

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

REQUEST FOR COMMENT

RFC NUMBER: 22772

DATE: July 14, 2014

GROUP: 73012

PLEASE ADDRESS COMMENTS TO

ITSPROcurement@ogs.ny.gov

DUE DATE: August 6, 11:00 AM

SUBJECT: Request for Comment – Information Technology (IT) Project Consulting

TO PROSPECTIVE BIDDERS:

On behalf of the New York State (NYS) Office of General Services (OGS), New York State Procurement (NYSPRO) is issuing this Request for Comment (RFC) to solicit commentary from vendors on specific sections of a draft Solicitation for the Initiative described below.

Vendors interested in participating in any possible future opportunities are encouraged to respond to this RFC. Further information may be found at the New York State Contract Reporter site at <http://www.nyscr.org/Public/Index.aspx>.

Purpose and Objective

It is the objective of this RFC to obtain vendor feedback on all requirements, terms and conditions presented in the draft Solicitation. Further, only comments specifically and explicitly related to the draft Solicitation content will be considered. Any collateral material such as brochures and marketing material submitted in a response will not be considered.

OGS will use the feedback received from this RFC as potential input to finalize overall requirements. The scope of the draft Solicitation could change based on comments received.

Content of Response

Vendors are asked to carefully review the content in the documents provided. Vendors are also asked to provide any comments and/or questions using the attached document entitled, "Attachment 4- Bidder Question Template". A response does not bind or obligate the responder or OGS to any provision or procurement of areas referenced. No contract can or will be awarded based on submission of responses to this RFC.

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two (2) statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two (2) findings within a four (4) year period, the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

Proposals submitted in response to this RFC are subject to the New York State Freedom of Information Law (Public Officers Law, Article 6; hereinafter FOIL). Pursuant to section 87(2)(d) of FOIL, records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise” may be exempt from disclosure. In addition, pursuant to section 89(5)(a)(1-a) of FOIL, records or portions thereof that contain critical infrastructure information may be exempt from disclosure (“Critical infrastructure” is defined in §86[5] of FOIL). If the Submitter intends to seek an exemption from disclosure of claimed trade secret materials or claimed critical infrastructure information under FOIL, the Submitter shall at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Submitter, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of the Public Officers Law. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State. Where such claimed material is embedded in the Response, it shall be the responsibility of the Submitter, at its sole cost and expense, to submit redacted versions of the Response within five (5) days of a request by OGS.

Please submit your electronic response to this RFC no later than 11:00 AM EST on August 6, 2014 to: ITSProcurement@ogs.ny.gov.

The State of New York thanks you for your assistance in this information collection process.

New York State Office of General Services

Information Technology (IT) Project Consulting

Request for Comment: #22772

**Group: 73012
Classification Codes: 43, 80, 81, 82, 83, 84, and 86**

July 14, 2014

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1. Introduction

1.1 Overview and Purpose of This Solicitation

This solicitation is issued by the New York State Office of General Services (OGS). OGS is a New York State agency which is authorized by law to issue centralized contracts for use by New York agencies and other Authorized Users.

OGS seeks to establish non-competitively awarded contracts with Contractors to provide services to Authorized Users, under a centralized contract. These services may include (but are not limited to):

- analysis, design, architecture, development, implementation, testing, and training for applications;
- systems, networks and systems integration of information technology infrastructures;
- Geographic Information Systems (GIS);
- Information security;
- Enterprise content management, (Services) any of which may encompass a wide range of tools and platforms.

The resulting contracts are generally referred to as the "IT Project Consulting Contract". These resultant contracts will also supplement and complement the Hourly Based IT Services (HBITS) contracts for staff augmentation. The resultant Contracts will provide the ability to procure deliverable based and fixed price services for projects.

Services will be acquired from the resulting contracts by Authorized Users through the issuance of Statements of Work (SOW) with a Mini-bid process for individual projects on an as needed basis. The resultant contracts will allow State agencies and other Authorized Users to procure these Services under a fixed price deliverable based model. OGS intends to enter into contracts with multiple Contractors who, will compete for award based on individual Statement of Work (SOWs) for projects proposed during this Contract term. There will be no minimum commitment of usage of the resultant Contracts by OGS.

Each project will be governed by the terms and conditions specified in the SOW which may not supersede the resultant OGS contract, which shall include the scope of services, project deliverables, approved costs and payment structure for the individual project. The SOW shall be signed by both the Authorized User and the Contractor before taking effect.

