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

# REQUEST FOR PROPOSAL

**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**<br>**DATE**: June 25, 2012 **TIME**: 11:00 AM ET | **TITLE**: **Group 73003**<br>Administrative Services<br>Classification Code(s): 80, 82, 85, 86 |
| **REQUEST FOR PROPOSAL NUMBER:**<br>**22559** | **SPECIFICATION REFERENCE:**<br>As Incorporated in the Request for Proposal |
| **CONTRACT PERIOD:** Five years | |
| **DESIGNATED CONTACTS:** | |
| Primary Contact:<br>Tony Montes<br>E-mail address: **SST_admin_svcs@ogs.ny.gov** | Secondary Contact:<br>Jill McCabe<br>E-mail address: **SST_admin_svcs@ogs.ny.gov** |
| Tertiary Contact:<br>Patty Billen<br>E-mail address: **SST_admin_svcs@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 REQUEST FOR PROPOSAL, 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).** Procurement lobbying information may be accessed at: Information may be accessed at: **http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html**.

| | |
|---|---|
| **Bidder's Federal Tax Identification Number:**<br>*(Do Not Use Social Security Number)* | **NYS Vendor Identification Number:**<br>*(See "New York State Vendor File Registration" clause)* |
| Legal Business Name of Company Bidding: | |
| D/B/A - Doing Business As (if applicable): | |
| Street City State Zip County | |
| If you are not bidding, place an "x" in the box and return this page only.<br>☐ WE ARE UNABLE TO BID AT THIS TIME BECAUSE_____. | |
| Bidder's Signature:<br><br>Title: | Printed or Typed Name:<br><br>Date: |
| Phone : ( ) - ext ( )<br>Fax : ( ) - ext ( )<br>E-mail Address: | Toll Free Phone : ( ) - ext ( )<br>Toll Free Fax : ( ) - ext ( )<br>Company Web Site: |

**FOR PROCUREMENT SERVICES GROUP USE ONLY**

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| **P.R. #** | LIT ☐ | MEMO ☐ | MISSING PAGES |
| | LET ☐ | OTHER ☐ | |

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### APPENDICES

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Appendix B - General Specifications
Appendix C - Equal Opportunity Employment Staffing Plan (EEO 100)

### ATTACHMENTS

Attachment 1 – Job Descriptions, Qualification and Requirements
Attachment 2 – Background Check Requirements
Attachment 3 – Report of Contract Usage (Excel Workbook)
Attachment 4 – Price Pages (Excel Workbook)
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## SECTION I. INTRODUCTION

### I.1 OVERVIEW AND SCOPE

1. Overview: This Request for Proposal (RFP) is issued by the New York State Office of General Services (OGS) Procurement Services Group, in conjunction with the New York State Strategic Sourcing Team. The service contracts awarded as a result of this RFP will be centralized contracts primarily for, but not limited to, New York State Agencies. (See Section IV.2 – Non-State Agencies Participation in Centralized Contracts.) Accordingly, references to the State and its Agencies as Authorized Users under this solicitation and the ensuing contract(s) encompass and include all such entities within the definition of "Authorized User" set forth in Appendix B.

This RFP outlines the terms and conditions, and all applicable information required for submitting a proposal. A bidder should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, bidder must follow the format and instructions in Section VI – FORMAT AND CONTENT OF BID SUBMITTAL.

Since taking office in January 2011, Governor Andrew Cuomo has committed his administration to implementing enterprise-wide changes that will utilize modern business practices in running New York State government. New Yorkers need a government in which they can take pride, and this comprehensive overhaul of operations will help accomplish that goal. This RFP is a part of Governor Cuomo's Procurement Transformation, by the Division of the Budget and the Office of General Services and focuses on implementing best practices and identifying opportunities for savings. The new procurement process will balance the needs of achieving savings with the administration's policy goals of encouraging small businesses and certified minority and women business enterprises. The scope, contents and format of this RFP are structured in accordance with the goals of the initiative and Bidders are encouraged to review the information contained in this RFP thoroughly to understand the extent of changes from the present contracts. For more information on the initiative, Bidders can refer to: **http://www.governor.ny.gov/press/10122011ImproveGovernmentEfficiency** and **http://www.ogs.ny.gov/BU/PC/SourcingFAQ.asp**.

2. Scope: The State of New York seeks to establish centralized contracts for the acquisition of specified service personnel for a variety of occupations (also referred to as "job titles"). These occupations are categorized in the "Lots" of service as follows:

a) Lot 1 - "Clerical Occupations"
b) Lot 2 - "Hearing Reporter Service
c) Lot 3 - "Transcription Service"
d) Lot 4 - "Financial Occupations"
e) Lot 5 - "Legal Occupations"
f) Lot 6 - "Translation Services and Interpretation"
g) Lot 7 - "Miscellaneous Health Occupations"
h) Lot 8 - "Physicians and Nurses"
i) Lot 9 - "Dental Services"
j) Lot 10 - "Psychiatric Services"
k) Lot 11 - "Light Industrial Occupations"

A description of these Lots and the Job titles included in each one can be found in "Attachment 1 – Job Descriptions, Qualifications and Requirements."

It is the intent of OGS to award Contracts for Lot 1 through Lot 11, in seven regions of the State, up to three Contractors per lot per region for job titles in each respective lot. Awards will be based on a tiered approach. While awards shall be made to multiple Contractors, each Contractor will be assigned a status as Primary, Secondary or Tertiary. When a need for service personnel occurs, for either Mandatory or Desirable Services, the Authorized User shall engage the Primary Contractor first. If the Primary Contractor is unable to supply an acceptable Candidate, then the Authorized User will proceed to the Secondary

Contractor. Additionally the order of the contractors can be changed as a result of deficient or non-compliant performance. Detailed information on the procurement process is set forth in Section IV.4 – Procurement Instructions. The State reserves the right during the Contract term to award a contract to the next ranking compliant bid in order to maintain three (3) Contractors per Lot, per Region. For detailed information, see Section VII, under Method of Award.

## I.2 ESTIMATED QUANTITIES

The historical dollar value of all contracts issued under previous awards for similar services offerings was approximately $42.2 million annually. However, each new contract shall be for the quantities or dollar values actually ordered during the contract term. The individual value of each new contract is indeterminate and will depend upon the tier of award and actual demand of the Authorized Users. The anticipated values of the tiered awards, based on three contracts per job lot, per region, are:

Primary Contractor: 50 – 80%
Secondary Contractor: 10 – 30%
Tertiary Contractor: 5 – 25%

Detailed information about the annual expenditures by job title and region is set forth in "Attachment 4 – Price Pages."

## I.3 KEY EVENTS/DATES

| EVENT | DATE | TIME |
|---|---|---|
| RFP Release | May 25, 2012 | |
| Intent to Bid Submission | May 31, 2012 | 5:00PM ET |
| Closing Date for Inquiries | May 31, 2012 | 5:00PM ET |
| | | |
| Pre-Bid Conference | N/A | |
| Submission of Proposal and Bid Opening | June 25, 2012 | 11:00AM ET |
| Time Estimates/Goals: | | |
| Evaluation and Tentative Awardee Notification | July 25, 2012 | |
| Contract Award | August 14, 2012 | |

## I.4 INTENT TO BID

A Bidder is requested to indicate its intent to bid by emailing the following information to **SST_admin_svcs@ogs.ny.gov** on or before May 31, 2012:

1. Company Name
2. Lots intending to bid
3. Regions intending to bid

Note that the Intent to Bid is discretionary, not mandatory, and as such is not binding in any way. However, it is highly recommended. In addition, identification of Lots and Regions which the Bidder is intending to submit a proposal for are not binding and do not have to be the same as the final proposal.

## I.5 INQUIRIES/ISSUING OFFICE

All inquiries concerning this RFP must be addressed to the following PSG Designated Contact(s):

| | | |
|---|---|---|
| Tony Montes<br><br>NYS Office of General Services | Jill McCabe<br><br>NYS Office of General Services | Patty Billen<br><br>NYS Division of Budget |
| Procurement Services Group | Procurement Services Group | |
| Corning Tower - 38th Floor | Corning Tower - 38th Floor | |
| Empire State Plaza | Empire State Plaza | |
| Albany, New York 12242 | Albany, New York 12242 | |
| E-Mail:<br>**SST_admin_svcs@ogs.ny.gov** | E-Mail:<br><br>**SST_admin_svcs@ogs.ny.gov** | E-mail:<br><br>**SST_admin_svcs@ogs.ny.gov** |

All questions must be submitted in writing using "Attachment 12 - Inquiries Template", citing the particular RFP document name and document section. The Inquiries Template must be emailed to **SST_admin_svcs@ogs.ny.gov** by closing date for inquiries listed above. A Bidder is strongly encouraged to submit questions at the earliest convenience. A Bidder should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Answers to all questions of a substantive nature will be provided to all Prospective Bidders in the form of a question and answer document which will be posted and released through the Bidder Notification System.

