIN will be evaluated for price on a weighted basis.

(i) To be considered for award for any item, prices must be offered for each quantity increment cited. Incremental quantities within which it is anticipated orders are most likely to be issued are assigned the highest weights.

(ii) Offers will be evaluated by multiplying the designated weight by the unit price for each order increment and adding the results. Only one award will be made for each line item. Each delivery order will be issued at the price offered for that increment.

(iii) The weighted average evaluated price will be developed for each item using the formula stated in subparagraphs (A) through (C) below.

Increment	Weight	Increment	Weight
A	_____	D	_____
B	_____	E	_____
C	_____	F	_____

(A) The weighted average price (for a given item for a given year) will be arrived at as follows:

(Offered unit price) x (increment weight) = weighted unit price (Sum of weighted unit prices) divided by (the sum of the weights) = weighted average price.

(B) (The weighted average price) x (the estimated annual requirement) = estimated annual cost for a given item for a given year.

(C) The sum of the estimated annual costs for a given item for the base year plus any option periods = the total estimated cost for that item.

(End of Provision)

Source: Defense Logistics Acquisition Directive (DLAD) (Revised February 12, 2014), available at

http://www.dla.mil/acquisition/documents/dlad_rev_5_and_pgi_pdf_version_2-12-2014.pdf

Market Basket Solicitation, Example 1

IFB for commercially purchased foods, meats, & supply items

Lot 1 (Prime Vendor Market Basket) & Lot 2 (Prime Vendor Line Items) Cost plus fixed fee

From instructions for bidders:

Bidders must provide the manufacturer brand name, vendor order or part number and the price of each item (cost + fixed fee for Lot 1 (Market Basket) and Lot 2 (Line items)). If the vendor is bidding a product different from the specifications (different case count or other unit of measure, or approved brand) as noted on the online bid document, the Bidder must indicate this by not checking the "bid as quoted" checkbox and enter a response note indicating the change the Bidder is making.

Bidders must submit by mail before the bid deadline, in a sealed envelope, a copy of their fixed fee schedule for Lot 1 (Market Basket) and Lot 2 (Line Items).

The State has grouped or put into "Lot 1" the highest volume branded items on the bid. Items in this first lot are called the "Market Basket." All items in this lot must be bid. If for some reason the item is no longer manufactured, bidders must use the Response Notes to indicate the reason. Under that circumstance only, the bidder should enter $0.01 as the price.

From proposal requirements:

Pricing: The State will award items in Lot 1 (Market Basket) and Lot 2 (Line Items) based on a prime vendor method. The State has created a "Market Basket" of the most used food and non- food items. The bidder must bid all items in the "Market Basket" (Lot 1). At least 80% of the Line Items (Lot 2) outside the "Market Basket" lot must also be bid. The State will award Lot 1 and Line items (Lot 2) of the bid to ONE vendor. All bid pricing quoted shall remain firm for the duration of the first 6-month period of the bid. The second 6-month bid period of the bid shall allow for any necessary price increases or decreases at which time an increase/decrease shall only be allowed to the cost portion of the bid. The Fixed Fee portion of the bid shall remain firm for the 12-month bid period. The State shall provide the contractor with an estimated usage of products for the second six month bid by _____. The vendor shall notify the State of any necessary price increases or decreases for the second six month bid period by _____. All bid pricing quoted for the second six month bid period shall remain firm for the duration of that period. All price increases/ decreases shall be accompanied by proper documentation of price increase/decreases to the contractor. Proper documentation shall include market bulletin(s) from an independent source, manufacturer's invoices, and freight bills.

Quantities: It shall be understood that any contract established as a result of this Bid Invitation will not obligate the State or any Using Governmental Unit to receive any quantity in excess of actual requirements. The quantities shown are estimates and result from actual or historical data.

Review: After the public opening of proposals received from the Bid Invitation, the State will review the results, develop a preliminary tabulation, and may contact bidders for the purpose of clarification only.

Award: After the review of the proposals the State will award a contract based on the total points awarded to each contract using the scale below:

		Maximum Points
a) Best Price for Market Basket Items (Lot 1)		70
70	Lowest Bid	
69	$1 – $10,000	
67	$10,001 - $20,000	
65	$20,001 - $30,000	
60	$30,001 - $40,000	
55	$40,001 - $50,000	
50	$50,001 - $60,000	
45	$60,001 - $70,000	
40	$70,001 - $80,000	
30	$80,001 - $90,000	
20	$90,001 - $100,000	
10	$100,001 - $250,000	
0	$250,001 & Over	
b) Best Price for All Line Items (Lot 2)		30
30	Lowest Bid	
29	$1 – $10,000	
27	$10,001 - $20,000	
22	$20,001 - $30,000	
17	$30,001 - $40,000	
15	$40,001 - $50,000	
10	$50,001 - $60,000	
5	$60,001 - $70,000	
0	$70,001 & Over	

Fixed Fee: Contractor shall be limited to one of the following fixed fee pricing methods for bid and non-bid or quoted items:

a) Line Item: A fee set for each individual item.

b) Sliding Scale: A fee set for items that are priced between certain cost brackets. (i.e., $5.01-$10 = $.50; $10.01-$15.00 = $1.00)

c) Set Fixed Fee: One fee set for all items on the bid.

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http://www.kybuy.org/bidding/archive/Archive2011/School%20Food%20Service/PV-SFS-2010-07_Terms_and_Conditions.pdf

Market Basket Solicitation, Example 2

1.1 PURPOSE

The purpose of this IFB and the resultant contracts is to provide contract users with a means of acquiring maintenance, repair, and operational (MRO) supplies which are purchased repetitively or on an emergency basis. It also provides a means for inventory reduction by offering quick shipment (within 2 business days) of a broad array of products and aggregation and purchasing of a variety of different products from the same contractor within a single order. This IFB offers the ability to pick up orders if warranted.

1.2 OVERVIEW

The State of New York seeks to establish statewide centralized Contracts for Authorized Users to acquire maintenance, repair and operational (MRO) supplies from qualified suppliers. This Invitation for Bids is based on a Market Basket approach.

Bidders are provided a Market Basket List of items by Lot. Lots may contain Sub-Lots. For each item in each Market Basket, Bidders will provide their commercial list price. For each Lot or Sub-Lot, Bidders will provide a percent discount from the commercial price list. The bidders with the lowest Total Bid Price for the Lot and the second lowest Total Bid Price for the lot will be awarded Primary Contractor and Secondary Contractor respectively.

***

1.3 SCOPE

The scope of this IFB includes commodities only; services are not included in this IFB. MRO supplies are the materials and equipment used to keep a facility in such condition that it may be continuously utilized at its original or designed capacity and efficiency for its intended purpose. Such supplies support routine recurring work and do not become part of the end product. MRO supplies do not include raw materials such as sheet metal and lumber or large agricultural or maintenance supplies such as tractors or mowers. Contracts will be awarded for four (4) Lots:

Lot 1 - Industrial Supplies

Industrial Supplies include, but are not limited to, supplies that are used in the maintenance of facilities and equipment not otherwise included in Lots 2, 3 and 4. For the purposes of this IFB, Lot 1 has been separated into the following nine (9) Sub-Lots, as defined in Section 1.11 - *Definitions*:

1. Abrasives, Adhesives, Sealants, and Tape
2. Hand and Power Tools
3. Heating, Ventilation, Air Conditioning, and Refrigeration
4. Machining Supplies
5. Maintenance Supplies
6. Mechanical Equipment
7. Plumbing and Hydraulics
8. Safety Products
9. Testing Instruments

Lot 2 - Fasteners

Fasteners include, but are not limited to, devices that link, affix, or mechanically join two or more objects together, close a container such as a bag, a box, or an envelope, or keep together the sides of an opening of flexible material, such as bolts, nuts, clips, screws, nails, staples, and pins. Fasteners can be temporary in that they may be fastened and unfastened repeatedly, or they may be permanent. Tamper resistant and tamper proof fasteners are also within the scope of Lot 2.

Lot 3 - Electrical Supplies

Electrical Supplies include, but are not limited to, the basic electronic elements of electrical distribution systems and electrical repair components. Also included are electric lamps, including Compact Fluorescent Lamps, as specified in, and in compliance with, New York State Executive Order No. 4, Establishing A State Green Procurement and Agency Sustainability Program as set forth in Section 6.27 - *Environmental Attributes and NYS Executive Order 4*. For the purposes of this IFB, Lot 3 has been separated into the following two Sub-Lots, as defined in Section 1.11 - *Definitions*:

1. Lamps
2. Electrical – All Other

Lot 4 - Janitorial Supplies
Janitorial Supplies are the durable and consumable products used by individuals who attend to the cleaning of a facility, including, but not limited to, products specified in, and in compliance with, New York State Executive Order No. 4, Establishing A State Green Procurement Agency Sustainability Program. Examples of Janitorial Supplies are general purpose cleaners, restroom cleaners, toilet bowl cleaners, carpet cleaners, carpet spot removers, and glass, window, and mirror cleaners, including green cleaning products.

1.4 STRUCTURE

It is the intent of OGS to award statewide Contracts for all lots (Lot 1 through Lot 4). Two (2) Contracts will be awarded per Lot. For each Lot, it is anticipated that there shall be a Primary Contractor and a Secondary Contractor. The Primary Contractor shall be the Contractor Authorized Users consider first when utilizing the resultant Contracts. The Secondary Contractor in each Lot will only be utilized in the event that the Primary Contractor cannot meet the Form, Function, and Utility of an Authorized User. When an Authorized User determines that the Secondary Contractor will be utilized for a purchase of MRO supplies, Agencies are required, and local governments are recommended, to document how the Primary Contractor could not provide items meeting the requirements for Form, Function, and Utility.

Bidders are required to make available their full offerings that are within the scope of any Lot for which a bid is being submitted. *** A Bidder can bid on any Lot or any combination of Lots; Bidders are not required to bid on every Lot. If a Lot has Sub-Lots, a Bidder bidding on the Lot must bid all Sub-Lots; if Bidder does not bid on all Sub-Lots within a Lot the bid will be deemed non-responsive and shall be disqualified for that Lot. For detailed information see Section 4 - *Method of Award*.

1.5 ESTIMATED SPEND AND QUANTITIES

The historic dollar value of all Contracts issued under previous awards for similar commodity offerings was approximately $14.9 million for New York State Executive Agencies from January 1, 2011 to December 31, 2011. The historic annual dollar value of contracts issued by New York City for similar commodity offerings was approximately $5.3 million. State Finance Law §163 allows for other Authorized Users, such as New York City, to make purchases of commodities through the Office of General Services' centralized contracts. The individual value of each new Contract is indeterminate and will depend upon actual demand of the Authorized Users and whether a Contractor has Primary or Secondary status within a Lot. Each new Contract shall be for the quantities or dollar values actually ordered during the Contract term (See Appendix B, §§ 39 Participation in Centralized Contracts and 42 Estimated/Specific Quantity Contracts). There is no guarantee that demand will continue in any manner consistent with previous purchases.

The following represents Executive Agency Historic Annual Spend for Market Basket items by Lot and Sub-Lot (where applicable) based on internal data and supplier reporting, and does not include other Authorized Users such as county, city, and educational facilities that may purchase from OGS centralized Contracts:

Lot #	**Lot Name** Sub-Lot Name	**Historical Annual Spend ($)**
Lot 1	**Industrial Supplies (Total)**	**$8,018,166**
	Abrasives, Adhesives, Sealants, Tape	$226,334
	Hand & Power Tools	$2,257,108
	HVAC/R	$647,696
	Machining Supplies	$48,028
	Maintenance Supplies	$1,278,243
	Mechanical Equipment	$1,101,299
	Plumbing & Hydraulics	$1,239,332
	Safety Products	$1,159,049
	Testing Instruments	$61,077
Lot 2	**Fasteners**	**$1,503,807**
	(no Sub-Lots)	
Lot 3	**Electrical Supplies (Total)**	**$1,706,303**
	Lamps	$442,619
	Electrical - All Other	$1,263,684
Lot 4	**Janitorial Supplies**	**$3,695,396**
	(no Sub-Lots)	

1.11 DEFINITIONS *[excerpts]*

"Lot" shall refer to a grouping of items to be bid and awarded together.

"Market Basket" shall refer to the combination of items selected for price evaluation based on NYS historic usage.

"Normalization" shall refer to the scaling of differing packaging units of measure of otherwise comparable items to establish unit pricing.

"No-Bid Item" shall refer to an item that was not bid or does not meet the minimum specifications. See also "Replacement Bid Price."

"Price List" shall refer to the spreadsheet provided to bidders by OGS and completed and submitted to OGS before the date and time indicated in Section 1.7 – *Key Events/Dates* that includes specification and pricing information that will be used during the specification and financial phases of the IFB evaluation.

"Replacement Bid Price" shall refer to the price, being highest Net Price among all responsive Bidders plus 10%, that OGS uses to replace a No-Bid Item included in a Bidder's Attachment 10 – *Price Pages (Final)* for the use in the Financial Evaluation only. See also "No-Bid Item."

"Sub-Lot" shall refer to a set of items within a Lot.

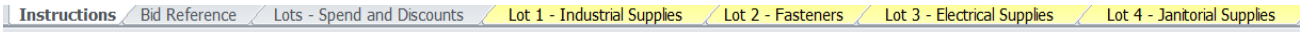
"Total Bid Price" shall refer to the price used for evaluation of each Lot which is the sum of Bidder's pricing after Normalization and Replacement Bid Prices are applied. See also "Replacement Bid Price" and "Normalization."

***

3.7 PRICING INFORMATION SUBMITTED WITH A BID

Attachment 10 - *Price Pages (Final)* contains separate tabs (shown in the graphic below) into which Bidders can insert information:

- Instructions
- Bid Reference
- Lots – Spend and Discounts
- Lot 1 – Industrial Supplies
- Lot 2 – Fasteners
- Lot 3 – Electrical Supplies
- Lot 4 – Janitorial Supplies



By the date indicated in Section 1.7 – *Key Events/Dates*, each Bidder's Market Basket price information shall be collected using the following methods as described below using Attachment 10 - *Price Pages (Final)*.

a. Instructions: All bidders are strongly encouraged to read and familiarize themselves with the instructions for Attachment 10 – *Price Pages (Final)*.

b. Bid Reference: Bidder is required to complete the second tab, called "Bid Reference," indicating Bidder's Name and which Lot(s) are being bid. The remaining tabs in Attachment 10 - *Price Pages (Final)* are to be completed according to the Lots being bid.

c. Lots – Spend and Discounts:

   For Lots 1 and 3, Bidder is required to bid a Discount percentage greater than 0% for each Sub-Lot. The Discount percentage may be different for each Sub-Lot. Failure to bid a Discount percentage greater than 0% on all Sub-Lots in Lots 1 and 3 shall result in a disqualification of the Bid for that Lot.

   For Lots 2 and 4, a Bidder is required to bid a Discount percentage greater than 0% for the entire Lot. Failure to bid a Discount percentage greater than 0% for a Lot shall result in a disqualification of the Bid for that Lot.

d. Market Baskets for Lots 1, 2, 3, and 4:

e. For each item in each Market Basket in which a bidder is bidding, bidder must review the Sub-Lot (where appropriate), the Item, and the Minimum Specifications. Bidder must then indicate if Bidder is bidding:

a- A reference part number,
b- A substitute part number that meets the minimum specifications, or
c- No-Bidding the item.

If bidder is bidding a reference part number, bidder must select which reference part number from the drop down cell provided.

f. If bidder is bidding a substitute item, bidder must indicate the Bidder's Part Number for the Substitute Item, the Name of the Manufacturer of the Substitute Item, the Manufacturer's Part Number for the Substitute Item, Description, whether the Bidder's Substitute Item Meets Each of the Minimum Specifications Listed (by selecting "Yes" or "No" from the dropdown cells provided), the Unit of Measure for the item being bid, the Number of Items per Unit of Measure for the item Bid, the Bidder's List Price for the Item Bid, the name of the Specification Document Reference, and the Page Number for the Item. If the Bidder indicates the Substitute Item does not meet each of the minimum specifications listed (i.e., selected "No"), a message will appear that says, "Bidder states that item does not meet minimum specifications." This item will now be designated a No-Bid, and treated as indicated in Section 3.10 - *No-Bid Items and Replacement Bid Prices.*

g. For every substitute item bid, the Number of Items Per Unit of Measure bid may not exceed the Reference Maximum Number of Items Per Unit of Measure for that item in Attachment 10 – *Price Pages (Final)*. Items bid that exceed the Reference Maximum Number of Items Per Unit of Measure will be disqualified as non-responsive, will not count towards the minimum number of bid Items, will be deemed a No-Bid Item, and will receive a Replacement Bid Price as described in Section 3.10 – *No Bid and Replacement Bid Prices.*

h. For each item in each Market Basket in which a bidder is bidding, NYSPro will normalize to a unit price.

The Price Pages in Attachment 10 - *Price Pages (Final)* will limit the number of decimal places a Bidder may enter for a Discount percentage to two decimal places. Dollar inputs are also limited to two decimal places. Any calculation resulting in decimals shall be rounded to two decimal places; the nearest cent for dollar decimals, and the nearest hundredth of a percent for Discount percentages.

3.8 MINIMUM NUMBER OF BID ITEMS

A Bidder is required to bid on the minimum number of items in each Market Basket for each Lot for which a bid is submitted. Failure to bid on the minimum number of items required for a Lot shall result in disqualification for the Lot. The specific number of items required to be bid for each Lot shall be identified in Attachment 10 – *Price Pages (Final)* once they are finalized and published at the following link: http://www.ogs.ny.gov/purchase/biddocument/22711BID.ASP

3.10 NO-BID ITEMS AND REPLACEMENT BID PRICES

After it is determined that a bid contains the minimum number of required items for the Lot pursuant to Section 3.8 - *Minimum Number of Bid Items*, any items determined to be No-Bid Items, as defined in Section 1.11 - *Definitions*, shall be priced with a Replacement Bid Price, as defined in Section 1.11 - *Definitions*. Replacement Bid Prices are included only for the purpose of evaluating comparable bids. OGS reserves the right to request additional information in determining whether a substitute item proposed by a bidder meets the minimum qualifications for an item being bid.

3.11 COMMERCIAL PRICE LIST SUBMITTED WITH BID

A Bidder is required to submit an electronic copy of its Commercial Price List, as defined in Section 1.11 - *Definitions*, in Microsoft Excel or Access Format with its bid. In the event a published set of prices does not exist, Bidder certifies by submission of the Bid that the submitted set of prices meets all other requirements of Commercial Price List.