Services Lots (Lot) available under this contract will be separated into three (3) distinct lots. Additional information about the minimum qualifications is set forth in Attachment 4.

Lot #	Project Threshold	Cost	Minimum Years of Continuous Operation	Minimum Years of IT Project Experience as a Prime Contractor
Lot 1	Greater than or equal to \$200,000		3 years	3 years
Lot 2	Greater than \$200,000 but less than or equal to \$5,000,000		10 years	10 years
Lot 3	Greater than \$5,000,000 but less than or equal to \$25,000,000		15 years	15 years

A Bidder may respond to one (1), two (2), or three (3) of the Lots. A Bidder may receive an award in more than one (1) lot.

1.2 Definitions

The term “Bidder” shall be defined as an individual, organization, or company that is external to the State of New York and submits a bid for this procurement opportunity. For the purposes of this Solicitation, the following terms will be used interchangeably: Bidder, Consultant, Firm, Proposer and Vendor.

1.3 Current Acquisition Methods

Since the expiration of NYS IT Service (Backdrop) Contract, Authorized Users have not had a standard method of procuring the professional IT services required for project delivery and have developed solicitations and managed stand-alone contracts for IT Project Consulting services. While hourly based services for IT staff augmentation are currently available under the Hourly Based IT Services (HBITS) contract, this contract was designed to meet staff augmentation needs.

The IT Project Consulting Contract will differ from the Hourly-Based IT Services (HBITS) contract, and is in no way meant to replace current HBITS Contract. The intent of this contract is to “fill the gap” between the HBITS contracts and the need for an Authorized User to conduct a full solicitation to acquire Consultant Services.

1.4 The Future State

The Project Consultant Services Contract is intended to complement the current IT service offerings. Once executed, these contracts will provide a set of standardized guidelines, processes, terms and conditions, and templates for the development, distribution and award of deliverable based and fixed cost for projects.

In addition, it is anticipated that these Contracts will improve the procurement process by reducing the amount of time and effort required by State agencies and other Authorized Users to engage Services on a deliverable based and fixed price for projects.

1.5 Key Events and Dates

The key dates for this solicitation are provided below. OGS reserves the right to change any of the dates stated in this Solicitation.

Event	Date / Time
Request for Comment (RFC) Release	07/09/2014
RFC Comments Due at OGS	08/06/2014
Solicitation Release (Projected Date)	08/22/2014
Solicitation Questions Due at OGS	09/10/2014, 12:00 PM Eastern
Answers to Solicitation Questions by OGS	09/24/2014
Proposal Submission Deadline (Bids Due)	10/17/2014 11:00 AM Eastern
Bid Opening	10/17/2014 11:00 AM Eastern
Tentative Awards Made	11/14/2014
Contracts Signed	12/15/2014
Contract Start Date	01/02/2015

Please note:

The NYS Office of General Services (OGS) Bidder Notification System (BNS) is being phased out. Starting October 1, 2014, OGS will provide all notifications on bidding opportunities through the New York State Contract Reporter site at <https://www.nyscr.ny.gov>. In order to receive information on OGS bidding opportunities on and after September 30, 2014 YOU MUST REGISTER FOR THE NEW YORK STATE CONTRACT REPORTER AT: <https://www.nyscr.ny.gov> and navigate to the "I want to find contracts to bid on" page to register for your free account. If you do not register for the New York State Contract Reporter, you will not receive information on OGS bidding opportunities after September 30, 2014. Existing BNS users who register through the New York State Contract Reporter site may receive notices from both the BNS and the Contract Reporter for the transition period of February through September 30, 2014. We appreciate your patience during this transition period and encourage you to register at your earliest convenience to take advantage of the added benefits of the new and improved New York State Contract Reporter notification and information portal.

2 Administrative Information

2.1 Designated Contacts

In compliance with the Procurement Lobbying Law, §139-j and §139-k, NYS Office of General Services, New York State Procurement (NYSPRO) has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email for all questions regarding this solicitation.

David Burmaster
NYS Office of General Services, NYSPRO
Corning Tower, 38th Floor, ESP
Albany, New York 12242
Email: ITSPROcurement@ogs.ny.gov

In the event the primary designated contact is not available, the SECONDARY Designated Contact is:

Jonathan Davis
NYS Office of General Services, NYSPRO
Corning Tower, 38th Floor, ESP
Albany, New York 12242
Email: ITSPROcurement@ogs.ny.gov

Questions regarding the Solicitation shall only be submitted to the above designated contacts and will only be accepted via e-mail. 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 on the OGS website.

