

New York State Office Of General Services
Procurement Services Group
Corning Tower Building
Empire State Plaza
Albany, New York 12242
<http://www.ogs.ny.gov>

PURCHASING MEMORANDUM

BID SOLICITATION UPDATE

IFB NUMBER: 22398

DATE: May 31, 2012

GROUP: 20915 – Furniture (Statewide)

**PLEASE ADDRESS INQUIRIES TO
DESIGNATED CONTACTS:**

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BID OPENING: June 7, 2012

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SUBJECT: BID UPDATES AND CLARIFICATIONS TO VENDOR
SUBMITTED SOLICITATION QUESTIONS

TO PROSPECTIVE BIDDERS:

Clarifications to the IFB are being made as noted on the following pages. Bids will be evaluated based on these changes.

If submitting a bid, this letter shall be signed, attached to, and made a part of your bid.

BID OF (COMPANY): _____

ADDRESS: _____

CITY, STATE, ZIP: _____

SIGNATURE OF BIDDER: _____

PRINTED COPY OF SIGNATURE: _____ DATE: _____

NOTE: This Purchasing Memorandum addendum is to notify potential bidders of the following corrections, clarifications and responses to questions received from potential bidders.

PAGE UPDATES:

On Page 4 – APPENDIX A: the following text is incorporated into this solicitation document as part of Appendix A.

Note: On March 30, 2012, Chapter 55 of the Laws of 2012 was signed into law by Governor Cuomo, amending State Finance Law section 112 to create an exception for contracts established as a centralized contract through OGS, and purchase orders or other procurement transactions issued under such centralized contracts, from the Office of the State Comptroller pre-approval and filing requirements. This amendment is not currently reflected in Appendix A. The statutory provisions govern over the contractual language.

On Page 6 – TAX LAW 5A – NYS Tax Dept. - Phone number and website: 518-485-2889 the web site is www.tax.ny.gov

On Page 12 - METHOD OF AWARD, Evaluation of Bids – Criteria

CLARIFICATION: It should read as follows:

The discount offered will be equal to or better than any others offered to other government agencies under similar terms and conditions. This will be confirmed by comparison with other government contracts held by the bidder.

On Page 12 – METHOD OF AWARD, Required Documentation #2 –

CLARIFICATION: For OGS to determine reasonableness of price, bidders should provide pricing currently in effect for all like furniture categories being bid.*Examples of acceptable comparison pricing are:

1. Approved Federal Contract such as: GSA Supply Schedule (indicate GSA Schedule#) pertinent pages of the contracts with similar terms and conditions and the pricing and discounts of categories being bid.
2. Prices on any current NYS contract (indicate NYS contract #)
3. Identify Contracts with other State or Government entity, etc. (indicate Entity and Contract #)
4. Pricing equal to or better than any other pricing or discount terms offered to other non-government commercial customers. (identify customer name)

*OGS reserves the right to request additional information as required to determine reasonableness of price.

On Page 14 - RESERVATION, one line was omitted. It should read as follows:

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a contract product totaling more than the best quantity discount line or \$500,000 list per single order.

On Page 23 – PRODUCT LINE DESCRIPTION

Refers to page 23 – It should be page 24.

On Page 29 – NOTES TO BIDDERS: The first question should read:

- For bidders offering wood products, are the products manufactured from wood harvested from forests certified as being sustainably managed?

Questions Submitted by Potential Bidders and PSG's Responses

Q. The front of the IFB (page 1) in the Bidder's Federal Tax Identification Number area in parenthesis says (Do Not Use Social Security Number)

OSG RESPONSE: This is intended to protect individual identity. If your company has a New York State Vendor ID number, there is no need to enter your Social Security Number.

Q. Do you require the entire IFB be submitted with the bid?

OSG RESPONSE: No. We require two originals of all pages that need to be completed, signed and or notarized. Please read through the IFB thoroughly to identify all documents that are required to be submitted with the bid.

Q. We are uncertain of the context of the statement on Page 7 of the bid document (general information). Will you please provide more context/ clarity? “Business Participation Opportunities for MWBE’s

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the contract does not offer any opportunities for participate by MWBE’s”

OGS RESPONSE: In addition to business opportunities for New York State Certified Minority and Women-owned Businesses, Section 312 of Executive Law Article 15-A requires equal employment opportunities for minority group members and women.

Q. Page 6 and Pages 37-46: Several questions were submitted related to the Tax Law requirements:

1. Do I need to fill in the ST-220TD and CA and how do I complete the form where it says to enter your contract number?
2. Are we required to complete Contractor Certification (page 38) since we do not collect sales tax for school furniture purchases?
3. As a Canadian based company we do not have a NY State license to collect State taxes. We leave that function up to our NY Dealers who are involved in the transaction. Is having our dealers charge and remit NY State taxes acceptable?
4. Is a new 220-TD required if we filed one in the past?
5. If we are only selling through dealers and we are an out of state manufacturer do we still have to fill out these forms?
6. We have no employees in NY and the tax will be collected by the dealers.
7. Please provide a definition or explanation of what an “affiliate” is on the Tax Form ST-220-TD, Section 2, page 40.
8. Are a manufacturer’s authorized servicing dealers considered subcontractors?

OGS RESPONSE: #1& 2 above - Yes, the ST-220-TD needs to be completed and sent to the Tax Dept. directly. The ST-220-CA is to be completed and submitted with the bid. Leave the contract number blank.

#3-7 above Any other questions should be directed to Tax Department’s Contractor Information Center by email: www.tax.ny.gov or by calling (518) 485-2889.

#8 above - If the Dealer is the bidder then for purposes of this contract they are the Contractor. If the dealer is designated by a contractor as being allowed to accept the orders, issue the invoices and receive the payments then they are agents. If the dealer is designated by a contractor as being allowed to accept the orders, however the invoices and payments go through the Contractor, then they are subcontractors.

Q. Page 9 SCOPE: There were several questions submitted related to the scope of the IFB and what products are included in the 10 categories listed.

1. Would this contract include Lockers/Shelving/Storage Cabinets, etc?

OGS RESPONSE: **Category 7 Office Furniture.** Lockers are not part of the scope of this contract.

2. Does industrial furniture (ie heavy duty furniture used in assembly areas, packing stations, and other high weight and rugged use applications) fits in the category of general purpose tables?

OGS RESPONSE: **These products do not fit in any category listed.**

3. Do you have a category that would cover laboratory furniture? If not, will there be a bid available later this year that might be more appropriate for our product?

OGS RESPONSE: **There is not a category for laboratory furniture. At this time there is no opportunity for that line of product.**

4. We manufacture “technology furniture” mainly teacher instructor podiums / lecterns, desks, mobile media carts, and AV rack cabinets for the classroom, meeting room, or conference room along with other specialty “Furniture for Technology”.

Can we participate with our technology furniture products under these general categories ???

#1 Conference Furniture, #7 Office Furniture, #8 School Furniture

OGS RESPONSE: **Categories 1, 7 and 8 are appropriate. These products are also available through the current Award 22227, link provided below: <http://www.ogs.ny.gov/purchase/snt/awardnotes/7955022227can02.pdf>**

5. Which category “early childhood furniture” would be classified in?

OGS RESPONSE: **Category #8 School Furniture is appropriate**

6. Can you confirm that this includes table desk and floor lamps? I did not see them listed specifically.

OGS RESPONSE: **No, the scope does not include table, desk and floor lamps.**

7. Are whiteboards considered part of the scope of IFB22398?

OGS RESPONSE: **No. They are available through Group 23100 Award 21710 School and Art Supplies**

8. Are Stages and Risers part of the scope of this IFB?
OGS RESPONSE: No
9. Can you tell me if there will be a different IFB in the future that will include these products? And if so, when do you expect that to be announced?
OGS RESPONSE: There are no plans at this time.
10. What category if any does auditorium seating and telescopic (bleachers) seating fit in?
OGS RESPONSE: Category 8 consists of student desks, tables and seating for elementary schools through college found in classrooms. Auditorium seating may be included. Indoor and outdoor bleachers are not included in the scope of the IFB.
11. What category under SCOPE Page 9 of IFB 22398 do lockers fit?
OGS RESPONSE: Lockers are not part of the scope of this bid.
Customers that have a requirement for any categories will need to follow their purchasing guidelines to make these purchases.
- Q. When can contract updates such as requests to add new products, etc. be submitted to the State for approval?
OGS RESPONSE: Page 9 PRICE clause, Discounts – 2nd paragraph. Annually one year after award
- Q. Referencing Page 12, "Method of Award": Language states awards will be made to low, responsible bidder. This would suggest a limited award. But, Page 9, "Scope", talks about multiple manufacturers' product lines. Does the State envision a limited number of awardees, or will it be similar to the past contract where all responsible bidders get a contract? Can a manufacturer submit a bid with one FID# for two different manufacturer product lines with two separate FID#'s?

OGS RESPONSE: Page 9 Scope – "It is the intent of this Invitation for Bids to establish a comprehensive multiple manufacturer's product line contract for NEW, unused and in current production commercial and institutional quality furniture in the following categories listed below." Where there are multiple bids for a manufacturer's product line, a single award will be made to the low, responsive and responsible bidder. It will be similar to the current Award 20551.
- Q. Since we are not a current contractor and we hold a GSA contract does this mean we can skip the inclusion of proof of sales?
OGS RESPONSE: This is a requirement. Page 12 – Required Documentation – #2.
- Q. For 3 recent calendar years. How recent?
OGS RESPONSE: The last three calendar years is what is intended.
- Q. What I was planning on providing are copies of PO's that the purchases were under GSA. Please confirm.
OGS RESPONSE: Refer to Page 12 – Required Documentation – #2. – Summary of sales by year is sufficient; the State reserves the right to request PO's.
- Q. What are the minimum criteria to submit a bid, is it \$200,000.00 in NYS sales only?
OGS RESPONSE: Page 12 Section: MINIMUM CRITERIA TO SUBMIT BID
The \$200,000.00 in sales for three recent consecutive years can be for any governmental entity, either within or outside New York State.
- Q. I can provide a summary report of invoices by date, dealer, and invoice amount that shows the agency or other authorized contract user where qualifying orders were shipped. Will this report be acceptable to meet the requirements under the Minimum Requirement To Submit Bid section on page 12 of the Invitation For Bids?
OGS RESPONSE: Yes, Page 12; section Minimum Criteria to Submit Bid:
Required proof will be in the form of a summary of the annual total sales reported under the current or previous contracts, or copies of actual purchase orders for non-NYS contract sales. These sales may include successful bids to school districts, BOCES, or municipalities.
- Q. I do not currently have a NYS Vendor ID#, how do I get one?
OGS RESPONSE: Page 5: Section: NEW YORK STATE VENDOR FILE REGISTRATION, paragraph 3.
"If the Bidder is not currently registered in the Vendor File, complete the enclosed OSC Substitute W-9 Form (page 35) and submit it with your bid.

- Q. Can a manufacturer partner with a dealer in the state of New York or should the manufacturer try securing a contract on its own and list dealers?

OGS RESPONSE: That is the manufacturer's decision to make.

- Q. What fees are involved with getting on the N.Y. State Contract?

OGS RESPONSE: OGS does not charge a fee to be approved for a contract associated with this IFB.

- Q. Is there a maximum number of dealers allowed?

OGS RESPONSE: No, there is no maximum number of dealers allowed.

- Q. Page 13 – Warranties – do the product specifications and literature need to be submitted with the bid documents?

OGS RESPONSE: Appendix B Clause 72 – Yes, submit with your bid.

- Q. Page 15 – Internet Websites – since we will be the contract holder for multiple factories, do we need to comply with the last bullet by listing only our dealers (probably only one) for each factory?

OGS RESPONSE: It is up to successful bidders to determine if they will be allowing authorized dealers to accept orders and payments. If so, the successful bidders shall maintain a website including those dealers who are authorized to service the contract.

- Q. Am I correct that our dealers can accept purchase orders and receive payments off the contract?

OGS RESPONSE: Yes. Page 15 Section INTERNET WEBSITES – second and third bulleted items.