3.18 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

***

R. To reject an obviously unbalanced bid as determined by the State; and

S. To remove from evaluation any item, Sub-Lot, or Lot for reasons attributable to the State including, but not limited to a change in Authorized User requirements and/or product(s), or an error in the bid solicitation (i.e., use of incorrect reference, unit of measure, description, etc.). In such case, evaluation and ranking of bids may be made on the remaining items, Market Baskets, or Lots.

For the purposes of paragraphs R and S, an unbalanced bid is one based on bid prices that are significantly understated for some items and/or significantly overstated for other items such that there is a reasonable doubt that the bid will result in the lowest overall cost to the State.

Section 4: Method of Award

4.1 METHOD OF AWARD

The State intends to award two (2) Contracts per Lot. For each Lot, the State intends to award to a Primary Contractor and a Secondary Contractor. Awards under this IFB shall be made based on lowest price as specified in Section 4.4 – *IFB Evaluation Process*. Lowest pricing shall be determined according to the methods in Section 4.4 – *IFB Evaluation Process*.

4.2 MARKET BASKETS EVALUATION

Market Baskets, as defined in Section 1.11 - *Definitions*, have been developed for Lot 1 – Industrial Supplies, Lot 2 – Fasteners, Lot 3 – Electrical Supplies, and Lot 4 – Janitorial Supplies. The Market Basket is used to identify a Bidder's Pricing and Discount(s) for this IFB. The Market Basket is NOT a complete or comprehensive listing of items available to Authorized Users upon award of this contract.

***

4.4 IFB EVALUATION PROCESS

After the time and date indicated in Section 1.7 – *Key Events/Dates*, the evaluation of Bids through this IFB will be separated into four parts: Administrative Evaluation, Specification Evaluation, Financial Evaluation, and Ranking.

4.4.1 Administrative Evaluation

Each bid will be evaluated for completeness and conformance with requirements for bid submission as set forth in Section 3.12 - *Format and Content of Bid Submittal*. If these requirements are not met, the bid is not responsive and will be disqualified.

a. Bids will be evaluated to ensure that the Bidder has responded to all questions and provided all requested information in Attachment 5 - *General Questions*.

b. Each bid shall be evaluated to ensure that all required Discount percentages, List Prices, and Specification Information for each substitute item have been submitted for the minimum number of items in each Lot for which a bid is submitted. If a bid for a Lot contains No-Bid Items, Replacement Bid Prices shall be added as stated in Section 3.10 - *No Bid Items and Replacement Bid Prices*.

***

4.4.3 Financial Evaluation

Financial bids from a Bidder must be presented as directed in Attachment 10 - *Price Pages (Final)* to enable the evaluation of pricing according to the State's prescribed formulas below.

After a set of responsive bids for a Lot has been determined, the following Microsoft Excel generated calculation shall be performed for each Lot to establish the tentative awardees; Primary and Secondary Contractors:

$$\left(L_1 * (1 - D)\right) + \left(L_2 * (1 - D)\right) + \left(L_N * (1 - D)\right) = Total\ Bid\ Price$$

Whereas:

L represents a List Price for a Market Basket Item.

D represents the Discount and shall be the single Discount quoted by a Bidder for all items purchased for a Lot or Sub-Lot.

Total Bid Price is determined by multiplying the List Price submitted for each Market Basket item by the Discount bid for the Lot or Sub-Lot.

The following example illustrates the calculation of Total Bid Price:

Formula Information:

Identifier	Description	Example $ or %
L_1	List price of item 1	$4.67
L_2	List price of item 2	$129.44
L_N	List price of item N (repeated for each value in the Lot)	$45.91
D	Discount	30%

$$(4.67 * (1 - .30)) + (129.44 * (1 - .30)) + (45.91 * (1 - .30)) = 126.01 = Total\ Bid\ Price$$

4.4.4 Ranking

For the evaluations for all Lots, bids shall be ranked in ascending order by their Total Bid Price. The Bidders with the lowest and second lowest Total Bid Price within each Lot shall be the tentative awardees; Primary and Secondary Contractors respectively.

State of New York Executive Department
Office of General Services - New York State Procurement (NYSPro)
Corning Tower - 38th Floor
Empire State Plaza
Albany, NY 12242

INVITATION FOR BIDS

Revised December 03, 2013

IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)

BID OPENING **DATE**: January 30, 2014 **TIME**: 11:00 AM ET	**TITLE**: Group 39000 Maintenance, Repair, and Operational Supplies (MRO) (Statewide) **Classification Codes:** 26, 27, 39, 46, 47
INVITATION FOR BIDS NUMBER: 22711	**SPECIFICATION REFERENCE:** As Incorporated in the Invitation For Bids
CONTRACT PERIOD:	**Three years, with two optional one-year extensions.**

DESIGNATED CONTACTS

PRIMARY CONTACT	SECONDARY CONTACT
Ruth Quezada	William Reilly

E-mail address: SSTmrosupplies@ogs.ny.gov

The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:
Procurement Lobbying: http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html

Bidder's Federal Tax Identification Number: *(Do Not Use Social Security Number)*	**NYS Vendor Identification Number:** (See Section 6.23 - *New York State Vendor File Registration)*

Legal Business Name of Company Bidding:

D/B/A - Doing Business As (if applicable):

Street	City	State	County	Zip Code

If applicable, place an "**x**" in the appropriate box(es) (***check all that apply***): ☐ Small Business #Employees ☐ Minority Owned Business ☐ Women Owned Business

If applicable, place an "**x**" in the appropriate box(es) (***check all that apply***): ☐ Manufactured Within New York State ☐ Manufactured Outside New York State

If you are not bidding, place an "x" in the box and return this page only.
☐ WE ARE UNABLE TO BID AT THIS TIME BECAUSE:

Bidder's Signature: Title:	Printed or Typed Name: Date:

Phone:	Extension	Toll Free Phone:	Extension
Fax:	Extension	Toll Free Fax:	Extension
E-mail Address:		Company Website:	

FOR New York State Procurement (NYSPro) USE ONLY

P.R. # 22711	LIT ☐	MEMO ☐	LET ☐	OTHER☐	MISSING PAGES

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 _**he** resides in _____, and further that:

[Check One]

☐ **If an individual): __he** executed the foregoing instrument in his/her name and on his/her own behalf.

☐ **If a corporation): __he** is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, __**he** is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, __**he** executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ **If a partnership): __he** is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ **If a limited liability company): __he** is a duly authorized member of _____ 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.

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APPENDICES

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Section 1: Introduction

Since taking office in January, 2011, Governor Andrew Cuomo has committed his administration to implementing enterprise-wide changes that will utilize modern business practices in running New York State government. New Yorkers need a government in which they can take pride, and this comprehensive overhaul of operations will help accomplish that goal. This Invitation for Bids (IFB) is a part of Governor Cuomo's Procurement Transformation, by the Division of the Budget and the Office of General Services and focuses on implementing best practices and identifying opportunities for savings. The new procurement process balances the needs of achieving savings with the administration's policy goals of encouraging small businesses and certified minority and women owned business enterprises. The scope, contents and format of this IFB are structured in accordance with the goals of the initiative and Bidders are encouraged to review the information contained in this IFB thoroughly to understand the extent of changes from the present Contracts. For more information on the initiative, a Bidder can refer to:

http://www.governor.ny.gov/press/10122011ImproveGovernmentEfficiency and
http://www.ogs.ny.gov/BU/PC/SourcingFAQ.asp.

This IFB is issued by the New York State Office of General Services (OGS) New York State Procurement (NYSPro). The commodity Contracts awarded as a result of this IFB will be centralized Contracts primarily for, but not limited to, New York State Agencies (see Section 6.29 - *Non-State Agencies Participation in Centralized Contracts*). Accordingly, references to the State and its agencies as Authorized Users under this IFB and the ensuing Contract(s) encompass and include all such entities within the definition of "Authorized User" set forth in Appendix B, §5, *Definitions*.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. Bidders should pay strict attention to all dates and, where indicated, times listed in Section 1.7 – *Key Events/Dates* to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, Bidders must follow the format and instructions in Section 3.12 - *Format and Content of Bid Submittal*.

Bidders are strongly encouraged to attend the Pre-Bid Conference described below in Section 1.9 - *Pre-Bid Conference* and to submit an Intent to Bid described below in Section 1.10 – *Intent to Bid.* OGS may, at its sole discretion, delete items or revise the Minimum Specifications for items in Attachment 10 – *Price Pages (Final)*.

OGS encourages Joint Ventures, sub-contracting, and use of Authorized Resellers with New York State Certified Minority and Women-owned Business Enterprises (MWBE) as well as specialized supply companies for particular items within each Lot.

Joint ventures between two or more companies are permitted, however one (1) single company must be designated as the primary Bidder and only one (1) single bid package shall be submitted. Bidders submitting a bid as a joint venture must complete Attachment 5 – *General Questions*, Tab 2 – *Bidder Information*, Items 48-94 with the bid by the date and time indicated in Section 1.7 – *Key Events/Dates*.

1.1 PURPOSE

The purpose of this IFB and the resultant contracts is to provide contract users with a means of acquiring maintenance, repair, and operational (MRO) supplies which are purchased repetitively or on an emergency basis. It also provides a means for inventory reduction by offering quick shipment (within 2 business days) of a broad array of products and aggregation and purchasing of a variety of different products from the same contractor within a single order. This IFB offers the ability to pick up orders if warranted.

1.2 OVERVIEW

The State of New York seeks to establish statewide centralized Contracts for Authorized Users to acquire maintenance, repair and operational (MRO) supplies from qualified suppliers. This Invitation for Bids is based on a Market Basket approach.

Bidders are provided a Market Basket List of items by Lot. Lots may contain Sub-Lots. For each item in each Market Basket, Bidders will provide their commercial list price. For each Lot or Sub-Lot, Bidders will provide a percent discount from the commercial price list. The bidders with the lowest Total Bid Price for the Lot and the second lowest Total Bid Price for the lot will be awarded Primary Contractor and Secondary Contractor respectively.

Minimum spend discounts are set forth in Section 6.12 - *Discounts*. In Attachment 5 – *General Questions*, Tab 2 – *Bidder Information,* Bidders are encouraged to propose increased spend discounts to those set forth in Section 6.12 - *Discounts*.

1.3 SCOPE

The scope of this IFB includes commodities only; services are not included in this IFB. MRO supplies are the materials and equipment used to keep a facility in such condition that it may be continuously utilized at its original or designed capacity and efficiency for its intended purpose. Such supplies support routine recurring work and do not become part of the end product. MRO supplies do not include raw materials such as sheet metal and lumber or large agricultural or maintenance supplies such as tractors or mowers. Contracts will be awarded for four (4) Lots:

Lot 1 - Industrial Supplies

Industrial Supplies include, but are not limited to, supplies that are used in the maintenance of facilities and equipment not otherwise included in Lots 2, 3 and 4. For the purposes of this IFB, Lot 1 has been separated into the following nine (9) Sub-Lots, as defined in Section 1.11 - *Definitions*:

1. Abrasives, Adhesives, Sealants, and Tape
2. Hand and Power Tools
3. Heating, Ventilation, Air Conditioning, and Refrigeration
4. Machining Supplies
5. Maintenance Supplies
6. Mechanical Equipment
7. Plumbing and Hydraulics
8. Safety Products
9. Testing Instruments

Lot 2 - Fasteners

Fasteners include, but are not limited to, devices that link, affix, or mechanically join two or more objects together, close a container such as a bag, a box, or an envelope, or keep together the sides of an opening of flexible material, such as bolts, nuts, clips, screws, nails, staples, and pins. Fasteners can be temporary in that they may be fastened and unfastened repeatedly, or they may be permanent. Tamper resistant and tamper proof fasteners are also within the scope of Lot 2.

Lot 3 - Electrical Supplies

Electrical Supplies include, but are not limited to, the basic electronic elements of electrical distribution systems and electrical repair components. Also included are electric lamps, including Compact Fluorescent Lamps, as specified in, and in compliance with, New York State Executive Order No. 4, Establishing A State Green Procurement and Agency Sustainability Program as set forth in Section 6.27 - *Environmental Attributes and NYS Executive Order 4*. For the purposes of this IFB, Lot 3 has been separated into the following two Sub-Lots, as defined in Section 1.11 - *Definitions*:

1. Lamps
2. Electrical – All Other

Lot 4 - Janitorial Supplies

Janitorial Supplies are the durable and consumable products used by individuals who attend to the cleaning of a facility, including, but not limited to, products specified in, and in compliance with, New York State Executive Order No. 4, Establishing A State Green Procurement Agency Sustainability Program. Examples of Janitorial Supplies are general purpose cleaners, restroom cleaners, toilet bowl cleaners, carpet cleaners, carpet spot removers, and glass, window, and mirror cleaners, including green cleaning products.

1.4 STRUCTURE

It is the intent of OGS to award statewide Contracts for all lots (Lot 1 through Lot 4). Two (2) Contracts will be awarded per Lot. For each Lot, it is anticipated that there shall be a Primary Contractor and a Secondary Contractor. The Primary Contractor shall be the Contractor Authorized Users consider first when utilizing the resultant Contracts. The Secondary Contractor in each Lot will only be utilized in the event that the Primary Contractor cannot meet the Form, Function, and Utility of an Authorized User. When an Authorized User determines that the Secondary Contractor will be utilized for a purchase of MRO supplies, Agencies are required, and local governments are recommended, to document how the Primary Contractor could not provide items meeting the requirements for Form, Function, and Utility.

Bidders are required to make available their full offerings that are within the scope of any Lot for which a bid is being submitted. Detailed information on the procurement process is set forth in Section 6.2 - *Procurement Instructions*. A Bidder can bid on any Lot or any combination of Lots; Bidders are not required to bid on every Lot. If a Lot has Sub-Lots, a Bidder bidding on the Lot must bid all Sub-Lots; if Bidder does not bid on all Sub-Lots within a Lot the bid will be deemed non-responsive and shall be disqualified for that Lot. For detailed information see Section 4 - *Method of Award*.

1.5 ESTIMATED SPEND AND QUANTITIES

The historic dollar value of all Contracts issued under previous awards for similar commodity offerings was approximately $14.9 million for New York State Executive Agencies from January 1, 2011 to December 31, 2011. The historic annual dollar value of contracts issued by New York City for similar commodity offerings was approximately $5.3 million. State Finance Law §163 allows for other Authorized Users, such as New York City, to make purchases of commodities through the Office of General Services' centralized contracts. The individual value of each new Contract is indeterminate and will depend upon actual demand of the Authorized Users and whether a Contractor has Primary or Secondary status within a Lot. Each new Contract shall be for the quantities or dollar values actually ordered during the Contract term (See Appendix B, §§ 39 Participation in Centralized Contracts and 42 Estimated/Specific Quantity Contracts). There is no guarantee that demand will continue in any manner consistent with previous purchases.

The following represents Executive Agency Historic Annual Spend for Market Basket items by Lot and Sub-Lot (where applicable) based on internal data and supplier reporting, and does not include other Authorized Users such as county, city, and educational facilities that may purchase from OGS centralized Contracts:

Lot #	**Lot Name** Sub-Lot Name	**Historical Annual Spend ($)**
Lot 1	**Industrial Supplies (Total)**	**$8,018,166**
	Abrasives, Adhesives, Sealants, Tape	$226,334
	Hand & Power Tools	$2,257,108
	HVAC/R	$647,696
	Machining Supplies	$48,028
	Maintenance Supplies	$1,278,243
	Mechanical Equipment	$1,101,299
	Plumbing & Hydraulics	$1,239,332
	Safety Products	$1,159,049
	Testing Instruments	$61,077
Lot 2	**Fasteners**	**$1,503,807**
	(no Sub-Lots)	
Lot 3	**Electrical Supplies (Total)**	**$1,706,303**
	Lamps	$442,619
	Electrical - All Other	$1,263,684
Lot 4	**Janitorial Supplies**	**$3,695,396**
	(no Sub-Lots)	

1.6 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this IFB 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 notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this IFB. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four (4) year period; the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:
http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html

1.7 KEY EVENTS/DATES

Events	Date	Time
Release of IFB 22711 with the following: • Attachment 1 – *Pre-Bid Conference Registration* • Attachment 2 – *Intent to Bid* • Attachment 3 – *Inquiries (IFB and Specifications)* • Attachment 4 – *Inquiries (Price Pages)* • Attachment 5 – *General Questions* • Attachment 6 – *NYS Required Certification* • Attachment 7 – *Insurance Requirements* • Attachment 8 – *Report of Contract Purchases* • Attachment 9 – *Encouraging Use of NYS Businesses in Contract Performance* **Pre-Bid Conference Registration Begins** **First Inquiry Period (IFB and Specifications) Begins**	9/13/13	
Pre-Bid Conference Registration Ends • Registration is mandatory in order to attend the Pre-Bid Conference • Return completed Attachment 1 – *Pre-Bid Conference Registration* to sstmrosupplies@ogs.ny.gov before this date and time	9/20/13	
Pre-Bid Conference • Attendance is highly encouraged • Held in Albany, NY at the date and time indicated • See Section 1.9 – *Pre-Bid Conference* for complete information	9/27/13	11am
Attachment 2 –*Intent to Bid* Due • Return Completed Attachment 2 – *Intent to Bid* to sstmrosupplies@ogs.ny.gov before this date and time	10/1/13	
First Inquiry Period (IFB and Specifications) Ends • Return completed Attachment 3 – *Inquiries (IFB and Specifications)* to sstmrosupplies@ogs.ny.gov before the date and time indicated	10/4/13	
Responses to Attachment 3 - *Inquiries (IFB and Specifications)* Posted NYSPro's Official Responses to submissions through Attachment 3 – *Inquiries (IFB and Specifications)* will be posted to the OGS website and will be released through the OGS Bidder Notification Service* • IFB Inquiry responses will be posted listing the submitted inquiry and NYSPro's official response • Specification Inquiry responses will be posted as Attachment 10 – *Price Pages (Draft)*	To be determined.	
Draft Price Pages Released and Second Inquiry Period (for Price Pages only) Begins • Attachment 4 – *Inquiries (Price Pages)*	To be determined.	
Second Inquiry Period (for Price Pages only) Ends Return Completed Attachment 4 – *Inquiries (Price Pages)* to sstmrosupplies@ogs.ny.gov before this date and time	To be determined.	
Attachment 10 – *Price Pages (Final)* Posted NYSPro's Official Responses to all inquiries submitted through Attachment 4 – *Inquiries (Price Pages)* will be posted to the OGS website concurrent with Attachment 10 – *Price Pages (Final)* and will be released through the OGS Bidder Notification Service *	To be determined.	
Bid Opening • See Section 3.12 – *Format and Content of Bid Submittal* for details regarding the required format of Bids • Bids are due BEFORE the time and date indicated	01/30/14	11am

*All documents related to this IFB can be found at http://www.ogs.ny.gov/purchase/biddocument/22711BID.ASP. Updates to these documents will be released through the OGS Bidder Notification Service at the following link: https://online.ogs.ny.gov/vendorregnet/Default.aspx under classifications 26, 27, 39, 46, and 47.