Deadline for submission of questions will be as stated in **Section 1.6 - Key Events and Dates**.

For questions related specifically to Minority Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contact is:

Tryphina Ramsey
NYS Office of General Services
Minority and Women-Owned Business Enterprises
Corning Tower, 29th Floor, ESP
Albany, NY 12242
Email: MWBE@ogs.ny.gov

2.2 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 a Bidder/bidder during the procurement process. An Bidder/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period")

to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this agreement. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder/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 Bidder/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

2.3 New York State Procurement Rights

New York State reserves the right to:

- A. Reject any or all proposals received in response to the Solicitation,
- B. Withdraw the Solicitation at any time, in OGS's sole discretion,
- C. Make an award under the Solicitation in whole or in part,
- D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the Solicitation,
- E. Seek clarifications and revisions of proposals,
- F. Prior to the bid opening, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available,
- G. Prior to the bid opening, direct Bidder to submit proposal modifications addressing subsequent Solicitation amendments,
- H. Change any of the schedule dates with notification through the Bidder Notification System and/or NYS Contract Reporter,
- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidder,
- J. Waive any requirements that are not material,
- K. Utilize any and all ideas submitted in the proposals received,
- L. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration,
- M. Negotiate with the Bidder(s) responding to this Solicitation within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidder' proposals,
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation,
- O. Select and award the Contract to other than the selected Bidder in the event that the State is unsuccessful in negotiating a Contract with the selected Contactor within 30 days of Contract award or, optionally, in other specified circumstances as detailed in the Solicitation requirements,
- P. Use proposal information obtained through site visits, management interviews, and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the Solicitation,

- Q. Request current Bidder financial statement(s) that demonstrate Bidder's ability to service a contract with dollar sales volume similar to the scope of this Solicitation,
- R. Request additional documentation from the Bidder or request reports on financial stability from independent financial rating services,
- S. Reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Solicitation,
- T. Reject any Bid submission or portion(s) thereof determined to have been altered or modified from the original format by the Bidder. Such alterations or modifications include but are not limited to: any changes to document headers, footers and/or cells, unprotecting worksheets or workbooks, hiding or un-hiding cells, columns, rows, or worksheets, and locking or unlocking cells,
- U. Reject an unbalanced bid, or a bid containing incomplete, unreasonable or unrealistic pricing, as determined by the State,
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to explain or justify the balance, realism and/or reasonableness of its pricing,
- W. Upon discovery of non-material completeness or conformance issues with a Bidder's Proposal, contact the Bidder to attempt to cure the issue prior to completion of the evaluation of the Bidder's Proposal.-

2.4 State Ethics Law Provision

By submitting a proposal in response to this Solicitation the person signing the proposal certifies, for and on behalf of the Bidder, that:

- A. He/she is familiar with provisions applicable to post-employment restrictions affecting former State employees, available using the link below¹:
 - 1. Public Officers Law § 73(8)(a)(i), (the two-year bar),
 - 2. Public Officers Law § 73(8)(a)(ii), (the life-time bar).
- B. Submission of this proposal does not violate either provision;
- C. He/she is familiar with the Bidder's employees, and its agents,
- D. He/she understands that the State intends to rely on this certification,
- E. No violation shall occur by entering into a Contract or in performance of the contractual services,
- F. This certification is material to the proposal.

The Bidder shall fully disclose to OGS, within the proposal and on a continuing basis, any circumstances that could affect its ability to comply with the cited laws. Bidder shall address any questions concerning these provisions to:

NYS Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

¹ <http://public.leginfo.state.ny.us/menuf.cgi> (When the page opens, under "Search", click on "Laws of New York". On the next page, select "PBO Public Officers". When this page opens, select "Article 4 – (60 - 79) POWERS AND DUTIES OF PUBLIC OFFICERS" and choose Sections 73 (8-a) (i) and 73 (8-a) (ii).)

Telephone #: (518) 408-3976

2.5 Solicitation Documents

This Solicitation is composed of the following documents:

- Appendix A - Standard Clauses for New York State Contracts (January 2014)
- Appendix B - General Specifications (June 2014)
- Attachment 1- Administrative Proposal
- Attachment 2- Financial Proposal
- Attachment 3- Technical Proposal
- Attachment 4- Bidder Question Template
- Attachment 5- Statement of Work Template
- Attachment 6- How to Use This Contract

3 Scope of Work

3.1 Description of Tier 1 Process (How to Receive an OGS Contract)

OGS requests proposals from vendors who are interested in providing project based information technology consulting services to Authorized Users of NYS centralized contracts. This contract is for services only. The establishment of the centralized contract is generally referred to as Tier 1.