Designation of Authorized Dealer(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with Authorized Dealer(s). If Authorized Dealer(s) are designated to fulfill orders under this Contract, issue invoices and receive payment, Contractor must provide OGS, in advance, with an OSC Substitute W-9 form which should be completed by each of the designated authorized dealers and submitted to the Office of General Services.

- Q. Page 15: Designation of Authorized Dealers – Can we have some dealers who will accept orders being placed directly with them and other dealers where the orders are placed with us (the contractor)?

Page 4, Contract Billings and Payments. Please provide clarity on paragraphs a, b and c. **Are dealers authorized to invoice end users?**

OGS RESPONSE: Refer to 15 – Internet Websites: It is the bidders' option to allow dealers to invoice end users and receive payment directly. Therefore the intent is for the bidder to make the determination which dealers, if any, will be allowed to receive payment directly.

- Q. If we want all the PO's to be made out to the mfg but have authorized dealers to service the contract, do we just provide a list of dealers as we have on the current contract? I am reading the requirements for if we want to allow them to accept PO's, invoice and receive payment on our behalf, but am unclear on if we need to follow those same requirements if we only want them to be servicing dealers where the PO's, invoicing and payments are handled solely by the Mfg.

OGS RESPONSE: Page 15: Second bullet, paragraph 2 – this applies to authorized dealers that are allowed by the manufacturer to receive payment directly, all dealers that are servicing the contract should be listed, whether or not they are authorized to accept orders and payments.

- Q. Can we have both ourselves and our named dealers accept orders and invoice?

OGS RESPONSE: YES

- Q. Are our dealers required to have toll free phone number?

OGS RESPONSE: No. Page 15 TOLL-FREE NUMBER – this applies to the bidder.

- Q. Page 26 – Notes to Bidders – does this page need to be completed for each of the authorized dealers?

OGS RESPONSE: Page 26 of the IFB is to be completed by the bidder with the bidders' information.

- Q. Is it necessary for dealers to have EDI capabilities?
OGS RESPONSE: No. Page 26– “Does bidder offer Electronic Access Ordering (EDI)?” applies to bidders. It is not a requirement of the bidder but rather an informational question.
- Q. Page 34 – Certificate of Manufacture – is this document required to be completed by the bidder? If yes, is it required for each factory, or just (1) for this bid?
OGS RESPONSE: Page 34 – Certificate of Manufacture – to be completed by the individual signing the bid.
- Q. I have questions regarding the online vendor responsibility service.
OGS RESPONSE: Contact OSC – http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm
By Email: ciohelpdesk@osc.state.ny.us **By Phone:** Toll free: (866) 370-4672 or (518)408-4672
- Q. I cannot find the specifications or the quantities needed. Could you, please, assist me and “point me in the right direction”?
OGS RESPONSE: Scope: page 9 and Estimated Quantities: Page 13
- Q. With this bid, can I submit paperwork for manufactures that are not currently on contract in hopes to have them added?
OGS RESPONSE: Yes. Page 9 SCOPE and Pages 25, 33 and 34 of the bidders questions.
- Q. May bidders submit exceptions-to-terms and/or deviations with their bid or must all exceptions be resolved before the bid opening?
OGS RESPONSE: The intention is to resolve any clarifications before the bid is submitted. Appendix B – Extraneous Terms...may render the Bid non-responsive and may result in rejection of the Bid.
- Q. Do bidders need to independently certify that all of its third-party carrier’s trucks comply?
DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW)
OGS RESPONSE: Not at this time. OGS reserves the right to request this certification in the future.
Subcontractors working for contractors on behalf of the State only need those vehicles to be in compliance which are actually used for state deliveries/ % of vehicles used on behalf of the state must be in compliance. Example: If company owns 5 trucks, 2 of which are DERA compliant and they do 40% of their business with the State they would be compliant. All 5 vehicles would not need to be compliant since it would be assumed that they use the 2 compliant vehicles for state work.
- Q. Which brand of procurement card(s) may NY State Authorized Users use?
OGS RESPONSE: The current NYS Procurement Card is a Visa card.
- Q. On page 14 under Qualification of Bidder, it has “Bids will be accepted only from established manufacturers or their authorized dealers.” On page 15, “OGS agrees to permit Contractor to utilize approved, Authorized Dealers, to participate as alternate distribution sources for Contractor.” And “Designation of Authorized Dealer(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with Authorized Dealer(s).”
1. Can a Manufacturer’s product be listed on more than one furniture contract with the State of NY...*i.e.* Can a Manufacturer and an Authorized Dealer(s) both hold contracts with the State of NY with the same product lines on this bid? Or is it that the Manufacturer bids on the contract and includes authorization of its servicing dealers to accept PO’s on its behalf in regards to invoicing and payment?
OGS RESPONSE: Page 12 METHOD OF AWARD: Award shall be made by ITEM to the lowest responsive and responsible bidder. An ITEM shall be described as a manufacturer’s product line doing business under a unique FEIN and serviced by a single contact person. Consolidated companies operating under the same FEIN shall be considered as one ITEM. Either the manufacturer or the authorized dealer for a product line is able to hold the contract not both.

Q. Is this disability insurance a new requirement for contracts? I do not see this as a requirement when the contract was in place and was bid a few years ago. Please confirm if the disability insurance is necessary for bid/award.

OGS RESPONSE: Page 20 Proof of Compliance with Disability Coverage Requirements: #2 –forms are required to be submitted with the bid.

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

Q. If we respond no to the questions on Page 26 will we be thrown out? (are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies including GSA). Plus our GSA contract does not have the complete product line on it. For example NY gets a better discount than some other contracts we have with other states, ease of working with, etc. etc.

OGS RESPONSE: OGS will evaluate your bid once it is received. Responding no to that question on Page 26 of IFB 22398 and providing an explanation similar to that you which you have provided above is not going to disqualify your bid.

Q. Will OGS accept other than the required forms for on page 20 for Disability Ins. OGS RESPONSE: The forms on Page 20 are those that will be acceptable with the bid.

Q. General Information: Page 12: Method of Award section: Evaluation of Bids-Criteria: You are evaluating discount on other contracts yet almost no contracts are written the same, for example, NJ requires the discount to also include installation. Other contracts allow you to add freight. Some contracts actually have different price lists. So when looking at other discounts how will you evaluate the terms of the other contracts by just looking at discount numbers?

OGS RESPONSE: The discount offered will be equal to or better than any others offered to other government agencies under similar terms and conditions. This will be confirmed by comparison with other government contracts held by the bidder.

Q. Page 12, General Information, Method of Award, Required Documentation. In what format (file type) would the State prefer the price lists on CD to be submitted?

OGS RESPONSE: Microsoft Excel

Q. Page 12, General Information, Method of Award, Required Documentation. Please clarify if the requirement: "Government contracts:2 copies for each government" is referencing the contractor's pricelists for the government contracts in question or a copy of the contract award.

OGS RESPONSE: Page 12 Method of Award, contractor's price lists for the government contracts

Q. Page 12, Volume Discounts. Where on the bid document form should the bidder indicate the basis for applying volume discounts?

OGS RESPONSE: Page 25 of bid pages VOLUME DISCOUNTS

Q. Page 25, Current Catalog Identification and Date. Is the contractor required to submit a catalog with the bid?

OGS RESPONSE: Is it not a requirement with the bid. The State reserves the right to request the catalog at a future time.

Q. Page 25, Price List Identification and Date. Is the contractor required to submit a Retail Price List other than the required 2 copies on CD with the bid?

OGS RESPONSE: No. The requirement is to submit your current Retail Price list, not a price schedule developed specifically for this bid on CD (two copies) labeled with the name and date of the Retail Price list.

Q. Page 19, paragraph (b)Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000.00 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles. Our current insurance is standard for the commercial auto – the limit, \$1,000,000 plus the current umbrella provides \$2M each accident. Will that be sufficient to address the Bid requirement?

OGS RESPONSE: The Insurance Requirements Page 19 requires \$2 million and you may provide that through the auto policy and the umbrella policy.

Q. Do we have to submit a list of authorized dealers?

OGS RESPONSE: Refer to page 15 INTERNET WEBSITE: We do require a list of authorized dealers at the time of bid if the manufacturer is allowing the authorized dealer to receive payment directly. If the AD is not allowed to receive payment directly, the State reserves the right to request the authorized dealers list at any time.

Q. Under the new NY State contract currently out for bid, will NYS allow for purchases to be invoiced by authorized dealers or must invoicing come from the manufacturer? The reason I ask is that there is a company that is 100% owned subsidiary of our company specializing in healthcare furniture applications. However, they are run as a “stand alone” company and our company does not have the capacity to invoice for their products. Do they have the ability to submit a response to the bid on their own?

OGS RESPONSE: Page 9 Scope – the product line is required to be included in the categories listed

Q. Also, do you need to hold a GSA contract to submit a bid?

OGS RESPONSE: No. Page 12, Minimum criteria to submit bid. -...”If not a current contractor, bidder must hold other governmental and/or municipal contracts (GSA, State, BOCES, etc.)

Q. Section: General Information – Price - Discounts; page 9 of ITB: The bid document states “Any restocking fees must be included in the retail price list as a percentage (%) of the net price.” Does this mean the State is requiring our list pricers to contain information regarding restocking fees?

OGS RESPONSE: The States requirement is to have all pricing that is associated with your bid pricing to be provided on your price list at the time of bid. If there are no restocking fees, that can be stated.

Q. Section: General Information – Method of Award – General; page 12 of ITB: The bid states “Award shall be made by ITEM to the lowest responsive and responsible bidder. An ITEM shall be described as a manufacturer’s product line doing business under a unique FEIN and serviced by a single contact person.” Please confirm it’s not the State’s intent to award by product category to a single bidder.

OGS RESPONSE: That is correct it is not the State’s intent to award by product category to a single bidder. The State’s intention is to award a manufacturer’s line to a single bidder.

Q. Section: General Information – Report of Contract Purchases; page 20 of ITB: within the paragraph that states “in addition to contractor direct sales, contractor shall submit sales information...”

Does this only apply if a contract allows both the manufacturer and authorized servicing dealer to invoice the eligible end users?

OGS RESPONSE: This requirement is after award. YES, the State requires the contract holder to submit purchase reports for both the manufacturer and their authorized dealers

Is the State only requesting the sales volume that each authorized dealer has sold and not the detailed information that is required in the first paragraph of this ITB section describing semiannual reports?

OGS RESPONSE: The State reserves the right to request.

In addition to the authorized dealers sales volumes, is the State requesting the contract holder to also list the MBE or WBE status that the authorized dealers may hold?

OGS RESPONSE: The State requesting the contract holder to list the MBE or WBE status that the authorized dealers may hold.

Q. Section: Appendix B - #48 Title and Risk of Loss, page 10: please confirm that any decision of the Commissioner is appealable to a court of confident jurisdiction.

OGS RESPONSE: OGS PSG encourages vendors to first seek resolution of disputes through consultation with PSG staff as stated on page 8 of the IFB. See also Appendix A, clauses 14 & 16.

Q. Section: Appendix B - #79 Product Acceptance, page 17: Please confirm that Office Furniture qualifies as hardware products for the product acceptance period.

OGS RESPONSE: Appendix B. #79 pertains to Technology & Negotiated contracts.

Q. Pg. 7 – Equal Employment Opportunity Requirements

1. Are we required to submit a completed EEO form for each dealer (subcontractor) that will perform a service under the contract, such as inside delivery? We will not be allowing dealers to receive PO’s and Payment on our behalf.

OGS RESPONSE: Refer to Page 7: This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Q. Pg. 16 – Contractors Insurance Requirements The Certificate of Insurance is not a requirement with the bid, but ‘upon tentative award’ because it has to note the contract number on it. Is this correct?

OGS RESPONSE: Correct

Q. The Workman’s Compensation does not require the contract number and proof should be submitted with the bid – is this correct? If not, please clarify.

OGS RESPONSE: That is correct. At this time there is no contract number and yes the proof is to be submitted with the bid.

Q. The Disability Benefit Coverage also do not require the contract number and proof should be submitted with the bid – is this correct? If not, please clarify.

