

SECOND AMENDMENT TO CONTRACT NUMBER PH68633
V Group Inc. dba V Group Consulting GROUP 73012 AWARD 23158

Hourly-Based Information Technology Services (HBITS)
(Statewide)

THIS SECOND AMENDMENT, (the “Second Amendment”) is made between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter “State” or “OGS”) whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163, and V Group Inc. dba V Group Consulting (hereinafter “Contractor”), with its principal place of business at 379 Princeton Hightstown Road, Building 3, Suite 2A, Cranbury, NJ 08512. The foregoing are collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, OGS entered into a Centralized Contract for the acquisition of Hourly-Based Information Technology Services (hereinafter referred to as the “Contract” or “Contract No. PH68633”) with V Group Inc. dba V Group Consulting on July 01, 2019; and

WHEREAS, Contract No. PH68633 provided for an initial term from July 01, 2019, through and including June 30, 2024, and an option for an extension of the initial term for up to a five (5) year period was provided for in Section 2.1.2 *Contract Term and Extensions; Extensions*.

WHEREAS, the Contract was amended pursuant to that certain First Contract Amendment to Contract No. PH68633 dated April 14, 2021 (the “First Amendment”).

WHEREAS, the Parties now wish to amend the Contract to extend the Contract term through and including June 30, 2029, pursuant to Contract Section 2.1.2 *Contract Term and Extensions; Extensions*, and to otherwise amend the Contract as set forth below.

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

1. TERM

Pursuant to Contract Section 2.1.2 *Contract Term and Extensions, Extensions*, the term of the Contract is hereby extended for five (5) years through and including June 30, 2029, or until a new contract for Hourly-Based Information Technology Services (Statewide) is awarded, whichever occurs first.

2. NYS COMPTROLLER APPROVAL

The Contract is amended to add the following new Section, 2.30 *NYS Comptroller Approval*, to read as follows:

2.30 NYS COMPTROLLER APPROVAL

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until this Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions under this Contract(s) may also be subject to OSC approval.

3. DEFINITIONS

Section 1.5 *Definitions* is amended to delete the definition for “NYS Holidays” in its entirety and replace it with the following new definition:

1.5 DEFINITIONS

“NYS Holidays” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’ Day; Thanksgiving Day; and Christmas Day.

4. CONFLICT OF TERMS

Section 1.7 *Conflict of Terms* of the Contract is deleted in its entirety and replaced with the following new Section 1.7 *Conflict of Terms*, to read as follows:

1.7 CONFLICT OF TERMS

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

1. Appendix A, Standard Clauses for New York State Contracts (June 2023);
2. Appendix C, Federal Funding Agency Mandatory Terms and Conditions;
3. This Second Amendment;
4. The First Amendment;
5. The Contract;
6. Appendix B, General Specifications (April 2016); and
7. All other appendices and attachments to this Contract, including those added by a Contract Amendment;

5. 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

Section 2.15(III)(C) *Form EEO 101 – Workforce Utilization Reporting Form (Commodities and Services)* (“*Form EEO-101-Commodities and Services*”) of the Contract is deleted in its entirety and replaced with the following new Section 2.15(III)(C) *NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)*, to read as follows:

The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:

<https://ny.newnycontracts.com>

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. 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 complete the Workforce Audit 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 complete the Workforce Audit 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.

6. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES,

Section 2.16 *Participation Opportunities For New York State Certified Service-disabled Veteran Owned Businesses*, of the Contract is deleted in its entirety and replaced with the following new Section 2.16 *Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses*, to read as follows:

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

- A. OGS hereby establishes an overall goal of 6.0% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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 SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:

- (a) If a Bidder fails to submit an SDVOB 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.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the 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-responsibility.
- III. Request For Waiver
- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at OGS for guidance
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (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 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) 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 business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to hbits.contractors@ogs.ny.gov

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
5. Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: hbits.contractors@ogs.ny.gov

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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

7. CONTRACT DOCUMENTS; ELECTRONIC FORMAT

The Contract is amended to add the following new Section, 1.8 *Contract Documents; Electronic Format*, to read as follows:

1.8 CONTRACT DOCUMENTS; ELECTRONIC FORMAT

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

8. APPENDIX A

Appendix A *Standard Clauses for New York State Contracts*, included in the Contract, is deleted in its entirety and replaced with the Appendix A dated June 2023, attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length therein. All references in the Contract to Appendix A shall be deemed to reference Appendix A, *Standard Clauses for New York State Contracts* (June 2023).

9. APPENDIX C

The Contract is amended to add Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* dated October 2023, attached hereto, which is expressly made a part of this Contract Amendment as fully as if set forth at length herein.

10. SEVERABILITY

In the event that any one or more of the provisions of this Second Amendment 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 Second Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Second Amendment.

11. Except as herein modified, all other terms of Contract PH68633 shall remain in full force and effect.