When responding to this Solicitation:

- A Bidder is expected to document a professional history that includes successful, on-time delivery of IT Projects;
- Bidder must demonstrate the ability to acquire and retain resources required to adequately staff IT projects;
- Bidder must offer project solutions that may or may not include state staff;
- Bidder must have the financial resources to perform under a deliverable-based payment schedule;
- Bidder must agree to all terms and conditions set forth in this Solicitation.
 - An Authorized User issued RFQ may include additional terms and conditions, but these additional terms and conditions may not change, soften, or override the terms and conditions of the Tier 1 contract in any manner.
- Bidder must accept that this contract will be utilized on a per project basis, as needed by Authorized Users

OGS will administer one periodic recruitment period (Periodic Recruitment #1) prior to start of contract. There will be one (1) additional periodic recruitment period (Periodic Recruitment #2) that will begin 21 months into the resultant contract. There will be no continuous recruitment of proposals. The following terms and conditions will also apply to the resultant contracts issued from this Solicitation:

- Every Bidder that meets the minimum qualifications and submits a responsive and responsible proposal will receive an initial contract award. A Bidder awarded under Periodic Recruitment #1 will have an initial four year contract term. A Bidder awarded under Periodic Recruitment #2 will have a lesser initial contract term so that the contracts from both periodic recruitments end on a common date. OGS will retain the sole option to renew the contracts for an additional two (2) year period.
- All responsive and responsible proposals will be offered a contract with the same Terms and Conditions. OGS will not entertain “carve-outs” for specific vendors.
- All contracts will expire on the same date, regardless of start date.
- OGS/NYSPPro will not create job titles, qualifications, or bid hourly rates, with the exception of the Not-To-Exceed Rate, as part of this periodic recruitment.

3.2 In-Scope Projects

IT Project Consulting Services may include (but are not limited to) IT system planning, analysis design, development, implementation, and testing for applications, systems or networks and the integration of information technology applications, systems, networks, infrastructures, Geographic Information Systems (GIS); information security, enterprise content management, etc. any of which may encompass a wide range of tools and platforms.

Additional examples of in-scope projects include:

- System installation and configuration, upgrades and integration;
- Workstation deployment;
- Business Analysis for project development;
- Proprietary software application development, programming and integration;
- Commercial off-the-shelf (COTS) software implementation;
- Data Information Management – includes data migration, data conversion, data manipulation, data integration;
- Project Management Project support services - including, but not limited to; project managers, project quality assurance and control, and Independent Verification & Validation (IV&V).

3.3 Out-of-Scope Work

The following services and/or offerings are excluded from the scope of this contract:

- Staff augmentation services;
- Web hosting;
- Automated network monitoring or any other service provided principally through an automated process;
- Equipment maintenance;
- Standardized training courses;
- Application service provisioning;
- Ongoing services;
- Acquisition of equipment, hardware or software either Commercial off-the-shelf (COTS) software or pre-existing software
- Cloud based or “As a Service” offerings, including but not limited to SaaS, IaaS, PaaS;
- Any offering that is a combination of equipment, hardware, software, cloud or “as a service offerings” is also expressly prohibited; and
- No Tier 2 “mini-bids”, RFQ’s or SOW’s to acquire a single consultant will be allowed.

3.4 Description of Tier 2 Process: (Authorized Users Statement of Work)

An Authorized User may use the IT Project Consulting Contract to request quotes for services from vendors who have been awarded to one of the contract lots. This is generally

referred to as the Tier 2 process. OGS is not be involved in the Tier 2 solicitation process. An Authorized User must only select one (1) lot for a solicitation based upon budgetary and other approvals received.

A competitively bid Request for Quote with detailed Scope of Work is required for all procurements under this contract. An Authorized User must prepare a detailed Scope of Work using the contract templates. The Authorized User must distribute the Request for quotation and the statement of work to all qualified bidders (per lot).

Under the resultant contract, NYS Agencies and other Authorized Users are directly prohibited from requesting a response from M/WBEs only.