OGS RESPONSE: That is correct. At this time there is no contract number and yes the proof is to be submitted with the bid.

Q. If we do not allow our dealers (subcontractor) to receive PO and Payment, are they required to provide the same certificates noted above naming OGS? If yes, can the subcontractors certificates also be submitted only upon request by OGS after tentative award?

OGS RESPONSE: No.

Q. Pg. 17 – Insurance Requirements for #7 – Subcontractors

If the contractor will utilize dealers to service this contract, are their insurance documents required with submission of the bid or only upon request?

OGS RESPONSE: The insurance requirements pertain to the bidder.

Q. Signed into law on August 14, 2008, the United States Consumer Product Safety Improvement Act (CPSIA), Section 102, provides regulations for testing and certification of certain products. Among the items regulated by Section 102 of the CPSIA is school furniture with a paint finish. Some manufacturers of school furniture have addressed this requirement and have available from a third-party laboratory, a certificate showing compliance with Section 102 of the CPSIA. Others however may not be aware of the law or choose to ignore it, especially those who manufacture outside of the US or ship in components from other countries. Will the state require proof or a signed statement from bidders who supply furniture used by children with our bid submittal or before an award is granted by the state?

OGS response: Regarding CPSIA certification, the State reserves the right to request, it is not a requirement of this IFB.

Q. P.19 B) Certificate of Workers’ Compensation Insurance:

1) Form C-105.2 (9/07) if coverage is provided by the contractor’s insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, Question 1) Do you have the address of the New York State Office of General Services?

OGS RESPONSE: Proof is required to be submitted with your bid. Page 19 A1.

Q. P.23 DELIVERY CONDITION: Our current GSA contract does not include assembly for KD furniture. Under the terms of this clause, the state requires KD furniture to be assembled as part of the pricing. Does the state of NY expect product such as chairs, meeting and training tables, or IT furniture to be assembled at the same net pricing extended to GSA?

OGS RESPONSE: The discount offered will be equal to or better than any others offered to other government agencies under similar terms and conditions. This will be confirmed by comparison with other government contracts held by the bidder.

Q. P.5 Appendix B 17B Would you please explain prevailing wage as it applies to the discount? Can there be separate discounts for separate lines? Does prevailing wage apply to all product installations?

OGS RESPONSE: INSTALLATION is not part of the scope of this contract.

Q. Page 26 Notes to Bidders Is this product available only on a “direct from the manufacturer basis” or can pricing be obtained from dealers or distributors? Check one.
If the bidder selects “Other” does that mean that both bidder and dealer are authorized to provide pricing and accept purchase orders from the buying organization?

OGS RESPONSE: Yes. “Other” is referring to other than the manufacturer which would mean the dealer.

- Q. Page 2, Paragraph 2 Bid Deviations indicates “If your bid differs from the specifications explain such deviation(s) See “Extraneous Terms” in Appendix B, OGS General Specifications.”

Page 11 indicates 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. Bidders entering into a contract with the State are expected to comply with **all** the terms and conditions contained herein.”

Appendix B, Paragraph 13 Extraneous Terms indicates that “Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:” ... and subsequent paragraphs outlining the appropriate way to propose extraneous terms.

Question: Will a bid that includes extraneous terms or material deviations submitted in accordance with Appendix B, Paragraph 13 be deemed by OGS as responsive?

OGS RESPONSE: The intention is to resolve any clarifications before the bid is submitted. Any extraneous terms submitted in accordance with Appendix B, Paragraph 13 will be considered on an individual basis and may render the Bid non-responsive and may result in the rejection of the bid.

- Q. Page 30-31. **Are we to provide answers to numbers 1-4 on these pages for our New York dealers?**

OGS RESPONSE: Page 30-31 – question 1-4 apply to the bidder.

- Q. Page 35, Substitute Form W-9. **Does the New York-based dealer instead of the out-of-state manufacturer/Contractor complete this form?**

OGS RESPONSE: Page 5 New York State Vendor File Registration and Page 15 Internet Websites. The w-9 is to be completed for the authorized dealer that is allowed to receive payment directly by the manufacturer provided they do not already have a NYS vendor ID #.

- Q. Page 10, Installation. Due to the complex nature of high density storage systems and to ensure a valid warranty the system must be installed by factory trained and certified installers. What is your recommendation for stating this in our proposal to ensure it's communicated in the resultant contract?

OGS RESPONSE: Page 10 Installation is not in the scope of this contract.

- Q. As a minority reseller, do you see a benefit for New York State if we submit a bid response that will also be submitted by several of the manufacturers that we represent?

OGS RESPONSE: That is your decision. Page 9 – Scope and Page 12 Method of Award General.

- Q. Would we also be able to participate as a dealer or representative of manufacturers that we do not submit a bid for?

OGS RESPONSE: Yes, Page 9 – Scope and Page 12 Method of Award General.

- Q. In order, to gain Minority business credits will state agencies be required to be invoiced by us directly?

OGS RESPONSE: It is the intention on Page 15 - Internet Websites to have manufacturers allow authorized dealers to receive payment directly so that those purchases through the Minority businesses will be able to be credited for participation.

- Q. Appendix B- #27. Procurement Card. Is the Contractor obligated to pay a credit card transaction fee

OGS RESPONSE: That depends on your credit card terminal entity. The NYS Procurement Card is currently a Visa card.

- Q. Appendix B- #63b. Default, failure to make payment. Language states that user has 60 days to make payment. Was this not net 30days on current contract?

OGS RESPONSE: Appendix A clause 15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law. The required payment date shall be thirty calendar days, excluding legal holidays....

Appendix B – 63b has not changed from previous IFB.

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- Q. General Information A. 1 Proof of Compliance with Worker’s Comp. Not exactly which form is needed? I tried to get the form CE-200 but the link says I need to request the exemption?
Should I go ahead and request for WC/DB and sign on? Please confirm.
OGS RESPONSE: Page 19 Proof of Compliance with Workers’ Compensation Coverage Requirements- Form CE-200 must be submitted with your bid if this coverage is not required by your company. If you feel your company is exempt you should follow the requirements of the Workers’ Compensation Board to obtain this form.
- Q. Manufacture’s Certificate, pages 33 –34 we are the manufacturer do we need to fill out pages 33 &34? Or is for if the bidder is a dealer? Please confirm.
OGS RESPONSE: Bidders who are the manufacturers do not need to complete Page 33. All bidders need to complete Page 34.
- Q. As a minority dealer, Can NYS still claim minority credits under the Governors mandated minority spending levels if we participate as a dealer of other contract holders Rather than a direct contract holder?
OGS RESPONSE: If the manufacturer allows you, the dealer, to receive payments directly.
- Q. Section: General Information – Workers’ Compensation Insurance and Disability Benefits Requirements; page 19 – 20 of ITB: Are we required to submit the Workers’ Compensation proof of coverage and the proof of Disability Benefits coverage directly to the New York State Office of General Services or can we submit the forms with our bid response?
OGS RESPONSE: Page 19 – These documents are required at the time of bid.
- Q. Section: General Information – Price – Installation; page 10 of ITB: Please further clarify the State requirements for installation of all products? Other products besides systems and high density filing may require installation. Will installation be negotiated on a project-by-project basis for all products? Is installation considered part of this contract?
OGS RESPONSE: Refer to page 10 – INSTALLATION is not part of the scope of this contract, it shall be handled by the ordering agency according to their purchasing guidelines.
- Q. The State of New York’s terms and conditions differ from the terms and conditions of the other government contracts. Terms and conditions impact how a manufacturer arrives at discounts, for example, a single award contract may have more favorable discounts than a multiple award contract. In the States review of information provided within the Sales Summary or copies of the Government Contracts, how will the State use this information to evaluate our State of New York bid?
OGS RESPONSE: The discount offered will be equal to or better than any others offered to other government agencies under similar terms and conditions. This will be confirmed by comparison with other government contracts held by the bidder.
- Q. On page 24 at the bottom of the page “Dealer/Distributor Contact”: Does the State require this information for all authorized servicing dealers that will be utilized in the performance of this bid? Or only those authorized dealers that will be invoicing an eligible end user? If we have multiple authorized servicing dealers, can we provide a separate list showing this information and note “see attached” within the form?
OGS RESPONSE: Page 24, this information is required if it is different than person identified on page 27.
- Q. On page 25, product category description, % discount from retail price list, and volume discounts sections: If we are offering multiple discounts based on product categories and volumes, can we complete the form by stating “see attached” in each one of these sections and then provide a detailed discount matrix?
OGS RESPONSE: Bidder can make copies of page 25 and complete that page for product categories and volume discounts.
- Q. On page 25, inside delivery: the bid form only has one space for bidders to list the % to be charged for inside delivery. On page 10 of the ITB under the Inside Delivery definition it states that bidders can offer a different fee for Downstate and Upstate. Can we fill in the form with “see attached” and include the fees for both on a separate attachment? How would the State like bidders to note these two different charges?
OGS RESPONSE: Indicate them on page 25, one above inside delivery

- Q. On page 26, it states “if yes, a copy of the GSA or VA schedule is required.” Does the State mean a copy of the discount schedule? Could you please clarify the definition of schedule?

OGS RESPONSE: The schedule #/GSA or VA contract # for our reference.

- Q. On page 26, it states “is this product available only on a direct from the manufacturer basis or can pricing be obtained from dealers or distributors?” Can a bidder check both a manufacturer and other?

OGS RESPONSE: NO, these are mutually exclusive.

- Q. Section: Appendix B - #58 Performance / Bid Bond, page 11: Please confirm no bond or irrevocable letter of credit is required for this ITB.

OGS RESPONSE: Confirmed.

- Q. Section: General Information – Equal Employment Opportunity Requirements; page 7 of ITB: It states that the “Bidder is required to submit with the bid a staffing plan on form EEO 100 identifying the anticipated work force to be utilized on the Contract;” will the State accept a copy of the current EEO 100 form from the Bidder as satisfactory to fulfill this requirement? As a manufacturer that is located outside the State of New York, with many different manufacturing facilities, we are unsure as to how the State would like us to complete this plan. Can the State please provide more guidance on what should be included in this plan or how it should be structured?

OGS RESPONSE: Refer to Page 7: This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State. In addition to business opportunities for New York State Certified Minority and Women-owned Businesses, Section 312 of Executive Law Article 15-A requires equal employment opportunities for minority group members and women

- Q. Additional question – can non-contract items be submitted on a purchase order with contract items?

OGS RESPONSE: No, non-contract items must be submitted on a separate purchase order.

- Q. Section: General Information – Contractor’s Insurance Requirements; page 16 – 19: Please confirm That certificates of insurance do not need to be provided upon bid submittal.

OGS RESPONSE: Page 19 – Certain forms are required at the time of bid submission other are at the time of award.

- Q. Section: Detailed Specifications – Delivery Conditions; page 23 of ITB: The bid states that “all furniture with the exception of systems furniture, high density shelving, frame type beds where side rails are attached to head and foot boards without the use of tools and dining room tables shall be delivered fully assembled and ready for use.” Is this another definition of Inside Delivery as noted on page 10 of the ITB? Can installation charges be negotiated for all furniture as modular desking systems are specified in the same manner as systems by many manufacturers? Can installation only be negotiated for systems furniture?

OGS RESPONSE: Refer to Page 10 Installation –shall be handled by the ordering agency according to the Purchasing Guidelines and discretionary limits.... Installation is not part of the scope of the IFB.

- Q. Section: General Information – Reservation; page 14 of ITB: The second sentence is incomplete. Can the State please provide the dollar limit for the “unanticipated excessive purchase,” the dollar total is not listed within this section.

OGS RESPONSE: This was an error. Page 14 Reservation: The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a contract product totaling more than the best quantity discount line or \$500,000 list per single order.

- Q. Section: Appendix B – (iii) Special Offers/Promotions Generally, page 7: please confirm special promotions or special discount pricing only applies to customers purchasing a similar quantity and under substantially similar terms and conditions.

OGS RESPONSE: Appendix B states Special Offers/Promotions Generally.. similar quantity transactions ...