1.8 INQUIRIES

A Bidder should raise any potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements of this IFB during the inquiry periods of the procurement. OGS will not entertain any exceptions to Appendix A. OGS will also not entertain exceptions to this IFB and Appendix B that are of a material and substantive nature. A Bidder should note that all clarifications and exceptions including those relating to the terms and conditions of the Contract are to be resolved prior to the submission of a bid. Bids that contain material changes to the terms, conditions, specifications, and requirements set forth throughout this IFB may be disqualified as non-responsive.

No inquiries submitted via phone, fax, or mail will be accepted.

This IFB includes *two separate inquiry periods*, described below and in Section 1.7 – *Key Events/Dates*. The First Inquiry Period (IFB and Specifications) will be used by Bidders to ask questions about the IFB and for Bidders to provide input on the specifications for the Market Basket Items. There is no pricing information included in this inquiry period. Any inquiries related to pricing will be addressed in the second inquiry period. Please do not submit pricing related inquiries in the first inquiry period. Once all inquiries have been collected and input on specifications have been collected, a draft Price List named Attachment 10 – *Price Pages (Draft)* will be posted to the OGS website at the following link: http://www.ogs.ny.gov/purchase/biddocument/22711BID.ASP

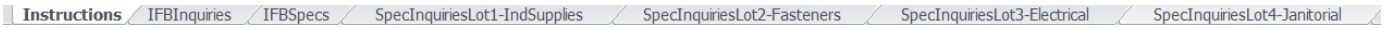
In the Second Inquiry Period (Price Pages), Bidders are encouraged to limit their questions to Attachment 10 – *Price Pages (Draft)*. Once all questions have been collected from the bidders, OGS will post the final Price Pages in Attachment 10 – *Price Pages (Final)* and bidders will be required to bid using this document.

1.8.1 Inquiries (IFB and Specifications)

All inquiries concerning the IFB and Specifications must be submitted to the designated contact at SSTmrosupplies@ogs.ny.gov using the forms found in Attachment 3 – *Inquiries (IFB and Specifications)* by the dates/times listed in Section 1.7 - *Key Events/Dates*. When e-mailing Attachment 3 – *Inquiries (IFB and Specifications)* to the designated contacts, a Bidder should include the following phrase in the subject of the e-mail: "Inquiries for MRO - IFB and Specifications."

Attachment 3 – *Inquiries (IFB and Specifications)* contains separate tabs (shown in the graphic below) into which Bidders can insert information:

- Instructions
- IFB Inquiries
- IFB Specifications
- Specification Inquiries for Lot 1 – Industrial Supplies
- Specification Inquiries for Lot 2 – Fasteners
- Specification Inquiries for Lot 3 – Electrical Supplies
- Specification Inquiries for Lot 4 – Janitorial Supplies



a. Instructions

Please enter your company name into the yellow cell at the top of this page and read through all instructions. Your company name will appear at the top of all the pages of Attachment 3 - *Inquiries (IFB and Specifications)*.

b. IFB Inquiries

Please enter all questions about the MRO IFB using the table provided. Please be thorough and clear with your questions and list the IFB document and section number which your question refers to. If your question does not refer to a particular IFB section, then list it as "General Inquiry." All questions must be submitted to SSTmrosupplies@ogs.ny.gov by the date and time listed in Section 1.7 - *Key Events/Dates*. Bidders shall only submit inquiries regarding the IFB during this timeframe. IFB inquiries submitted during the Second Inquiry Period (Price Pages) will NOT be addressed.

Responses to IFB Inquiries submitted shall be provided electronically on the OGS website at http://www.ogs.ny.gov/purchase/biddocument/22711BID.ASP, and released through the OGS Bidder Notification Service, as a formal addendum which will become part of the ensuing Contract. Registration

for the OGS Bidder Notification Service can be found at the following link: https://online.ogs.ny.gov/vendorregnet/Default.aspx.

c. IFB Specifications

Bidders are asked to indicate which Lots they may be interested in bidding on by selecting "Yes" or "No" in the yellow fields on this page.

d. Specifications Inquiries for Lots 1, 2, 3, and 4

Bidders are strongly encouraged to submit the requested information (in the yellow cells) for the Lot(s) in which it is their intention to bid. Any information submitted by the bidder in Specification Inquiries for Lots 1, 2, 3, and 4 is not binding on the bidder, and is solely for the purpose of potentially revising the IFB specifications. Submission of responses to the Specification Inquiries is voluntary. Submissions of the Specification Inquiries after the date indicated in Section 1.7 – *Key Events/Dates* shall not be considered. Attachment 3 – *Inquiries (IFB and Specifications*), Specification Inquiries Tabs permit potential bidders to provide feedback or alternatives for consideration

Bidder shall not include any pricing information as part of the response to Attachment 3 – *Inquiries (IFB and Specifications)*. Any pricing information accompanying Attachment 3 – *Inquiries (IFB and Specifications)* shall not be evaluated and shall not be returned to the Bidder.

Following NYSPro's issuance of responses to the submission of Attachment 3 – *Inquiries (IFB and Specifications)* NYSPro shall issue Attachment 10 – *Price Pages (Draft)*, posted to http://www.ogs.ny.gov/purchase/biddocument/22711BID.ASP, through the OGS Bidder Notification Service for review by Bidders. Registration for the OGS Bidder Notification Service can be found at the following link: https://online.ogs.ny.gov/vendorregnet/Default.aspx.

Specification Inquires shall be completed as follows for each item in each Lot in which a vendor intends to Bid:

1. Review the Sub-Lot (where appropriate), Item, Minimum Specifications, Reference Vendors/ Manufacturers, and Reference Part Numbers for Each Item.

2. Indicate if each reference part number meets all of the Minimum Specifications listed for the item by selecting "Yes" or "No" from the dropdown menu provided. If bidder is unable to determine whether the reference part number meets each of the Minimum Specifications listed for the item, please select "Unknown".

3. Indicate (by selecting "A", "B", "C", or "D" from the drop-down menu in each cell) if bidder can bid one of the following:

   A. One or more reference part #s,
   B. A substitute part # that meets the minimum specifications,
   C. Neither "A" nor "B" above, or
   D. Both "A" and "B" above.

4. Indicate (by selecting from the automated drop-down menu in each cell), which reference part number(s) vendor can bid on.

5. Indicate (by selecting "Yes" or "No" from the automated drop-down menu in each cell) whether bidder can bid a substitute item.

6. If the bidder CAN bid a substitute item and the answer is "Yes," bidders are encouraged to enter the following for the Substitute Item:

   A. Bidder's Part Number for the Substitute Item
   B. Name of Manufacturer of the Substitute Item
   C. Manufacturer's Part Number for the Substitute Item
   D. Description for the Substitute Item
   E. Unit of Measure for the Substitute (ex: Each, Pack, Case, etc.)

F. Items per Unit of Measure for the Substitute Item
G. Does Bidder's Substitute Item Meet Each of the Minimum Specifications Listed Below (select "Yes" or "No" from the dropdown menu).
H. Website or file name (if document is attached to the e-mail) and page number where the Bidder's specification for each substitute item can be found.

1.8.2 Inquiries (Price Pages)

Attachment 4 – *Inquiries (Price Pages)* shall be completed by the vendor after Attachment 10 – *Price Pages (Draft)* has been released by NYSPro and reviewed by the vendor. A Bidder should raise any potential assumptions, exceptions, caveats, etc. about the Price Pages of this IFB during the inquiry period for the Price Pages of this procurement indicated in Section 1.7 – *Key Events/Dates*. A Bidder should note that all clarifications and exceptions relating to Price Pages are to be resolved prior to the submission of a bid. Bids that contain changes to the Price Pages shall be disqualified as non-responsive. IFB inquiries submitted during the IFB Inquiries (Price Pages) period will NOT be addressed.

All inquiries concerning the Price Pages must be submitted to the designated contact at SSTmrosupplies@ogs.ny.gov using the template found in Attachment 4 – *Inquiries (Price Pages)* by the dates/times listed in Section 1.7 - *Key Events/Dates*. When e-mailing Attachment 4 – *Inquiries (Price Pages)* to the designated contacts, a Bidder should include the following phrase in the subject of the e-mail: "Inquiry for MRO – Price Pages."

Responses to Attachment 4 – *Inquiries (Price Pages)* shall be provided electronically on the OGS website (http://www.ogs.ny.gov/purchase/biddocument/22711BID.ASP), and released through the OGS Bidder Notification Service, as Attachment 10 – *Price Pages (Final)* which will become part of the ensuing Contract. Registration for the OGS Bidder Notification Service can be found at the following link: https://online.ogs.ny.gov/vendorregnet/Default.aspx.

1.9 PRE-BID CONFERENCE

A Pre-Bid Conference will be hosted by OGS to review this IFB. The date and time of the Pre-Bid Conference can be found in Section 1.7 – *Key Events/Dates*. Attending the Pre-Bid Conference is highly encouraged. Vendors who are not able to attend the Pre-Bid Conference in person will be given the opportunity to attend via conference call.

In order to attend the Pre-Bid Conference in person or via conference call, vendors must register by completing Attachment 1 – *Pre-Bid Conference Registration* and submitting it via e-mail to SSTmrosupplies@ogs.ny.gov by the date and time listed in Section 1.7 - *Key Events/Dates*. Vendors who register for the Pre-Bid Conference will receive an e-mail with logistics upon receipt of registration by OGS. Vendors who fail to register for the Pre-Bid Conference by the date and time listed in Section 1.7 – *Key Events/Dates* shall not be permitted to attend the Pre-Bid Conference. Vendors who do not register for the Pre-Bid conference by the date listed in Section 1.7 – *Key Events/Dates* shall not be permitted to register at the Pre-Bid conference.

Each vendor is permitted to send not more than three (3) representatives to the Pre-Bid Conference. Vendors who have registered for the Pre-Bid Conference by the date and time indicated in Section 1.7 – *Key Events/Dates* who wish to revise which representatives shall attend the Pre-Bid Conference may do so at the Pre-Bid Conference. Any individuals arriving later than 10 minutes after the start time of the Pre-Bid Conference will not be admitted. The Pre-Bid Conference will be held at the New York State Empire State Plaza in Albany, NY at the date and time listed in Section 1.7 - *Key Events/Dates*.

Vendors are advised that photo identification is required for parking at the Empire State Plaza and for security Screenings. Direction to Empire State Plaza can be found at the following link: http://www.ogs.ny.gov/ESP/Directions.asp. Parking pricing and location information for Empire State Plaza can be found at the following link: http://www.ogs.ny.gov/BU/BA/Parking/Visitor. Bidders are encouraged to allow plenty of extra time for parking at the Empire State Plaza and are advised that all parking fees and fines are solely at the Bidder's expense.

At the discretion of OGS, materials may be provided prior to the Pre-Bid Conference to the e-mail address(es) submitted with registration or posted to the OGS website for viewing. At the discretion of OGS, inquiries submitted prior to the Pre-Bid Conference may be addressed by OGS at the Pre-Bid Conference.

Any responses to inquiries provided during the Pre-Bid Conference are not binding; only official responses to inquiries submitted in accordance with Section 1.8 – *Inquiries* posted on the OGS website shall be binding.

1.10 INTENT TO BID

A Vendor may signify Intent to Bid by completing and submitting Attachment 2 – *Intent to Bid* according to the instructions below. Failure to submit the Intent to Bid will NOT disqualify the vendor from submitting a bid. However, by submitting the Intent to Bid, the vendor is not obligated to submit a bid.

Submission of the Intent to Bid form shall be considered complete when the following steps have been completed:

A. Vendor must populate each empty cell that is shaded yellow with the requested information (either hand written or typed);
B. Vendor must print the form and sign it by hand or insert an electronic signature in the space provided; and
C. Vendor must convert the form to PDF format and e-mail it to sstmrosupplies@ogs.ny.gov by the date and time indicated in Section 1.7 – *Key Events/Dates*.

1.11 DEFINITIONS

"Abrasive" shall be defined as a hard or sharp substance or material used to wear away the surface of softer, less resistant materials. Included are both natural and synthetic substances used in the form of grinding wheels, sandpapers, cutoff wheels, sandblasting, and other tools and products.

"Adhesive" shall be defined as any substance that is capable of holding or sticking materials or objects together by surface attachment that resists separation such as glue, cement, or paste.

"Agency or Agencies" as defined in Appendix B, §5 – *Definitions*.

"Authorized Reseller" shall refer to an entity that may receive orders directly for MRO supplies, may conduct delivery and may perform billing on behalf of the Contractor. Authorized Reseller shall encompass the terms "Value Added Reseller" and "Designated Authorized Reseller."

"Authorized User(s)" as defined as provided in State Finance Law § 163(1)(k).

"Bidder" as defined in Appendix B, §5 – *Definitions*.

"Bidder Notification Service (BNS)" shall refer to a service intended to be used by suppliers, bidders and others interested in receiving announcements of bidding opportunities for the commodities, services and technology contracts of New York State Procurement. Registration for the BNS is located at: https://online.ogs.ny.gov/vendorregnet/Default.aspx

"Business Day" shall refer to Monday through Friday, excluding State holidays.

"Business Hours" shall refer to 8:00 AM to 5:00 PM ET on Business Days.

"Commercial Price List" shall refer to a set of prices from which a Bidder offers items for sale to the general public that is published and dated. See also "List Price."

"Contract" as defined in Appendix B, §5 – *Definitions*.

"Contract Price List" is a list of items available on the resultant Contract that is created and maintained by the Contractor that contains Net Prices for Authorized Users.

"Contractor" as defined in Appendix B, §5 – *Definitions*. See also "Bidder", "Primary Contractor", and "Secondary Contractor."

"Delivery" as defined in Appendix B, §5 – *Definitions*.

"Discount" shall be the discount percentage applied to a List Price to determine a Net Price.

"Electrical – All Other" shall be defined as the basic electronic elements of electrical distribution systems and electrical repair components including, but not limited to ballasts, circuit breakers, conduits, electrical boxes, fuses, switches, and receptacles.

"Executive Agency" shall refer to all State departments, offices or institutions but, for the purposes of this IFB, excludes the State University of New York and excludes City University of New York. Furthermore, such term shall not include the legislature and judiciary. The term "Executive Agency" does not include any public benefit corporation, public authority, or local government entity.

"Fasteners" shall refer to products used to link, affix, or otherwise join objects or materials together, among other uses.

"Form, Function, and Utility" shall refer to the minimum essential requirements that will meet an Authorized User's needs for an item and/or for an order. These requirements are defined by the Authorized User. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.

"Hand Tools" shall be defined as manual implements or devices used directly upon an object to manipulate or shape it into a desired state, such as hammers, pliers, rakes, screwdrivers, shovels, or wrenches.

"Heating, Ventilation, Air Conditioning, and Refrigeration Supplies (HVAC/R)" shall be defined as supplies to support the control of indoor climates and conditions, including, but not limited to, air filters, blowers, diffusers, fans, refrigerant/coolant, or small heaters.

"Historic Annual Spend" shall refer to the historic dollar value of New York State Executive Agency purchases of MRO supplies between January 1, 2011 and December 31, 2011.

"Hydraulic Supplies" shall be defined as hoses, tubing, hydraulic liquids, and other supplies used in support of a hydraulic system.

"Invitation for Bids (IFB)" as defined in Appendix B, §5 – *Definitions*.

"Janitorial Supplies" shall refer to durable and consumable cleaning products used in janitorial service.

"Joint Venture" shall mean a contractual agreement joining together two or more business enterprises, for the purpose of performing on a State Contract.

"Lamp" shall be defined as a replaceable component which is designed to produce light from electricity. These components include, among other things, bulbs, diodes, or tubes, and have a base of ceramic, metal, glass or plastic, that that makes an electrical connection in the socket of a light fixture.

"List Price" shall refer to a price for an item found in a Bidder's Commercial Price List. See also "Commercial Price List."

"Lot" shall refer to a grouping of items to be bid and awarded together.

"Machining Supplies" shall be defined as supplies to support automatic or manually operated machines (e.g. lathes, presses, mills) used for shaping metal or other rigid materials by cutting, boring, grinding, shearing or other forms of deformation.

"Magnetic Media" shall be defined as the device on which the electronic format of the bid shall be submitted. Magnetic Media includes CD, DVD, Thumb Drive, Memory Stick, or Flash Drive. All Magnetic Media shall be readable and accessible without encryption or passwords. Magnetic Media that is submitted as locked, encrypted, or otherwise unreadable shall be deemed non-responsive and the bidder shall be disqualified from bidding.

"Maintenance Supplies" shall be defined as supplies in support of retaining, repairing, or restoring a facility or equipment to a specified condition including but not limited to: de-icers, insecticides, ladders, paint supplies, replacement parts, storage supplies, tarps, welding supplies.

"Market Basket" shall refer to the combination of items selected for price evaluation based on NYS historic usage.

"May" denotes the permissive in a Contract clause or specification. "May" does not mean "required." See also "Shall" and "Must."

"Mechanical Equipment" shall be defined as mechanical components, including but not limited to belts, pulleys, sprockets, gears, small motors and their accessories.

"MRO" shall refer to maintenance, repair and operational supplies and shall refer to items and Lots included in this IFB, and does not include any services.

"Must" denotes the imperative in a Contract clause or specification. "Must" is synonymous with "required." See also "Shall" and "May."

"MWBE" shall refer to a business that is a NYS certified Minority and/or Women-owned Business Enterprise by Empire State Development (ESD). See also "Authorized Reseller."

"Net Price" shall refer to the price extended to New York State inclusive of all customs, duties and charges and F.O.B. Delivery to any point in New York State.

"New York State Procurement" or "NYSPRO" shall refer to the Centralized Procurement Contracting business unit with the New York State Office of General Services; formerly known as Procurement Services Group.

"Nominal Size" shall refer to the size by which something is known, which may be different from its actual, measurable size, but not materially different.

"Normalization" shall refer to the scaling of differing packaging units of measure of otherwise comparable items to establish unit pricing.

"No-Bid Item" shall refer to an item that was not bid or does not meet the minimum specifications. See also "Replacement Bid Price."

"NYS Vendor File" A centralized repository to maintain timely and reliable information on all Contractors registered to do business with the State.

"NYS Vendor ID" shall refer to the ten-digit identifier issued by New York State when a Contractor is registered on the NYS Vendor File.

"N/A" is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

"Plumbing Supplies" shall be defined as supplies including, but not limited to, faucets, fittings, pipes, water filters, and their accessories, to be used in support of a system of pipes and drains for the distribution of water for drinking, heating, washing, and the removal of waterborne wastes, among other uses.