The following terms and conditions shall apply to each SOW issued by an Authorized User

- All services must be provided from within the 50 states of the United States of America.
- The services performed for an Authorized User for any individual SOW shall not run longer than three (3) years total. (Longer engagements may be bid separately, through a Request for Proposal issued by Authorized Users but not under this Solicitation and its resultant contracts.)
- An Authorized User must conduct a competitive best-value solicitation amongst all vendors awarded within Lot 1, 2 or 3.
- An Authorized User may require the execution of Non-Disclosure agreements.
- An Authorized User may require additional security requirements necessary for performance of services.
- An Authorized User shall solely determine reasonableness of price for any award made under the Tier 2 Process
 - An Authorized User is required to make tentative award and non-award notifications to all Contractors who submitted a response to the SOW.
- An Authorized User must post all RFQ/SOW (bid) documents on the agency website.
- A Tentative Award must be made within one (1) year of the SOW release.

The Scope of Work document must include the following information in sufficient detail to permit the Contractors understanding:

1. Project objectives
2. Project plans and detailed timelines
3. High-level project deliverables and their acceptance criteria
4. Detailed project deliverables (milestones)
5. Project approach and methodology
6. Project resource requirements (key personnel)
7. Project time line (projected start and end dates and overall duration)
8. Expectations for delivery of work products (deliverables)
9. Expectations for documentation, reports, invoicing, and knowledge transfer, etc.
10. Requirements for status reporting and meetings (form, content and frequency)
11. Performance specifications (vendor and system)
12. Testing and acceptance criteria

13. Not to exceed project cost
14. Work-site/location and provisions (office space, phone, desktop computer, etc.)
15. Detailed listing of hardware and software to be provided by the AU for the project, applicable warranty services and warranty periods (must be procured outside this contract)

3.4.1 Tier 2 Solicitation from an Authorized User

Awards issued under Lot 1

- Competitive bidding is required for every Tier 2 RFQ/SOW
- Total contract value may not exceed \$200,000
- No total Tier 2 RFQ/SOW may exceed \$200,000 in cost and/or 3 years in duration including extensions/amendments
- No job title may exceed \$250/hr.
- 2% price escalation limit between any contract year, including deliverables (hourly rate may not exceed \$250/hr for the life of the Tier 2 RFQ/SOW)

Awards issued under Lot 2

- Competitive bidding is required for every Tier 2 RFQ/SOW
- Total contract value must be between \$200,000 and \$5,000,000
- No total Tier 2 RFQ/SOW may exceed \$5 million in cost and/or 3 years in duration including extensions/amendments
- No job title may exceed \$250/hr.
- 2% price escalation limit between any contract year (hourly rate may not exceed \$250/hr for the life of the Tier 2 RFQ/SOW)

Awards issued under Lot 3

- Competitive bidding is required for every Tier 2 RFQ/SOW
- Total contract value must be between \$5,000,000 and \$25,000,000
- No total Tier 2 RFQ/SOW may exceed \$25 million in cost and/or 3 years in duration including extensions/amendments
- No job title may exceed \$250/hr.
- 2% price escalation limit between any contract year (hourly rate may not exceed \$250/hr for the life of the Tier 2 RFQ/SOW)

3.4.2 Tentative Awards

Each Award under Tier 2 must be made no later than one year after RFQ/SOW issue date (not including debriefings and protests). If the award is not made within the one year period from the issue date of the RFQ/SOW, then the Authorized User is prohibited from making an award and must re-bid the RFQ/SOW.

3.4.3 No-Cost or Fixed Price

If a Contractor indicates that some or all of the work for a project is to be provided on a fixed-price basis, such statement must be indicated in the SOW. In such case, the Contractor shall complete all of the work, which is indicated therein to be performed on a no-

cost or fixed-price basis, in accordance with the contractual schedule even if the Contractor resources required to complete such work are more than the Contractor had estimated in agreeing to such SOW and/or the cost to the Contractor exceeds the fixed price.

Fixed price deliverable based IT procurements must be based on standard project management documentation as defined in the NYS Project Management Guidebook, including the standard documents defined in the NYS System Development Life Cycle (section III of the NYS PM Guidebook).

Unless otherwise provided in a SOW, the payment Milestones of fixed-price work indicated in a SOW shall be conditioned upon the Authorized User's Acceptance of designated Deliverables.