## I.6 PRE-BID CONFERENCE

There is no PRE-BID CONFERENCE for this Contract.

## I.7 DEFINITIONS

**"Authorized User(s)"** As defined in Appendix B.

**"Bidder"** shall refer to any business entity who submits a response to this RFP. At the time that the Bidder executes a contract with the State for their services a Bidder shall become a "Contractor." See also "Contractor."

**"Candidate"** shall refer to an individual proposed by a Contractor in response to a request from an Authorized User. Upon completion of background check, determination of suitability by the Authorized User, and acceptance by Authorized User, a Candidate will become an Employee. Also see "Employee" and "Contractor."

**"Capacity"** shall mean the Contractor's ability to accommodate an Authorized Users' request for Employees, measured by the total number of hours supplied by a Contractor for each job title in a lot over a sample year.

**"Consecutive Interpreter"** shall mean that the interpreter is physically present in the room and translates short utterances, normally a sentence or two at a time. Usually bi-directional between two languages, for example, interpreting French to a listener in English, and then translating the English back into French. This form of interpretation makes it possible for an interpreter to ask the speaker for an explanation if there is an understanding difficulty.

**"Contract"** as defined in Appendix B.

**"Contractor"** shall refer to a responsive and responsible Bidder who has attained a best value score for a respective Lot and Region and is working under an executed contract with New York State. Contractor is a general term and does not specify tier of award. Also see "Bidder", "Primary Contractor, "Secondary Contractor" and "Tertiary Contractor."

**"Contractor Deficiency Report"** shall refer to report that an Authorized User files with OGS alleging a Contractor does not meet required service levels or that is prepared by OGS in response to a Contractor's non-compliance or deficient performance.

**"Contractor Status Reduction"** shall mean the reduction of a Contractor's Primary or Secondary status resulting from three (3) Contractor Deficiency Reports, as a consequence of failure to maintain Required Service Levels. Procedures for Contractor Status Reduction are stated in "Attachment 8 – Required Service Levels." Also see "Contractor Deficiency Report", "Required Service Level", "Primary Contractor", "Secondary Contractor", and "Tertiary Contractor."

**"Delivery'** within Lot 2 – Hearing Reporting and Lot 3 – Transcription shall constitute an original transcript arriving at the Authorized User's designated location.

**"Desirable Services"** within "Attachment 4 – Price Pages" and Section VII.2.2, Financial Evaluation, shall refer to those job titles which the State wishes to contract for but which Bidder is not required to bid on. OGS reserves the right to not make awards for Desirable Service titles. See also "Mandatory Services."

**"Differential"** shall refer to pay adjustment above prevailing hourly wage allowed when working shifts other than normal working hours. An Authorized User must verify the allowance and amount of differential pay with DOL Prevailing Wage rate guidelines and /or prevailing trade labor agreements. This definition applies only to Lot 11 – Light Industrial titles.

**"Employee"** shall refer generically to any individual provided by a Contractor in response to a service request by an Authorized User and who is hired for the service requested. An Employee can be a direct Employee, a subcontractor or an agent. Also see "Candidate."

**"Full Service Contract"** shall mean that the Contractor's bid price includes all costs of providing Employees, including but not necessarily limited to: all administrative requirements; all other additional costs such as necessary financial reports; all reporting or other requirements, all overhead costs and profit. It shall also include all parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc.; and services not explicitly stated in these specifications, but necessarily attendant thereto.

**"Interpretation"** shall mean one who translates orally for parties conversing in different languages, either in Simultaneous and/or Consecutive time. For the purpose of this RFP it will mean on an as needed, if needed basis. Interpretation Services shall be provided at meetings, conferences, fair hearings, briefings and over the phone.

**"Joint Venture"** shall mean a contractual agreement joining together two or more business enterprises, for the purpose of performing on a State Contract.

**"Lateness"** shall be defined as late arrival of an Employee to a scheduled engagement; also referred to as "late."

"**Lot"** shall mean that organization of job titles within a specified category of service.

**"Mandatory Services"** within "Attachment 4 – Price Pages" and Section VII.2.2, Financial Evaluation, shall refer to those job titles which the Bidder is required to bid on. See also "Desirable Services."

**"Master File"** shall mean an electronic file maintained by Contractor for each Candidate. The Master File must include for each Candidate a resume (except for Lots 2, 3 and 6 unless requested by an Authorized User), qualifications, certifications, licenses, and background checks (except for Lots 3 and 6 unless requested by an Authorized User).

**"May"** denotes the permissive in a contract clause or specification. "May" does not mean "required." Also see "Shall" and "Must."

**"Must"** denotes the imperative in a contract clause or specification. "Must" is synonymous with "required." Also see "Shall" and "May."

"**n/a"** is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

**"NYS Vendor ID"** is a ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

"**Overtime Pay"** shall mean the additional payment above the hourly wage paid. Time and a half shall be paid above the base pay rate for time worked above 40 hours in a single week for Authorized Users regardless of time of day, day of the week or holidays. This requirement applies to Lots 1, 4, 5, 7, 8, 9, 10 and for the in-person translation titles contained in Lot 6 (Consecutive Interpreters, Simultaneous Interpreters and American Sign Language). There shall be no overtime for the non-location-specific titles in Lot 6 (Translation – Over the Phone and Written translation) as these services are billed by the minute and the word respectively. There shall be no overtime for Lots 2 and 3 as these services are billed by the page. Overtime Pay for Lot 11 – Light Industrial is determined by the relevant prevailing wage which the engagement is subject to. All overtime to be allowed based on the sole discretion of the Authorized User and must receive prior written approval.

**"Over the Phone Interpretation"** shall mean interpreting normally done consecutively, but in some cases if the technology is available may be simultaneous.

"**Premium Pay"** shall mean the additional payment above the prevailing hourly wage paid for night/evening differentials, overtime pay and/or holiday pay. Premium Pay should be in accordance with DOL Prevailing Wage rate guidelines and /or prevailing trade labor agreements. This term only applies to Lot 11 – Light Industrial titles.

**"Prevailing Wage Rate"** shall mean that part of the requirements of Article 8 (Sections 220-223) and Article 9 (Sections 230-239) of the New York State Labor Law, which requires public work Contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed. Prevailing wage requirements for this RFP are contained herein. This term only applies to Lot 11 – Light Industrial titles.

**"Primary Contractor"** shall refer to a responsive and responsible Bidder who has attained the best value score for a respective Lot and Region or that has been promoted to this position through a change in Contractor status. Primary Contractor shall be the first selection among Contractors by an Authorized User for orders. Also see "Secondary Contractor" and "Tertiary Contractor."

"**Procurement Services Group (PSG)"** shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

**"Region"** shall mean the grouping of counties by the State.

**"Request for Proposal (RFP)"** shall refer to this document, and its appendices and attachments.

**"Required Service Levels"** shall refer to the minimum levels of service that a Contractor is required to meet during the Contract. Service levels and Status Reduction procedure are stated in "Attachment 8 – Required Service Levels." Also see "Contractor Status Reduction" and "Contractor Deficiency Report."

**"Secondary Contractor"** shall refer to a responsive and responsible Bidder who has attained the second-best value score for a respective Lot and Region or that has been promoted to this position through a change in Contractor status. Secondary

Contractor shall be the second selection among Contractors by an Authorized User for orders. Also see "Primary Contractor" and "Tertiary Contractor."

**"Shall"** denotes the imperative in a contract clause or specification. "Shall" is synonymous with "required." Also see "Must" and "May."

**"Simultaneous Interpretation"** shall mean real time interpreting. The interpreter speaks at the same time as the speaker, usually in a conference or meeting. The interpreter listens to one language and speaks in another. The voices overlap as they are speaking at the same time.

**"Standard Language"** shall mean a language variety used by a group of people in their public discourse. Standard languages commonly feature: A recognized dictionary (standardized spelling and vocabulary); and a linguistic institution defining usage norms (e.g., Académie Française or the Royal Spanish Academy).

**"Suitability"** refers to the Authorized User's review of identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract without undue risk to the interests of the Authorized User.

