



Office of General Services

ANDREW M. CUOMO
Governor

ROANN M. DESTITO
Commissioner

Sent via Email: lmarcus@derivetech.com CC: mmartinez@derivetech.com lmarcus@derivetech.com

August 15, 2018

Mr. Lawrence Marcus
Derive Technologies, LLC
110 William Street
14th Floor
New York, NY 10038

RE: Group 73600 / Award 22772 Project Based Information Technology Consulting Services
Contract PB086AA, Derive Technologies, LLC

Dear Mr. Marcus:

The subject contract for PB086AA is scheduled to expire on September 8, 2018. The NYS Office of General Services, Procurement Services seeks your agreement to an extension, with amendments, to the above-referenced Contract until September 8, 2024, in accordance with the contract terms.

In accordance with New York State Finance Law § 139-j, offerers must only make permissible contacts with respect to this procurement with the following Designated Contacts:

DESIGNATED CONTACTS:

Table with 2 columns: Primary Contact and Secondary Contacts. Primary Contact: Nancy Dougherty, Telephone: (518) 408-3265, Email: OGS.sm.Pbits.Contractors@ogs.ny.gov. Secondary Contacts: Shannon M. Prica – Kast, Charles Strickland, Jordan Marryott, Jessica Paul, Daniel Blake, Mark Joly, Sean Hume, Karen Fowler, Email: OGS.sm.Pbits.Contractors@ogs.ny.gov

This Extension becomes effective once OGS approves and an authorized signatory executes.

Please complete and sign the signature page of the Contract Extension Agreement, then have it properly notarized. After signing and notarization, please return two (2) complete, fully executed original to the following address:

NYS Office of General Services
Procurement Services
ATTN: Nancy Dougherty
Corning Tower, 38th floor
Empire State Plaza
Albany, NY 12242

In addition to the Agreement documents, please include the following:

- 1. NYS Department of Taxation and Finance Contractor Certification to Covered Agency form ST-220-CA. A Contractor may access this document utilizing the following web address: https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. Please list the Covered Agency as the NYS Office of General Services; the Covered Agency address as Corning Tower, 38th floor, Empire State Plaza, Albany, NY 12242; and the Covered Agency Telephone Number as (518) 408-3265.

2. Proof of a Vendor Responsibility Questionnaire certified within the last 6 months. Acceptable proof is either a copy of the Vendor Summary page or the Certification page.

A Contractor may access the Office of the State Comptroller's VendRep System by utilizing the web address: <http://www.osc.state.ny.us/vendrep/>. OGS recommends that each Contractor file the required Questionnaire online via the New York State VendRep System.

- To enroll in and use the VendRep System, please refer to the following link at the Office of the State Comptroller (OSC) website: http://osc.state.ny.us/vendrep/info_vrsystem.htm.
 - Contractors who are unable to complete the VR Questionnaire online must print out the applicable VR Questionnaire (Non-Construction For-Profit Questionnaire) available at http://www.osc.state.ny.us/vendrep/forms_vendor.htm, have it notarized and submit it to OGS for review.
3. Provide a copy of the most recent Workers Compensation, Disability Insurance and General Liability Accord. PBITS Insurance Requirements have been attached for your convenience and reference.
 4. **The Contractor Name, Vendor ID and FEIN must be consistent on all forms submitted to OGS as well as to the Department of Tax and Finance and as identified on the Vendor Responsibility Questionnaire.**

Please direct any questions regarding this Extension Agreement to OGS.sm.Pbits.Contractors@ogs.ny.gov.

Sincerely,

Nancy L Dougherty

Nancy Dougherty

NYS Office of General Services
Empire State Plaza
Corning Tower, 38th floor
Albany, NY 12242
OGS.sm.Pbits.Contractors@ogs.ny.gov

Enclosure



Amendment #2 to Contract PB086AA

THIS AMENDMENT #2 (the "Amendment"), effective on the date of the Office of General Services signature, by and between the People of the State of New York, acting by and through the New York State Office of General Services, with offices at the 38th Floor, Corning Tower, Empire State Plaza, Albany, NY 12242 ("OGS"), and Derive Technologies, LLC, (hereinafter "Contractor"), with offices at 110 William Street 14th Floor, New York, NY, 10038, (hereinafter collectively referred to as "the Parties")

WITNESSETH:

WHEREAS, the Parties entered into Contract PB086AA a centralized contract for the acquisition of Project Based Information Technology Consulting Services (hereinafter "Contract"); and