3.4.4 Tier 2 Bid Evaluations

The Technical portion of the Tier 2 bid evaluation shall include, but is not limited to, both qualitative and quantitative measures based on the following criteria:

- Contractor's portfolio of projects in area of interest, Contractor references and key staff references.
- Contractor experience directly related to the project. Contractor's track record of delivering on time and on budget. In cases where the technology is proprietary, the Contractor must outline the project resources and additional internal resources for internal consulting/issue escalation.
- If the project is restricted to specific software, toolkits, etc., the Contractor must demonstrate its working knowledge of these software, toolkits, etc. as an essential requirement, as opposed to the Contractor having limited experience with the general technology, business knowledge or similar tools.

4 Method of Award, Evaluation and Scoring Method for the Tier 1

4.1 Method of Award

It is the intent of OGS to award responsive and responsible Contractor(s) a centralized contract for IT Project Consulting Services. The contract awards made under this solicitation will be made based upon the Bidder Submissions of Attachments 2, 3 and 4 of this solicitation.

4.2 Evaluation and Scoring Method

Proposals will consist of three (3) separate parts: (1) an Administrative Proposal, (2) a Technical Proposal and (3) a Financial Proposal. Each component will be evaluated separately and independently in accordance with the solicitation as further described below. The relative weights of each part of the Proposal are as follows:

Administrative Proposal: Pass/Fail

Technical Proposal: Pass/Fail

Financial Proposal: Pass/Fail

4.3 Administrative Proposal Requirements

Administrative Proposal Evaluation (Pass/Fail)

An Administrative Proposal that is received in a timely manner will be reviewed to determine if it meets the proposal submission requirements as outlined in Section 5.1 of this Solicitation. An Administrative Proposal that is materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of OGS, may be rejected and disqualified from further consideration for award.

The Administrative Proposal will be reviewed to determine if it contains responses to all mandatory requirements as prescribed in Attachment 1. No score will be tabulated for this portion of the evaluation and proposals that fail in this review will be disqualified.

4.4 Financial Proposal Evaluation

All bids passing the Administrative Evaluation will then move to the Financial Evaluation.

The Financial Proposal will be reviewed to determine if it contains responses to all mandatory requirements as prescribed in Attachment 2. No score will be tabulated for this portion of the evaluation and proposals that fail in this review will be disqualified.

4.5 Technical Proposal Evaluation

All bids passing the Financial Proposal evaluation will then move to the Technical Evaluation.

The Technical Evaluations process will be determined by a Pass/Fail Evaluation. The technical evaluation team will inspect each Technical Proposal to determine if it contains responses to all of the mandatory requirements as prescribed in the solicitation. No score will be tabulated for this portion of the evaluation and proposals that fail this review will be disqualified.

All Bids passing the Administrative, Financial and Technical Proposal Evaluation Sections shall receive an award for the corresponding Lot.

5 Proposal Requirements for Tier 1- Centralized Contract

The Bidder shall submit a proposal that clearly provides **all** of the information required by this solicitation. Emphasis should be concentrated on conformance to the solicitation instructions, responsiveness to the solicitation requirements, and clarity of content. The Bidder is advised to thoroughly read and follow all instructions contained in this Solicitation. Proposals that do not comply with solicitation instructions may be deemed non-responsive.

The State does not require, nor desire, any promotional material that does not specifically address the response requirements of this Solicitation.

A complete proposal for this Solicitation is comprised of three (3) separate sealed proposals: (1) Administrative, (2) Technical and (3) Financial. Please see below for content and submission details.

5.1 Administrative Proposal Requirements

After the bid opening, each proposal will be screened for completeness and conformance with the stated requirements for bid submission as set forth herein. Any Bid not meeting these requirements may be deemed nonresponsive and may be denied further consideration for award.

5.1.1 Contractor Requirements

The information shared in this section describes aspects of this solicitation that the Contractor must perform. In each of the below categories an attachment is made available that shows the requirements for both contract performance and the bid proposal. A Bidder is advised that the State's intent in having requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the Contract. The Bidder shall have the burden of demonstrating to the OGS' satisfaction that it can in fact perform the work.