**"Suitability determination"** is a determination by the Authorized User that there are reasonable grounds to believe that a given individual will likely be able to perform the job title requirements without undue risk to the interests of the Authorized User.

**"Tertiary Contractor"** shall refer to a responsive and responsible Bidder who has attained the third-best value score for a respective Lot and Region or that has been demoted to this position through a change in Contractor status. Tertiary Contractor shall be the third selection among Contractors by an Authorized User for orders. Also see "Primary Contractor" and "Secondary Contractor."

**"Tiered Structure"** shall refer to the order with which Contractors are utilized by an Authorized User in a given region for a given lot. Also see "Primary Contractor", "Secondary Contractor", and "Tertiary Contractor."

"**Translation"** shall mean translation of written English concepts to the Authorized User Requested Language or the written translation of that Authorized User Requested Language to English written concepts. To provide written conversions of source texts in one language into target texts written in another language, with the meaning and intent of the original source text retained. A rendering from one language to another.

**"0 (Zero)"** is both a number and the numerical digit used to represent that number in numerals. It is the integer immediately preceding 1 (one).

## I.8 QUALIFICATIONS OF PROSPECTIVE BIDDERS

1. A Bidder shall submit with its bid satisfactory evidence that it has had previous experience, adequate financial resources, and organization to perform the type, magnitude, and quality of work specified for each of the specific Lot(s) for which it is bidding. In addition to the qualifications in this RFP, a Bidder shall meet the qualifications and requirements outlined in the following attachments.

   a) Attachment 1 – Job Descriptions, Qualifications and Requirements
   b) Attachment 2 – Background Check Requirements
   c) Attachment 3 – Report of Contract Usage
   d) Attachment 5 – Technical Questions
   e) Attachment 6 – General Questions
   f) Attachment 7 – Contractor Insurance Requirements
   g) Attachment 8 – Required Service Levels

2. A Bidder shall meet the following additional qualifications:

   a) A Bidder shall provide evidence that it has maintained an organization capable of performing the work hereinafter described, in continuous operation for at least the past three (3) years for each of the specific Lot(s) for which it is bidding. If this is not proven through the submission of a Dun & Bradstreet Business Information Report, then Bidder must provide additional evidence that it meets this requirement;
   b) A Bidder must certify its commitment to obtain **all necessary proof of insurance with their proposal** (see "Attachment 7 – Contractor Insurance Requirements" for detailed insurance requirements). Upon tentative award, Bidder shall be required to procure all required insurance. If awarded a Contract, Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term if requested by an Authorized User or OGS Procurement Services Group;
   c) The Bidder shall provide a statement regarding the specific size of the temporary workforce currently available for each job title in each Lot in each Region that is being bid. All information must be provided in the designated space in the pricing worksheet set forth in "Attachment 4 – Price Pages";
   d) A Bidder shall agree to meet the reporting requirements in Section III.3 and "Attachment 3 – Report of Contract Usage."

3. Each Bidder must provide a minimum of five references, as outlined in "Attachment 5 – Technical Questions." References shall demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity as set forth in the RFP. References shall be provided in the designated space in "Attachment 5 - Technical Questions."

4. Bidder is advised that the State's intent in having requirements listed above is to ensure that only qualified and reliable Contractors are awarded a Contract. OGS retains the right to request any additional information pertaining to the Bidder's ability, qualifications, and procedures used to accomplish all work under this Contract as it deems necessary to ensure safe and satisfactory work.

Note: Failure to meet any of the above qualifications in whole or in part may result in a rejection of the bid of that Bidderas non-responsive.

### I.8.1 TOLL-FREE NUMBER

A Bidder must provide a toll-free telephone number for the Authorized User usage. Bidder must staff this toll-free number at a minimum from 9:00am to 5:00pm Monday through Friday. If Bidder does not currently maintain a toll-free number, the Bidder must certify its willingness to establish one prior to award of Contract. Contract award is contingent upon the Contractor's establishment of this toll free number.

### I.8.2 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 for each of the specific Lot(s) for which it is bidding. 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 of the request. The State reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of their bid.

## SECTION II. CONTRACT REQUIREMENTS

This section sets forth the terms and conditions that shall be incorporated into the resulting Contracts.

### II.1 GENERAL REQUIREMENTS

A Bidder should note that 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. Further, a Bidder should note that 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. A Bidder should also note that Appendix C – Article 15-A of the Executive Law, 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. All three appendices shall be incorporated into the resulting Contracts.

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.

1. This is a Full Service Contract.

2. Bidders should pay particular attention to the following clauses in the Appendix B - General Specifications: Clauses 9, 12, 14, 15, and 26.

3. No illegal drug use of any type, nor consumption of alcoholic beverages by the Contractor, its candidates, Employees or other personnel shall be permitted while performing any phase of work under this Contract.

4. The State shall not be liable for any expense incurred by the Contractor as a consequence of any traffic infraction or parking violations attributable to Contractor's Candidates or Employees.

5. OGS's interpretation of specifications shall be final and binding upon the Contractor.

6. **On-Site Work**: Services performed on-site by Contractor's Employees shall be rendered in accordance with these additional requirements:

   a) Employee Sign-In: Contractor's Employees shall sign in and out in accordance with the Authorized User's security procedures and guidelines. Failure to sign in or out, whether intentional or not, may be understood to mean that service was not performed;
   b) A review of all facility use rules; and
   c) An introduction for each respective Agency organization, chain of command, etc.

7. **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 and Compliance with Authorized User Goals**

In accordance with the foregoing, an Authorized User that is a State Agency or State Authority (as defined in New York State Executive Law §310 and hereinafter referred to as "State Agency") should establish separate goals for each order made against this Contract for participation of New York State Certified minority-owned business enterprises and women-owned business enterprises ("MWBEs") at the time of the acquisition, if the acquisition is (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction. As a condition of award of the Contract resulting from this RFP, the Contractor agrees to be bound by a State Agency's implementation of the provisions of Article 15-A of the New York State Executive Law, including but not limited to the submission of a utilization plan in the acquisition. State Agencies and Authorities will seek an overall 20 percent participation rate based on all acquisitions made throughout the term of the contracts awarded hereunder. Joint ventures with Certified MWBEs to meet the goals is encouraged.

**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

**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.**

## II.2 SERVICE REQUIREMENTS

1. The Contractor shall meet all Required Service Levels as outlined in "Attachment 8 – Required Service Levels."

2. For all Lots: The Authorized User reserves the right to select the level of personnel for the task to be performed, as well as to stipulate the length of time that such personnel will be retained, provided that the Authorized User provides the Contractor a reasonable estimate prior to the commencement of work. In the event of exceptionally complex assignments, a Contractor may propose to the Authorized User that resource levels be adjusted, subject to approval by the Authorized User.

3. **QUALITY OF SERVICES**
   The Authorized User shall have the right to interview a Candidate to determine his/her qualifications. The qualifications must reflect the position of the specific job title requested. The Authorized User reserves the right to reject the Candidate if the Authorized User determines that the Candidate is not qualified based on the referenced job title. An Authorized User has the right to request a replacement Candidate if the original selected Candidate is deficient in the performance of an assignment.

   To ensure all services conform to Contract specifications, the Contractor shall implement the quality control procedures and the quality assurance plan set forth in Bidder's response in Attachment 5, Technical Qualifications. Contractor shall warrant that the services acquired under this Contract will be provided in a professional manner in accordance with industry standards.

4. **DISQUALIFIED RESOURCES**
   Any Employee that an Authorized User deems unfit to perform a position at the time of suggestion or any time in the future shall be recorded by alerting in writing the Contractor and may result in that Employee being disqualified from performing future services for the Authorized User under this Contract.

5. **LATE ARRIVAL**
   An Authorized User shall not pay for any scheduled time for the period the Employee was late. More than three late arrivals in a one month period by the same interpreter may result in that interpreter being disqualified from performing future services for the Authorized User under this Contract. In addition, repeated latenesses by multiple Employees from a single Contractor may be considered an example of poor service and may result in a Contractor Deficiency Report.

6. **MAINTENANCE OF A MASTER FILE**
   The Contractor shall maintain a Master File for each Candidate and keep it in electronic format (i.e., electronic or scanned documents). The Contractor shall provide a Candidate's Master File to the Authorized User when suggesting a Candidate for a role.

7. **BACKGROUND CHECKS**
   The Contractor shall provide appropriate background checks for each Candidate prior to the start of their employment. **Background check requirements are detailed in "Attachment 2 - Background Check Requirements."** The

Contractor shall pre-screen and qualify Candidates as defined in the respective job titles for all positions requested. Candidate must have the ability to reside and be employed legally in the United States.