WHEREAS, the Parties entered into an Amendment #1 to the Contract to amend certain provisions thereof; and

WHEREAS, the Contract is scheduled to expire on September 8, 2018 and OGS seeks to have the contract extended until September 8, 2024 in accordance with section 2.3 thereof, and further seeks to amend the Contract as specifically provided herein; and

WHEREAS, the State desires to exercise the first and second optional extensions and extend the term of the Contract for an additional six (6) year period.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

1. Term

The State hereby exercises both optional three year term extensions provided for in Contract section 2.3 such that the new end date for the Contract is now September 8, 2024. Contractor hereby agrees to such extensions. This Amendment #2 shall be deemed effective as of September 9, 2018 upon signing by OGS and will be deemed in effect from September 9, 2018 in effect until September 8, 2024.

2. The table contained within Section 1.4 *Definitions* is amended by inserting the following terms and definitions:

Enhancement: Additional functionality and additional Deliverables unknown to the Authorized User at time of Mini-Bid release.

Execution Date: The date on which a contract has been signed by all necessary parties.

Implementation: Post sales process of guiding a client from purchase to use of the product that was purchased. This may include but is not limited to post sales requirements analysis, scope analysis, limited customizations, systems integrations, data conversion/migration, business process analysis/improvement, user policy, customized user training, Knowledge Transfer, project management and system documentation.

Integration: The act of bringing together smaller components into a single system that functions as one. In an IT context, Integration refers to the end result of a process that aims to stitch together different, often disparate, subsystems so that the data contained in each becomes part of a larger, more comprehensive system that, ideally, quickly and easily shares data when needed. This often requires that companies build a customized architecture or structure of applications to combine new or existing hardware, software and other communications.

Must: Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.

Shall: Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.

3. **Section 1.4 *Definitions* is amended by deleting the definitions for Fixed Price Authorized User Agreement, Government Contract and Government Entity in their entirety and replacing those definitions with the following language:**

Fixed Price Authorized User Agreement: An agreement pursuant to the Centralized Contract that provides for a fixed cost for a defined project.

Government Contract: A contract let by a Government Entity, not on behalf of a Government Entity (Federal, State, or Local governmental body) within the United States.

Government Entity: An entity at the federal, state, county, or city level.

4. **Section 2.1 *OGS Contract Documents* is amended to insert the following item at the bottom of the bulleted list:**

- Appendix H – Contractor’s Insurance Requirements

5. **Section 2.2 *Conflict of Terms* is amended to insert the following item “B” in the order of precedence as described below.**

B. The Contract and Appendix H – Contractor’s Insurance Requirements

6. **Section 2.3 *OGS Centralized Contract Start Date, Term and Extension* is deleted in its entirety and is replaced with the following language:**

2.3 OGS Centralized Contract Start Date, Term and Extension

The Parties agree that this Contract term commences upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line through September 8, 2024.

A Contractor is eligible to participate in the Mini-bid process upon the OGS Commissioner’s mailing or electronic communication to the address in the contract of the fully executed Contract.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent Periodic Recruitment. This OGS Centralized Contract shall be in effect for an initial term of up to three (3) years with two (2) optional three (3) year extensions. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a contract extension processed under this section.

7. **Section 2.6 *New York State Procurement Rights* is amended to insert the following items to the end of the lettered list as follows:**

Q. The State reserves the right to exclude any price lists or individual Products and Services that do not fall within the scope of the Solicitation.

R. OGS reserves the right to incorporate an electronic workflow system that may include elements of the Authorized User Mini-Bid process.

S. Upon discovery of non-material completeness or conformance issues with a Vendor’s Submission, contact the Vendor to attempt to cure the issue prior to completion of the evaluation of the Vendor’s Submission.

T. OGS reserves the right to post information about Authorized User Contract usage of Centralized Contracts

8. Section 2.11 *Periodic Recruitment* is deleted in its entirety and replaced with the following language:**2.11 Periodic Recruitment**

The State reserves the right to add new Contractors during the term of the Centralized Contract via periodic recruitment. OGS will formally announce when the periodic recruitment Solicitation is issued. It is at the discretion of OGS when a future periodic recruitment shall commence. A periodic recruitment will be publicly announced through all standard means including, but not limited to: the NYS Contract Reporter; and OGS website.