5.1.2 Qualifications of Bidder

- A. Bidder shall be registered with the NYS Department of State (NYS DOS) as an entity authorized to conduct business in New York State at the time of bid submission.
- B. Bidder shall be registered with NYS Contract Reporter (NYSCR)
- C. Bidder shall provide proof of Insurance(s) as per Section 7.19 "Required Insurance"
- D. Bidder shall be registered with the Office of the NYS Comptroller and maintain a current certified VR Questionnaire. Bidder shall be compliant with all NYS reporting requirements including Consultant Disclosure Form A & B
- E. The Bidder must represent and warrant that, as of the date of submission of its proposal, the Bidder has completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of the services.
- F. The Bidder will, in order to perform said services during the term of the Contract, comply with any requirements imposed upon it by law during said Contract term.
- G. 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.
- H. The Bidder shall submit with its bid satisfactory evidence that it has had previous experience, adequate financial resources, and organization as herein specified to perform the type, magnitude, and quality of work specified qualifications.

5.1.3 Joint Ventures

Joint ventures between two or more companies are not permitted. A company must not appear as a bidder in more than one (1) proposal.

5.2 Technical Proposal Requirements

This section of the Solicitation provides instructions to Bidder regarding information that is to be included in the Technical Proposal. All responses must be complete, factual and as detailed as necessary to allow the State to perform a comprehensive review and evaluation of the Bidder's Technical Proposal.

5.3 Financial Proposal Requirements

All Financial Proposal requirements have been identified in Attachment 3 to this Solicitation.

5.3.1 MWBE

The Bidder shall also include the following as part of their Financial Proposal completed and signed: Forms EEO 100 and MWBE 100 (Equal Employment Opportunity Staffing Plan (Appendix C)).

6 FORMAT AND CONTENT OF BID SUBMITTAL

6.1 Proposal Format

To be considered responsive, a Bidder must submit a complete proposal that satisfies and addresses all requirements stated in this solicitation.

A Bidder's proposal shall be organized in **three (3) separate parts**:

(1) Administrative Proposal, (2) Technical Proposal and (3) Financial Proposal (collectively referred to herein as "Submissions"). A Table of Contents should clearly identify the location of all material within the Submissions by section and page number. Each part will be evaluated separately. Each part shall indicate its content and be labeled, as applicable: ADMINISTRATIVE, TECHNICAL or FINANCIAL PROPOSAL. Bidder shall include the following as part of their bid:

- A. Bidder shall submit a total of three (3) separate original hard copies for each of the Administrative, Technical and Financial Proposals.
- B. Bidder shall submit six (6) electronic versions for each of the Administrative, Technical and Financial Proposals. Electronic media shall be included on Microsoft Windows formatted USB Flash Drives and must be clearly labeled. These electronic versions are to be sealed with the corresponding hard copy. All Technical and Financial Proposal submissions shall be stored in separate unlocked files in Microsoft Office products (Word or Excel) in product release 2007 or 2010. All other materials must be stored in currently available releases of either Adobe or Microsoft products.
- C. **The Administrative, Technical and Financial Proposals shall be separately sealed and labeled.** The official name of the Bidder's organization(s) as well as the name and number of the solicitation must appear on the outside front cover of each copy. If the Proposals are submitted in loose-leaf binders, this information should also appear on the spine of the binders.
- D. Bidder shall NOT include any cost information in the Bidder's Administrative Proposal or Technical Proposal in either the hard copy or the electronic submission. Inclusion of such cost information in the Administrative or Technical proposals shall result in disqualification of the proposal.
- E. The Financial Proposal must not contain any material that is applicable to the Administrative Proposal or the Technical Proposal in either the hard copy or the electronic submission. Inclusion of such information in the Financial Proposal may result in the disqualification of the proposal. NYS Minority and Women Owned Business documentation (Forms EEO 100 and MWBE 100) includes cost information and thus must be included with the Financial Proposal.
- F. In the event that there are any inconsistencies between the electronic Submissions and the hard copy Submissions, or between multiple hard copy Submissions for each of the three (3) parts of the Proposal, the Original, wet ink, hard copy will be deemed controlling by OGS when reviewing each Proposal.
- G. **Please ensure the Administrative; Technical and Financial bid packets contain no extraneous documentation, sales literature or other documentation.**

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. This information shall be submitted in a separate sealed envelope labeled as “*Supplemental Information*”.

- H. All bids and accompanying documentation shall become the property of the State of New York and shall not be returned.
- I. Pursuant to Appendix B, §8, *Extraneous Terms*, a Bid 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. If your proposal differs from the specifications in the solicitation, the Bidder shall explain such deviation(s) or qualification(s) and if necessary, provide details in Attachment 1 as part of their Bid submission. Bidder is advised that OGS will not entertain any exceptions to Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions to the solicitation or Appendix B (General Specifications) that are of a material and substantive nature.
- J. A Bidder is responsible for the accuracy of their Bids. A Bidder is directed to take extreme care in developing their Bids. A Bidder is cautioned to carefully review their Bids prior to Bid submittal, as requests for Bid withdrawals of any type are not likely to be granted. Bidder should maintain complete and accurate calculation worksheets in the preparation of their Bids which clearly support their submissions.