**8. REPLACEMENT CANDIDATES**

For job titles in Lots 1, 4, 5, 7, 8, 9 and 10 the Contractor must recommend a replacement Candidate within two (2) workdays of request from an Authorized User. For job titles in Lots 2, 6 and 11, the Contractor must recommend a replacement Candidate within one (1) workday of request from an Authorized User. The Authorized User may review Contractor's selection process and/or Candidate resumes. If a Contractor cannot provide a replacement Candidate within the time periods specificed in RFP Section II.2(8) than the Authorized User will consider the request unfulfilled and make a request for a Candidate from the next successive Contractor as follows: a.in the event the Candidate was placed by the Primary Contractor the request shall be made with the Secondary Contractor; b. in the event the Candidate was placed by the Secondary Contractor the request shall be made with the Tertiary Contractor; and, in the event the Candidate was placed by the Tertiary Contractor the request shall be made with the Primary Contractor.

A background check must be provided as per "Attachment 2 – Background Check Requirements" on the replacement Candidate before they begin working. However, at the discretion of the Authorized User, the replacement Candidate may begin work before the background check is completed, with the issuance of a written waiver by the Authorized User to the Contractor.

If the Candidate's Master File contains educational background verification and social security number verification, then these items may be omitted from the initial background check at the discretion of the Authorized User. If the Master File contains employment verification from previous engagements with the State, then employment verification is only required to be updated going back to the previous verification included in the Master File.

**9. REDUCE WORK**

The Authorized User has the right to reduce the length of the work assignment and the Contractor shall be provided as much notice as is reasonably possible. A minimum of 24 hours' notice will be given, except when reduction is due to a force majeure event, as defined in Clause 61 of Appendix B, or if Employee presents a risk to the safety and well-being of his/herself or others. Contractors shall not assess any fees or penalties for reductions in work assignments.

**10. TRAVEL**

All Employee travel expenses must be pre-approved by the Authorized User. "Personal Vehicle Mileage Reimbursement" and "Ground Transportation via Common Carrier (Train and Bus Travel)", for work-related travel only, shall be provided in accordance with codes, rules, and regulations promulgated by the Office of the State Comptroller for Management/Confidential Employees. Any travel under 35 miles or any travel that is a standard commute between home and office is excluded, as per the policy. Any other travel expenses including Lodging, Meal Allowances, Rental Vehicles and Air Travel are specifically excluded from the scope of the Contract.

**11. RATES AND MARKUPS**

For Lots 1 through 10 the Contractor shall provide to the Authorized User, upon request, personnel at the awarded bid price. The Contractor shall refer to the definitions of job titles in "Attachment 1 – Job Descriptions, Qualifications and Requirements" for a brief description of skills for Lots 1, 4, 5, 7, 8, 9 and 10.

The hourly rates for job titles in Lots 1, 4, 5, 7, 8, 9 and 10, will be considered straight time costs for work accomplished during 40 hours in a single week for an Authorized User regardless of time of day, day of the week or holidays. Any work performed at times other than above is considered to be overtime and would be allowed only when approved by the Authorized User. The rates paid for overtime shall be 1.5 times the resource pay rate, with the appropriate markup. Markups do not apply to Lots 2, 3, and 6 (except in-person translations) as they are not based on hourly rates.

Note: The overtime work assumes the Employee has worked a 40-hour week. Should the regular work shift of the Employee be other than normal hours, then the overtime rate is not paid until 40 hours is exceeded by an individual Employee for an Authorized User. If an employee is performing work for more than one Authorized User, the Contractor shall inform each of the Authorized Users of the employee's schedule and actual hours worked so that all parties are aware of when the employee will reach 40 hours worked and at what point overtime rates would begin. An Authorized User is responsible for overtime rates when an Employee has performed 40 hours of work for said Authorized User. An Authorized User shall not pay overtime rates if an Employee has performed less than 40 hours of work for the Authorized User, but more than 40 hours among several Authorized Users.

For Lot 11 of this RFP, the Contractor shall provide to the Authorized User, upon request, personnel at the percent markup rates offered over the current prevailing wage including supplemental benefits. The prevailing wage will be what is listed for the date the work is performed in the county it is completed.

Note: An Authorized User subject to a local law establishing a "living wage", such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) as set forth in Attachment 4, - Price Pages, are less than the local law "living wage" than Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS contract.

**12. OSHA TRAINING**

For Lot 11, all Employees shall have completed the OSHA 10-hour Construction course and shall have completed additional training, including but not limited to, asbestos & lead awareness, lockout/tagout, hazard communication and confined space awareness. Upon first reporting to an Authorized User location assignment, the Employee MUST present the Authorized User with proof of the completion of the above listed courses, including all updates and renewals. Failure of the Employee to provide such documentation to the Authorized User when reporting for initial assignment shall result in the Authorized User rejecting Employee.

**13. PREVAILING WAGE** shall apply to job titles in Lot 11. See "Attachment 10 – Prevailing Wage Schedule", which is the prevailing wage schedule in effect at the time of the release of this RFP. It is the Contractors responsibility to ensure compliance with the current prevailing wage rates paid at the time work is performed under this Contract.

**14. NEW YORK STATE DESIGNATED HOLIDAYS**

The following are New York State designated holidays:

| | | | |
|---|---|---|---|
| New Years Day<br>Martin Luther King, Jr. Day<br>Lincoln's Birthday<br>Washington's Birthday | Memorial Day<br>Independence Day<br>Labor Day | Columbus Day<br>Election Day<br>Veteran's Day | Thanksgiving<br>Christmas |

## SECTION III. SPECIAL TERMS AND CONDITIONS

This section sets forth additional terms and conditions that will become a part of the resulting Contract.

### III.1 CONTRACT PERIOD

This Contract shall become effective upon signature of final Contract award document by OGS (see Appendix B, Clause 38). The Contract shall be in effect for five year(s). The Contract is expected to begin on or about August 2012. The Bidder is to submit a bid for the INITIAL ONE (1) YEAR PERIOD of the Contract. Price adjustments may be allowed on each anniversary date of the Contract, in accordance with Section III.5 PRICE ADJUSTMENT.

### III.2 PERFORMANCE AND BID BONDS

There are no BONDS for this Contract. In accordance with Appendix B, §58 Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Term for this Contract.

### III.3 ADMINISTRATIVE AND REPORTING REQUIREMENTS

1. Contractor shall furnish a report of all services provided under the Contract during each quarterly period, no later than the 15th of the month following the close of each quarter. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. **A template for such report is included herein ("Attachment 3 –Report of Contract Usage").** The report must be submitted electronically via electronic mail utilizing the template provided. All fields of information shall be accurate and complete. The report is to be submitted electronically in Microsoft Excel 2007 or 2003 (or as otherwise directed by OGS), via electronic mail 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, and all other fields required, using the report template. OGS reserves the right to amend the report template without acquiring the approval of the Attorney General.

2. Additional related sales information and/or detailed Authorized User purchases may be required by OGS and must be supplied within 30 days upon request.

3. Failure to submit the required report shall be considered a service lapse and may result in the issuance of a Contractor Deficiency Report.

4. In addition to the quarterly reports required by OGS, the Contractor shall also provide a copy of the report on a monthly basis to the Authorized User, (unless Authorized User requests reports on a less frequent basis) which shall be attached to the Invoice. This report shall detail all work completed that month for that Authorized User.

5. In addition to Contractor direct sales, Contractor shall submit information regarding any subcontractors used. A Contractor shall verify if each subcontractor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. A Contractor 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**.

### III.4 APPENDICES AND ATTACHMENTS

The Bidder's attention is directed to the appendices and attachments attached hereto and hereby incorporated by reference and made part hereto as fully as if it were set forth at length herein. The Bidder is responsible for adhering to all requirements of the appendices.