- Q. Section: Appendix B – #59 Suspension of Work, page 11: Please explain how contract holders must handle purchase orders that have been received and are being processed if a suspension of work is required.
OGS RESPONSE: It is explained in the clause and that means all work is to stop and monies do not change hands until the suspension is lifted
- Q. On page 27, “NOTES TO BIDDERS:” “If awarded a contract, will the bidder honor orders for less than the minimum order”? We will not have a minimum order amount. How should we respond to this question and the following two questions regarding shipping of an order for less than the minimum order clause?
OGS RESPONSE: If there is no minimum order – you can state that. The other questions would not apply if there is no minimum order.
- Q. On page 33, “Manufactures Certificate.” Since we are the manufacturer as well as the bidder, what if anything do we complete on this certificate?
OGS RESPONSE – Bidders who are the manufacturers do not need to complete Page 33, All bidders need to complete Page 34.
- Q. On page 42 “ST-220-TD (5/07).” At the top of the page to the right of “STATE OF” and “COUNTY OF” are the letters, “SS:.” What does “SS:.” stand for?
OGS RESPONSE: Contact Tax Department – it may be a notarization abbreviation.
- Q. Required documentation on page 12: 2. Government contracts – 2 copies for each government or 2 copies of sales summary by year. If sales summary not available, please advise documentation required.
OGS RESPONSE:
Page 12 – Refer to page 12, section Minimum Criteria to Submit: Required proof will be in the form of a summary of the annual total sales reported under the current or previous contracts, or copies of actual purchase orders for non-NYS contract sales.
- Q. References page 14: Is this the same documentation as requested on page 12 for government contracts?
Please clarify.
OGS RESPONSE: Page 14 - REFERENCES – Upon request – References are not required at the time of bid.
- Q. Page 21 – General information New York State Procurement Card I have 3 authorized dealers and only 2 accept the NYS Purchasing Card. Please advise how to proceed. Also, is contractor required to accept NYS purchasing card?
OGS RESPONSE: The question on Page 26 is a question for the bidder. It is not a requirement for a contractor to accept the NYS procurement card.
- Q. Page 25: Inside delivery - This price varies based upon the order. Would it be ok to put “Negotiable per Order”?
OGS RESPONSE: There must be a price indicated. OGS cannot accept Negotiable per Order.
- Q. Page 23, section: Delivery Condition. The first paragraph states that all furniture must be delivered fully assembled or a contractor’s representative must be there to assemble. A large amount of the furniture we deliver requires some assembly especially on adjustable elementary school furniture. All the schools that accept a tailgate delivery have custodial staff to do this assembly. For us to assemble all delivered furniture would require an assembly crew to go with most deliveries and would result in a much lower discount level/higher prices for tailgate deliveries. Some of our orders are so small that this requirement would place a burden on the contract holder as well as on the budgets of our customers. Can you clarify this paragraph?
OGS RESPONSE: Refer to Page 23 DELIVERY CONDITION –No “KD” furniture shall be accepted unless contractor’s representative is present to assemble it upon receipt. Other exceptions may be made with prior agreement between the contractor and ordering agency.
- Q. We want to propose our inside delivery fee of a% of the net with a minimum of \$XX how can that be done on the response since there is only a spot for a % of the net?
OGS RESPONSE: Attach an explanation to your bid.

- Q. Page 9 - DISCOUNTS - second paragraph - "Price lists submitted with the bid shall remain in effect for one year after awarded a contract." However on page 12 under Evaluation of Bids - Criteria "The discount offered will be equal to or better than any others offered to other government agencies." We cannot agree with both of these statements. Our prices are reviewed annually under our GSA contract and have been accepted every year since the contract was awarded to us in 2004. We would need to offer New York the same pricing structure, as we cannot offer any state better prices or discounts than those on our GSA contract. We do have contracts with other states whose agreements are tied to the GSA contract and they will only accept price increases when the GSA accepts a price increase. We would like to offer those same terms to New York for this contract. We did not have an across-the-board price increase for the year 2012, but only increased prices on three series.

OGS RESPONSE: Refer to Page 2, BID DEVIATIONS.

- Q. Page 10 - Inside Delivery - States "An additional fee for Inside Delivery may be requested in the appropriate place on the price page. A different fee may be requested for Downstate - Metropolitan NYC (from Westchester County south and Long Island) than Upstate - the rest of NY State. However, on Page 25, under Price Additional, there is space for one percentage discount for Inside Delivery. We believe that with these regulations, installers should be able to quote inside delivery on a per project basis.

OGS RESPONSE: Inside delivery is to be a percentage of net. Quotes on a per project basis are not acceptable.

- Q. Page 15 - Fourth paragraph - Authorized Dealer(s) must be approved in advance by OGS as a condition of eligibility. (If we will be processing all New York agency orders and receiving all payments, but utilizing authorized dealers for installation, are we required to submit dealer information before we can add a new dealer to our list of authorized dealers?)

OGS RESPONSE: No, we are only requiring the list at this time if the authorized dealer is allowed to accept payment directly.

- Q. Page 26: - In the second paragraph under the 6th bullet asks if we have the ability to make NY pricing available along with our catalog on line. Are you requesting for New York agency's net price after discount, or can we show our list prices and list our New York contract discounts?

OGS RESPONSE: You can show your Retail list price and NYS Discount

- Q. Page 25 - Current Catalog Identification and Date: Should we send our complete binder, or just our 80 page 2012 Book?

OGS RESPONSE: We do not require the entire catalog. You can submit it on CD. We reserve the right to request.

- Q. Page 10 talks about inside delivery and Installation and the fees allowed under each.
Most Library Shelving is shipped "KD" however it is unclear in the bid documents if NYS considers Library Shelving KD or Free standing. Can you clarify where Library Shelving would be classified as it is different than High Density Filing systems?

OGS RESPONSE: Refer to Page 10 – 2nd paragraph and what conditions the inside delivery fee is based on.

- Q. Page 9 the 'Scope - Would Security System Furniture, ie... Security Gates and Book check counters fall in to the scope of this contract? If so, under which Category? Would Interactive Whiteboards be covered under this contract? If so, under which category?

OGS RESPONSE: Refer to Page 9 SCOPE – Security Gates, book check counters and whiteboards are not part of the scope of this contract.

- Q. Regarding the insurance requirements discussed on page 16-20, I assume that the necessary verification forms are submitted after the contract is awarded. Nothing regarding verification of insurance will accompany the bid. Is this correct?

OGS RESPONSE: Refer to Page 16, upon tentative award,..... see A3. Certificate of Insurance/Notices. Refer to page 19 – Failure to provide proof of worker's compensation and disability benefits coverage or legal exemption will result in a rejection of your bid or renewal.

Q. Section: Appendix B - #75 Indemnification Relating to Third Party Rights, page 15: Please confirm indemnity obligations are related to contractor's supply of products or services **ONLY**.

OGS RESPONSE: Confirmed

Q. We are a manufacturer of Ergonomic workstation accessories. Please let me know what category to select.

OGS RESPONSE: Please refer to the description of the categories on Page 9 of the IFB. OGS is unable to direct you on how to respond to this bid.

Q. Can you clarify for me whether my company which has no employees in NY State should submit a Form CE-200 as an out of state entity? We carry a Workman's Compensation Policy through the Hartford for our employees none of whom are in NY.

OGS RESPONSE: "Staffing Plan information is not required for: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State."

Q. Since we do not have employees in NY State, are we still required to carry Disability Benefits Insurance?

OGS RESPONSE: Refer to Page 20 – You must provide a Form CE200 – if disability insurance is not required because you are an out of state entity.

Q. Page 9 Price: It's stated annually new price lists can be submitted. What time of year can new price lists can be submitted?

OGS RESPONSE: One year after awarded a contract.

Q. Page 15 Internet Websites: At what time does a URL need to be submitted for the designated website?

OGS RESPONSE: At time of bid is preferable, it is required before an award can be made.

Q. P.34 The names and addresses of subcontractors involved in the manufacture of the final product are: Would you please define subcontractor? Does this include warranty hardware? Chair casters? Laminate suppliers? Keyboard trays? Particle board cores for tops? Pedestal manufacturers for our modular furniture?

OGS RESPONSE: **Refer to Appendix B: SUBCONTRACTOR** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

Q. On the Certificate of Manufacture form (page 34 of the Invitation to Bid) - will this information be kept confidential or made public? Is there anything a bidder can/must do to keep this information confidential?

OGS RESPONSE: You can mark the document "confidential" and OGS will respect that.

Q. In order to comply with the requirement that "the discount offered be equal to or better than any others offered to other government agencies" - how will you compare GSA pricing that does NOT include delivery with the delivered pricing required for this bid?

OGS RESPONSE: OGS will compare things that are similar.

Q. Detailed Specifications Page 25, California 133 Flammability Compliance

% (Expressed as a % of Net discounted price) We offer as a standard up charge price across all chairs. Can we offer this as a standard up charge price instead of a % increase?

OGS RESPONSE: See page 2, NOTICE TO BIDDERS: #2 BID DEVIATIONS.

Q. Detailed Specifications Page 29 Question seems to be incomplete. Is any information missing?

OGS REPOSENSE: This question should read: For bidders offering wood products, are the products manufactured from wood harvested from forests certified as being sustainably managed?

Q. Page 33 – Manufacturer's Certificate Do the Manufacturer's certificates submitted with the bid need to be original signatures, or are copies acceptable?

OGS RESPONSE: Originals

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

INVITATION FOR BIDS

**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	TITLE: Group 20915 – FURNITURE (Statewide)
DATE: June 7, 2012	
TIME: 11:00 AM	Classification Code: 56
INVITATION FOR BIDS NUMBER: 22398-ES	SPECIFICATION REFERENCE: As Incorporated in the Invitation For Bids
CONTRACT PERIOD: October 29, 2012 – October 28, 2017	
DESIGNATED CONTACTS: Team #4	
Donna McNeil, Purchasing Officer I Telephone No. (518) 486-9023 E-mail address: donna.mcneil@ogs.ny.gov	Edwin Lucier, Team Leader Telephone No. (518) 474-3540 E-mail address: edwin.lucier@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: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See "New York State Vendor File Registration" clause)</i>
If applicable, place an "x" in the appropriate box <input type="checkbox"/> Small Business <input type="checkbox"/> Minority Owned <input type="checkbox"/> Women Owned <i>(check all that apply):</i> _____ #Employees Business Business	
Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Street	City
State	Zip
County	
If applicable, place an "x" in the appropriate box <input type="checkbox"/> Manufactured Within <input type="checkbox"/> Manufactured Outside <i>(check all that apply):</i> New York State New York State	
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____.	
Bidder's Signature:	Printed or Typed Name:
Title:	Date:
Phone : () - ext ()	Toll Free Phone : () - ext ()
Fax : () - ext ()	Toll Free Fax : () - ext ()
E-mail Address:	Company Web Site:

FOR PROCUREMENT SERVICES GROUP USE ONLY

P.R. # 22398	LIT <input type="checkbox"/>	MEMO <input type="checkbox"/>	LET <input type="checkbox"/>	OTHER <input type="checkbox"/>	MISSING PAGES
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GENERAL INFORMATION

IMPORTANT NOTICE TO POTENTIAL BIDDERS: Receipt of these bid documents does not indicate that the Office of General Services' Procurement Services Group has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

NOTICE TO BIDDERS:

The Commissioner of General Services will receive bids pursuant to the provisions of Article XI of the State Finance Law or the provisions of the State Printing and Public Documents Law. The following procedures shall be used for bid submittals:

1. BID PREPARATION

Prepare your bid on this form using indelible ink. Print the name of your company on each page of the bid in the block provided. One copy of the bid is required, unless otherwise specified herein.

2. BID DEVIATIONS

If your bid differs from the specifications explain such deviation(s) or qualification(s); and if necessary, attach a separate sheet. See "Extraneous Terms" in Appendix B, OGS General Specifications.