All OGS Centralized Contracts awarded under the Periodic Recruitment will commence upon OGS approval. All Contracts will co-terminate on the then current end date of the Centralized Contract or at the end of any approved extension or renewal period.

9. Section 3.1 *Minimum Qualifications* is amended to insert the following language as the final paragraph of the section:

Note: If Contractor is relying on operations of a parent company, subsidiary, predecessor entity, or other entity for purposes of satisfying any of the three listed above, Contractor is required to provide a full explanation describing such relationship and how it satisfies this requirement OGS will determine whether such other entity experience satisfies this requirement, and reserves the right to ask for additional information or require a contract performance guarantee and/or other assurances from such other entity(ies) or the Contractor.

10. Section 4.2.1.II *Dispute Resolution Procedures* is amended to insert the following paragraph to Section 4.2.1.II.A.(4):

The Formal Dispute Process set forth in this section II(B) does not apply to formal disputes arising out of an Authorized User Mini-Bid or Authorized User Agreement. Formal disputes between the Contractor and the Authorized User arising out of an Authorized User Mini-Bid or Authorized User Agreement are to be handled in accordance with the process specified by the Authorized User for disputes. See Section 6.12 *Mini-Bid Dispute Resolution Process*.

11. The following language new section 4.2.1.2 is added to the Contract:

2. Section 26(A) is hereby added as follows:

26(A) Official Use Only/No Personal Use

The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

12. Section 4.4 *Appendix D* is amended to reflect the following change to the last sentence of the section (shown in underline and strike-out):

Amendments to Appendix D, Pricing Schedules, shall be processed in accordance with Appendix C, Contract Modification Procedure, section 4.~~89~~, OGS Centralized Contract Modifications and section 4.~~2322~~ Price Adjustments for OGS Centralized Contracts.

13. New Section 4.8 *Appendix H* is inserted as follows:**4.8 Appendix H**

Appendix H, Contractor's Insurance Requirements, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein. The Contractor shall maintain in force at all times during the terms of the resultant Contract, policies of insurance pursuant to the requirements outlined in Appendix H – Contractor's Insurance Requirements.

14. The following sections of Section 4 OGS Centralized Contract: Terms and Conditions have been renumbered as depicted in the following chart:

Current	Amended	Section Title
4.8	4.9	OGS Centralized Contract Modifications
4.9	4.10	Notices
4.10	4.11	Performance of Services
4.11	4.12	Removal of Records from Premises
4.12	4.13	Contractor Staff
4.13	4.14	Employee Information Required to be Reported by Certain Consultant Contractors and Service Contractors
4.14	4.15	Confidentiality and Privacy Policies and Laws
4.15	4.16	Federal Funding

15. Section 4.9 OGS Centralized Contract Modifications is amended to reflect the following change to the last sentence of the first paragraph (shown in underline and strike-out):

A request to change a contractual term and condition, like adding a Lot, is an example of an amendment.

16. Section 4.17 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 is deleted in its entirety and replaced with the language below. The current section title is deleted and replaced by the title included below:

4.17 Contractor Requirements and Procedures For Business Participation Opportunities For NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan.
To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
 2. Separate forms shall be completed by Contractor and any subcontractor.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).
- V. MWBE Utilization Plan
- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:
- (a) If a Bidder fails to submit an 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.

- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

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

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

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

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

X. Fraud

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

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

17. Section 4.18.2 *Updated Certification of Required Insurances* is amended to reflect the following change to the last sentence of the section (shown in underline and strike-out):

The Contractor shall furnish to the State up to date certifications of coverages for all insurance requirements per ~~section 4.16~~Appendix H - Insurance Requirements.

18. Section 4.19 *New York Statewide Financial System* is deleted in its entirety and is replaced with the following language:

4.19 New York State Statewide Financial System

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions. The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

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

19. Section 4.20 *Electronic Workflow System* is deleted in its entirety.

20. The following sections of Section 4 *OGS Centralized Contract: Terms and Conditions* have been renumbered as depicted in the following chart:

Current	Amended	Section Title
4.21	4.20	Non-State Agencies Participation in Centralized Contracts
4.22	4.21	Accessibility of Web-Based Information and Applications
4.23	4.22	Price Adjustments for OGS Centralized Contracts
4.24	4.23	Performance/Bid Bond and Letter Of Credit

21. Section 4.22 *Price Adjustments for OGS Centralized Contracts* is deleted in its entirety and replaced with the following:

Section 4.22 Price Adjustments for OGS Centralized Contracts

Pricing offered with the Vendor Submission shall be fixed for the first twelve (12) months of the Contract term. Commencing with the first anniversary date of the Contract Execution Date, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes. Such price increases will only apply to the OGS Centralized Contracts and shall not be applied retroactively to Authorized User Agreements or any Mini-bids already submitted to an Authorized User.