## III.5 PRICE ADJUSTMENT

### III.5.1 PRICE ADJUSTMENT FOR LOTS 1- 10

For Lots 1 through 10, on each anniversary date of the Contract, the Contractor may be granted an increase or decrease in his/her bid dependent upon fluctuations in the latest published copy of the Consumer Price Index for all Urban Consumers as published by the U S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. It is the Contractor's responsibility to request the price adjustment from the OGS Purchasing Officer. This request must be received no later than thirty (30) calendar days before the anniversary of the signed Contract. If the Contractor fails to submit the request on or before the specified date, then no adjustment will be made for that full year. The index is also available through the Internet at the Bureau of Labor Statistics web site at **http://stats.bls.gov/**. Go to "Inflation and Consumer Spending" then click "Consumer Price Index" and then click on "Tables created by BLS" then click on "Table Containing History of CPI-U U.S. All Items Indexes And Annual % Changes 1913 To Present"

Price adjustments using the CPI involve changing the Employee pay rate by the percent change in the level of the CPI between the reference period and a subsequent time period. This is calculated by first determining the index point change between the two periods and then the percent change. The price adjustment shall be calculated as follows. Take the CPI for the 3rd month prior to the month of the start date of the Contract and subtract this figure from the CPI value for the 3rd month prior to the anniversary date of the Contract. (e.g., if start date begins in December, use the September CPI). That sum is then divided by the CPI value for the original 3rd month prior to start date and this result is then multiplied by 100 to equal the percent change that is the price adjustment value. This percentage of increase or decrease shall be applied to the Contract year, effective on the latter of the anniversary date or upon notification by OGS/PSG.

The following example illustrates the computation of percent change:

| | |
|---|---|
| CPI for current period | 136.0 |
| Less CPI for previous period | (-) 129.9 |
| Equals index point change | = 6.1 |
| Divided by previous period CPI | ÷ 129.9 |
| Equals | = 0.047 |
| Result multiplied by 100 | 0.047 x 100 |
| Equals percent change | = 4.7% |

The Contractor has the sole responsibility to submit invoices at the OGS approved adjusted rate, after approved rates are issued by OGS.

### III.5.2 – PRICE ADJUSTMENT FOR LOT 11 – PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

Work being bid in Lot 11 – Light Industrial is subject to the prevailing wage rate provisions of New York State Labor Law. See "17. Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of bid.

Contractors are reminded that ALL PUBLIC WORKS AND BUILDING SERVICE CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS AS ESTABLISHED BY LAW BY THE DEPARTMENT OF LABOR. Information indicating that prevailing wages are not being paid on a public works project shall be forwarded to the New York State Department of Labor for investigation. Willful violations of the prevailing wage provisions of the Labor Law may result in monetary fines or debarment from the bidding and award of Contracts.

NOTE: CONTRACTORS AND SUBCONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING WAGE RATES IN A PROMINENT AND ACCESSIBLE PLACE AT THE WORK SITE. Contractor is solely responsible for confirming subsequent changes to the posted rates and for paying the prevailing rates at all times during the Contract term.

For job titles in Lot 11, the prevailing wage rates will be considered straight time costs for work accomplished during regular hours between 7 a.m. and 5 p.m., Mondays through Fridays, excluding holidays so designated in the prevailing wage rates for the applicable trades. The rates paid to the Contractor will be the percent (%) bid over prevailing wage (which includes supplemental benefits and any other required benefits). Authorized User must check for current prevailing wages including overtime/afterhours/Saturdays/holiday rates to confirm price charged by Contractor. Authorized Users should use the following link for verification of all wages for job titles in Lot 11. **http://www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm**.
Any differential, overtime or holiday pay billed to an Authorized User must be passed through to the Employee and shall not be subject to Contractor' mark-up. Please note that a Contractor cannot increase its respective mark-ups at any time after bid opening. However, a Contractor may offer a lower mark-up at anytime.

See example of applied pay below:

| | 10 % Differential | Overtime (1.5x base) | Sunday/Holiday (2x base) |
|---|---|---|---|
| Prevailing wage | $25.17 | $25.17 | $25.17 |
| Supplemental benefits | $8.18 | $8.18 | $8.18 |
| Total | $33.35 | $33.35 | $33.35 |
| Mark-up 20% of $33.35 | $6.67 | $6.67 | $6.67 |
| Regular time hourly rate | $40.02 | $40.02 | $40.02 |
| Premium pay | $2.52 | $12.58 | $25.17 |
| Total hourly charge | $42.54 | $52.60 | $65.19 |

Where DOL Prevailing Rate schedule indicates a different method of calculation, the DOL schedule shall prevail for calculation of premium pay. Additional supplemental benefits identified by DOL Prevailing Rate schedule should be incorporated in the Bidders percentage mark-up and cannot be added to an invoice.

### III.6 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 ("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://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html**.

### III.7 DISPUTE RESOLUTION POLICY:

It is the policy of OGS 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 Request for Proposal or through the OGS website (**http://ogs.ny.gov/default.asp**).

## III.8 NEW YORK STATE VENDOR FILE REGISTRATION:

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) and any designated authorized reseller(s) who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the 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, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned 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 certain vendor information in one central location for all transactions related to the State of New York.
**If the Bidder is already registered in the Vendor File**, the vendor must enter the vendor's ten-digit Vendor ID on the first page of this bid document. An authorized reseller already registered in the Vendor File must enter its ten-digit Vendor ID along with the authorized reseller's information on the first page of this bid document.

**If the Bidder is not currently registered in the Vendor File,** the bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form to OGS **in advance** of your bid. Please send this document to the Designated Contact in the solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) should be completed by each designated authorized reseller and submitted to OGS. **The OGS will initiate the vendor registration process** for all Bidders and their authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.
For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

## III.9 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

OGS conducts a review of Bidders to provide reasonable assurances that the Bidder is responsive and responsible. A New York State Vendor Responsibility Questionnaire For-Profit Business Entity (hereinafter the "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, the 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 OSC's 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**.

**Please note that a Vendor ID is required to enroll in the VendRep System.** Please see section NN for information on how to obtain a Vendor ID. Note: Allow up to four (4) business days to accommodate the verification process associated with assigning a Vendor ID and updating the OSC Online Services portal to allow a vendor to enroll to use the VendRep System.

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 must complete and certify (or recertify) the Questionnaire no more than six (6) month 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.

## III.10 TAX LAW §5-A

A Bidder is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Bidder filed the ST-220-TD with NYS Department of Taxation and Finance (DTF). Note: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Proposed Contractors should complete and return the certification forms within five (5) 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. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf.

Form ST-220-CA should be filed with the Bid and submitted to the OGS. If the form is not submitted with the Bid, the Bidder must submit the completed form to OGS within five (5) business days of receiving a written request to do so from OGS.

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than $100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and Contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving Agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who is not so registered in accordance with the law.

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: **http://www.tax.ny.gov/**.

### III.11 PREFERRED SOURCE PRODUCTS:

NYS State Finance Law §162 requires that governmental entities 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 Authorized User.

### III.12 APPENDIX B AMENDMENTS:

Appendix B is amended as follows:

A. Section 4 (Conflict of Terms) is deleted and replaced with the following:

**The following shall be incorporated into the resulting Contract. Other documents may be identified for inclusion during the course of the solicitation process. Conflicts among the documents shall be resolved in the following order of precedence:**

1. Appendix A, Standard Clauses for New York State Contracts;
2. The resulting Contract;
3. Appendix B, General Specifications; and
4. Other Appendices and attachments as deemed necessary.

B. Section 33 (Equivalent or Identical Bids) is deleted and replaced with the following:

33. EQUIVALENT OR IDENTICAL BIDS:

In the event two offers are found to have tied scores, price shall be the basis for determining the award recipient. If two or more Bidders submit bids with tied scores for pricing, the Bidder with the greatest number of compliant bids for Desirable Services shall be the deciding factor. Criteria from bids from other Lots and Regions will not be considered in breaking a tie.

C. Section 62 (Contract Billings) is deleted and replaced with the following:

62. 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.

### III.13 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS:

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting contracts. State Agency consultant contracts are defined as "Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, the Office of the State Comptroller (OSC), the Division of the Budget and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered Contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

Form B - Contractor's Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category;
2. Total number of hours worked by such Employees; and
3. Total compensation paid to all Employees that performed consultant services under such Contract.*

*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to the Department of Civil Service and the Office of the State Comptroller as designated below:

**Department of Civil Service**
Alfred E. Smith State Office Building
Albany, NY 12239

**Office of the State Comptroller** - Bureau of Contracts
110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at **http://www.osc.state.ny.us/agencies/gbull/g-226.htm**.

**INSTRUCTIONS FOR COMPLETING FORM A AND B:**

Form A and Form B should be completed for contracts for consulting services in accordance with the Office of the State Comptroller's Bulletin G-226 and the following:

**Form A** - Contractor's Planned Employment Form (available from and submitted to the using Agency, if necessary.)
**Form B** - Contractor's Annual Employment Report (to be completed by May 15th of each year for each consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the Department of Civil Service, Office of the State Comptroller and procuring Agency.)

**Scope of Contract**: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

**Employment Category**: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.
*(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at **http://www.onetonline.org/** to find a list of occupations.)*
**Number of Employees**: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

**Number of Hours**: enter the total number of hours worked during the report period by the Employees in the employment category.