3. BID DELIVERY

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. **LATE BIDS may be rejected. E-mail bid submissions are not acceptable and will not be considered.**

- **Bid envelopes and packages**

An envelope and/or package containing a bid should be clearly marked "**BID ENCLOSED**" and should state the **Bid Number, 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 "Bid Submission" in Appendix B, OGS General Specifications. Bids shall be delivered to:

State of New York Executive Department
Office of General Services
Procurement Services Group
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242

- **FAX transmittals**

Facsimile transmittals are NOT acceptable for this solicitation.

- **Hand deliveries**

Bidders must allow extra time to comply with the security procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. **Bidders assume all risks for timely, properly submitted deliveries.**

4. IMPORTANT BUILDING ACCESS PROCEDURES

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk.

Bidders attending bid openings are encouraged to pre-register for building access by contacting the Procurement Services Groups (PSG) receptionist at 518-474-6262 at least 24 hours prior to the bid opening.

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 PSG Receptionist. The Receptionist will register the visitor at that time but delays may occur. Vendors who intend to deliver bids or conduct PSG business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time.

(continued)

GENERAL INFORMATION (Cont'd)

NON-COLLUSIVE BIDDING CERTIFICATION:

(Reference: State Finance Law Section 139-d and Appendix A, Clause 7)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

In the event that the bidder is unable to certify as stated above, the bidder shall provide a signed statement which sets forth in detail the reasons why the bidder is unable to furnish the certificate as required in accordance with State Finance law Section 139-d(1)(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, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the 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/defaultAdvisoryCouncil.html>

DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services’ Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG’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 (www.ogs.ny.gov).

(continued)

GENERAL INFORMATION (Cont'd)

CONTRACT BILLINGS AND PAYMENTS:

a. 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.

b. 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 www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by 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.

c. 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.

APPENDIX A:

Appendix A, Standard Clauses For New York State Contracts, dated December 2011, 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.**

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.**

CONFLICT OF TERMS AND CONDITIONS:

Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. Appendix A (Standard Clauses For NYS Contracts)
- b. This Invitation For Bids
- c. Appendix B (General Specifications)
- d. Bidder's Bid

(continued)

GENERAL INFORMATION (Cont'd)**NEW YORK STATE VENDOR FILE REGISTRATION:**

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) and any designated 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, list the 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, complete the enclosed OSC Substitute W-9 Form and submit it with your bid. In addition, if authorized resellers are to be used, an OSC Substitute W-9 form should be completed by each of the designated authorized resellers and submitted to the Office of General Services. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award and their authorized resellers. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company 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/

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY (hereinafter the "Questionnaire")

OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A 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, the Bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid opening 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 found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. 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.

(continued)

GENERAL INFORMATION (Cont'd)

TAX LAW 5-A AMENDED APRIL 26, 2006 (APPENDIX 2)

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.

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. 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 filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698-2909** 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 web site: <http://www.nystax.gov>.

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>.

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GENERAL INFORMATION (Cont'd)**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****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.

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal in response to this solicitation, 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 to submit with the bid a staffing plan on Form EEO 100 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.

BUSINESS PARTICIPATION OPPORTUNITIES FOR MWBES

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the contract does not offer any opportunities for participation by MWBES.

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>

(continued)

GENERAL INFORMATION (Cont'd)**ELECTRONIC BID OPENING RESULTS**

The Procurement Services Group (PSG) posts bid prices on the OGS/PSG web page. The web page makes available bid tabulations (i.e.: photocopies of price pages or spreadsheets) received by PSG for scheduled bid openings. Such information is anticipated to be available online within two business days after the bid opening.

The Bid Opening Results Page is available at: <http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>

DEBRIEFING

A bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, OGS shall, upon request, provide a debriefing to any unsuccessful bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such bidder was not selected for a contract award. The post-award debriefing should be requested in writing within 30 days of posting of the contract award on the OGS website.

IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew a Contract or assume the responsibility of a Contract awarded in response to the solicitation, certifies at the time the Contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the Contract, should OGS receive information that a person is in violation of the above-referenced certification, OGS will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment 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 including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

(continued)

GENERAL INFORMATION (Cont'd)

SCOPE:

It is the intent of this Invitation for Bids to establish a comprehensive multiple manufacturer's product line contract for NEW, unused and in current production commercial and institutional quality furniture in the following categories listed below. **Direct patient care medical furniture (for example, exam tables, wheel chairs, geriatric chairs, over bed tables, etc.) and remanufactured or refurbished furniture products are NOT a part of this IFB.**

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Conference Furniture includes Seating and Tables 2. Dormitory Furniture 3. General Purpose Tables 4. High Density Filing 5. Household Furniture 6. Library Furniture | <ol style="list-style-type: none"> 7. Office Furniture includes Bookcases, Casegoods, Lounge, Seating, and Tables 8. School Furniture includes Cafeteria Tables 9. Specialty Seating 10. Systems Furniture |
|--|--|

DESCRIPTION OF CATEGORIES:

1. Encompasses all seating to go with Conference Tables, including stacking chairs. Includes tables of various styles and materials suitable for conference rooms or areas from basic to executive levels. May also include meeting room tables.
2. Includes Bedroom, Lounge, Dining Hall, in room Storage and Desks. Suitable for school dormitory generally more durable and versatile than household.
3. Includes work tables, occasional tables and folding tables.
4. Includes manual or powered shelving designed to take as little space as possible also includes retrieval systems.
5. Includes Living Room, Dining Room and Bedroom furniture suitable for Community residence programs. Some of the upholstered Seating and cross over to Dormitory or office Lounge.
6. Includes bookcases, display cases, tables, chairs, lounge seating carts and circulation desks.
7. Includes desks, files credenzas, and storage for use in office environments made of metal and/or wood. Bookcases for office and library application furniture include case goods, filing, storage and seating for upper level Executive offices also usable for courtrooms. This category consists of upholstered seating (chairs, loveseats and sofas) and occasional tables as would be found in a waiting area and includes Ergonomic Task, and Managerial chairs and Side chairs.
8. Consists of student desks, tables and seating for elementary schools through college found in classrooms.
9. This includes big and tall seating, bariatric, gang seating such as that found in public transportation terminals and laboratory stools.
10. Includes products and parts to build "Cubicles" and modular office space.

PRICE:

General

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering agency including dock delivery and tailgating of load which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck for agency personnel to remove the load without entering the truck. In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

Discounts

Prices shall be expressed as a discount from the manufacturer's RETAIL Price List for either the entire price list or breakdowns by style, function, etc., from the manufacturer's RETAIL Price List. Volume discounts, if offered, shall also be based on RETAIL Price List. **Any restocking fees must be included in the retail price list as a percentage (%) of the net price.** Discount shall remain in effect for the entire contract period.

Price lists submitted with the bid shall remain in effect for one year after awarded a contract. After that time contractor may submit new RETAIL price lists on an **annual basis**. Effective date of new price lists will be when they have been reviewed and approved by OGS and published on the OGS website.

Volume Discounts - If offered, shall apply to orders delivered to the same location at the same requested time. The contractor, at his discretion, may include multiple delivery points from the same agency.

(continued)

GENERAL INFORMATION (Cont'd)

PRICE: (Cont'd)

Inside Delivery - An additional fee for inside delivery may be requested in the appropriate place on the price page. A different fee may be requested for **Downstate** -Metropolitan NYC (from Westchester County South and Long Island) than **Upstate** - the rest of NY State.

Inside Delivery is intended for essentially free standing furniture when the ordering agency is unable to bring it from the dock to the point of use. It shall consist of removal from truck, bringing to point of use, uncrating, minor assembly (for example, attach hutch to desk or credenza, attach a return, set shelves in bookcase and leveling), leaving ready for use and removal of debris. This cannot be applied to installations such as Systems Furniture and High Density Shelving. (See "Installation" below)

This additional fee may not be used to assemble furniture shipped "KD". (See "Delivery Condition" clause)

This inside delivery fee shall be based on the following conditions:

1. Delivery location has a loading dock or off street loading area
2. The delivery will be to the same floor as the loading dock or there is a freight elevator available
3. The delivery may be completed during regular working hours
4. Deviations from the above shall require a separate non-contract negotiation by the ordering agency at the time of order.

Installation – Installation of products such as systems furniture, high density filing systems, etc. **shall be handled by the ordering agency according to the Purchasing Guidelines and discretionary limits, and shall comply with wage and labor rates, all state and local codes and public works guidelines if applicable.**

New York State's determination of acceptable price lists shall be final. Furthermore, the State reserves the right to delete products from a price list that are not considered relevant or which may be available from a Preferred Source (please refer to "PREFERRED SOURCE PRODUCTS" clause) or which do not meet the listed categories herein, the remainder of the price list offerings that meet requirements shall be considered at the percentage discount.

(continued)

GENERAL INFORMATION (Cont'd)

INQUIRIES/ISSUING OFFICE

PSG (the Procurement Services Group, NYS Office of General Services) is the issuing office for the solicitation (please see address on front page). All inquiries concerning this bid solicitation will be addressed to the following PSG Associate(s):

	<u>DESIGNATED CONTACT *</u>	<u>LIAISON – SECONDARY CONTACT</u>
	Donna McNeil, Purchasing Officer	Edwin Lucier, Team Leader
Phone No.:	(518) 486-9023	(518) 474-3540
FAX No.:	(518) 474-5052	(518) 474-5052
E-Mail:	donna.mcneil@ogs.ny.gov	edwin.lucier@ogs.ny.gov

All questions should be submitted in writing no later than 14 calendar days before the bid opening, citing the particular bid section and paragraph number. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders 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. Bidders entering into a contract with the State are expected to comply with **all** the terms and conditions contained herein. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing contract.

There will be no pre-bid conference.

The Office of General Services, Procurement Services Group, Tower Building, Empire State Plaza, Albany, NY 12242, has been made responsible for the Invitation for Bids, specification, award and servicing of this contract. Any and all communications between any of the parties, (i.e., State Agencies or contractors) relating to this award shall be through the Procurement Services Group.

Any request by the agency or contractor with regard to changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services Group, prior to effectuation.

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 "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. 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 Procurement Services Group's Customer Services at 518-474-6717.

EXTENSION OF USE:

Any contract resulting from this bid solicitation 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.

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GENERAL INFORMATION (Cont'd)**MINIMUM ORDER:**

Minimum order if required shall be established by the bidder and stated on price page where indicated. The bidder may offer to ship orders less than the minimum order with the freight prepaid and added to the invoice. It shall be the agency's choice if they wish to accept the offer.

MINIMUM CRITERIA TO SUBMIT BID:

The following minimum criteria must be met for a bid to be considered. Meeting these criteria does not guarantee inclusion in the subsequent award. The State reserves the right to limit the number of contractors in each basic category to insure manageability.

Due to the recent increase in Discretionary Purchasing levels, the bidder must provide proof of sales to **governmental agencies** and/or those authorized to use State contracts (Political Subdivisions, Schools, Not for Profits, etc.) in excess of **\$200,000.00** annually for at least 3 recent calendar years. Required proof will be in the form of a summary of the annual total sales reported under the current or previous contracts, or copies of actual purchase orders for non-NYS contract sales. These sales may include successful bids to school districts, BOCES, or municipalities.

If not a current contractor, bidder must hold other governmental and/or municipal contracts (GSA, State, BOCES, etc.).

The State reserves the right to waive either or both of the above requirements if it is deemed to be in the State's best interest.

METHOD OF AWARD:

General - Award shall be made by ITEM to the lowest responsive and responsible bidder. An ITEM shall be described as a manufacturer's product line doing business under a unique FEIN and serviced by a single contact person. Consolidated companies operating under the same FEIN shall be considered as one ITEM.

Evaluation of Bids - Criteria:

The discount offered will be equal to or better than any others offered to other government agencies. This will be confirmed by comparison with other government contracts held by the bidder. The bidder must supply copies of their current contract price lists with other government entities indicating the % discount.

Required Documentation

1. Manufacturer's Retail Price Lists: Must provide 2 copies on CD. Offered Price Lists should be submitted with a bid at time of bid opening or within seven (7) calendar days from Office of General Services (OGS) Procurement Services Groups' (PSG) request for the price list.
2. Government contracts: 2 copies for each government or 2 copies of sales summary by year. These documents should be submitted with a bid at time of bid opening or within seven (7) calendar days from OGS PSGs' request for the price list.