Requests for price adjustments shall be submitted 30 days prior to the anniversary date of the Contract Execution Date and annually thereafter. Should the Contractor fail to make a request and submit supporting documentation to OGS Procurement Services within 90 days after the applicable anniversary date of the Contract Execution Date, the Contractor shall be deemed to have waived its right to any increase in price for that year. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the Contract.

4.22.1 Price Decreases

Contractor shall be permitted to reduce their pricing any time during the contract term. Additionally, some price decreases shall be calculated in accordance with Appendix B, section 17, Pricing.

4.22.2 Price Increases

This section applies to pricing not Benchmarked to GSA Supply Schedule. Additionally, where pricing submitted for Services is not benchmarked to an approved GSA Supply Schedule:

a. Price Increase Requests: Commencing with the first anniversary date of the Contract Execution Date, and annually thereafter, the Contractor may request an increase in the pricing contained in Appendix D, Pricing Schedule by submitting an update request based on changes in pricing level as contained in Appendix C, Contract Modification Procedure to the OGS Contract Administrator.

(i) CPI Price Increase:

The Contractor may request a rate increase based upon fluctuations in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at www.bls.gov.

The Contractor is solely responsible for notifying OGS Procurement Services that the Contractor wishes to receive the CPI rate change to submit a request for the adjusted rate on the applicable Contract Execution anniversary Date; and Contractor shall provide a copy of the index, a completed Appendix C - Contract Modification Procedure and other supporting documentation necessary to support the increase to OGS Procurement Services.

Price adjustments using the CPI involve changing the base payment by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two periods and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value for the current period and subtract the CPI value for the previous period. The difference is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change shall be applied to the next Contract year, upon notification from OGS Procurement Services.

The following example illustrates the computation of percent change:

CPI for current period	185.2
Less CPI for previous period	181.7
Equals index point change	3.5
Divided by previous period CPI	181.7
Equals	0.0192

Result multiplied by 100	<u>0.019 x 100</u>
Equals percent change	1.9

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

With any price increase request, in addition to the requirements contained in Appendix C, the Contractor must certify in writing that the price change for the Product(s) is the same as or better than the pricing in its U.S. Commercial Price List, and that Contractor documents the request to the satisfaction of the State. Should the Contractor not have a U.S. Commercial Price List, it must include a copy of the government contract containing the job titles and rates that are to be adjusted. In no case may the pricing adjustment conflict with the Escalation Cap in section 4.23.2.b.

b. Escalation Cap: In a single year of the Contract, the maximum price increase for each individual item on contract shall not exceed the lesser of two (2%) percent of the Contractor’s current NYS pricing as found in the OGS Centralized Contract or the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at www.bls.gov.

c. Effective Date of Increase: Price increases shall be effective upon final approval by the State, and may not be posted on the pricelist prior to receipt of final approval.

4.22.3 GSA Benchmarked Pricing

Additionally, where the NYS Net Price is based upon an approved GSA Supply Schedule:

a. Associated Discounts: The State is entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to, discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in this NYS Contract or GSA schedule, when calculating the NYS Net Price.

b. Industrial Funding Fee: GSA pricing incorporates a sum referred to as the “GSA Industrial Funding Fee” (IFF). The NYS Net Price may be calculated by reducing the published GSA price, after the discounts, if any, set forth in paragraph (1) above, downward by the amount of the Industrial Funding Fee, currently set at 0.75%. Therefore, as an example, the NYS Net Price shall be calculated by multiplying 0.9925 times the GSA price.

c. Pricing Increase Requests: Commencing with the first anniversary date of the Contract Execution Date, and annually thereafter, the Contractor may request an increase in the pricing contained in the Centralized Contract by submitting an update request based on change in pricing level as contained in Appendix C, Contract Modification Procedure to the OGS Contract Administrator. With any price increase request, in addition to the requirements contained in Appendix C, the Contractor must certify in writing that the price change for the Services is the same as its pricing in its GSA Supply Schedule, and that Contractor documents the request to the satisfaction of the State.

d. Effective Date of Increase: Price increases shall be effective upon final approval by the State, and may not be posted by Contractor prior to receipt of final approval.