**Amount Payable under the Contract**: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

## III.14 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 or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it 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.

## SECTION IV. USE OF CONTRACT BY STATE AGENCIES, POLITICAL SUBDIVISIONS AND OTHER AUTHORIZED USERS

The intent of this section is to acquaint Bidders with the procedures and methods Authorized Users will follow in order to utilize services from the ensuing Contract.

### IV.1 GENERAL DESCRIPTION OF CONTRACT

OGS has various types of contracts available for use by Authorized Users. The Contract that shall result from this RFP is known within New York State as a “PS” Contract. This type of Contract is for services which an Authorized User utilizes on an intermittent basis. Purchase orders under this type of Contract are issued:

a) To a given Contractor for a specific term; or

b) For either a fixed amount (if known) or for an estimated amount (if not known).

Payments are then made each month against the purchase order for actual expenditures.

### IV.2 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS AND EXTENSION OF USE

New York State political subdivisions and others authorized by New York State law may participate in Contracts resulting from this solicitation. 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 "39. 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), services to be provided may include locations adjacent to New York State.

In order for services to be extended to additional States or governmental jurisdictions there must be 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

Upon request, all eligible non-State Agencies must furnish a Contractor 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://ogs.ny.gov/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.

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, as per Section 39c of Appendix B.

### IV.3 NEW YORK STATE PROCUREMENT CARD

See "Procurement Card" in Appendix B, OGS General Specifications. A Bidder shall indicate if it will accept the NYS Purchasing Card for orders not to exceed $15,000 (see “Attachment 6 – General Questions”, “Standard Forms” worksheet).

### IV.4 PROCUREMENT INSTRUCTIONS

1. An Authorized User shall review the list of locations to determine what region is applicable for the required service.

2. An Authorized User shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law §162 which requires that agencies afford first priority to the commodities/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such commodities/services meet the form, function and utility of the Authorized User.

3. An Authorized User is reminded that it must obtain approval from the State of New York Office of the Attorney General prior to engaging the services of outside counsel. Please refer to “Attachment 11 - Outside Counsel Contracts

Memorandum."

4. An Authorized User shall seek to engage the services of the Primary Contractor in the appropriate Lot for their Region. An Authorized User shall submit a request to the Contractor by means of the contact information provided in "Attachment 6 – General Questions" or other acceptable means established between the Contractor and the Authorized User. The request shall consist of:
   a. Job title(s);
   b. Location;
   c. Duration;
   d. Start date;
   e. Additional specifications;
   f. Authorized User information;
   g. Order priority (normal – 7 days, priority – 3 days, overnight – next day, immediate – same day); and
   h. Other information necessary for the particular engagement.

5. The Primary Contractor is required to recommend Candidate(s) according to the performance standards set forth in "Attachment 8 - Required Service Levels." If the Primary Contractor is unable to fill the Authorized User's request in accordance with the required service levels, the Secondary Contractor shall be engaged, proceeding to the Tertiary Contractor if necessary.

6. A. The Contractor shall supply potential Candidates and the Master File for each Candidate to the Authorized User. The Authorized User shall make a selection of the Candidate they prefer and request a background check be completed for the Candidate. Contractor shall provide the Authorized User with the results of the background check. Upon receipt of the background check the Authorized User shall make a suitability determination following the below guidelines.

   B. In cases of Employee replacement, a background check must be run on the replacement Candidate before they begin working. However, the Authorized User can elect to allow a Candidate to begin working prior to receiving their background check as outlined in Section II.2, item 8. The Authorized User must provide the Contractor with a written waiver if it elects to waive the completion of a background check before a replacement commences work.

   <u>Suitability Determination Guidelines</u>

   A. In making a suitability determination, the Authorized User shall consider the information obtained through the background check for the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to its organization in accordance with NYS Correction Law §752:

a) Any loyalty or terrorism issue;

b) Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);

c) Dishonorable military discharge;

d) Felony and misdemeanor offenses;

e) Drug manufacturing/trafficking/sale;

f) Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);

g) Criminal sexual misconduct;

h) Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);

i) Illegal use of firearms/explosives;

j) Employment related misconduct involving dishonesty, criminal or violent behavior; and

k) Misrepresentation of information including educational and professional background, legal status or valid licensure

B. The Authorized User shall evaluate any adverse information about a Candidate by considering the following factors before making a suitability determination:

a) The nature, extent and seriousness of the conduct;

b) The circumstances surrounding the conduct;

c) The frequency and recency of the conduct;

d) The individual's age and maturity at the time of the conduct;

e) The presence or absence of rehabilitation and other pertinent behavior changes;

f) The potential for pressure, coercion, exploitation, or duress;

g) The likelihood of continuation of the conduct;

h) How, and if, the conduct bears upon potential job responsibilities; and

i) The Employee's employment history before and after the conduct.

**A negative suitability determination must be supported by a finding that the adverse information has a direct bearing on the potential job duties or that it is deemed sufficiently serious to bar the Employee from a governmental site. The Authorized User should consult with its legal counsel regarding any questions on the suitability determination.**

7. An Authorized User and the Contractor shall develop the exact cost or estimated cost if an exact cost cannot be determined at that time. An Authorized User shall issue a purchase order or other written order for work, which is effective and binding on the Contractor at time of order in accordance with Appendix B §44. A Contractor shall not

initiate services until the order is issued, and an Authorized User shall not request performance of services until the purchase order has been issued. Note: for services, purchase orders may be issued for an estimate for the entire year.

8. An Authorized User shall monitor the Contractor's quality of work. "Attachment 8 – Required Service Levels" details a list of deficiencies and non-compliance that may result in a Contractor Deficiency Report. In case of deficiencies, an Authorized User may complete a deficiency report and send to OGS and the Contractor. A template for the deficiency report can be found in "Attachment 9 – Contractor Deficiency Report."

## IV.5 METHOD OF PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in Section III.12 amending Appendix B 62. Contract Billings and Payments.

If the Contractor bills for services not specified in the Scope or Services, or at rates greater than those specified in the Contract, an Authorized User may submit a Contractor Deficiency Report. If a Contractor offers a discount for prompt payment, the Contractor shall include the terms of the discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the date for which the prompt payment discount(s) expire.

## SECTION V. ADMINISTRATIVE

### V.1 BIDS

All bids and accompanying documentation shall become the property of the State of New York and shall not be returned. Joint ventures between two or more companies are permitted, however one (1) single company must be designated as the primary bidder and only one (1) single bid package shall be submitted. OGS encourages joint ventures and sub-contracting with New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as well as specialized service companies for particular job titles within each lot.

**FACSIMILE BID RESPONSES WILL NOT BE ACCEPTED FOR THIS BID OPENING.**

### V.2 NEW YORK STATE PROCUREMENT RIGHTS

**New York State reserves the right to:**

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the Agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
8. Change any of the schedule dates with notification through the Bidder Notification System;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
10. Waive any requirements that are not material;
11. Utilize any and all ideas submitted in the bids received;
12. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration.
13. Negotiate with the Bidder responding to this RFP within the RFP requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' proposals;
14. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation;
15. Should the State of New York be unsuccessful in negotiating a Contract with the selected Contractor within 90 days of Contract award, the State may begin Contract negotiations with the next best value Bidder in order to serve the best interests of the State of New York;
16. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the RFP requirements.

### V.3 BIDDER DEBRIEFING

Unsuccessful bidders shall be notified upon Notification of Award to the winning Contractor(s). A bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's 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. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The post-award debriefing should be requested in writing within 30 days of posting of the Contract award on the OGS website.

## V.4 CONTRACT AMENDMENT PROCESS

During the term of the Contract, the Contract may be amended as changes occur within the industry. OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the State. Examples of amendments may include, but are not limited to, new job titles under the Department of Labor Prevailing Wages, new categories of expertise, ancillary job classifications, on-going services, etc. The process by which amendments may occur is in accordance with the method outlined below. OGS, an Authorized User, or the Contractor may suggest amendments. Contractor may suggest the addition of new job titles or services it offers. Contract amendments are subject to approval by the Attorney General and shall take effect upon written notification by OGS.

Contractor submitted requests for changes to the Contract during the Contract period or any extension period should include the following, as applicable:

1. A cover letter briefly describing the request for addition, stating the need for such service to be added;
2. If applicable, a statement from the Authorized User indicating the requirement for the addition, and the estimated usage (dollars);
3. A price incorporating all changes.