CANCELLATION FOR CONVENIENCE

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

VOLUME DISCOUNTS:

Bidders may offer volume discounts. Volume discounts may be applied per purchase order, cumulatively per customer agency, and cumulatively statewide. The bidder shall indicate the basis for applying the volume discount(s) on the bid document form. Volume discounts shall be defined and applied as follows: Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this contract.

(continued)

GENERAL INFORMATION (Cont'd)

DELIVERY:

Delivery shall be expressed in number of calendar days required to make delivery after receipt of a purchase order.

Product is required as soon as possible and guaranteed delivery may be considered in making award.

Delivery shall be made in accordance with instructions on Purchase Order from each agency. If there is a discrepancy between the purchase order and what is listed on the contract, it is the contractor's obligation to seek clarification from the ordering agency and, if applicable, from the Office of General Services, Procurement Services Group.

ESTIMATED QUANTITIES:

The historical dollar value of all contracts issued under previous awards was approximately \$125,000,000.00 annually. However, each contract shall be for the quantities or dollar values actually ordered during the contract period. The individual value of each contract is indeterminate and will depend upon the number of contracts issued and the competitiveness of the pricing offered. Agencies will be encouraged to purchase from contractors who offer the supplies, services, and pricing that best meet their needs in the most practical and economical manner. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

CONTRACT PERIOD AND EXTENSION:

General - It is the intention of the State to enter into a contract for the term as stated on the Invitation for Bids except that the commencement and termination dates appearing on the Invitation for Bids may be adjusted forward unilaterally by the State for any resulting contract for up to two calendar months, by indicating such change on the Contract Award Notification. The contract dates may be adjusted forward beyond two months only with the approval of the successful bidder. If, however, the bidder is not willing to accept an adjustment of the contract dates beyond the two month period, the State reserves the right to proceed with an award to another bidder.

Unilateral Short Term Extension by the State - In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

Cancellation For Convenience By The State - The State of New York retains the right to cancel contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

CONTRACT MIGRATION:

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

WARRANTIES:

See "Warranties" in Appendix B, OGS General Specifications.

At time of bid opening, product offered must meet all requirements of this solicitation including full commercial/retail availability. Product literature and specifications must also be available.

(continued)

GENERAL INFORMATION (Cont'd)**RESERVATION:**

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a contract product(s) totaling more than

QUALIFICATION OF BIDDER:

Bids will be accepted only from established manufacturers or their authorized dealers. Any dealer submitting a bid hereby guarantees that it is an authorized dealer of the manufacturer, 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, and that it will provide a certificate from the manufacturer acknowledging this level of support. (See Manufacturer's Certificate in this document.)

Bidder must maintain a business establishment with adequate inventories of the products offered, and must be capable of processing and shipping large numbers of orders to various destinations. Bidder must have maintained an organization capable of performing the work hereinafter described, in continuous operation for at least the past three (3) years.

The Commissioner 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.

REFERENCES:

Upon request, all bidders, excluding current contractors, must provide a minimum of five references including references from two of the bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the:

- Name, address, contact person, telephone number, fax number, and number of years bidder has serviced the referenced account;
- Volume of business performed within the past three years for each referenced account.

FINANCIAL STABILITY:

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

(continued)

GENERAL INFORMATION (Cont'd)

INTERNET WEBSITES:

- The State would prefer and recommends that successful bidders have a designated NYS contract website for end users direct access. This website will be listed in the award notification under the Contractor information. The website will be the responsibility of the contractor to maintain and keep updated. **Changes in product line or pricing must be approved by the Procurement Services Group in accordance with any terms included in this bid prior to addition to the website.** Hard copy catalog and price lists, either in paper format or electronic format, must be available to all end users who either do not have web access or prefer the optional format.
- OGS agrees to permit Contractor to utilize approved, Authorized Dealers, to participate as alternate distribution sources for Contractor. Authorized Dealers may be added at any time during the Contract term at the discretion of the Contractor provided that they comply with all of the conditions of participation set forth in paragraph B, below, with no set minimum or maximum number of Authorized Dealers who may be used. Such participation is subject to the following conditions:

Designation of Authorized Dealer(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with Authorized Dealer(s). If Authorized Dealer(s) are designated to fulfill orders under this Contract, issue invoices and receive payment, Contractor must provide OGS, in advance, with an OSC Substitute W-9 form which should be completed by each of the designated authorized dealers and submitted to the Office of General Services. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award and their authorized dealers. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application.

1. Authorized Dealer(s) must be approved in advance by OGS as a condition of eligibility.

MODIFICATIONS IN Authorized Dealer LIST:

If the Contractor allows Authorized Dealers to participate in the Contract, requests to add or delete Authorized Dealers or to modify Authorized Dealer information must be submitted for prior approval of OGS.

- Contract holders allowing Authorized Dealers to accept purchase orders and payments directly must provide OGS a URL (universal resource locator) to their website. The website must have a tab which provides contact information for the New York State Authorized Dealers. The information for the Authorized Dealers must include their name, address, contact person, phone, E-mail address, FID# and NYS Vendor ID.

PRICE SHEETS AND CATALOGS:

Contractor shall be required to furnish, without charge, catalog and price lists identical to those accepted with their bid, including any changes (additions, deletions, etc.) pursuant to the contract, to authorized users which request them. Catalogs and price lists provided must reflect all products excluded from the resultant contract either through the omission of those portions or by obvious indications within the catalogs and price lists.

Catalogs and price lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting authorized user. Upon request the contractor shall assist authorized users in the use of catalogs and price lists.

TOLL-FREE NUMBER:

Contractors **must** provide a toll-free telephone number for the state's procurement usage. If bidder does not currently maintain a toll-free number, the bidder must be willing to establish one prior to award of contract.

PERIODIC RECRUITMENT:

A Periodic Recruitment **may** be held **ONLY** if it is in the States best interest as only determined by OGS and may be limited to a specific type of furniture.

(continued)

GENERAL INFORMATION (Cont'd)**CONTRACTORS INSURANCE REQUIREMENTS:**

Upon tentative award, Bidder shall be required to procure at its sole cost and expense all required insurance. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (“admitted” carriers) with an A.M. Best Company rating of “A-” Class “VII” or better. If during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report. OGS may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OGS to accept insurance placed with a non-authorized carrier under any circumstances.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

General Conditions

A. **Conditions Applicable to Insurance.** All policies of insurance required by this Contract must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B *Insurance Requirements* below.
2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS, upon tentative award and within three (3) business days of request. Certificates shall reference the Contract Number. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The Office of General Services, Procurement Services Group, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder). Certificates shall be submitted to the Office of General Services, Procurement Services Group, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to OGS. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- a. Be in the form approved by OGS.
 - b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
 - c. Specify the Additional Insured and Named Insured as required herein.
 - d. Refer to this Contract by number and any other attachments on the face of the certificate.
 - e. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and
 - f. Be signed by an authorized representative of the insurance carrier or producer.
- Only original documents (Certificates of Insurance and other attachments) will be accepted.

(continued)

GENERAL INFORMATION (Cont'd)**CONTRACTORS INSURANCE REQUIREMENTS: (Cont'd)**

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in OGS or the Authorized User's own policy of insurance.
5. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this contract the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OGS.

All insurance required by the Contract shall name The People of the State of New York, its officers, agents, and employees as additional insured hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85** or the equivalent). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

(continued)

GENERAL INFORMATION (Cont'd)

B. Insurance Requirements: The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a) Commercial General Liability Insurance with a limit of not less than **\$2,000,000.00** each occurrence. Such liability shall be written on the ISO occurrence form **CG 00 01 01 96**, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
 - 1. If such insurance contains an aggregate limit, it shall apply separately on a per job basis.
Policy shall include bodily injury, property damage and broad form contractual liability coverage.
 - 2. General Aggregate \$2,000,000
 - 3. Products – Completed Operations Aggregate \$1,000,000
 - 4. Personal and Advertising Injury \$1,000,000
 - 5. Each Occurrence \$2,000,000

Coverage shall include, but not be limited to, the following:

- premises liability,
- independent contractors,
- blanket contractual liability, including tort liability of another assumed in a contract,
- defense and/or indemnification obligations, including obligations assumed under this contract,
- cross liability for additional insureds
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract
- explosion, collapse, and underground hazards,
- contractor means and methods
- liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- b. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name The People of the State of New York and the New York State Office of General Services as Additional Insured and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

GENERAL INFORMATION (Cont'd)

The CGL policy, and any umbrella/excess policies used to meet the “ Each Occurrence” limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insured, and such policies) shall be primary to, and non-contributing with, any other insurance maintained by OGS. Any other insurance maintained by OGS shall be excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy of insurance.

- b) Comprehensive Business Automobile Liability Insurance with a limit of not less than **\$2,000,000.00** each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.

A. Workers’ Compensation Insurance and Disability Benefits Requirements

Workers’ Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

1. Proof of Compliance with Workers’ Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers’ compensation coverage. In order to provide proof of compliance with the requirements of the Workers’ Compensation Law pertaining to workers’ compensation coverage, a contractor shall:

- A) Be legally exempt from obtaining Workers’ Compensation insurance coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Workers’ Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers’ Compensation Board’s website (www.wcb.state.ny.us); (Reference applicable RFP and Group #s on the form.)
- B) Certificate of Workers’ Compensation Insurance:
 - 1) Form C-105.2 (9/07) if coverage is provided by the contractor’s insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
 - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
- C) Form SI-12, Certificate of Workers’ Compensation Self-Insurance available from the New York State Workers’ Compensation Board’s Self-Insurance Office.
- D) Form GSI-105.2, Certificate of Participation in Workers’ Compensation Group Self-Insurance available from the contractor’s Group Self-Insurance Administrator.

(continued)

GENERAL INFORMATION (Cont'd)

2. Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable RFP and Group #s on the form.)
- B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
- C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish **semiannual reports** containing total sales for both state agency and authorized non-state agency contract purchases no later than 15 days after the close of the semi-annual reporting period. Failure to submit the required report may be cause for disqualification of contractor for future contracts.

In addition to contractor direct sales, contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. Contractors shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each contractor at time of award for completion in accordance with the contract terms and conditions:

<u>Item/ SubItem Number</u>	<u>Product or Catalog Number</u>	<u>Product/ Service Description</u>	<u>Total Quantity Shipped to State Agencies</u>	<u>Total Quantity Shipped to Authorized Non-State Agencies</u>	<u>Total Sales \$ State Agencies</u>	<u>Total Sales \$ Authorized Non-State Agencies</u>
						\$
				Grand Total Sales State and Non-State Agencies		\$

The report is to be submitted electronically in Microsoft Excel 2007 or lower format to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name.

The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request. OGS reserves the right to cancel a contract where annual minimum sales to NYS eligible contract users is less than \$100,000.00.

GENERAL INFORMATION (Cont'd)**EMERGENCY PURCHASING:**

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

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 bid solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specifications.

PREFERRED SOURCE PRODUCTS:

Section 162 of the State Finance Law requires that agencies afford first priority to the products/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, 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 Award Notification, agencies will be reminded to comply with the statutory requirements and resulting guidelines with respect to affording first priority to the preferred sources.

Resultant contractors will be required to prominently display the following language on all price lists 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 Section 162 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.

OVERLAPPING CONTRACT ITEMS:

Products/services available in the resulting contract may also be available from other New York State contracts. Contract users will 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.

NEW YORK STATE PROCUREMENT CARD:

See "Procurement Card" in Appendix B, OGS General Specifications. All bidders shall indicate if they will accept the NYS Purchasing Card for orders not to exceed \$15,000 (see Questions at end of bid document).

(continued)

GENERAL INFORMATION (Cont'd)**"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:**

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. This means that State agencies can purchase products from sources other than the contractor provided that such products are substantially similar in form, function or 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 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 Procurement Council Guidelines section "OGS or Less Purchases" for complete procedural and reporting requirements.