22. The following section of Section 4 OGS Centralized Contract: Terms and Conditions has been renumbered as depicted in the following chart:

Current	Amended	Section Title
4.24	4.23	Performance/Bid Bond and Letter Of Credit

23. Section 4.24 Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance is inserted as follows:

4.24 Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, Contractors on this Contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf.

Contractors need to be aware that all Authorized Users of this Contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, Contractors are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects Contractors to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

24. Section 4.25 Environmental Attributes and NYS Executive Order Number 4 is inserted as follows:

4.25 Environmental Attributes and NYS Executive Order Number 4

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

25. The following sections of Section 4 OGS Centralized Contract: Terms and Conditions have been renumbered as depicted in the following chart:

Current	Amended	Section Title
4.25	4.26	Severability
4.26	4.27	Entire Agreement

26. Section 6.5.1(a) Issue Escalation Plan is inserted as follows:

As part of the Mini-Bid, the Authorized User may require the Contractor to develop and submit an issue escalation plan. The escalation plan should describe how the Contractor will manage any resulting Authorized User Agreement to ensure uninterrupted, high quality performance and overall contract effectiveness.

The plan must at a minimum:

- Detail action(s) to be taken to investigate any issues reported by an Authorized User;

- Describe the process used to monitor and investigate any issues identified by the Contractor, and to notify an Authorized User of any such issues identified by the Contractor;
- Describe how the Contractor will ensure an issue is addressed and resolved in a timely manner, and Authorized User Agreement terms and conditions, as well as any terms and conditions unique to an Authorized User Agreement, are met; and
- Include a depiction of the chain of command for purposes of escalation, including at each level of the chain, a named contact, specifying the contact's title, role, phone number and email address.

27. Contractor Responsibility

In conjunction with this Contract Extension Agreement, OGS conducts a review of Contractors to provide reasonable assurances that the Contractor is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction Contracts and is designed to provide information to assess a Contractor's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Contract Amendment, Contractor agrees to fully and accurately complete the Questionnaire. The Contractor acknowledges that the State's execution of the Contract Amendment will be contingent upon the State's determination that the Contractor is responsible, and that the State will be relying upon the Contractor's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Contractor file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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

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

28. Procurement Lobbying Law:

- By signing this Contract Extension Agreement, Contractor certifies that: a Government Entity has not made a finding of Non-Responsibility regarding the Contractor in the previous four years; a Government Entity has not terminated or withheld a Procurement Contract with the Contractor due to the intentional provision of false or incomplete information; and all information provided regarding State Finance Law §139-k is complete, true and accurate.
- By signing this Contract Extension Agreement, Contractor further affirms that it understands and agrees to comply with the procedures of OGS relative to permissible Contacts as required by State Finance Law § 139-j (3) and (6) (b).
- Summary of Policy and Prohibitions on Procurement Lobbying:

Pursuant to State Finance Law §139-j and 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/Bidder during the procurement process. An Offerer/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, were identified in the Contact Extension Agreement Cover letter. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes.

Certain findings of Non-Responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Offerer/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/defaultSFL_139j-k.asp

29. Severability

In the event that any one or more of the provisions of this Contract Extension Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Contract Extension Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

30. Entire Agreement

The Contract, as amended, constitutes the entire agreement of the Parties with respect to the subject matter thereof, and any further amendment must also be in writing executed by authorized representatives of the Parties. Except as set forth in this Agreement, all terms and conditions of the Contract shall continue in full force and effect.

31. All Other Terms and Conditions of the Contract

Except as set forth in this Amendment, all terms and conditions of the Contract, as previously amended, shall continue in full force and effect.

Signature Page

CONTRACT NO.PB086AA

IN WITNESS WHEREOF, the Parties have executed this Amendment #2 as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Amendment #2 being executed simultaneously herewith. The acknowledgment 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 agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor 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).

DERIVE TECHNOLOGIES, LLC

Signature: _____
Printed Name: _____
Title: _____
Date: _____

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____
Printed Name: _____
Title: _____
Date: _____

NOTICE: This Amendment #2 becomes effective once OGS approves and an OGS authorized signatory executes. OGS will then post a notification to its website in the form of a Contract Award Notification Update.

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }
: **Sworn Statement:**
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 maintains an office at

Town of _____

County of _____, State of _____; 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.

Signature of Notary Public

Notary Public Registration No. _____ **State** _____