"Power Tools" shall be defined as hand-held and motor-powered implements that are used directly upon an object to manipulate or shape it into a desired state, such as electric drills, grinders, sanders, saws, and their electrical accessories.

"Preferred Source" shall refer to National Industries for the Blind (NIB), and/or New York State Industries for the Disabled (NYSID), and Correctional Industries (Corcraft).

"Preferred Source Offering" shall refer to those commodities or services that have been approved in accordance with State Finance Law §162 – Preferred Sources.

"Preferred Source Program" shall refer to the special social and economic goals set by New York State in State Finance Law §162 – Preferred Sources that require a governmental entity to purchase select commodities and services from designated organizations when the commodities or services meet the "Form, Function, and Utility" requirements of the governmental entity. Under State Finance Law §163, purchases of commodities and services from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: Corcraft; National Industries for the Blind (NIB); New York State Industries for the Disabled; and the

Office of Mental Health. These requirements apply to state agencies, political subdivision and public benefit corporation (including most public authorities).

"Price List" shall refer to the spreadsheet provided to bidders by OGS and completed and submitted to OGS before the date and time indicated in Section 1.7 – *Key Events/Dates* that includes specification and pricing information that will be used during the specification and financial phases of the IFB evaluation.

"Primary Contractor" shall refer to a responsive and responsible Bidder who has bid the lowest price on a Lot and from whom Authorized Users shall consider first when utilizing the resulting Contracts. See also "Secondary Contractor."

"Reference Part Number" shall refer to a manufacturer part number, a name-brand part number, or another number that is unique to the product.

"Replacement Bid Price" shall refer to the price, being highest Net Price among all responsive Bidders plus 10%, that OGS uses to replace a No-Bid Item included in a Bidder's Attachment 10 – *Price Pages (Final)* for the use in the Financial Evaluation only. See also "No-Bid Item."

"Responsive Bidder" as defined in Appendix B, §5 – *Definitions*.

"Responsible Bidder" as defined in Appendix B, §5 – *Definitions*.

"Safety Products" shall be defined as items needed to keep people safe and facilities in compliance with applicable safety standards. Safety products include, but are not limited to, eye protection, eye wash, head and face protection, hearing protection, gloves, protective clothing, or first aid.

"Sealants" shall be defined as materials used to seal assemblies and joints, form a hard coating on a porous surface, keep moisture in or out of components, and provide thermal and/or acoustical insulation, such as caulk or grout.

"Secondary Contractor" shall refer to a responsive and responsible Bidder from whom Authorized Users shall consider second when utilizing the resulting Contracts for a given Lot when the Primary Contractor's offerings do not meet the Authorized User's Form, Function, and Utility for a given item. See also "Primary Contractor."

"Shall" denotes the imperative in a Contract clause or specification. "Shall" is synonymous with "required." See also "Must" and "May."

"Special Delivery" shall refer to delivery of an order that is requested by the authorized user in less than the 2-business days delivery term of the contract, or delivery of less than the minimum order amount of $100.

"Specifications" see "Bid Specifications" as defined in Appendix B, §5 – *Definitions*.

"Sub-Lot" shall refer to a set of items within a Lot.

"Tape" shall be defined as a continuous narrow, flexible strip of cloth, metal, paper, or plastic, such as duct tape, magnetic tape, masking tape, or ticker tape.

"Testing Instruments" shall be defined as instruments and equipment that evaluate electrical, mechanical, thermal or other material properties and environmental conditions. Examples include, but are not limited to thermometers, pressure gauges, and multimeters.

"Total Bid Price" shall refer to the price used for evaluation of each Lot which is the sum of Bidder's pricing after Normalization and Replacement Bid Prices are applied. See also "Replacement Bid Price" and "Normalization."

Section 2: Qualifications and Requirements

2.1 QUALIFICATIONS OF BIDDER

2.1.1 Bids shall be accepted only from manufacturers or their authorized dealers. Any dealer submitting a bid hereby guarantees that it is an authorized dealer of the manufacturer and that the manufacturer has agreed to supply the dealer with all quantities of products required by the dealer in fulfillment of its obligations under any resultant Contract with the State.

2.1.2 Bidder must have been in continuous operation for at least the past three years immediately prior to bid submission with experience (prior to bid submission) in the provision of Maintenance, Repair, and Operational Supplies in the Lot(s) in which bidder is placing a bid. Bidder must be capable of maintaining adequate organizational capacity to fulfill the demand of any resultant contract pursuant to this IFB.

2.2 REQUIREMENTS OF BIDDER

Upon request by OGS, a Bidder shall submit satisfactory evidence that it is a manufacturer or an authorized dealer of a manufacturer, that it possesses sufficient previous experience, financial resources and organizational capacity to provide the type of products specified herein. To this end, a Bidder shall provide to OGS the following within five (5) business days of such request:

a. Authorized dealers shall provide a certificate from the manufacturer acknowledging that the manufacturer has agreed to supply the dealer with all quantities of products required by the dealer in fulfillment of its obligations under any resultant Contract with the State.

b. Satisfactory evidence that it has maintained an organization capable of performing the work specified herein in continuous operation for at least the past three (3) years through submission of a Dun & Bradstreet Business Information Report or other equivalent evidence.

c. Reports that document sales, financial status, inventory capacity, distribution information, or other organizational capacity indicators.

A Bidder is advised that the State's intent in having the requirements listed above is to ensure that a Responsive and Responsible Bidder is awarded a Contract. OGS reserves the right to request any additional information regarding a Bidder's abilities, qualifications and procedures as it deems necessary to ensure safe and satisfactory performance under a Contract.

OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See "Performance and Responsibility Qualifications," "Disqualification for Past Performance and Findings of Non-Responsibility" and "Employees/Subcontractors/Agents" in Appendix B, OGS General Specifications.

Note: Failure by a Bidder to provide any of the above information as requested by OGS or to meet any of the above qualifications in whole or in part shall result in bidder being deemed non-responsive and in a rejection of that Bidder's bid.

2.3 FINANCIAL STABILITY

If requested, Bidder must document its ability to service a contract with sales volume similar to the scope of this Bid. In addition to sales history, current financial statements may be requested and must be provided within five business days of the request. The State reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services which must be provided at bidder's expense within five business days of the request. Failure to provide the information within the specified time period shall deem the bid non-responsive and shall result in the rejection of the bid. The Bidder must be financially stable and able to substantiate the financial statements of its company. The State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this bid.

Section 3: Bid Submittal

3.1 NOTICE TO BIDDERS

Receipt of these bid documents does not indicate that OGS has pre-determined a company's qualifications to receive a Contract award. Such determination shall be made after the bid opening and shall be based on the evaluation of a bid submission as compared to the specific requirements and qualifications contained in these bid documents.

The Commissioner of OGS shall receive bids pursuant to the provisions of Article XI of the State Finance Law. All bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

Bidders are responsible for the accuracy of their bids and are cautioned to carefully review their bids prior to bid submittal to ensure the bid is complete. Failure to comply with all terms and conditions in this document, attachments, and updates may result in a disqualification of the bid.

3.2 PERFORMANCE AND BID BONDS

There are no bonds for this Contract. In accordance with Appendix B, §58 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Term for resulting Contracts.

3.3 BID DEVIATIONS

In accordance with the requirements set forth in Appendix B, §13 *Extraneous Terms*, a Bidder shall explain any deviation(s) or qualification(s) in Attachment 5 - *General Questions*.

3.4 RESPONSIVENESS

To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in this IFB. Any bid submitted that fails to conform to all requirements will be considered non-responsive and will be rejected as specified in the applicable section(s) of the IFB.

3.5 INCORPORATION

Portions of the successful Bidder's bid and of this IFB shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. Therefore, the bid must be signed by a partner, corporate officer, or other person authorized to commit the Bidder to all provisions of the IFB and the bid as submitted.

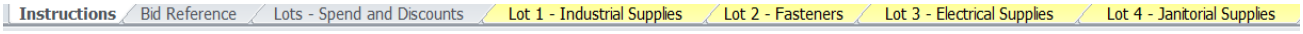
3.6 BID LIABILITY

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. Bids must be received at the specified location on or before the date and time listed in Section 1.7 - *Key Events/Dates*. Bidder assumes all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date/time of the bid opening. Late bids shall be rejected except as provided in Appendix B, §11 *Late Bids*. E-mail or faxed bids are not acceptable and shall not be considered. The received time of bids will be determined by OGS by the clock at the final receiving location.

3.7 PRICING INFORMATION SUBMITTED WITH A BID

Attachment 10 - *Price Pages (Final)* contains separate tabs (shown in the graphic below) into which Bidders can insert information:

- Instructions
- Bid Reference
- Lots – Spend and Discounts
- Lot 1 – Industrial Supplies
- Lot 2 – Fasteners
- Lot 3 – Electrical Supplies
- Lot 4 – Janitorial Supplies



By the date indicated in Section 1.7 – *Key Events/Dates***,** each Bidder's Market Basket price information shall be collected using the following methods as described below using Attachment 10 - *Price Pages (Final)*.

a. Instructions: All bidders are strongly encouraged to read and familiarize themselves with the instructions for Attachment 10 – *Price Pages (Final)*.

b. Bid Reference: Bidder is required to complete the second tab, called "Bid Reference," indicating Bidder's Name and which Lot(s) are being bid. The remaining tabs in Attachment 10 - *Price Pages (Final)* are to be completed according to the Lots being bid.

c. Lots – Spend and Discounts:

   For Lots 1 and 3, Bidder is required to bid a Discount percentage greater than 0% for each Sub-Lot. The Discount percentage may be different for each Sub-Lot. Failure to bid a Discount percentage greater than 0% on all Sub-Lots in Lots 1 and 3 shall result in a disqualification of the Bid for that Lot.

   For Lots 2 and 4, a Bidder is required to bid a Discount percentage greater than 0% for the entire Lot. Failure to bid a Discount percentage greater than 0% for a Lot shall result in a disqualification of the Bid for that Lot.

d. Market Baskets for Lots 1, 2, 3, and 4:

e. For each item in each Market Basket in which a bidder is bidding, bidder must review the Sub-Lot (where appropriate), the Item, and the Minimum Specifications. Bidder must then indicate if Bidder is bidding:

   a- A reference part number,
   b- A substitute part number that meets the minimum specifications, or
   c- No-Bidding the item.

   If bidder is bidding a reference part number, bidder must select which reference part number from the drop down cell provided.

f. If bidder is bidding a substitute item, bidder must indicate the Bidder's Part Number for the Substitute Item, the Name of the Manufacturer of the Substitute Item, the Manufacturer's Part Number for the Substitute Item, Description, whether the Bidder's Substitute Item Meets Each of the Minimum Specifications Listed (by selecting "Yes" or "No" from the dropdown cells provided), the Unit of Measure for the item being bid, the Number of Items per Unit of Measure for the item Bid, the Bidder's List Price for the Item Bid, the name of the Specification Document Reference, and the Page Number for the Item. If the Bidder indicates the Substitute Item does not meet each of the minimum specifications listed (i.e., selected "No"), a message will appear that says, "Bidder states that item does not meet minimum specifications." This item will now be designated a No-Bid, and treated as indicated in Section 3.10 - *No-Bid Items and Replacement Bid Prices.*

g. For every substitute item bid, the Number of Items Per Unit of Measure bid may not exceed the Reference Maximum Number of Items Per Unit of Measure for that item in Attachment 10 – *Price Pages (Final)*. Items bid that exceed the Reference Maximum Number of Items Per Unit of Measure will be disqualified as non-responsive, will not count towards the minimum number of bid Items, will be deemed a No-Bid Item, and will receive a Replacement Bid Price as described in Section 3.10 – *No Bid and Replacement Bid Prices.*

h. For each item in each Market Basket in which a bidder is bidding, NYSPro will normalize to a unit price.

The Price Pages in Attachment 10 - *Price Pages (Final)* will limit the number of decimal places a Bidder may enter for a Discount percentage to two decimal places. Dollar inputs are also limited to two decimal places. Any calculation resulting in decimals shall be rounded to two decimal places; the nearest cent for dollar decimals, and the nearest hundredth of a percent for Discount percentages.

3.8 MINIMUM NUMBER OF BID ITEMS

A Bidder is required to bid on the minimum number of items in each Market Basket for each Lot for which a bid is submitted. Failure to bid on the minimum number of items required for a Lot shall result in disqualification for the Lot. The specific number of items required to be bid for each Lot shall be identified in Attachment 10 – *Price Pages (Final)* once they are finalized and published at the following link: http://www.ogs.ny.gov/purchase/biddocument/22711BID.ASP

3.9 BID ITEMS AND SPECIFICATIONS SUBMITTED WITH A BID

Within each Lot, each Market Basket item will include a list of the minimum specifications for that item as well as a list of one or more reference part numbers that meet the minimum specifications.

3.9.1 Bidder May Bid on One Reference Part Number

Bidders may bid on one of the reference part numbers indicated. No specification documentation is required by the bidder if using this method. If a Bidder cannot bid on one of the reference part numbers listed for an item, then Bidder may bid on a substitute item. Bidder would then need to provide specification documentation in accordance with Section 3.9.2 – *Bidder May Bid on a Substitute Item*.

3.9.2 Bidder May Bid a Substitute Item

If a bidder does not bid on a reference part number, bidder may bid on a substitute item. A substitute item bid by a Bidder must clearly demonstrate in the specification documentation provided on electronic media (see Section 3.12 – *Format and Content of Bid Submittal*) that it meets each of the minimum specifications listed for that item. Substitute items bid that provide alternatives to any specification listed, or bid that fail to demonstrate one or more of the minimum specifications in the specification documentation for that item shall be deemed a No-bid Item.

A Bidder must indicate in Attachment 10 - *Price Pages (Final)* which specification document and/or page number in the bid package where all of the specifications for each substitute item can be found. OGS shall use ONLY the Bidder's electronic submission to evaluate items bid and will determine if the substitute item bid meets the minimum specifications for the item.

If a Bidder bids a substitute item, Bidder must provide evidence that the substitute item meets the Minimum Specifications listed. Evidence shall be provided on Magnetic Media (CD, DVD, Thumb Drive, Memory Stick, or Flash Drive), as defined in Section 1.11 – *Definitions*, in electronic format submitted with the bid.

The document name and page numbers must be clearly indicated in the appropriate cell in Attachment 10 – *Price Pages (Final)*. The documentation shall include sufficient data to demonstrate the item bid meets or exceeds the Minimum Specifications. Items shall be evaluated by comparing documentation submitted with the Specifications. If the item cannot be determined to meet the Minimum Specifications, then the item shall be deemed a No-Bid Item. OGS shall have the final determination as to whether the substitute item bid meets the minimum specifications.

a. The following are **acceptable** forms of evidence that an item meets the minimum specifications:
   - Documentation in PDF format
   - Screen shot of bidder's website that lists the minimum specifications
   - Screen shot of a manufacturer's website that lists the minimum specifications
   - White papers for the item being bid
   - Any combination of the above
   - Other forms of evidence may be considered at the discretion of OGS.

b. The following are **NOT acceptable** evidence that an item meets the minimum specifications:
   - Live link to any website
   - Full electronic catalog
   - Anything in hard copy

Please note: a link to a website is <u>not</u> an acceptable specification document. An item that relies on a link to a website as specification documentation will be disqualified as non-responsive for that item and the item will be considered a No-Bid Item as indicated in Section 3.10 – *No-Bid Items and Replacement Bid Prices*.

For a given Lot, the bid items and pricing proposed by each Bidder shall become their Total Bid Price.

3.10 NO-BID ITEMS AND REPLACEMENT BID PRICES

After it is determined that a bid contains the minimum number of required items for the Lot pursuant to Section 3.8 - *Minimum Number of Bid Items*, any items determined to be No-Bid Items, as defined in Section 1.11 - *Definitions*, shall be priced with a Replacement Bid Price, as defined in Section 1.11 - *Definitions*. Replacement Bid Prices are included only for the purpose of evaluating comparable bids. OGS reserves the right to request additional information in determining whether a substitute item proposed by a bidder meets the minimum qualifications for an item being bid.

3.11 COMMERCIAL PRICE LIST SUBMITTED WITH BID

A Bidder is required to submit an electronic copy of its Commercial Price List, as defined in Section 1.11 - *Definitions*, in Microsoft Excel or Access Format with its bid. In the event a published set of prices does not exist, Bidder certifies by submission of the Bid that the submitted set of prices meets all other requirements of Commercial Price List.

3.12 FORMAT AND CONTENT OF BID SUBMITTAL

Prior to the Bid Opening date and time indicated in Section 1.7 – *Key Events/Dates*, each Bidder shall submit the entire offering on Magnetic Media (CD, DVD, or memory stick) as defined in Section 1.11 – *Definitions*, and in accordance with the instructions below. Only those items listed below in Part 2 are required in paper copy.

A complete bid consists of one (1) copy of each of the following items in Part 1 and Part 2:

Part 1: Magnetic Media containing:

a. Pages 1 and 2 of the IFB (signed and scanned) (PDF);
b. Completed Attachment 5 – *General Questions* (all tabs) (Microsoft Excel Format);
c. Completed Attachment 6 – *New York State Required Certifications* (signed and scanned) (PDF);
d. Completed Attachment 9 – *Encouraging Use of New York State Businesses in Contract Performance* (PDF);
e. Completed Attachment 10 – *Price Pages (Final)* for all Lots on which are being bid (Microsoft Excel Format);
f. The Commercial Price List (Microsoft Excel or Access Format);
g. Specification documents (See 3.9 - *Bid Items and Specifications Submitted With a Bid*);
h. Completed Appendix C – Equal Employment Opportunity Staffing Plan (Form EEO 100);
i. GSA or VA price schedule (Microsoft Excel Format) (if applicable);

Part 2: Signed, paper original of each of the following:

a. Pages 1 and 2 of the IFB with original ink signatures; and
b. Completed Attachment 6 – *New York State Required Certifications* with original ink signatures.

If these requirements are not met, the bid is not responsive and will be disqualified. Please note that in the case of discrepancies between paper copies and electronic media submissions, the electronic copy shall take precedence over the paper copy except where OGS determines that signature executions warrant otherwise.

A Bidder should note that any indicators or messages that have been built into Attachment 10 - *Price Pages (Final)* or Attachment 5 - *General Questions* 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 IFB requirements. Bidders remain responsible for reviewing the Attachments to ensure compliance with the IFB requirements.

3.13 BID DELIVERY

A Bidder assumes all risk for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date and time of the bid opening. Late bids shall be rejected except as provided in Appendix B, §11 *Late Bids*. E-mail or fax bid submissions are NOT acceptable and shall not be considered.