## V.5 BID DEVIATIONS

In accordance with the requirements set forth in Appendix B, §13, Extraneous Terms, if your bid differs from the specifications, the Bidder shall explain such deviation(s) or qualification(s); and if necessary, provide details in paper copy as part of the binder submission as described "Attachment 6 – General Questions", in the Bidder's Submittal Checklist.

Appendix A: Standard Clauses for NYS Contracts contains standard requirements to be included in every contract entered into with the State. The successful Bidder shall agree to abide by these requirements and provide any information requested by OGS in connection with these requirements. In addition to the established provisions in Appendix A, the contract(s) that results from this RFP is expected to substantially contain the terms and conditions set forth in Appendix B and the RFP. In accordance with State procurement guidelines, any modification to the terms and conditions reflected in the executed contracts must not substantially alter the requirements or specification set out in herein. **Therefore, hourly rates or fees shall be proposed based on the assumption that the terms and conditions in Appendix A, Appendix B, and the RFP will not be modified in the resulting contract(s)**.

Bidders are encouraged to provide, as an attachment to any questions asked in the Bidder Inquiry period, any proposed modifications to the terms and conditions outlined in Appendix A, Appendix B, and the RFP. The Bidder should also include an explanation or justification for the requested modification. The State will consider any potential modifications as part of its Bidder Inquiry response.

## SECTION VI. FORMAT AND CONTENT OF BID SUBMITTAL

To be considered responsive a Bidder must submit a proposal in compliance with the requirements in the RFP and its Attachments.

Portions of the successful bidder's proposal and of this RFP shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. Therefore, the proposal must be signed by a partner, corporate officer, or other person authorized to commit its firm to all provisions of the RFP and its proposal as submitted.

Once a Contract is awarded Contractor's pay rates and mark-ups provided in Attachment 4, Price Pages, will be posted on the OGS website.

### VI.1 PROPOSAL FORMAT

**SUBMISSION OF ELECTRONIC MEDIA**

**It is required that each Bidder submit the entire offering on magnetic media (CD) or memory stick.** Magnetic media shall be on CD or memory stick in accordance with the instructions below. **Please note that in case of discrepancies between paper copies and electronic media submissions, the electronic copy will take precedence over the paper copy.** Only those items listed below in Part II(B) are required in paper copy. No items from Part I or Part II(A) should be submitted in paper copy.

### VI.2 GENERAL PROPOSAL CONTENT

A complete proposal consists of **three (3) copies** of each of the following:

Part I: A separate CD or memory stick containing "Attachment 4 – Price Pages" submitted in .xls or .xlsx.

Part II: (A) A separate CD or memory stick containing:

(1) "Attachment 5 – Technical Questions" submitted in .xls or .xlsx;
(2) "Attachment 6 – General Questions" submitted in .xls or .xlsx;
(3) A folder labeled "Scanned Documents" containing scanned copies of all items in Part II (B).

(B) A binder containing original copies of each of the following:

(1) Page #1 of the RFP with original signature;
(2) Completed and signed INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC acknowledgment form;
(3) A completed and signed Appendix 2 - Contractor Certification (ST-220-CA);
(4) Evidence that Bidder has maintained an organization capable of performing the work described, in continuous operation for at least the past three (3) years prepared not more than six months prior to the Bid Proposal Due Date (Dunn & Bradstreet Report or other equivalent evidence);
(5) All necessary proof of insurance or agreement to supply insurance upon notification of tentative award (see "Attachment 7 - Contractor Insurance Requirements" for the detailed insurance requirements);
(6) Proof of Compliance with Workers' Compensation Coverage Requirements as specified in WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS in "Attachment 7 – Contractor Insurance Requirements";
(7) Completed and signed New York State Non-Collusive Bidding Certificate, and, Nondiscrimination in Employment in Northern Ireland;
(8) Please refer to the Extraneous Terms requirements in Appendix B, §13. If Bidder is including extraneous terms or bid deviations include paper copies of materials as per the requirements in Appendix B.

### VI.3 PACKAGING OF RFP RESPONSE

**A complete proposal package consists of a total of six (6) CDs or memory sticks and three (3) binders**. If using a commercial delivery company that requires Bidder use their shipping package or envelope, the bid must be placed within the second sealed envelope labeled as detailed below. This will ensure that the bid/proposal is not prematurely opened.

1. Bidder's proposals must be submitted in sealed packages and received on or before **11:00 AM ET** on **Monday, June 25, 2012**. Part I must be sealed separately from Part II in order that the technical and financial evaluations may be

accomplished independently, concurrently and the evaluation of the Technical Qualifications & Service Requirements submittal can be made strictly on the basis of its merits.

a. Part I – shall be submitted in a sealed envelope. If Part II information is included within the same sealed envelope as the Part I information, Bidder's proposal shall be disqualified.
    (1) The sealed envelope shall be labeled with the following information:
        1. "Part I – Financial";
        2. The legal name of the Bidder submitting the proposal;
        3. Group 73003, RFP 22559, Administrative Services.
b. Part II – shall not be included in the Part I sealed envelope, and shall be submitted in another sealed envelope or separate container (box, envelope, etc)
    (1) Part II shall be labeled with the following information:
        1. Part II – "Technical";
        2. The legal name of the Bidder submitting the proposal;
        3. Group 73003, RFP 22559, Administrative Services.

2. Both Part I and Part II shall be included in the same box/package delivered to OGS.
3. Binding of Part II(B): A loose-leaf three ring binder is required. Bidder will submit proposals so that update pages can be easily incorporated in the originals. All proposals must be machine produced. Proposals hand written will be disqualified.
4. CDs or memory sticks submitted for Part I and Part II(A) must be labeled with
    a. Identification of CD or memory stick Contents;
    b. The legal name of the Bidder submitting the proposal;
    c. Group 73003, RFP 22559, Administrative Services.

## VI.4 INSTRUCTIONS FOR PROPOSAL SUBMISSION

The following procedures shall be used for proposal submission:

Complete bids in response to this RFP are to be packaged, sealed and submitted to OGS Procurement Services Group (PSG). Responses must be addressed to:

Procurement Services Group
NYS Office of General Services
Corning Tower, 38th Floor
Reception Desk
Empire State Plaza
Albany, NY 12242-0064

All bids must have a label on the outside of the box or package itemizing the following information:

1. **BID ENCLOSED** (preferably bold, large print, all capital letters)
2. Bid number (RFP 22559)
3. Bid Opening Date and Time (June 25, 2012, 11:00am ET)
4. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

Only those Bidders who furnish all required information shall be considered for evaluation.

## VI.5 LIABILITY AND VALIDITY

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the preparation and production of a proposal or for any work performed prior to the formal execution of a Contract. Proposals must be received in the above office on or before **11:00 AM ET** on **Monday, June 25, 2012. Bidder assumes all risks for timely, properly submitted deliveries.** A Bidder is strongly encouraged to arrange for delivery of bids to OGS **prior to** the date of the bid opening. **LATE BIDS shall be rejected. E-mail or faxed bid submissions are not acceptable and shall not be considered.** The received time of proposals will be determined by OGS by the clock at the above noted location.

**Proposals must remain open and valid for at least 120 days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A proposal shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 day period until either tentative award of the Contract by OGS is made or withdrawal of the proposal in writing by Bidder. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal Contract.**

**NO CONSIDERATION WILL BE GIVEN TO PROPOSALS RECEIVED AFTER THE STATED DATE AND TIME.**

## VI.6 IMPORTANT BUILDING ACCESS PROCEDURES

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk.
**A Bidder who elects to deliver its proposal is 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 submission date.**

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the PSG Receptionist**.** The Receptionist will register the visitor at that time but delays may occur. Bidders 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. **Note:** Bids not received within the Procurement Services Group, or the OGS Mailroom, by the time and date shown on the front page of the bid document will be considered late.

## SECTION VII. METHOD OF AWARD OF CONTRACT

These Contracts shall be awarded on the basis of best value. Contracts awarded under this RFP shall be made to the responsive and responsible Bidders receiving the highest point total using the evaluation criteria listed below. Contracts will be awarded by Lot and by Region to up to three Bidders per Lot and per Region.

It is the State's intent to award Contracts based on the following Tiered Approach.

The Bidder with the highest best value score in each respective Lot and Region shall be awarded as the "Primary Contractor." The Bidder with the second highest best value score in each respective Lot and Region shall be awarded as the "Secondary Contractor." The Bidder with the third highest best value score in each respective Lot and Region shall be awarded as the "Tertiary Contractor."

In the case of tied bids, see Section III.12 amending Appendix B 33, Equivalent or Identical Bids.