<http://www.ogs.ny.gov/procurecounc/pdfdoc/guidelines.pdf>

DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now 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. They need to be operated exclusively on ULSD by February 12, 2007. 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.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, 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 any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

DETAILED SPECIFICATIONS**PACKAGING:**

All packaging shall meet industry standards and provide complete protection to furniture in shipment, loading and unloading, and long term storage if required.

All packaging shall be labeled as to Contents, Purchase Order No., Model No., Fabric No., and/or Finish.

(continued)

DETAILED SPECIFICATIONS (Cont'd)**DELIVERY CONDITION:**

All furniture with the exception of systems furniture, high density shelving, frame type beds where side rails are attached to head and foot boards without the use of tools and dining room tables shall be delivered fully assembled and ready for use. No “KD” furniture shall be accepted unless contractor’s representative is present to assemble it upon receipt. Other exceptions may be made with prior agreement between the contractor and ordering agency.

FINISHES:

All finishes shall be applied in accordance with the highest industry standards to assure the longest possible durability. All materials used must be lead-free and shall meet all OSHA Standards in place at the time of manufacture. Material Safety Data Sheets shall be available upon request.

Colors shall be manufacturer’s standard offering and shall be designated at the time of order.

WORKMANSHIP:

The assembly and finishing of all component parts shall be done in a first class workmanship-like manner. All upholstery shall be free of loose stitching, raw edges, ripples or sagging. The finished product shall be neat, trim and visually acceptable.

Cushion covers on removable cushions shall be easily removable for replacement and/or cleaning.

Complete instructions for cushion and cushion cover removal and cleaning shall be included with, but not attached to, each piece of furniture delivered.

FLAMMABILITY:

All textiles shall meet the flammability requirements of NFPA 260 latest update when tested in accordance with the methods of that standard.

All upholstered products offered should also meet the requirements of California Technical Bulletin 117 Section A Part I and Section D Part III when tested in accordance with that method.

Compliance with Cal. 133 shall be available at an extra cost if necessary.

Certified Laboratory Test Results or Certificate of Compliance with Flammability Requirements on ALL upholstering fabrics and foam shall be submitted to the Procurement Services Group, upon request.

CONSTRUCTION:

Shall be manufacturer’s standard design and construction resulting in good durability in high use environments. Whenever possible, cushions on upholstered furniture should be easily removable for cleaning and covers should be easily removable for laundering and replacement.

All furniture shall exhibit the highest quality workmanship in all areas of construction and finishing and comply with all applicable industry standards as set forth by but not limited to UL, ANSI/BIFMA, ASTM or OSHA.

DECORATING AIDS, CATALOGS, AND PRICE LISTS:

Office of Mental Health (OMH) and OMRDD will require quantities of fabric swatches to facilitate the interior decoration of their facilities. The swatches shall be 3” x 5” and be available for all regularly stock fabrics.

Additionally, photographs of the furniture that clearly show the product size, manufacturer and model number of each piece and finish blocks for all finishes shall also be available.

Price lists shall be provided upon request at no charge to all users. Catalogs or appropriate excerpts shall also be provided upon request at no charge.

PRODUCT LINE DESCRIPTION:

In the space provided on page 23 place an X for each category of product contained in your price list

DEALER/DISTRIBUTOR CONTACT:

Bidder shall provide a toll free phone number and e-mail address if available for the using agency to call and determine the closest authorized dealer should that type of assistance be necessary (see page 27).

If different from above, bidder shall provide a contact point for product information and order follow up.

Bidder shall also supply a web-site address to view the company catalogue if one is available.

(continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

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Bidder

PRODUCT LINES (BY CATEGORY) INCLUDED IN CATALOG (refer to category descriptions on page 9)

- 1. Conference Furniture Includes Seating and Tables
2. Dormitory Furniture Tables Includes Beds, Dressers, Desk w/chairs, Armories, Lounge
3. General Purpose Tables
4. High density Filing Systems
5. Household/Hospitality/Residential Includes Bedroom, Dining, Living Room Occasional and seating
6. Library Furniture
7. Office Furniture Includes Bookcases, Caseloads, Lounge, Seating and
8. School Furniture Includes Cafeteria Tables
9. Specialty Seating
10. Systems Furniture

DEALER/DISTRIBUTOR CONTACT (if different than person identified on page 27):

Name: Toll Fee No.: E-mail Address:

(continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

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Bidder

Make Copies of this document as necessary to portray all manufacturing lines being offered to the State of New York.

MANUFACTURER: _____
BRAND NAME IF DIFFERENT: _____
ADDRESS: _____

PRODUCT/CATEGORY DESCRIPTION: Choose from the 10 categories listed on page 24

% DISCOUNT FROM RETAIL PRICE LIST:

CURRENT CATALOG IDENTIFICATION AND DATE: (This should match the catalog title on the face page of the document being referenced)

_____ / _____

PRICE LIST IDENTIFICATION AND DATE: (This must be a commercially available manufacturer’s retail price list. Submission of price schedules developed specifically for this bid WILL result in disqualification from award consideration) {RETAIL PRICE LIST IS REQUIRED}

_____ / _____

VOLUME DISCOUNTS: \$ _____ K @ LIST PRICE:
\$ _____ K @ LIST PRICE:
\$ _____ K @ LIST PRICE:
\$ _____ K+ @ LIST PRICE:

_____ % NOTE: All volume discounts should be shown as a single total discount from list (rounded to 2 decimal places).
_____ %
_____ %
_____ %

PRICE ADDITIONAL: (Percent of net discounted price to be shown as separate line on purchase order and invoice):

INSIDE DELIVERY: _____ % (expressed as a % of Net discounted price)
CALIFORNIA 133 FLAMMABILITY COMPLIANCE: _____ % (expressed as a % of Net discounted price)

GUARANTEED DELIVERY: _____ Calendar Days A/R/O

MINIMUM ORDER: \$ _____

MANUFACTURER’S WARRANTY _____ years

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

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Bidder

NOTES TO BIDDERS: (Cont'd)

- If bidder limits the maximum acceptable card amount to less than \$15,000, please indicate the maximum amount:

\$ _____

Additional discount for purchases made with the NYS Procurement Card:

_____ %

- Are any products offered manufactured from recycled materials?

_____ YES _____ NO

Are any products offered remanufactured (restored to its original performance standards and function)?

_____ YES _____ NO

Are any products offered Energy Star Compliant? (If YES to any of the above, please attach specifics.)

_____ YES _____ NO

- If awarded a contract, will bidder honor orders for less than the minimum order?

_____ YES _____ NO

If YES, will shipping costs be added in accordance with the "Minimum Order" clause?

_____ YES _____ NO

OR

If YES, will bidder ship at no additional cost?

_____ YES _____ NO

- Person or persons to contact for expediting New York State contract orders:

Name: _____

Title: _____

Telephone Number: () _____

Toll Free Telephone Number: () _____

Fax Number: () _____

Toll Free Fax Number: () _____

E-Mail Address: _____

(continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

NOTES TO BIDDERS: (Cont'd)

- Person or persons to contact in the event of an emergency occurring after business hours or on weekend/holidays:

State Normal Business Hours (Specify M-F, Sat, Sun):

Name:

Title:

Telephone Number:

Fax Number:

Pager Number:

Cellular Telephone Number:

E-Mail Address:

() _____

() _____

() _____

() _____

(continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

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Bidder

NOTES TO BIDDERS: FAILURE TO ANSWER THE QUESTIONS WILL DELAY THE EVALUATION OF YOUR BID AND MAY RESULT IN REJECTION OF YOUR BID.

- or bidders offering wood products, are the products manufactured from wood harvested from forests certified as being sustainably managed?

_____YES _____NO

IF YES:

- Please check the organization providing the certification:

- American Tree Farm Program
- Canadian Standards Association
- Forest Stewardship Council
- Sustainable Forestry Initiative SM
- Other _____
(Name)

- Please identify the products manufactured from certified forests:

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

- 1. Is your company a Minority or Women-Owned Business Enterprise, certified in accordance with Article 15A of the New York State Executive Law as defined below?
- 2. Is your company listed in the Empire State Development Directory of Certified Minority and Women Owned Businesses?

http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

NOTE: Contractors certified **and** listed in the Empire State Development’s Directory of Certified Minority and Women-Owned Business Enterprises* will be identified by OGS as MBEs and/or WBEs in the OGS Contract Award Notification upon award of the contract.

*For further information and or application please contact New York State Department of Economic Development, Division of Minority and Women-Owned Business Enterprise at 518-292-5250 (Albany) or 212-803-2414 (New York City).

"Minority or Women-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- (a) at least fifty-one percent owned and controlled by the minority members and/or women;
- (b) an enterprise in which such minority and/or women ownership interest is real, substantial and continuing;
- (c) an enterprise in which such minority and/or women ownership has and exercises the authority to independently control the day-to-day business decisions; and
- (d) an enterprise independently owned, operated and authorized to do business in New York State.

- 3. Is your company a New York Small Business Concern as defined in accordance with Article 11 of the New York State Finance Law?

"Small Business Concern" means a business which:

- (a) is resident in New York State;
- (b) is independently owned and operated;
- (c) is not dominant in its field; and,
- (d) employs one hundred or fewer persons.

_____ YES _____ NO

_____ YES _____ NO

- MINORITY-OWNED
- WOMEN-OWNED
- MINORITY AND WOMEN-OWNED

_____ YES _____ NO

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

4. Total number of people employed by your business in New York State:

5. PLACE OF MANUFACTURE OF PRODUCT(S) BID: (Indicate Yes or No for either A, B or C)

- A. All NYS Manufacture
B. All Manufactured outside NYS
C. Manufactured In NYS and Outside NYS
If yes to C above, Location (State) where more than half the value is added to the product(s) bid:

YES NO
YES NO
YES NO

State of _____

6. BIDDER’S PRINCIPAL PLACE OF BUSINESS*:

*"Principal Place of Business" is the location of the primary control, direction and management of the enterprise.

State of _____

7. "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES"

In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

(Answer Yes or No to one or both of the following, as applicable),

A. have business operations in Northern Ireland:

YES NO

If yes,

B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.

YES NO

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

8. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Pursuant to Procurement Lobbying Law (SFL §139-j)

A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

_____ YES _____ NO

If yes, please answer the following question:

B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

_____ YES _____ NO

C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

_____ YES _____ NO

If yes, please provide details regarding the finding of non-responsibility:

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-Responsibility: (add additional pages if necessary)

D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

_____ YES _____ NO

If yes, please provide details:

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (add additional pages if necessary)

CERTIFICATE OF MANUFACTURE

I, _____, (name of individual signing bid/proposal) certify under penalty of perjury that the final product for which I am providing a bid/proposal, was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to child labor laws, wage and hour laws and workplace safety laws.

I further certify that:

The names and addresses of subcontractors involved in the manufacture of the final product are:

(Add additional sheets if necessary.)

I cannot determine, using commercially reasonable methods of inquiry, the names and addresses of any subcontractors involved in the manufacture of the final product other than those identified above.

There are no subcontractors for this product.

The names and addresses of manufacturing plants contributing to the manufacture of the final product are:

(Add additional sheets if necessary.)

I cannot determine, using commercially reasonable methods of inquiry, the names and addresses of any manufacturing plants contributing to the manufacture of the final product other than those identified above.

Printed or Typed Copy of Signature

Dated: _____

Bidder's Signature

Name of Company Bidding: _____

* * * * *

(continued)



**NEW YORK STATE OFFICE OF GENERAL SERVICES-PROCUREMENT SERVICES
SUBSTITUTE FORM W-9
REQUEST FOR TAXPAPER IDENTIFICATION NUMBER & CERTIFICATIONS**

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name	2. If you use a DBA, please list below
3. Entity Type (Check one only)	
<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Business Corporation <input type="checkbox"/> Unincorporated Association/Business <input type="checkbox"/> Federal Government <input type="checkbox"/> State Government <input type="checkbox"/> Public Authority <input type="checkbox"/> Local Government <input type="checkbox"/> School District <input type="checkbox"/> Fire District <input type="checkbox"/> Other	

Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type

1. Enter your TIN here: <i>(DO NOT USE DASHES)</i>	<table border="1" style="width:100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width:12.5%;"></td> </tr> </table>										
2. Taxpayer Identification Type (check appropriate box)											
<input type="checkbox"/> Employer ID No. (EIN) <input type="checkbox"/> Social Security No. (SSN) <input type="checkbox"/> Individual Taxpayer ID No. (ITIN) <input type="checkbox"/> N/A (Non-United States Business Entity)											

Part III: Address

1. Physical Address: Number, Street, and Apartment or Suite Number	2. Remittance Address: Number, Street, and Apartment or Suite Number
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country

Part IV: Exemption from Backup Withholding and Certification

For payees exempt from Backup withholding, check the box below. Valid explanation required for exemption. See instructions.