3.13.1 Bid Envelope

All bids must have a label on the outside of the envelope itemizing the following information:

BID ENCLOSED (preferably bold, large print, all capital letters)
Bid number (IFB 22711)
Bid Opening Date and Time

Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality. See Appendix B, §8 *Bid Submission*. Bids shall be delivered to:

State of New York Executive Department
Office of General Services
New York State Procurement (NYSPro)
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242

3.13.2 Hand Deliveries

A Bidder must allow extra time to comply with the building access procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. A Bidder assumes all risks for timely, properly submitted hand deliveries.

3.14 IMPORTANT BUILDING ACCESS PROCEDURES

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk at the base of the Corning Tower. A Bidder who elects to deliver its bid is encouraged to pre-register for building access by contacting New York State Procurement's (NYSPro) receptionist at 518-474-6262 at least 24 hours prior to the bid submission date. Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the NYSPro Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct NYSPro business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. Note: Bids not received within NYSPro by the time and date specified will be considered late.

3.15 DISPUTE RESOLUTION POLICY

It is the policy of the NYSPro to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYSPro bid solicitations, contract awards and contract administration. NYSPro encourages vendors to seek resolution of disputes through consultation with the designated contacts indicated on Page 1 of this IFB. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of NYSPro's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Invitation for Bids or through the OGS website (http://ogs.ny.gov/BU/PC/BizInfo.asp), (click on Dispute Resolution Procedures).

In the event OGS disputes Contractor's designation of a product in a Sub-Lot or Lot, Contractor shall not be able to sell the product until the resolution of the dispute.

3.16 ELECTRONIC BID OPENING RESULTS

NYSPro posts bid information on the OGS/NYSPro web page. The web page makes available information about the list of Bidders that responded to this IFB. The Bid Opening Results Page is available at: http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp.

3.17 DEBRIEFING

Unsuccessful Bidders shall be notified upon Notification of Award to the winning Contractor(s). A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's bid. The pre-award debriefing should be requested in writing within thirty (30) business days of notification of non-Award. After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the IFB, regarding the reason that the bid submitted by such Bidder was not selected for a Contract award. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The post-award debriefing should be requested electronically to the Designated Contacts of this IFB at SSTmrosupplies@ogs.ny.gov within thirty (30) business days of posting of the Contract award on the OGS website.

A Bidder's request for a debriefing shall be electronically submitted to the Designated Contacts of this IFB.

3.18 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

A. Reject any or all bids received in response to the IFB;

B. Withdraw the IFB at any time, at the sole discretion of the Agency;
C. Make an award under the IFB in whole or in part;
D. Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of the IFB;
E. Seek clarifications and revisions of the IFB;
F. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
G. Prior to the bid opening, direct Bidders to submit bid modifications addressing subsequent IFB amendments;
H. Change any of the schedule dates with notification through the Bidder Notification System;
I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
J. Waive any requirements that are not material;
K. Utilize any and all ideas submitted in the bids received;
L. Adopt all or any part of a Bidder's bid in selecting the optimum configuration;
M. Negotiate with the Bidder responding to this IFB within the IFB requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' bids;
N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's bid and/or to determine a Bidder's compliance with the requirements of the IFB;
O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the IFB requirements;
P. If an incorrect reference/parameter/component/product/etc. is stated by the State or by the Bidder, the evident parameter/component/product shall prevail; the proper alternative or corrected parameter/model/code number(s) shall be considered;
Q. To have the flexibility to consider bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the IFB. This flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a Contract is threatened due to a minor technicality or a minor deviation;
R. To reject an obviously unbalanced bid as determined by the State; and
S. To remove from evaluation any item, Sub-Lot, or Lot for reasons attributable to the State including, but not limited to a change in Authorized User requirements and/or product(s), or an error in the bid solicitation (i.e., use of incorrect reference, unit of measure, description, etc.). In such case, evaluation and ranking of bids may be made on the remaining items, Market Baskets, or Lots.

For the purposes of paragraphs R and S, an unbalanced bid is one based on bid prices that are significantly understated for some items and/or significantly overstated for other items such that there is a reasonable doubt that the bid will result in the lowest overall cost to the State.

Section 4: Method of Award

4.1 METHOD OF AWARD

The State intends to award two (2) Contracts per Lot. For each Lot, the State intends to award to a Primary Contractor and a Secondary Contractor. Awards under this IFB shall be made based on lowest price as specified in Section 4.4 – *IFB Evaluation Process*. Lowest pricing shall be determined according to the methods in Section 4.4 – *IFB Evaluation Process*.

4.2 MARKET BASKETS EVALUATION

Market Baskets, as defined in Section 1.11 - *Definitions*, have been developed for Lot 1 – Industrial Supplies, Lot 2 – Fasteners, Lot 3 – Electrical Supplies, and Lot 4 – Janitorial Supplies. The Market Basket is used to identify a Bidder's Pricing and Discount(s) for this IFB. The Market Basket is NOT a complete or comprehensive listing of items available to Authorized Users upon award of this contract.

Reference Part Numbers and Specifications have been included for each item in the Market Baskets. Bidders may bid on Market Basket items in one of two ways:

4.2.1 A Bidder may elect to bid a Reference Part Number, requiring no further evidence that the item meets the minimum specifications; or

4.2.2 A Bidder may elect to bid a substitute item that meets the Minimum Specifications listed in Attachment 10 – *Price Pages (Final)* for the item. If a Bidder bids a substitute item, Bidder must provide evidence that the substitute item meets the Minimum Specifications listed. Evidence shall be provided on Magnetic Media (CD, DVD, Thumb Drive, Memory Stick, or Flash Drive) as defined in Section 1.11 - *Definitions* in electronic format submitted with the bid. The document name and page numbers must be clearly indicated in the appropriate cell in Attachment 10 – *Price Pages (Final)*. The documentation shall include sufficient data to demonstrate the item bid meets or exceeds the Minimum Specifications. Items shall be evaluated by comparing documentation submitted with the Specifications. If the item cannot be determined to meet the Minimum Specifications, then the item shall be considered a No-Bid Item. OGS shall have the final determination as to whether the substitute item bid meets the minimum specifications.

a. The following are **acceptable** forms of evidence that an item meets the minimum specifications:
   - Documentation in PDF format
   - Screen shot of bidder's website that lists the minimum specifications
   - Screen shot of a manufacturer's website that lists the minimum specifications
   - White papers for the item being bid
   - Any combination of the above
   - Other forms of evidence may be considered at the discretion of OGS.

b. The following are **NOT acceptable** evidence that an item meets the minimum specifications:
   - Live link to any website
   - Full electronic catalog
   - Anything in hard copy

Please note: a link to a website is <u>not</u> an acceptable specification document. An item that relies on a link to a website as specification documentation will be disqualified as non-responsive for that item and the item will be considered a No-Bid Item as indicated in Section 3.10 – *No-Bid Items and Replacement Bid Prices*.

4.3 PRODUCT REQUIREMENTS

Reference Part numbers and specifications for each individual item in the Market Baskets are set forth in Attachment 10 - *Price Pages (Final)*. A Bidder is responsible for understanding EO4 requirements and for submitting bids for compliant items. Information regarding EO4 can be found here: http://www.ogs.ny.gov/EO/4/Default.asp.

4.4 IFB EVALUATION PROCESS

After the time and date indicated in Section 1.7 – *Key Events/Dates*, the evaluation of Bids through this IFB will be separated into four parts: Administrative Evaluation, Specification Evaluation, Financial Evaluation, and Ranking.

4.4.1 Administrative Evaluation

Each bid will be evaluated for completeness and conformance with requirements for bid submission as set forth in Section 3.12 - *Format and Content of Bid Submittal*. If these requirements are not met, the bid is not responsive and will be disqualified.

a. Bids will be evaluated to ensure that the Bidder has responded to all questions and provided all requested information in Attachment 5 - *General Questions*.

b. Each bid shall be evaluated to ensure that all required Discount percentages, List Prices, and Specification Information for each substitute item have been submitted for the minimum number of items in each Lot for which a bid is submitted. If a bid for a Lot contains No-Bid Items, Replacement Bid Prices shall be added as stated in Section 3.10 - *No Bid Items and Replacement Bid Prices*.

4.4.2 Specification Evaluation

When a bidder bids a substitute item, the required specification documentation shall be evaluated to ensure that each substitute item meets each of the minimum specifications as stated in Section 3.9 - *Bid Items and Specifications Submitted with a Bid* and Attachment 10 - *Price Pages (Final)*. Each item in each Market Basket that is bid shall be evaluated to determine whether the item meets each of the minimum specifications listed for that item as indicated in Section 4.2 – *Market Baskets Evaluation*.

All information necessary to verify that an item meets the minimum specification requirements must be contained on the electronic media provided by the bidder. Any item that contains a link to a website as the sole or a part of

specification documentation will be disqualified as non-responsive for that item and the item will be considered a No-Bid Item as described in Section 3.10 – *No-Bid Items and Replacement Bid Prices*.

Important Note: All embedded links should either link to another document on the electronic media or be listed such that the linked document can be found on the electronic media.

4.4.3 Financial Evaluation

Financial bids from a Bidder must be presented as directed in Attachment 10 - *Price Pages (Final)* to enable the evaluation of pricing according to the State's prescribed formulas below.

After a set of responsive bids for a Lot has been determined, the following Microsoft Excel generated calculation shall be performed for each Lot to establish the tentative awardees; Primary and Secondary Contractors:

$$\left(L_1 * (1 - D)\right) + \left(L_2 * (1 - D)\right) + \left(L_N * (1 - D)\right) = Total\ Bid\ Price$$

Whereas:
L represents a List Price for a Market Basket Item.
D represents the Discount and shall be the single Discount quoted by a Bidder for all items purchased for a Lot or Sub-Lot.

Total Bid Price is determined by multiplying the List Price submitted for each Market Basket item by the Discount bid for the Lot or Sub-Lot.

The following <u>example</u> illustrates the calculation of Total Bid Price:

Formula Information:

Identifier	Description	Example $ or %
L_1	List price of item 1	$4.67
L_2	List price of item 2	$129.44
L_N	List price of item N (repeated for each value in the Lot)	$45.91
D	Discount	30%

$$(4.67 * (1 - .30)) + (129.44 * (1 - .30)) + (45.91 * (1 - .30)) = 126.01 = Total\ Bid\ Price$$

4.4.4 Ranking

For the evaluations for all Lots, bids shall be ranked in ascending order by their Total Bid Price. The Bidders with the lowest and second lowest Total Bid Price within each Lot shall be the tentative awardees; Primary and Secondary Contractors respectively.

4.5 NOTIFICATION OF AWARD

The successful Bidder shall be advised by OGS in accordance with Appendix B, §38 *Contract Creation/Execution*. Tentative awards of the Contracts shall consist of written notice to that effect by OGS to the successful Bidders, who shall thereupon be obligated to execute a formal Contract. In the case where a Bidder is the lowest price bid in more than one Lot, a single contract will be issued which includes terms for all awarded Lots.

Section 5: Contract Administration

5.1 CONTRACT AMENDMENT PROCESS

During the term of the Contract, the Contract may be amended by the mutual agreement of the parties.

5.2 CONTRACT ADMINISTRATOR

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Contract Administrator shall be set forth in Attachment 5 - *General Questions*. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Contractor may submit a Contract Administrator change by submission of a revised Contractor and Authorized Reseller Information form to the OGS Contract Administrator.

Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail through the submission of a revised Contractor and Authorized Reseller Information form to the Contract Administrator.

Section 6: Terms and Conditions

6.1 CONTRACT TERM AND EXTENSION

6.1.1 Contract Term

The Contract(s) resulting from this IFB shall commence after all necessary approvals and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B, §38 *Contract Creation/Execution*). The Contract(s) shall be in effect for three (3) years.

6.1.2 Contract Extension

If mutually agreed upon between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to two (2) additional periods of up to one (1) year each. Extensions may be exercised on a continuing basis such as an additional three (3) month, six (6) month or twelve (12) month period. In the event a replacement Contract has not been issued at the time of Contract expiration, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the current Contract including, but not limited to, quantities (prorated for such one (1) month extension), pricing, and Delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should the replacement Contract be issued in the interim.

6.2 PROCUREMENT INSTRUCTIONS

Authorized Users subject to the requirements of State Finance Law §162 shall first purchase all MRO Supplies from the appropriate Preferred Sources. When a need for MRO supplies arises that cannot be satisfied through Preferred Sources, the following steps to determine the appropriate source shall be followed:

a. Search the respective Primary Contractor's offering for the item(s).

b. If the Primary Contractor cannot provide an item in the Form, Function, and Utility required by the Authorized User, the Authorized User shall repeat step 1 with the Secondary Contractor.

Should both Contractors be unable to supply acceptable goods, Authorized Users must follow statutory requirements for determining the appropriate source.

When purchasing from a Secondary Contractor, Agencies are required, and local governments are recommended, to document how the Primary Contractor could not provide items meeting the requirements for Form, Function, and Utility.

6.3 ORDERING

6.3.1 Minimum Order

Minimum order shall be $100.00. Contractor may elect to honor orders for less than the minimum order. For orders below the minimum order, at the Contractor's option, Delivery costs from the Contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Contractor may elect to honor orders for less than the minimum order for the duration of the Contract.
Note: The estimated Historic Order Average is $392. The estimated Historic Median Order is: $137.

6.3.2 Ordering

Authorized Users may submit orders electronically via web-based ordering system, via e-mail, or via facsimile at any time. Authorized Users may submit orders over the phone at minimum during Business Hours. Orders shall reference Contract number, requisition and/or purchase order number if applicable.

Contractor shall receive orders at a minimum during Business Hours. Orders submitted after Business Hours shall be received on the next Business Day for the purposes of Section 6.4 - *Delivery*.

Upon Contractor's receipt of order, order confirmation shall be provided to Authorized Users electronically or via facsimile, shall be itemized, and shall include purchase price, taxes, date of purchase, Delivery information (if applicable), Authorized User name, and sales representative (if applicable).

6.3.3 Web-Based Ordering

Contractor shall provide a web-based ordering system in accordance with the provisions of Section 6.9 - *Internet Access to Contract Pricing Information* within thirty (30) calendar days of Contract execution. The system shall be able to perform ordering, reporting and tracking in a fully secure, real-time system accessible using the Internet. The web-based ordering system shall acknowledge receipt of a customer's order, allow multiple users at once and allow access to order history.

Web-Based ordering systems must be capable of processing, controlling, documenting and reporting on at least the following data elements:

a. Contractor part number
b. Product name and manufacturer
c. Contractor name and address
d. Agency/Facility/Political Subdivision, etc.
e. Contract number
f. Order number/Purchase Order number
g. Authorized User (Individual placing order)
h. Product description
i. Manufacturer name and part number
j. Unit of measure and number of items per unit of measure
k. Indication of whether a product is available through an Authorized Reseller
l. Authorized Reseller's name and address (if applicable)
m. Net Price and total amount

The website shall be the responsibility of the Contractor to maintain, update, and to keep secure. Contractor shall provide all means for managing secure access to the web-based ordering system.

If OGS exercises its right to integrate SFS procurement functions as provided in Section 6.3.5 - *New York State Statewide Financial System*, then SFS users shall consult SFS for information and purchases.

6.3.4 Procurement Card

A Bidder shall accept a Procurement Card as payment for purchases. See Section 6.18 - *Appendix B Amendments* "Procurement Card".

Authorized Users are encouraged to use a Procurement Card as the primary means of payment.

6.3.5 New York State Statewide Financial System

The New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs or to integrate Contractor-hosted punch-out catalogs. OGS reserves the right to integrate either of these future catalog functions with a Contractor during the Contract period, and by submittal of a bid a Bidder agrees to coordinate with SFS for integration if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS during integration. Upon completion of integration and activation of an SFS-based catalog ordering system, Executive Agencies shall process their orders through the SFS functionality and the other Authorized Users shall continue to process orders in accordance with Contract terms and conditions, including through any Contractor-hosted web-based ordering system; however, Contractor shall continue to be subject to provisions in Section 6.3.3 - *Web-Based Ordering*. For more information on SFS, its use, and its capabilities please visit the SFS website here: http://www.sfs.ny.gov/.

6.4 DELIVERY

All terms for Delivery shall be in accordance with Appendix B, §§ 45 *Product Delivery* and 47 *Shipping/Receipt of Product*, except as provided herein:

6.4.1 Orders shall be delivered within two (2) Business Days from the time of receipt of order. Orders shall be received in accordance with Section 6.3 - *Ordering*;

6.4.2 There shall be no charges for Delivery, other than Special Delivery and orders less than the minimum order. Charges for Special Delivery may be charged to Authorized Users, as agreed upon at the time of purchase.

Receiving times and requirements shall vary with the receiving facility and should be verified at the time of purchase. Authorized Users may waive the delivery requirement for an order and elect to pick the item up from a Contractor or Reseller's location.

6.5 PRODUCT RETURNS

6.5.1 Product Returns Because of Quality Problems

The Authorized User must conduct an inspection of all items received, and notify the Contractor within 30 calendar days of delivery for quality problems, outdated product, damage, etc. Upon written notification by the Authorized User to the Contractor, products determined to have quality problems, outdated product, damage, etc., shall be picked up by the Contractor within ten (10) calendar days after notification. The Authorized User shall elect whether to receive a replacement product or a credit/refund for the full purchase price. Contractor shall not charge a restocking fee for products determined to have quality problems, outdated product, damage, etc.

6.5.2 Product Returns Due to Authorized User Error

Products ordered in error by an Authorized User shall be returned by Authorized User at its expense for credit within fifteen (15) business days of delivery. Standard stock products must be in resalable condition (original container, unused). The Contractor may charge a restocking fee not to exceed ten percent (10%) of the Contract price of each product returned due to Authorized User error.

Returned items shall be picked up by the Contractor in accordance with Appendix B, §51 *Rejected Product*.

6.6 INSTRUCTION MANUALS

Contractor shall furnish to the Authorized User all instructions, operational materials, and required safety information as provided by the manufacturer for the item supplied at the time of Delivery of the items. Material Safety Data Sheets (MSDS) must be provided to the Authorized User for all orders for which they are available.

6.7 RECEIPTS AND INVOICING

6.7.1 Procurement Card Receipts

For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each Delivery.

6.7.2 Invoices

Contractor invoices must include detailed line item information to allow Authorized Users to verify that delivered pricing matches the correct price on the date of order. At a minimum, the following fields must be included on all invoices to Authorized Users:

a. Order Date
b. Authorized User's Purchase Order Number
c. SKU Number
d. Product Description
e. Contractor's Federal ID Number
f. Contractor's NYS Vendor ID Number
g. Item Quantity
h. Net Price per Item
i. Total Price per Order

If a Contractor offers a discount for prompt payment, the Contractor shall include the terms of the discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the date for which the prompt payment discount(s) expire.