All pricing should be the lowest pricing offered based on anticipated volume. **This is NOT "maximum not to exceed" pricing.**

### VII.1 STATE EVALUATION PHILOSOPHY

New York State evaluates bids for goods and services in an objective, comprehensive manner designed to benefit both the State and participating bidders. Through this process the State identifies Contractors who will best meet its needs and will be the most cost effective.

All proposals will be evaluated uniformly and consistently, ensuring that each bidder has an equal opportunity to be considered. The evaluation process will be conducted as described in this section.

### VII.2 EVALUATION PROCESS

1. **Proposal Screening**
   After the bid opening, each proposal will be screened for completeness and conformance with stated requirements for bid submission as set forth in the Bidders Submittal Checklist in "Attachment 6 – General Questions." Any proposal not meeting these requirements may be deemed non- responsive and may be denied further consideration.

2. **Qualifying Technical and Financial Evaluation Sections**
   Bid proposals meeting the proposal screening will then be reviewed to ensure that the Bidder has responded in the affirmative to all mandatory, qualifying criteria in the Technical and Financial sections. Failure to respond in the affirmative to any of these qualifying criteria will result in the Bidder's proposal being disqualified, unless otherwise provided in an Attachment to the RFP. The qualifying technical and financial evaluations shall be conducted separately and distinct from each other.

3. **Evaluation Criteria**
   Each proposal shall be evaluated according to the factors outlined in Sections VII.2.1 and VII.2.2. Prior to the Technical and Financial Evaluations, proposals will be reviewed for the minimum qualifications as listed in Section I.8 Qualifications of Prospective Bidders.

#### VII.2.1 TECHNICAL EVALUATION (VALUED AT 40 POINTS)

The Technical Evaluation is located in "Attachment 5 – Technical Questions" and will measure each proposal which passes the initial proposal screening and the mandatory qualifying evaluation section against the following criteria (these criteria are listed by area):

1. References
2. Quality Control
3. Capacity

4. Technical Capabilities

The State reserves the right to weight each of the factors listed above as it deems appropriate. All scoring for the items appearing below will total a maximum of 40 possible points.

### VII.2.2 FINANCIAL EVALUATIONS (VALUED AT 60 POINTS)

The Financial Evaluation will proceed separate, but concurrent, with the Technical Evaluation. The Financial Evaluation will measure each proposal which passes the initial screening and meets all mandatory financial criteria, against the following criteria:

1. "Attachment 4 – Price Pages".

The basis for the financial evaluation rankings within each Lot by Region will be:

Low cost of mandatory job titles weighted by historical usage.

- Within "Attachment 4 – Price Pages" Mandatory Services are identified and Bidder must provide the required pricing items for each Mandatory Service for each Lot and Region for which they are bidding.

In "Attachment 4 – Price Pages" cells automatically round up to the nearest cent regardless of how many numbers are entered after a decimal point. The same applies to Markup %.

Desirable Services will be evaluated only for the limited purpose of determining whether Bidder provided the required information as set forth in "Attachment 4 – Price Pages" or as provided in Section III.12 Appendix B Amendments (Section 33). Desirable Services are not part of the Financial Evaluation. Any award shall include all Desirable Services determined to have provided the required information as set forth in "Attachment 4 – Price Pages".

## VII.3 PROPOSAL RANKING

Scores for each of the Bidders will be totaled and the Bidder having the highest score for a given Lot and Region will be ranked number one; the Bidder with the second highest total score will be ranked number two and so on.

## VII.4 NOTIFICATION OF AWARD

The successful Bidder shall be advised by OGS in accordance with Section 38 of Appendix B. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal Contract.

## VII.5 BID OPENING RESULTS

PSG posts bid information on the OGS/PSG web page. The web page makes available information about the list of Bidders that responded to this RFP.

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

## BIDDER'S SUBMITTAL CHECKLIST

**The Bidder's Submittal Checklist can be found on the first tab of the Excel spreadsheet "Attachment 6 – General Questions." It must be completed and submitted with each bid. The Bidder's Submittal Checklist is intended to acquaint the Bidder with all items of information that must be submitted with the bid. Failure to respond or submit any item may render the bid non-responsive.**

## ACKNOWLEDGMENT PAGE

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 REQUEST FOR PROPOSALS, 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).** Procurement lobbying information may be accessed at: http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html.

_____ _____

**Bidder Name (Printed)** **Title**

_____ _____ _____

**Bidder Signature** **Date** **Corporation**

**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:

**[Check One]**

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

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

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

(☐ **If a limited liability company):** _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____

**Notary Public**

**Registration No.**

# 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)

☐ **Sole Proprietor** ☐ **Partnership** ☐ **Limited Liability Corporation** ☐ **Business Corporation** ☐ **Unincorporated Association/Business** ☐ **Federal Government**

☐ **State Government** ☐ **Public Authority** ☐ **Local Government** ☐ **School District** ☐ **Fire District** ☐ **Other**

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

1. Enter your TIN here: *(DO NOT USE DASHES)*

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

2. Taxpayer Identification Type (check appropriate box)

☐ Employer ID No. (EIN) ☐ Social Security No. (SSN) ☐ Individual Taxpayer ID No. (ITIN) ☐ N/A (Non-United States Business Entity)

### Part III: Address

| 1. Physical Address: | 2. Remittance Address: |
|---|---|
| Number, Street, and Apartment or Suite Number | 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 TO NYS OFFICE OF THE STATE COMPTROLLER**

**FOR OSC USE ONLY**

# NEW YORK STATE NON-COLLUSIVE BIDDING CERTIFICATE & NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND [MACBRIDE FAIR EMPLOYMENT PRINCIPLES]

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with New York State Finance Law, Section 165, the contractor certifies that it or any individual or legal entity in which the contractor holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the contractor, either (answer yes or no to one or both of the following, as applicable),

(1) have business operations in Northern Ireland,

No _____ Yes _____, and if yes:

(2) 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 nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.

No _____ Yes _____

**NON-COLLUSIVE BIDDING CERTIFICATION**

In accordance with New York State Finance Law, Section 139-d, by submitting its bid each bidder and each person signing on behalf of any other 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 his or her knowledge and belief:

(A) The prices of 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;

(B) 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

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

**BIDDER**

**By:**_____

**Name:** _____

**Title:** _____

**Company:** _____

**Principal Place of Business:**

_____

**Address:**

_____

_____

**Federal Tax Identification #:**

_____

**DATE:** _____

**JOINT BIDDER**

**By:**_____

**Name:** _____

**Title:** _____

**Company:** _____

**Principal Place of Business:**

_____

**Address:**

_____

_____

**Federal Tax Identification #:**

_____

**DATE:** _____

# APPENDIX A

# STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT**
**FOR FUTURE REFERENCE.**

December, 2011

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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**

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## 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 Orders 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-responsible.

**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 e 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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# EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

**SUBMIT WITH BID OR PROPOSAL or within a reasonable time thereafter as requested by OGS, but prior to Contract Award.**

| **Solicitation No.:** | **Vendor ID Number:** | Report includes Contractor's | **Contractor's FEIN:** |
|---|---|---|---|
| **Contractor Name:** | | ☐ Contractor's work force to be utilized on this contract | |
| **Contractor Address:** | | ☐ Contractor's total work force | |

Enter the total number of employees for each classification.

| EEO Job Category | Total Work Force | Work force by Gender | | Work force by Race/Ethnic Identification | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total Male (M) | Total Female (F) | White (M) | (F) | Black (M) | (F) | Hispanic (M) | (F) | Asian (M) | (F) | American Indian or Alaskan Native (M) | (F) | Veteran (M) | (F) |
| Executive/Senior level Officials & Managers | | | | | | | | | | | | | | | |
| First/Mid level officials & Managers | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | |
| Administrative Support | | | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | | | |
| Operatives | | | | | | | | | | | | | | | |
| Laborers and Helpers | | | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | |

**PREPARED BY (Signature):**

**NAME AND TITLE OF PREPARER (Print or Type):**

## GROUP 73003 – Administrative Services **Appendix C**

**General instructions:** Contact the Designated Contact(s) for the solicitation if you have any questions. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
3. Enter the total work force by EEO job category.
4. Break down the total work force by gender and enter under the heading "Work force by Gender."
5. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

**WHITE -** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

**BLACK -** A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

**HISPANIC -** A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

**ASIAN & PACIFIC ISLANDER -** A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**AMERICAN INDIAN OR ALASKAN NATIVE (Not of Hispanic Origin) -** A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.