Exempt from Backup Withholding

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding. Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN).

Sign Here:

Signature	Date	
Print Preparer's Name	Phone Number	Email Address

Part V: Contact Information - Individual Authorized to Represent the Vendor

Vendor Contact Person: _____	Title _____
Contact's Email Address: _____	Phone Number: () _____

DO NOT SUBMIT FORM TO IRS - SUBMIT FORM WITH YOUR BID

FOR OSC USE ONLY

(continued)

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Appendix 2

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD) {Updated 01/08}
Contractor Certification to Covered Agency (ST-220-CA)

(continued)



New York State Department of Taxation and Finance
Contractor Certification
 (Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-TD
 (5/07)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need help? below)*.

Contractor name

Contractor's principal place of business	City	State	ZIP code
--	------	-------	----------

Contractor's mailing address (if different than above)

Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ()
---	---	--

Covered agency name OGS PSG	Contract number or description	Estimated contract value over the full term of the contract (but not including renewals) \$ N/A
Covered agency address Corning Tower, The Governor Nelson A. Rockefeller Plaza, Albany, NY 12242		Covered agency telephone number

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*, available at www.nystax.gov. Information is also available by calling the Tax Department’s Contractor Information Center at 1 800 698-2931.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Need Help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from
8:00 A.M. to 5:00 P.M. (eastern time),
Monday through Friday.

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

Page 2 of 4 ST-220-TD (5/07)

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (

title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, 3 below. Make only one entry in each section below.

Section 1 - Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 - Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor’s knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor’s knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 - Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor’s knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor’s knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this _____ day of _____, 20 ____

(sign before a notary public)

(title)

(continued)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
COUNTY OF _____ } SS.:

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 at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (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 a _____ 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. _____

ST-220-CA
(6/06)



New York State Department of Taxation and Finance
Contractor Certification to Covered Agency
 (Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need Help? on back)*.

Contractor name		<i>For covered agency use only Contract number or description</i>
Contractor's principal place of business	City State ZIP code	
Contractor's mailing address (if different than above)		<i>Estimated contract value over the full term of contract (but not including renewals)</i>
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number ()	Covered agency name	
Covered agency address		<i>Covered agency telephone number</i>

I, _____, hereby affirm, under penalty of perjury, that I am
 _____ (name) _____ (title)
 of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify
 that:
 (Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
 (insert contract number or description)
 and, to the best of the contractor's knowledge, the information provided on that previously filed Form T-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 _____

 (sign before a notary public) _____ (title)

Instructions

General Information
 Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form
 As set forth in Publication 223, a contract is subject to

(continued)

circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

(continued)

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 at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (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.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information

Need Help?
Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

(continued)

programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

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Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are

required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually

agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 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. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict

with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has

retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX B
GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

3. **ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. **Appendix A** (Standard Clauses for NYS Contracts)
- b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. **Bid Documents** (Other than Appendix A).
 - i. Bid Specifications prepared by the Authorized User.
 - ii. Appendix B (General Specifications).
 - iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- e. **Contractor's Bid or Mini-Bid Proposal.**
- f. **Unincorporated Appendices** (if any).

5. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

AFFILIATE Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

ATTORNEY GENERAL Attorney General of the State of New York.

AUTHORIZED USER(S) Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

BIDDER/OFFERER Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to a Bid Solicitation. The term Bidder shall also include the term "offeror." In the case of negotiated Contracts, "Bidder" shall refer to the "Contractor."

BID DOCUMENTS Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS Contracts), Appendix B, (General Specifications). Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

BID SPECIFICATION A written description drafted by the Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

COMMISSIONER Commissioner of OGS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or their authorized representative.

COMPTROLLER Comptroller of the State of New York.

CONTRACT The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

a. Agency Specific Contracts Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).

b. Centralized Contracts Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.

c. Back-Drop Contracts Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

d. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

e. Contract Letter A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a Contract has been established.

CONTRACTOR Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

ENTERPRISE The total business operations in the United States of Authorized User (s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User.

ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

GROUP A classification of Product, services or technology which is designated by OGS.

INVITATION FOR BIDS (IFB) A type of Bid Document which is most typically used where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder(s).

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

LICENSEE One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

MINI-BID PROJECT DEFINITION A Bid Document containing project specific Bid Specifications developed by or for an Authorized User which solicits Bids from Contractors previously qualified under a Back-Drop Contract.

MULTIPLE AWARD A determination and award of a Contract in the discretion of the Commissioner to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

OGS The New York State Office of General Services.

PROCUREMENT RECORD Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.

PRODUCT A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

PROPRIETARY Protected by secrecy, patent, copyright or trademark against commercial competition.

PURCHASE ORDER The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

REQUEST FOR PROPOSALS (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value," as defined by the State Finance Law.

REQUEST FOR QUOTATION (RFQ) A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

SINGLE SOURCE A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

SITE The location (street address) where Product will be executed or services delivered.

SOLE SOURCE A procurement where only one Bidder is capable of supplying the required Product.

SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

STATE State of New York.

SUBCONTRACTOR Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software,

firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

BID SUBMISSION

6. INTERNATIONAL BIDDING All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

7. BID OPENING Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

8. BID SUBMISSION All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/time.

A Bid return envelope, if provided with the Bid Specifications, should be used with the Bid sealed inside. If the Bid response does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.

All Bids must have a label on the outside of the package or shipping container outlining the following information:

"BID ENCLOSED (bold print, all capitals)

- Group Number
- IFB or RFP Number
- Bid Submission date and time"

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Product group, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

9. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to

the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

10. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a Bid by facsimile transmission, including an executed signature page or as otherwise specified in the Bid Documents, shall be deemed a confirming act by Bidder which authenticates the signing of the Bid.

11. LATE BIDS For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Bid Documents or if no place is specified in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the Bid opening. For purposes of Bid openings held and conducted by Authorized Users other than OGS, the term late Bid is defined as a Bid not received in the location established in the Bid Specifications at or before the date and time specified for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

12. BID CONTENTS Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening, may not be considered.

13. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or

resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

14. CONFIDENTIAL/TRADE SECRET MATERIALS

a. Contractor Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. Commissioner or Authorized User Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

15. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or

factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner.

16. FREEDOM OF INFORMATION LAW During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the Commissioner to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

17. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. “Public Works” and “Building Services” - Definitions

i. Public Works Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.

ii. Building Services Labor Law Article 9 applies to Contracts for building service work over \$1,500 with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.

b. Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

c. Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

d. Public Posting & Certified Payroll Records In compliance with Article 8, Section 220 of the New York State Labor Law:

i. Posting The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For “agency specific” Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Records Retention Contractors and Subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

Day’s Labor Eight hours shall constitute a legal day’s work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS

Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

18. TAXES

a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

d. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

19. **EXPENSES PRIOR TO CONTRACT EXECUTION** The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid or best and final offers or for any work performed prior to Contract execution.

20. **ADVERTISING RESULTS** The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

21. PRODUCT REFERENCES

a. **“Or Equal”** In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner’s decision as to acceptance of the Product as equal shall be final.

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

22. **REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS** Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable 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, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

23. **PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products that are manufactured or produced in public institutions will be rejected.

24. PRICING

a. **Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. **Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. **“No Charge” Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid “no charge” on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. **Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.

f. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

(i) **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, the date Contractor

lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any Authorized User without being in conflict with, or obligation to comply on a global basis, with the terms of this clause.

g. Best and Final Prices As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

25. DRAWINGS

a. Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

26. SITE INSPECTION Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if

additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

27. 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 Order or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

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.

28. SAMPLES

a. Standard Samples Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.

b. Bidder Supplied Samples The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

c. Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

d. Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid

Specifications, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.

f. Requests For Samples By Authorized Users Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

BID EVALUATION

29. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

30. CONDITIONAL BID Unless the Bid Specifications provides otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

31. CLARIFICATIONS / REVISIONS Prior to award, the Commissioner reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.

32. PROMPT PAYMENT DISCOUNTS While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the State Finance Law, which are applicable in any case, may render the Bid non-responsive and may be cause for its rejection.

33. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services,

qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If the Commissioner determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

35. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsive.

36. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with the successful Bidder(s), upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

39. PARTICIPATION IN CENTRALIZED CONTRACTS The following shall not limit or inhibit the OGS Commissioner's authority under State Finance Law, Section 163 (10) (e) (Piggybacking):

a. Agencies All State Agencies may utilize and purchase under any state Centralized Contract let by the Commissioner, unless the Bid Documents limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through state Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a State Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163 (3) (iv) of the State Finance Law.

d. Responsibility for Performance Participation in state Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-state agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

40. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed

order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

43. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163 (10) (b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of

the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the OGS Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

45. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

46. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

47. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the

Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

49. RE-WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

50. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of Contract.

51. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

52. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be

performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PARTS / COMPONENTS

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Additional Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

54. ON-SITE STORAGE With the written approval of the Authorized User, materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk.

55. EMPLOYEES, SUBCONTRACTORS & AGENTS All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

56. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment

of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

57. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

58. PERFORMANCE / BID BOND The Commissioner reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

59. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

60. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience: By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

c. For Violation of the Sections 139-j and 139-k of the State Finance Law: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Revised Tax Law 5a: The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor.

61. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may:

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance

that continued performance of the Contract would result in a substantial loss.

62. CONTRACT BILLINGS Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Commissioner from 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.

63. DEFAULT – AUTHORIZED USER

a. Breach of Authorized User Not Breach of Centralized Contract. An Authorized User's breach shall not be deemed a breach of the Centralized Contract, rather it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach. Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.

64. INTEREST ON LATE PAYMENTS

a. **State Agencies** The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

b. By Non-State Agencies The terms of Article 11-A apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

65. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. Cover/Substitute Performance In the event of Contractor's material breach, the Commissioner may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.

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

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim

or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

66. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

67. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User agency representative.

68. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

69. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

70. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery of Product or coordination of performance of services.

71. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

72. ADDITIONAL WARRANTIES Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

a. Product Performance Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Warranty Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

c. Contractor Compliance Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

d. Product Warranty Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Where Contractor, the Independent Software Vendor "ISV," or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes

beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer's standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

e. Replacement Parts Warranty If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

f. Virus Warranty The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

g. Date/Time Warranty Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

h. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

i. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

73. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

74. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.

75. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product without Contractor's approval.

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the

Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Authorized User and secure a continuance to permit the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

76. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

77. INSURANCE Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

78. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or

interest in any trademark, trade name, or service mark is granted hereunder.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional

license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as

authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the terms of license, Licensee shall not:

- (i) Copy the Product;
- (ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- (iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

79. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

80. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this paragraph, "Products." A deliverable furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this paragraph, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

2. Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed

Product”), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner’s standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User’s satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User’s Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV’s owner’s standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

(ii.) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor’s business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. **Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee (“Trustee”) as collateral where required by the terms of the financing agreement. Trustee’s sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee’s rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee’s rights in such Licensed Product shall terminate immediately and Authorized User’s prior rights to such Existing Licensed Product shall be revived.

d. **Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)** The Authorized User’s sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

e. **Contractor’s Obligation with Regard to ISV (Third Party Product)** Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV’s standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor’s sole cost and expense.

82. **PROOF OF LICENSE** The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer’s certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

83. **PRODUCT VERSION** Purchase Orders shall be deemed to reference Manufacturer’s most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

84. **CHANGES TO PRODUCT OR SERVICE OFFERINGS**

a. **Product or Service Discontinuance** Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User’s option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor

ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers (“date of notice”) that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

85. NO HARDSTOP/PASSIVE LICENSE MONITORING

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37

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