6.8 CONTRACT PRICE LIST

A Bidder must submit a Contract Price List in Microsoft Excel Format upon notice of tentative award. The Contract Price List shall reflect the pricing and discount structure submitted with the bid. The Contract Price List must include, but is not limited to, Contractor name, the date the list was produced, and the following fields: Contractor part number, part description, unit of measure, number of items per unit of measure (1 or more), Lot, Sub-Lot (where applicable), List Price, Discount percentage, Spend Discounts, and Net Price. Discounts in the Contract Price List must be applied according to the definitions of each Lot and Sub-Lot in Section 1.3 - *Scope*.

Contractors shall maintain the Contract Price List on their website in accordance with Section 6.9 - *Internet Access to Contract Pricing Information*. Upon request, Contractors shall supply hard copies of the Contract Price List to OGS for distribution to Authorized Users or supply them directly to Authorized Users.

6.9 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION

Contract pricing information shall be made available and posted on the Contractor's Internet website for access by Authorized Users. Information about payment, delivery, and special pricing as set forth in the Contract shall be available and posted on the Contractor's Internet website for access by Authorized Users. Directions and assistance in using the website in general must be available at entry. To that end, the Contractor is required to host the complete Contract pricing and product offerings at Contractor's Internet website, at Contractor's sole expense, including all subsequent changes in the Contract offerings (e.g. adds, deletes and price revisions, as applicable) during the Contract term, in accordance with the following requirements:

6.9.1 Warranty

Contractor warrants and represents that Contract pricing and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's Internet website. Contractor shall indemnify the State and Authorized Users for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

6.9.2 Contract Pricing

Contractor is required to post a copy of the complete Contract pricelist, in Microsoft Excel or PDF Format, on their website.

6.9.3 Price Data Retention & Audit

Information on the website shall contain the Contract Price List from the previous Contract year. At the end of each Contract year, the Contractor shall either electronically archive the Contract Price List at the website in a manner which allows the State to access the information or electronically transmit the information to the State. This requirement does not relieve the Contractor from any audit requirements imposed by Appendix A, §10, *Records*, nor does it shorten the retention periods for information stated therein.

6.9.4 Site Changes

Contractor hereby consents to a link from the OGS website to the Contractor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State, and OGS reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. OGS will provide Contractor with subsequent notice of link termination or removal. Contractor shall provide OGS with timely written notice of any change in URL or other information needed to access the Contract Internet website and/or maintain the link.

6.9.5 Use of Access Data Prohibited

If Contractor stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Contractor for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State of New York and Contractor cannot restrict access to the Contract terms and conditions including pricing, e.g., through use of restrictive technology or passwords.

6.9.6 Responsibility for Content

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 f/k/a Office for Technology 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. In accordance with such policy, the following language is incorporated into this Contract:

"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 as determined by quality assurance testing. Such quality assurance testing will be conducted by OGS and the results of such testing must be satisfactory to OGS before web-based information and applications will be considered a qualified deliverable under the Contract or procurement."

6.10 USE OF AUTHORIZED RESELLERS

Contractors must provide service, sales and support staff to supply Authorized Users located throughout New York State with approved products. Contractors shall ensure that sufficient commodities are available directly, or through Authorized Resellers to ensure maximum commodity availability throughout the State. The State agrees to permit Contractor to utilize approved Authorized Resellers to participate as alternate distribution sources for Contractor. Such participation is subject to the following conditions:

6.10.1 Applicability of Contract Terms

Products ordered directly through Authorized Reseller(s) shall be limited to products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Authorized Reseller participation.

6.10.2 Responsibility for Reporting/Performance

Contractor shall be fully liable for Authorized Reseller(s) performance and compliance with all Contract terms and conditions. Products purchased through an Authorized Reseller must be reported by Contractor in the required quarterly reports to the State in accordance with the requirements in Section 6.15 - *Report of Contract Purchases*. At the request of Authorized Users, Authorized Reseller(s) shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Authorized Reseller.

6.10.3 Designation of Authorized Reseller(s)

Contractor shall specify whether orders may be placed directly with Contractor, or may be placed directly with designated Authorized Reseller(s). When Authorized Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering, billing addresses, Federal Identification numbers, and Vendor ID numbers in the format provided in Attachment 5 - *General Questions*. Requests to add or delete Authorized Resellers or to modify Authorized Reseller information must be submitted electronically via e-mail through the submission of a revised Contractor and Authorized Reseller Information form to OGS for prior approval.

6.11 CONTRACT PRICE LIST UPDATES

Requests for Contract Price List updates may include item additions and deletions, and price decreases and increases as specified below:

6.11.1 Updates to the Contract Price List are limited to the pricing and items offered in the current Commercial Price List at the time the request is made. The Contractor may annually request Contract Price List updates.

6.11.2 Requests for updates should be submitted to OGS at least sixty (60) calendar days prior to the Contract anniversary date. Requests made less than sixty (60) calendar days prior to the Contract anniversary date may be considered only when it is determined to be in the best interest of the State**.**

6.11.3 Updated Contract Price Lists shall be in the same format as the original Contract Price List submitted upon tentative award notification, as specified in Section 6.8 - *Contract Price List***.**

6.11.4 If the Contractor fails to timely submit the request then the Contract Price List may remain unchanged for the following Contract year, except for as specified in Appendix B, §24 F *Best Pricing Offer***.**

6.11.5 Requests must include an electronic copy of the Contract Price List and an updated Commercial Price List. All updates are subject to OGS review and approval, and shall take effect upon such approval**.**

6.11.6 Contract pricing may be subject to decreases during the Contract period in accordance with changes which may be made by the Contractor in the Commercial Price List, and spend discounts in accordance with Section 6.12.2 - *Spend Discounts*. Price decreases, including Best Pricing Offer, are to be effective immediately as specified in Appendix B, §24 F *Best Pricing Offer*. A summary of these decreases shall be submitted annually**.**

6.12 DISCOUNTS

6.12.1 Item Discounts

Discount percentage(s) shall not decrease for the life of the Contract. A Contractor may offer increased Discount percentage(s) for either a Sub-Lot discount or a Spend Discount, at any time during the life of the Contract, without prior approval by OGS, provided that OGS be notified by the Contractor at the time of the Discount increase. Discount percentages must remain equal or better than those offered in the Contractor's original bid.

6.12.2 Spend Discounts

A Bidder may offer spend discounts to the State in excess of the spend discounts set forth below. Once a spend threshold is reached, any additional proposed spend discount percentage(s) in Attachment 5 - *General Questions* will be added to spend discount below and that discount percentage will be added to the existing Contract Discount percentage(s) for the Sub-Lots and Lots for the balance of the Contract term. If Contractor is awarded multiple Lots the State's spend will be aggregated among the Lots for purpose of calculating the spend discount to the State.

Abbreviations Explained	NYS Pre-defined Spend Thresholds	Minimum Spend Discount
'M' = Millions of Dollars '>' = Greater than '<' = Less than	$0 - $10.0M	None
	>$10.0M - $20.0M	1.00%
	>$20.0M and up	1.00%

Example #1:
If no additional spend discounts beyond the minimum are provided, the Sub-Lot Item Discounts provided are impacted in the following way (the data in the example below is sample data for illustrative purposes only):

Spend Threshold →			**<$10.0M**	**>$10.0M – $20.0M**	**>$20.0M**
% Discounts →		% Discount at Bid	Minimum Spend Discount: 0%	Minimum Spend Discount: 1%	Minimum Spend Discount: 1%
Lot #1:	Sub-Lot #1	25%	25%	26%	27%
	Sub-Lot #2	40%	40%	41%	42%
	Sub-Lot #3	30%	30%	31%	32%
	Sub-Lot #n	15%	15%	16%	17%
Lot #2	-	30%	30%	31%	32%
Lot #3	Sub-Lot #1	45%	45%	46%	47%
	Sub-Lot #2	25%	25%	26%	27%
Lot #4	-	35%	35%	36%	37%

Example #2:
If additional spend discounts are provided, the Sub-Lot Item Discounts are impacted in the following way (the data in the example below is sample data for illustrative purposes only):

Spend Threshold →		**<$10.0M**	**>$10.0M – $20.0M**	**>$20.0M**
% Discounts →	% Discount	Bidder's Spend	Bidder's Spend	Bidder's Spend

		at Bid	Discount: 2%	Discount: 5%	Discount: 10%
Lot #1:	Sub-Lot #1	25%	27%	32%	42%
	Sub-Lot #2	40%	42%	47%	57%
	Sub-Lot #3	30%	32%	37%	47%
	Sub-Lot #4	15%	17%	22%	32%
Lot #2	-	30%	32%	37%	47%
Lot #3	Sub-Lot #1	45%	47%	52%	62%
	Sub-Lot #2	25%	27%	32%	42%
Lot #4	-	35%	37%	42%	52%

6.13 SALES FLYERS

At the Contractor's option, sale Commercial Price Lists and flyers based on the Contract Price List that offer further pricing reductions or increased Discounts may be offered to Authorized Users.

6.14 RECALLS

During the Contract term, the Contractor(s) must immediately notify the OGS Contract Administrator of any recalls pertaining to any items in any Lots awarded to the Contractor.

6.15 REPORT OF CONTRACT PURCHASES (SALES REPORTS)

Contractor shall furnish quarterly Sales Reports containing total sales for Authorized Users no later than forty-five (45) 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 reported in the quarterly report.

In addition to Contractor direct sales, Contractor shall submit sales information for all Authorized Resellers where such Contract sales are provided by other than the Contractor. Contractors shall specify if any Authorized Resellers are NYS Certified Minority and/or Women Owned Businesses Enterprises (MWBEs). Contractor shall verify such status through the Empire State Development directory of Minority and Women Owned Businesses at:
http://www.esd.ny.gov/MWBE/directorySearch.html

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

The report in Attachment 8 – *Report of Contract Purchases* is the **minimum** information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis shall be considered poor performance in accordance with Section 6.32 - *Poor Performance* and may result in Contract cancellation and designation of Contractor as non-responsible.

6.16 APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated December 2012, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. Please retain this document for future reference and do not return to OGS as part of the Bid submission.

6.17 APPENDIX B

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. Please retain this document for future reference and do not return to OGS as part of the Bid submission.

6.18 APPENDIX B AMENDMENTS

6.18.1 Section 4 - *Conflict of Terms* is deleted and replaced with the following language:

Conflict of Terms and Conditions
The following shall be incorporated into the resulting Contract. Other documents may be identified for inclusion during the course of the IFB process. Conflicts among the documents shall be resolved in the following order or precedence:

a. Appendix A, Standard Clauses for New York State Contracts;
b. The resulting Contract;
c. Appendix B, General Specifications;
d. Other Appendices and attachments as deemed necessary.

6.18.2 Section 5 – *Definitions*, the definition of "Authorized User" is deleted and replaced with the following language:
Authorized User shall have the same meaning as set forth in Section 163(1)(k) of the State Finance Law.

6.18.3 Section 27 - *Procurement Card* is deleted and replaced with the following language:
Procurement Card. The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Contractor shall accept the Purchasing Card for purchases under the Contract.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for products returned as defective or faulty.

6.18.4 Section 62 - *Contract Billings* is deleted and replaced with the following language:

1. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. 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.

2. Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at http://www.osc.state.ny.us/epay/index.htm or by e-mail at epayments@osc.state.ny.us. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above. Inquiries relating to OSC's Electronic Payments program should be directed to:

   NYS Office of the State Comptroller
   Vendor Management Unit
   110 State Street Mail Drop 10-4
   Albany, NY 12236
   Telephone: (855) 233-8363
   E-Mail: helpdesk@sfs.ny.gov

3. Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

6.19 APPENDIX C

Appendix C, Equal Employment Opportunity Staffing Plan (EEO 100) is hereby expressly made a part of this IFB as fully as if set forth at length herein.

6.20 MERCURY ADDED CONSUMER PRODUCTS

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information: http://www.dec.ny.gov/chemical/8512.html.

6.21 DIESEL EMISSION REDUCTION ACT OF 2006

Pursuant to §19-0323 of the N.Y. Environmental Conservation Law (“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 Contract vendors “on behalf of” State agencies and public authorities and require certain reports from Contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2012. 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 NYECL §19-0323, to be used under this Contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

6.22 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

6.22.1 New York State Law

Pursuant to New York State Executive Law Article 15-A, OGS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises and the employment of minority group members and women in the performance of OGS Contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the

enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establishes goals for maximum feasible participation of New York State Certified minority and women–owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State Contracts.

6.22.2 Business Participation Opportunities for MWBEs

For purposes of this IFB, OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers (Tier-Two Suppliers) in the performance of the Contract and Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: http://www.esd.ny.gov/mwbe.html.

For guidance on how OGS will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OGS may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid, a Bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

1. A Bidder is required to submit a MWBE Utilization Plan on Form MWBE #100 with the bid or proposal as part of Attachment 5 - *General Questions*. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State Contract and a description of the Contract scope of work that the Contractor intends to structure to meet the goals on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract that the Contractor intends to be performed by a NYS Certified minority or woman-owned business. Any modifications or changes to the agreed participation by NYS Certified MWBEs set forth in the Utilization Plan submitted with the bid or proposal, after the Contract award and during the term of the Contract, must be reported on a revised MWBE Utilization Plan and submitted to OGS.

2. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS' acceptance or issue a notice of deficiency within 20 days of receipt.

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

4. OGS may disqualify a Bidder as being non-responsive under the following circumstances:
   a. If a Bidder fails to submit a MWBE Utilization Plan;
   b. If a Bidder fails to submit a written remedy to a notice of deficiency;
   c. If a Bidder fails to submit a request for waiver; or
   d. If OGS determines that the Bidder has failed to document good faith efforts.

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

Contractors are required to submit a Contractor's quarterly MWBE Contractor Compliance & Payment Report on Form MWBE #102 to OGS in conccurrance with the Report of Contract Purchases documenting the progress made toward achievement of the MWBE goals of the Contract.

6.22.3 Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this IFB, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit a staffing plan on Form EEO 100 (Appendix C) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will 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.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

6.23 NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a Contract pursuant to this IFB, the Bidder(s) and any Authorized Resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company and to each of your Authorized Resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors 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 vendor must enter the vendor's ten-digit Vendor Id number on the first page of this bid document. Authorized Resellers already registered should list the ten-digit Vendor Id number along with the Authorized Reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor Id number from OGS. Complete the OSC Substitute W-9 Form http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf and submit the form to OGS in advance of bid submittal. Please send this document to the Designated Contact in the IFB. In addition, if an Authorized Reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf should be completed by each designated Authorized Reseller and submitted to OGS. The OGS will initiate the vendor registration process for all Bidders and their Authorized Resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.
For more information on the vendor file please visit the following website: http://www.osc.state.ny.us/vendor_management

6.24 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 when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us.

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 the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

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

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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 or her designee, 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 or her designee issues a written notice authorizing a resumption of performance under 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee 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.

6.25 TAX LAW §5-A

A Bidder is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Bidder filed the ST-220-TD with NYS Department of Taxation and Finance (DTF). Note: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render a Bidder non-responsive. A Bidder shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the

information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than $100,000 to certify to the 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 are 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.

This law imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect State sales and compensating use tax and Contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving Agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who is not so registered in accordance with the law.

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: http://www.tax.ny.gov.

6.26 USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors 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 IFB. 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 "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specifications.

6.27 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 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) (EO4), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at http://www.ogs.ny.gov/EO/4/Default.asp. 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.

6.28 "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the Products included in this IFB and related Contract Award Notification are subject to the "OGS or Less" provisions of State Finance Law §163(3)(a)(.v). This means that State agencies can purchase products from sources other than the Contractor provided that such products are substantially similar in Form, Function, and Utility to the products herein and are:

1. lower in price -and/or-
2. available under terms which are more economically efficient to the State agency (e.g. Delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two (2) Business Days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should

refer to the New York State Procurement Guidelines "OGS or Less Purchases" for complete procedural and reporting requirements.

6.29 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in 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, §39 *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have Delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include Delivery to locations adjacent to New York State.

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

6.30 EXTENSION OF USE

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

6.31 EXTENSION OF USE COMMITMENT

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

Any unilateral limitations/restrictions imposed by the Contractor and/or manufacturer on eligible Authorized Users will be grounds for rejection of the bid or cancellation of the Contract. If a Contract, or any portion thereof, is canceled for this reason, any additional costs incurred by the eligible purchaser will be borne by the Contractor.

6.32 POOR PERFORMANCE

Authorized Users should notify NYSPro's 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 (NYSPro)
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717 / Fax: (518) 474-2437

6.33 BASIC WARRANTY

See Appendix B, §72 *Additional Warranties*.

6.34 OVERLAPPING CONTRACT ITEMS

Products available in the resulting Contracts may also be available from other New York State Contracts. Authorized Users shall be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

In the event that there is an overlap between Lots, Authorized User shall consider price as part of Form, Function, and Utility and shall select the item from the Lot that offers the most cost effective alternative that meets their Form, Function, and Utility and maintain a procurement record documenting the basis for this selection.

6.35 IRAN DIVESTMENT ACT

By submitting a bid in response to this IFB or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should OGS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OGS will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate and provided for by law, rule, or Contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a Contract, and to pursue a responsibility review with respect to any entity that is awarded a Contract and appears on the Prohibited Entities list after Contract award.

6.36 PREFERRED SOURCE PRODUCTS

Bidders should note that State Finance Law §162 – Preferred Sources requires that many governmental entities, including Executive Agencies, afford first priority to the products/services of Preferred Source suppliers such as Correctional Industries (Corcraft), National Industries for the Blind (NIB) and NYS Industries for the Disabled (NYSID), when such products/services meet the form, function and, utility of the agency. Some products/services in the resultant Contract(s) may be available from one or more Preferred Sources. In the Contract, agencies will be reminded to comply with the statutory requirements and resulting guidelines with respect to affording first priority to the Preferred Sources.

Resultant Contractor will be required to prominently display the following language on all price guides and Contract updates to agencies relative to the award: Agencies Note: Some products/services in this Contract may be available from one or more Preferred Sources. Agencies are reminded to comply with the statutory requirements under §162 – Preferred Sources of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products/services available from Preferred Sources which meet your form, function and utility. The complete, updated list of Preferred Source Offerings is available on the OGS website,
at http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf.

6.37 CUSTOMER SERVICE AND TOLL FREE NUMBERS

Contractor must provide a toll-free telephone number for the Authorized Users' usage. Contractor must staff this toll free number during Business Hours. If Bidder does not currently maintain a toll-free number, the Bidder must certify its willingness to establish one after award of Contract.

6.38 ELECTRONIC EQUIPMENT RECYCLING AND REUSE ACT

Contractors should be aware of the NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act which was signed into law in May 2010 and requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. More information regarding the Electronic Equipment Recycling and Reuse Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html

6.39 BULK DELIVERY AND ALTERNATIVE PACKAGING MATERIALS

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Bidder/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.

6.40 NEW YORK STATE REQUIRED CERTIFICATIONS

A Bidder is required to submit the signed New York State Required Certifications (Attachment 6 – *New York State Required Certifications*) with its bid. Failure to submit this document may result in bid being considered non-responsive and may result in bid being REJECTED.

6.41 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 (as per Section 6.29 - *Non-State Agencies Participation in Centralized Contracts*) to use New York State Contracts, agency code, name, address, and contact person. Authorized Users shall not be required to provide credit references.

6.42 GENERAL REQUIREMENTS

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor. For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

Market Basket Solicitation, Example 3

1.1.1 This document constitutes an invitation for sealed bids from prospective bidders to establish a contract for the purchase of electronic key control systems on an as needed, if needed basis for various correctional facilities within the Missouri Department of Corrections, hereinafter referred to as "state agency", in accordance with the requirements and provisions stated herein.

2.1.2 A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the state agency.

2.6.2 The contractor may obtain detailed information for payments issued for the past 24 months from the State of Missouri's central accounting system (SAM II) on the Vendor Services Portal at https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx.

2.11.1 Quantities of electronic control key systems that will actually be purchased cannot be estimated. The State of Missouri makes no guarantees about single order quantities or total aggregate order quantities.

3.1.1 The contractor shall provide electronic key control systems on an as needed, if needed basis as ordered by the state agency. Each electronic key control system shall be custom designed to meet the needs of the state agency. The contractor must comply with all mandatory requirements and specifications presented herein pertaining to provision of electronic key control systems.

5.8.1 The bidder should include a current price list/catalog with their bid response at no additional cost to the State of Missouri. If the bidder does not include a copy of the current price list/catalog with their bid, then the bidder must provide a copy within five (5) working days after notification by the buyer.

5.10.1 The bidder shall submit a firm, fixed percentage discount in the Discount Pricing portion (line item 001) of the Pricing Page to apply to all electronic key control systems/components and related items available in the bidder's current price list/catalog. The discount stated shall be firm for the duration of the contract.

5.10.2 In addition, the bidder must state firm fixed prices for all of the items listed in the Market Basket Pricing portion of the Pricing Page. The prices stated, must be after-discount pricing. The market basket items are for evaluation purposes only and will not be considered firm, fixed pricing for the contact period.

5.11 Cost Evaluation:

5.11.1 The cost evaluation shall be based on the bidder's after-discount prices stated for all items listed in the Market Basket Pricing portion of the Pricing Page. For purposes of the cost evaluation, the state will compute the total cost for all items in the Market Basket. The State of Missouri reserves the right to evaluate optional items, if deemed necessary.

5.12 Determination for Award:

5.12.1 The award shall be made to the lowest priced responsive bidder….

PRICING PAGE

DISCOUNT PRICING

The products bid shall conform to the specifications and requirements stated herein. The bidder shall state a firm, fixed percentage discount below. The discount shall apply to all electronic key control systems/components and related items available in the bidder's current price list/catalog. The discount stated shall be firm for the duration of the contract.

LINE ITEM	MANDATORY SPECIFICATIONS	UNIT	PERCENT DISCOUNT
001	C/S Code: 42550 *Key Storage Cabinets and Files* Firm, fixed percentage discount to be applied to all electronic key control systems/components and related items available in the bidder's price list/catalog.	PCNT	_____%

MARKET BASKET PRICING

For purposes of the cost evaluation, the bidder must price all market basket items listed below. The bidder must state firm, fixed after-discount pricing for all items. The bidder must use the current price list/catalog and then apply the percentage discount quoted in line item 001 above for completing the pricing in this section. The bidder should indicate the brand/model number of the system/module offered below and specify the page number where the item can be found in the bidder's price list/catalog.

Note: The market basket items are for evaluation purposes only and will not be considered firm, fixed pricing for the contract period.

ITEM	DESCRIPTION	QTY	AFTER DISCOUNT PRICE	BRAND/ MODEL #	CATALOG PAGE #
1)	One Module Cabinet System	1	$ _____	_____	
2)	Two Module Cabinet System	1	$ _____	_____	_____
3)	Six Module Cabinet System	1	$ _____	_____	_____
4)	Six Key Module	1	$ _____	_____	_____
5)	Sixteen Key Module	1	$ _____	_____	_____
6)	Folger Adams Key Module	1	$ _____	_____	_____
7)	Software	1	$ _____	_____	_____

STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID (IFB)

IFB NO.: B1Z14130
TITLE: ELECTRONIC KEY CONTROL SYSTEMS
ISSUE DATE: 11/18/13

REQ NO.: NR 931 YYY14709050
BUYER: LAURIE BORCHELT
PHONE NO.: (573) 751-1702
E-MAIL: laurie.borchelt@oa.mo.gov

RETURN BID NO LATER THAN: 12/04/13 AT 2:00 PM CENTRAL TIME

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Delivered sealed bids must be in DPMM office (301 W High Street, Room 630) by the return date and time.

RETURN BID TO:

(U.S. Mail)
DPMM
PO BOX 809
JEFFERSON CITY MO 65102-0809

or

(Courier Service)
DPMM
301 WEST HIGH STREET, ROOM 630
JEFFERSON CITY MO 65101-1517

CONTRACT PERIOD: APRIL 1, 2014 THROUGH MARCH 31, 2015

DELIVER SUPPLIES/SERVICES FOB (Free On Board) DESTINATION TO THE FOLLOWING ADDRESSES:

MISSOURI DEPARTMENT OF CORRECTIONS
VARIOUS LOCATIONS THROUGHOUT THE STATE OF MISSOURI

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid (Revised 12/27/12). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when a Notice of Award is signed and issued by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

DOING BUSINESS AS (DBA) NAME	LEGAL NAME OF ENTITY/INDIVIDUAL FILED WITH IRS FOR THIS TAX ID NO.
MAILING ADDRESS	IRS FORM 1099 MAILING ADDRESS
CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE

CONTACT PERSON		EMAIL ADDRESS
PHONE NUMBER		FAX NUMBER
TAXPAYER ID NUMBER (TIN)	TAXPAYER ID (TIN) TYPE (CHECK ONE) ___ FEIN ___ SSN	VENDOR NUMBER (IF KNOWN)
VENDOR TAX FILING TYPE WITH IRS (CHECK ONE) ___ Corporation ___ Individual ___ State/Local Government ___ Partnership ___ Sole Proprietor ___IRS Tax-Exempt		
AUTHORIZED SIGNATURE		DATE
PRINTED NAME		TITLE

1. INTRODUCTION

1.1 Purpose:

1.1.1 This document constitutes an invitation for sealed bids from prospective bidders to establish a contract for the purchase of electronic key control systems on an as needed, if needed basis for various correctional facilities within the Missouri Department of Corrections, hereinafter referred to as "state agency", in accordance with the requirements and provisions stated herein.

1.2 Awarded Bid & Contract Document Search:

1.2.1 Both the prior contract (C111168001) and the previous procurement documentation (B1Z11168) may be viewed and printed from the Division of Purchasing & Materials Management's **Awarded Bid & Contract Document Search** located on the Internet at http://www.oa.mo.gov/purch.

2. CONTRACTUAL REQUIREMENTS

2.1 Contract:

2.1.1 A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Division of Purchasing and Materials Management's acceptance of the response (bid) by "notice of award". All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.

2.1.2 A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the state agency.

2.1.3 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.

2.1.4 Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

2.2 Contract Period:

2.2.1 The original contract period shall be as stated on page 1. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for two (2) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract, including the percentage discount stated, shall remain the same and apply during the renewal periods.

2.3 Contract Discount:

2.3.1 The discount shall be as indicated on the Pricing Page. The discount shall be a firm, fixed discount percentage that shall apply to all electronic key control systems available in the contractor's current price list/catalog. The percentage discount shall remain the same throughout the duration of the contract.

2.3.2 The contractor shall understand and agree that the price list/catalog may change during the contract period and each renewal period, although such pricing shall not change with a frequency greater than every six (6) months. It is preferred that the price list/catalog change only on an annual basis.

2.3.3 In the event that the price list/catalog lists more than one price for the same item, the applicable quoted firm, fixed discount shall be applied to the lowest listed price. The State of Missouri shall always receive the contractor's lowest price for the item.

2.3.4 The contractor shall furnish current price lists/catalogs (with products clearly identified) to the state agency upon request. Price lists/catalogs shall also be provided to the state agency as the catalogs change and/or pricing is updated.

2.3.5 All prices shall include all packing, handling, shipping and freight charges FOB Destination, Freight Prepaid and Allowed. The State of Missouri shall not make additional payments or pay add-on charges for freight or shipping unless specifically described and priced in the bid, or as otherwise specifically stated and allowed by the IFB. In addition, the state shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

2.4 Termination:

2.4.1 The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

2.5 Insurance:

2.5.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract. General and other non-professional liability insurance shall include an endorsement that adds the State of Missouri as an additional insured. Self-insurance coverage or another alternative risk financing mechanism may be utilized provided that such coverage is verifiable and irrevocably reliable and the State of Missouri is protected as an additional insured.

2.6 Payment Terms:

2.6.1 The contractor shall understand and agree the state reserves the right to make contract payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor must return a completed state Vendor Input/ACH-EFT Application, which is downloadable from the Vendor Services Portal at: https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx. Each contractor invoice must be on the contractor's original descriptive business invoice form and must contain a unique invoice number. The invoice number will be listed on the state's EFT addendum record to enable the contractor to properly apply state payments to invoices. The contractor must comply with all other invoicing requirements stated in the IFB.

2.6.2 The contractor may obtain detailed information for payments issued for the past 24 months from the State of Missouri's central accounting system (SAM II) on the Vendor Services Portal at https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx.

2.6.3 All payment terms shall be as stated in the Terms and Conditions of the contract (see paragraph 10, "Invoicing and Payment") unless otherwise addressed in the IFB, or mutually agreed to by the state and the contractor. Payment terms should be net 30 days unless otherwise stated in the IFB. No late charges shall be applied which are not in compliance with Chapter 34.055 RSMo. This statute may be found at http://www.moga.mo.gov/STATUTES/STATUTES.HTM.

2.7 Federal Funds Requirement:

2.7.1 The contractor shall understand and agree that this procurement may involve the expenditure of federal funds. Therefore, in accordance with the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, Public Law 101-166, Section 511, "Steven's Amendment", the contractor shall not issue any statements, press releases, and other documents describing projects or programs funded in whole or in part with Federal money unless the prior approval of the state agency is obtained and unless they clearly state the following as provided by the state agency:

a. the percentage of the total costs of the program or project which will be financed with Federal money;
b. the dollar amount of Federal funds for the project or program; and
c. percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

2.8 Contractor Liability:

2.8.1 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.

2.8.2 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.

2.9 Other Agencies May Order:

2.9.1 The state reserves the right to allow other state agencies to order from the contract, providing prior approval of the Division of Purchasing and Materials Management is obtained.

2.10 Cooperative Procurement Program:

2.10.1 If the contractor has indicated agreement on the Pricing Page with participation in the Cooperative Procurement Program, the contractor shall provide electronic key control systems as described herein under the terms and conditions, requirements and specifications of the contract, including prices, to other government entities in accordance with the Technical Services Act (section 67.360, RSMo, which is available on the internet at: http://www.moga.mo.gov/statutes/c000-099/0670000360.htm.). The contractor shall further understand and agree that participation by other governmental entities is discretionary on the part of that governmental entity and the State of Missouri bears no financial responsibility for any payments due the contractor by such governmental entities.

2.11 Quantities:

2.11.1 Quantities of electronic control key systems that will actually be purchased cannot be estimated. The State of Missouri makes no guarantees about single order quantities or total aggregate order quantities.

2.12 Contractor's Personnel:

2.12.1 The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.

2.12.2 If the contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state.

2.12.3 The contractor shall agree to fully cooperate with any audit or investigation from federal, state, or local law enforcement agencies.

2.13 Independent Contractor:

2.13.1 The contractor is an independent contractor and shall not represent the contractor or the contractor's employees to be employees of the State of Missouri or an agency of the State of Missouri. The contractor shall assume all legal and financial responsibility for salaries, taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2.14 Subcontractors:

2.14.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.

2.15 Participation by Other Organizations:

2.15.1 The contractor must comply with any Organization for the Blind/Sheltered Workshop participation levels committed to in the contractor's awarded bid.

2.15.2 The contractor shall prepare and submit to the Division of Purchasing and Materials Management a report detailing all payments made by the contractor to Organizations for the Blind/Sheltered Workshops participating in the contract for the reporting period. The contractor must submit the report on a monthly basis, unless otherwise determined by the Division of Purchasing and Materials Management.

2.15.3 The Division of Purchasing and Materials Management will monitor the contractor's compliance in meeting the Organizations for the Blind/Sheltered Workshop participation levels committed to in the contractor's awarded bid. If the contractor's payments to the participating entities are less than the amount committed, the state may cancel the contract and/or suspend or debar the contractor from participating in future state procurements, or retain payments to the contractor in an amount equal to the value of the participation commitment less actual payments made by the contractor to the participating entity. If the Division of Purchasing and Materials Management determines that the contractor becomes compliant with the commitment, any funds retained as stated above, will be released.

2.15.4 If a participating entity fails to retain the required certification or is unable to satisfactorily perform, the contractor must obtain other organizations for the blind/sheltered workshops to fulfill the participation requirements committed to in the contractor's awarded bid.

a. The contractor must obtain the written approval of the Division of Purchasing and Materials Management for any new entities. This approval shall not be arbitrarily withheld.

b. If the contractor cannot obtain a replacement entity, the contractor must submit documentation to the Division of Purchasing and Materials Management detailing all efforts made to secure a replacement. The Division of Purchasing and Materials Management shall have sole discretion in determining if the actions taken by the contractor constitute a good faith effort to secure the required participation and whether the contract will be amended to change the contractor's participation commitment.

2.15.5 No later than 30 days after the effective date of the first renewal period, the contractor must submit an affidavit to the Division of Purchasing and Materials Management. The affidavit must be signed by the director or manager of the participating Organizations for the Blind/Sheltered Workshop verifying provision of products and/or services and compliance of all contractor payments made to the Organizations for the Blind/Sheltered Workshops. The contactor may use the affidavit available on the Division of Purchasing and Materials Management's website at http://oa.mo.gov/purch/vendor.html or another affidavit providing the same information.

2.16 Confidentiality and Security Documents:

2.16.1 If required by the state agency, the contractor and any required contractor personnel must sign specific documents regarding confidentiality, security or other similar documents upon request. Failure of the contractor and any required personnel to sign such documents shall be considered a breach of contract and subject to the cancellation provisions of this document.

3. TECHNICAL SPECIFICATIONS

3.1 General:

3.1.1 The contractor shall provide electronic key control systems on an as needed, if needed basis as ordered by the state agency. Each electronic key control system shall be custom designed to meet the needs of the state agency. The contractor must comply with all mandatory requirements and specifications presented herein pertaining to provision of electronic key control systems.

3.1.2 The electronic key control system must be an interchangeable modular system.

3.1.3 The electronic key control system storage cabinet must be illuminated.

3.1.4 The electronic key control system cabinet must be available in sizes of one (1), two (2), three (3) and six (6) modules or more.

3.1.5 The electronic key control system cabinet(s) must be compatible for future expansion.

3.1.6 The electronic key control system module must be available in sizes of six (6), eight (8) and sixteen (16) key capacity.

3.1.7 The electronic key control system must include a specifically designed Folger Adam Key module with six key minimum capacities.

3.1.8 The electronic key control system must have a minimum of six (6) different key holder colors with tamper resistant key rings.

3.1.9 The electronic key control system shall be accessed by PIN number or swipe card or both.

3.1.10 The electronic key control system shall be equipped with an illuminated message screen display with a two-line sixteen-character minimum. The key locations must be identified by the message screen display.

3.1.11 The electronic key control system must be equipped with a minimum 48-hour emergency back-up battery.

3.1.12 The electronic key control system must be equipped with a communication port for direct connection to a printer.

3.1.13 The electronic key control system must be equipped with an Ethernet port.

3.1.14 The electronic key control system must track key movement by time, date and user code.

3.1.15 The electronic key control system shall only allow user access to cabinet and keys authorized.

3.1.16 The electronic key control system key access shall be controlled by day(s) of the week and time.

3.1.17 Only authorized users shall be capable of utilizing the emergency release function of the electronic key control system.

3.1.18 The electronic key control system must include PC application software with remote access capabilities. The software must be able to generate reports which trace key movements by time, date and use code and audit trail reports by key, user, events, alarms and dates.

3.1.19 The electronic key control system must include an alarm. The alarm shall be activated by the following:

- A user forces the cabinet door(s) open;
- A user tries to remove a key by force;
- An invalid user code is entered three times consecutively;
- The door is left open for ten (10) seconds or longer;
- A key is missing or not returned on time;
- A key is returned by the wrong user;
- There is a power failure.

4. PERFORMANCE REQUIREMENTS

4.1 General:

4.1.1 The contractor shall agree that all electronic key control systems provided under the contract shall conform to all industry standard definitions and to all mandatory specifications, terms, conditions and requirements stated herein.

4.2 Substitutions:

4.2.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management.

4.2.2 In the event an item becomes unavailable, the contractor shall be responsible for providing a suitable substitute item. The contractor's failure to provide an acceptable substitute may result in cancellation or termination of the contract.

4.2.3 Any item substitution must be a replacement of the contracted item with a product of equal or better capabilities and quality, and with equal or lower pricing. The contractor shall understand that the state reserves the right to allow the substitution of any new or different product/system offered by the contractor. The Division of Purchasing and Materials Management shall be the final authority as to acceptability of any proposed substitution.

4.2.4 Any item substitution shall require a formal contract amendment authorized by the Division of Purchasing and Materials Management prior to the state acquiring the substitute item under the contract.

4.2.5 The state may choose not to compel an item substitution in the event requiring a substitution would be deemed unreasonable in the sole opinion of the State of Missouri. The contractor shall not be relieved of substituting a product in the event of manufacturer discontinuation or other reason simply for reasons of unprofitability to the contractor.

4.3 Replacement of Damaged Product:

4.3.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the State of Missouri. This includes all shipping costs for returning non-functional items to the contractor for replacement.

4.4 Software Support:

4.4.1 The contractor must provide a minimum of one (1) year of software support at no additional cost to the State of Missouri.

4.5 Telephone Technical Support:

4.5.1 The contractor must provide unlimited telephone technical support for the equipment at no additional cost to the State for the life of the contract.

4.6 Warranty:

4.6.1 The contractor must provide the standard manufacturer warranty on the electronic key control system provided. The warranty shall become effective upon installation and acceptance of the equipment.

4.7 Manuals:

4.7.1 The contractor shall provide user documentation/operating manual(s) necessary to install, operate and maintain the system at no additional cost to the State of Missouri.

4.8 Delivery Performance:

4.8.1 The contractor shall deliver products in accordance with the contracted delivery times stated herein to the state agency upon receipt of an authorized purchase order or P-card transaction notice. Delivery shall include unloading shipments at the state agency's dock or other designated unloading site as requested by the state agency. All orders must be shipped F.O.B. Destination, Freight Prepaid and Allowed. All orders received on the last day of the contract, must be shipped at the contract price. All deliveries must be coordinated with the state agency.

4.8.2 A Missouri Uniform Law Enforcement System (MULES) background check may be required on the driver before allowing the vehicle to enter the institution. If a driver or carrier refuses to provide the appropriate information to conduct a MULES background check, the delivery will be refused. In addition, if information obtained in the MULES background check prohibits the driver from entering the institution, the delivery will be refused. Additional delivery costs for redelivery or contracting with an alternative carrier will be the responsibility of the contractor.

4.8.3 Institutions may have specific times that deliveries can be accepted based on security procedures. The contractor shall coordinate delivery times with the institution. A delivery arriving during a time the institution does not accept deliveries will be delayed or refused. Any additional cost for redelivery shall be the responsibility of the contractor.

4.8.4 Delivery must not be made on official state holidays. A list of official state holidays may be found on the State of Missouri website at http://www.oa.mo.gov/pers/hoursofwork.htm.

4.8.5 The contractor shall deliver to the location specified on the purchase order. The following locations are possible delivery sites where product might be delivered. The contractor shall coordinate with the factory regarding specific dates and times for delivery.

Algoa Correctional Center
8501 No More Victims Rd
Jefferson City, MO 65101

Chillicothe Correctional Center
3151 Litton Road
Chillicothe, MO 64601

Crossroads Correctional Center
1115 East Pence Road
Cameron, MO 64429

Farmington Correctional Center
1012 West Columbia
Farmington, MO 63640

Jefferson City Correctional Center
8200 No More Victims Road
Jefferson City, MO 65101

Missouri Eastern Correctional Center
18701 Old Highway 66
Pacific, MO 63069

Northeast Correctional Center
13968 Airport Road (off of Business 61)
Bowling Green, MO 63334

Potosi Correctional Center
11593 State Highway O
Mineral Point, MO 63660

Southeast Correctional Center
300 East Pedro Simmons Drive
Charleston, MO 63834

Women's Eastern Reception &
Diagnostic Correctional Center
1101 East Highway 54
Vandalia, MO 63382

Western Reception Diagnostic
Correctional Center
3401 Faraon Street
St. Joseph, MO 64506

Fulton Community Supervision Center
Route 0
Fulton, MO 65251

Boonville Correctional Center
1216 East Morgan Street
Boonville, MO 65233

Cremer Therapeutic Center
689 Rt. O, PO Box 70
Fulton, MO 65251

Eastern Recep. & Diag Correctional Center
2727 Highway K
Bonne Terre, MO 63628

Fulton Recep. & Diagnostic Center
1393 Highway O, PO Box 190
Fulton, MO 65251

Moberly Correctional Center
5201 South Morley
Moberly, MO 65270

Maryville Treatment Center
30227 U.S. Highway 136
Maryville, MO 64468

Ozark Correctional Center
929 Honor Camp Lane
Fordland, MO 65652

South Central Correctional Center
255 Highway 32 West
Licking, MO 65542

Tipton Correctional Center
619 North Osage Avenue
Tipton, MO 65081

Western Mo. Correctional Center
609 East Pence Road
Cameron, MO 64429

Farmington Community Supervision Center
1430 Doubet Road
Farmington, MO 63640

Hannibal Community Supervision Center
2003 Warren Barrett Drive
Hannibal, MO 63401

Kansas City Community Supervision Center
651 Mulberry
Kansas City, MO 64101

Kansas City Community Release Center
651 Mulberry
Kansas City, MO 64101

Kennett Community Supervision Center
1401 Laurie Drive
Kennett, MO 63857

Poplar Bluff Community Supervision Center
1414 Industrial Park Road
Poplar Bluff, MO 63901

St. Joseph Community Supervision Center
3305 Faraon Street
St. Joseph, MO 64503

St. Louis Community Release Center
1621 North First
St. Louis, MO 63102

5. BIDDERS' INSTRUCTIONS

5.1 Contact:

5.1.1 Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc. related to the bid document must be referred to the buyer identified on the first page of this document. Such communication should be received at least ten (10) calendar days prior to the official bid opening date.

5.2 Business Compliance:

5.2.1 The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) or by submitting an on-line bid that the bidder and any proposed subcontractors either are presently in compliance with such laws or shall be in compliance with such laws prior to any resulting contract award. The bidder shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include but may not be limited to:

- Registration of business name (if applicable)
- Certificate of authority to transact business/certificate of good standing (if applicable)
- Taxes (e.g., city/county/state/federal)
- State and local certifications (e.g., professions/occupations/activities)
- Licenses and permits (e.g., city/county license, sales permits)
- Insurance (e.g., worker's compensation/unemployment compensation)

5.3 Submission of Bids:

5.3.1 ELECTRONIC SUBMISSION OF BIDS THROUGH THE ON-LINE BIDDING WEB SITE IS <u>NOT</u> AVAILABLE FOR THIS IFB.

5.4 Open Competition:

5.4.1 Any manufacturer's name, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand of product that meets or exceeds the specifications. In addition to identifying the manufacturer's name and model number, the bidder should explain in detail how the product bid meets or exceed the specifications. Bids which do not comply with the requirement and the specifications are subject to rejection without clarification.

5.5 Description of Product:

5.5.1 The bidder should present a detailed description of all products and services proposed in the response to this Invitation for Bid. It is the bidder's responsibility to make sure all products proposed are adequately described in order to conduct an evaluation of the bid to insure its compliance with mandatory technical specifications.

It should not be assumed that the evaluator has specific knowledge of the products proposed; however, the evaluator does have sufficient technical background to conduct an evaluation when presented complete information

5.6 Bid Detail Requirements and Deviations:

5.6.1 It is the bidder's responsibility to submit a bid that meets all mandatory specifications stated herein. The bidder should clearly identify any and all deviations from both the mandatory and desirable specifications stated in the IFB. Any deviation from a mandatory requirement may render the bid non-responsive. Any deviation from a desirable specification may be reviewed by the state as to its acceptability and impact on competition.

5.6.2 A descriptive brochure of the item bid may not be acceptable as clear identification of deviations from the written specification.

5.7 Unit of Measure:

5.7.1 If the unit of measure specified on the attached pricing pages is different than the manner in which the bidder offers that item, then the unit of measure being proposed by the bidder must be clearly identified on the pricing page. All mathematical conversions should be shown by the bidder, and must be provided upon specific request from the buyer.

5.7.2 In the cost evaluation, a unit price conversion will be done to fairly evaluate bid prices. However, for any resulting contract, the unit of measure bid will be the unit of measure awarded. Bidders are encouraged to contact the buyer prior to submission of their bid to discuss anticipated unit modifications. The bidder is cautioned that the State of Missouri reserves the right to clarify the unit of measure modification or to disqualify the bid for that line item if the unit of measure modification is not deemed appropriate or in the best interests of the State of Missouri.

5.8 Catalog:

5.8.1 The bidder should include a current price list/catalog with their bid response at no additional cost to the State of Missouri. If the bidder does not include a copy of the current price list/catalog with their bid, then the bidder must provide a copy within five (5) working days after notification by the buyer.

a. The current catalog and/or price list may be used during the evaluation to verify the bidder's ability to provide the necessary scope of electronic key control systems/components and related items required by the State of Missouri to satisfy the intent of this IFB including the bidder's ability to supply the products identified herein.

5.9 Compliance with Terms and Conditions:

5.9.1 The bidder is cautioned when submitting pre-printed terms and conditions or other type material to make sure such documents do not contain other terms and conditions which conflict with those of the IFB and its contractual requirements. The bidder agrees that in the event of conflict between any of the bidder's terms and conditions and those contained in the IFB that the IFB shall govern. Taking exception to the State's terms and conditions may render a bidder's bid non-responsive and remove it from consideration for award.

5.10 Discount/Prices:

5.10.1 The bidder shall submit a firm, fixed percentage discount in the Discount Pricing portion (line item 001) of the Pricing Page to apply to all electronic key control systems/components and related items available in the bidder's current price list/catalog. The discount stated shall be firm for the duration of the contract.

5.10.2 In addition, the bidder must state firm fixed prices for all of the items listed in the Market Basket Pricing portion of the Pricing Page. The prices stated, must be after-discount pricing. The market basket items are for evaluation purposes only and will not be considered firm, fixed pricing for the contact period.

5.11 Cost Evaluation:

5.11.1 The cost evaluation shall be based on the bidder's after-discount prices stated for all items listed in the Market Basket Pricing portion of the Pricing Page. For purposes of the cost evaluation, the state will compute the total cost for all items in the Market Basket. The State of Missouri reserves the right to evaluate optional items, if deemed necessary.

5.12 Determination for Award:

5.12.1 The award shall be made to the lowest priced responsive bidder. Other factors that affect the determination of the lowest price responsive bidder include consideration of the Domestic Product Procurement Act, the Blind/Sheltered Workshop Preference, and the Missouri Service Disabled Veterans Preference explained in the paragraphs that follow.

5.12.2 The State of Missouri reserves the right to reject any bid which is determined unacceptable for reasons which may include but are not necessarily limited to: 1) failure of the bidder to meet mandatory general performance specifications; and/or 2) failure of the bidder to meet mandatory technical specifications; and/or, 3) receipt of any information, from any source, regarding delivery of unsatisfactory product or service by the bidder within the past three years. As deemed in its best interests, the State of Missouri reserves the right to clarify any and all portions of any bidder's offer.

5.13 Preference for Organizations for the Blind and Sheltered Workshops:

5.13.1 Pursuant to section 34.165, RSMo, and 1 CSR 40-1.050, a ten (10) bonus point preference shall be granted to bidders including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920, RSMo.

a. In order to qualify for the ten bonus points, the following conditions must be met and the following evidence must be provided:

1) The bidder must either be an organization for the blind or sheltered workshop or must be proposing to utilize an organization for the blind/sheltered workshop as a subcontractor and/or supplier in an amount that must equal the greater of $5,000 or 2% of the total dollar value of the contract for purchases not exceeding $10 million.

2) The services performed or the products provided by the organization for the blind or sheltered workshop must provide a commercially useful function related to the delivery of the contractually-required service/product in a manner that will constitute an added value to the contract and shall be performed/provided exclusive to the performance of the contract. Therefore, if the services performed or the products provided by the organization for the blind or sheltered workshop is utilized, to any extent, in the bidder's obligations outside of the contract, it shall not be considered a valid added value to the contract and shall not qualify as participation in accordance with this clause.

3) If the bidder is proposing participation by an organization for the blind or sheltered workshop, in order to receive evaluation consideration for participation by the organization for the blind or sheltered workshop, the bidder <u>must</u> provide the following information with the bid:

- Participation Commitment - The bidder must complete **Exhibit A**, Participation Commitment, by identifying the organization for the blind or sheltered workshop and the commercially useful products/services to be provided by the listed organization for the blind or sheltered workshop.

If the bidder submitting the bid is an organization for the blind or sheltered workshop, the bidder must be listed in the appropriate table on the Participation Commitment Form.

- Documentation of Intent to Participate – The bidder must either provide a properly completed **Exhibit B**, Documentation of Intent to Participate Form, signed and dated no earlier than the IFB issuance date by the organization for the blind or sheltered workshop proposed or must provide a recently dated letter of intent signed and dated no earlier than the IFB issuance date by the organization for the blind or sheltered workshop which: (1) must describe the products/services the organization for the blind/sheltered workshop will provide and (2) should include evidence of the organization for the blind/sheltered workshop qualifications (e.g. copy of certificate or Certificate Number for Missouri Sheltered Workshop).

  NOTE: If the bidder submitting the bid is an organization for the blind or sheltered workshop, the bidder is not required to complete **Exhibit B**, Documentation of Intent to Participate Form or provide a recently dated letter of intent.

b. A list of Missouri sheltered workshops can be found at the following internet address:
http://dese.mo.gov/se/sw/se-sw-directories.html

c. The websites for the Missouri Lighthouse for the Blind and the Alphapointe Association for the Blind can be found at the following Internet addresses:
http://www.lhbindustries.com
http://www.alphapointe.org

d. Commitment – If the bidder's bid is awarded, the organization for the blind or sheltered workshop participation committed to by the bidder on **Exhibit A**, Participation Commitment, shall be interpreted as a contractual requirement.

5.13.2 The Blind/Sheltered Workshop Preference required under section 34.165, RSMo, allows for ten (10) bonus points to a qualifying vendor. If the lowest priced bidder qualifies for the preference, or in the event none of the bidders qualify for the preference, no further calculation is necessary.

5.13.3 In the event the lowest priced bidder does not qualify for the preference but other bidders do, then the following evaluation point formula shall apply to determine cost evaluation points:

Lowest Responsive Bidder's Price / Compared Bidder's Price	x	200 Maximum Cost Evaluation Points	=	Awarded Cost Evaluation Points

5.14 Missouri Service-Disabled Veteran Business Preference:

5.14.1 Pursuant to section 34.074, RSMo, and 1 CSR 40-1.050, a three (3) bonus point preference shall be granted to bidders who qualify as Missouri service-disabled veteran business enterprises and who complete and submit **Exhibit C**, Missouri Service-Disabled Veteran Business Enterprise Preference with the bid. If the bid does not include the completed Exhibit C and the documentation specified on Exhibit C in accordance with the instructions provided therein, no preference points will be applied.

5.14.2 If the lowest priced bidder qualifies for the preference, or in the event none of the bidders qualify for the preference, no further calculation is necessary.

5.14.3 In the event the lowest priced bidder does not qualify for the preference but other bidders do, then the following evaluation point formula shall apply to determine cost evaluation points:

Lowest Responsive Bidder's Price / Compared Bidder's Price	x	200 Maximum Cost Evaluation Points	=	Awarded Cost Evaluation Points

5.15 Debarment Certification:

5.15.1 The bidder certifies by signing the signature page of this original document and any amendment signature page(s) that the bidder is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, or otherwise excluded from or ineligible for participation under federal assistance programs. The bidder should complete and return the attached certification regarding debarment, etc., **Exhibit D** with their bid. This document must be satisfactorily completed prior to award of the contract.

PRICING PAGE

DISCOUNT PRICING

The products bid shall conform to the specifications and requirements stated herein. The bidder shall state a firm, fixed percentage discount below. The discount shall apply to all electronic key control systems/components and related items available in the bidder's current price list/catalog. The discount stated shall be firm for the duration of the contract.

LINE ITEM	MANDATORY SPECIFICATIONS	UNIT	PERCENT DISCOUNT
001	C/S Code: 42550 *Key Storage Cabinets and Files* Firm, fixed percentage discount to be applied to all electronic key control systems/components and related items available in the bidder's price list/catalog.	PCNT	_____%

MARKET BASKET PRICING

For purposes of the cost evaluation, the bidder must price all market basket items listed below. The bidder must state firm, fixed after-discount pricing for all items. The bidder must use the current price list/catalog and then apply the percentage discount quoted in line item 001 above for completing the pricing in this section. The bidder should indicate the brand/model number of the system/module offered below and specify the page number where the item can be found in the bidder's price list/catalog.

Note: The market basket items are for evaluation purposes only and will not be considered firm, fixed pricing for the contract period.

ITEM	DESCRIPTION	QTY	AFTER DISCOUNT PRICE	BRAND/ MODEL #	CATALOG PAGE #_
1)	One Module Cabinet System	1	$ _____	_____	_____
2)	Two Module Cabinet System	1	$ _____	_____	_____
3)	Six Module Cabinet System	1	$ _____	_____	_____
4)	Six Key Module	1	$ _____	_____	_____
5)	Sixteen Key Module	1	$ _____	_____	_____
6)	Folger Adams Key Module	1	$ _____	_____	_____
7)	Software	1	$ _____	_____	_____

DELIVERY:

The desired delivery is thirty (30) calendar days after the receipt of a properly executed order. If bidder's delivery is different, the bidder should state best delivery in days after receipt of the order: _____calendar days ARO.

LOCAL GOVERNMENT USE (COOPERATIVE PROCUREMENT)

The bidder should indicate agreement/disagreement to participate in the State of Missouri's Cooperative Procurement Program as described herein.

Yes_____ No_____

EMPLOYEE BIDDING/CONFLICT OF INTEREST:

Bidders who are elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.450 to 105.458, RSMo, regarding conflict of interest. If the bidder or any owner of the bidder's organization is currently an elected or appointed official or an employee of the State of Missouri or any political subdivision thereof, please provide the following information.

Name and title of elected or appointed official or employee of the State of Missouri or any political subdivision thereof: _____

If employee of the State of Missouri or political subdivision thereof, provide name of state agency or political subdivision where employed: _____

Percentage of ownership interest in bidder's organization held by elected or appointed official or employee of the State of Missouri or political subdivision thereof: _____%

Internal Purchasing Procedure 23

3.3 Establish the Itemized Bid List which is the format for bidders to offer their prices consistent with the Method of Award selected in SCOB's *[Special Conditions of Bid]* (i.e. item number, quantity, unit, description, manufacturer, unit price and total price).

Price structure:

- **discounts from established price list** (Use if confident that all bidders can provide pricing from the exact same price list [e.g. a specific manufacturer's price list])
- **quantity** (Insert a quantity that is your best estimate of annual usage. The end result should be that you will get the best available pricing based on the estimates presented.)
- **price breaks: dollar and item quantity** (Confer with potential bidders to identify appropriate levels of quantity and/or dollar breaks. [e.g. 1 pencil=10 cents, dozen = $1.00])
- **packaging** (Many items are packaged and sold in quantities of more than one. Confer with potential bidders to ensure that you are requesting units in accordance with the way they are packaged and sold [e.g. each, dozen, pound, liter, pallet].)
- **apply weight factors** to the bid by assigning an arithmetic value (percentage or estimated quantity) to item(s) or categories of products:
    - to emphasize their significance to the bid
    - to indicate items that are most frequently purchased
    - to indicate quantity levels that are most frequently ordered
    - where the value is important or has significance
- **a market basket** is a short list of items from a larger list of related products [i.e. office supplies]. Use this method of awarding the bid to simplify the bid award process and to ensure that you are getting the best price for the products purchased in higher quantities, or those that have higher cost. The market basket must be determined prior to bid opening and be revealed at bid opening. The value in not revealing during the bid process is to avoid low-ball prices.

Source: http://www.bussvc.wisc.edu/purch/ipp/ipp23.html