6.2 Required Documentation

A. Administrative Proposal

1. Completed and signed pages 1 and 2 of the solicitation - Cover Sheet and Acknowledgement Page
2. Completed Attachment 1- Administrative Proposal
3. Completed and signed Contractor Certification ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf),
4. Completed Vendor Responsibility Questionnaire For-Profit Business Entity or proof of on-line submission (see Section 7.26, New York State Vendor Responsibility)

B. Financial Proposal

1. Completed Attachment 2- Financial Proposal

C. Technical Proposal

1. Completed Attachment 3- Technical Proposal

6.3 Bid Delivery Instructions

If using a commercial delivery company that requires that their shipping package or envelope be used, Bidder’s proposal must be placed within a second sealed envelope

labeled as detailed below. This will ensure that Bidder's proposal is not prematurely opened.

Complete Bids in response to this solicitation are to be packaged, sealed and submitted to the Office of General Services, NYSPRO. Responses must be addressed to:

**NYS Office of General Services
NYSPRO
Corning Tower, 38th Floor
Reception Desk
Empire State Plaza
Albany, NY 12242**

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

- A. BID ENCLOSED (preferably bold, large print, all capital letters)**
- B. Bid number (Solicitation Number 22772)**
- C. Bid Opening Date and Time (e.g., October 17, 2014, 11:00 a.m.)**
- D. The number of boxes or packages (i.e., 1 of 2; 2 of 2)**

Bidder must allow extra time to comply with the Building Access procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. A Bidder assumes all risks for timely, properly submitted deliveries.

6.4 Proposal Liability

The State of New York will not be held liable for any cost incurred by the Bidder 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 the Bid Opening date. 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.** The received time of proposals will be determined by OGS by the clock at the above noted location.

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

6.5 Proposal Validity

Proposals must remain open and valid for at least 270 days from the Bid opening 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 270 day period until either tentative award of the Contract by OGS is made or withdrawal of the proposal in writing by the 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.

6.6 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 NYSPRO receptionist at 518-474-6262 at least 24 hours prior to the bid submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the NYSPRO Receptionist. The Receptionist will register the visitor at that time but delays may occur. A Bidder who intends to deliver Bids or conduct NYSPRO business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time.

7 Terms and Conditions

The terms and conditions set forth in this section are expressly incorporated in and applicable to the Contract resulting from this Solicitation. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

7.1 Dispute Resolution Policy

See Appendix B section 64 for information on the OGS dispute resolution policy.

7.2 Bidder Debriefing

Unsuccessful Bidder 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 Bidder 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.

7.3 Appendix A

Appendix A — Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby incorporated in, and expressly made a part of, this Solicitation.

7.4 Appendix B

Appendix B, Office of General Services General Specifications, dated June 2014, attached hereto, is hereby incorporated in, and expressly made a part of, this Solicitation.

7.5 Appendix C

Appendix C, Equal Employment Opportunity Staffing Plan (EEO 100), attached hereto, is hereby incorporated in, and expressly made a part of, this Solicitation.

7.6 Estimated Quantities

All quantities or dollar values listed within this Solicitation are estimates.

7.7 Contract Documents

The Contract between Contractor and the State shall be comprised of a separate document executed by Contractor and OGS incorporating (i) Appendix A, Standard Clauses for New York State Contracts, (ii) Appendix B, General Specifications, (iii) portions of the successful Bidder's proposal and (iv) portions of the Solicitation. Other documents may be identified by OGS for inclusion in the Contract during the course of the solicitation process.

7.8 Conflict of Terms

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

- A.** Appendix A, Standard Clauses for New York State Contracts;
- B.** The separate document executed by Contractor and OGS;
- C.** Appendix B, General Specifications;
- D.** Contracts or purchases made between an Authorized User and the Contractor; and
- E.** Other documents identified by OGS for inclusion during the course of the solicitation process.

7.9 Contract Term

All Contracts resulting from this Solicitation shall have a common end date, exclusive of any renewals or extensions. The Contract shall be in effect for a term of (4) years with (1) optional (2) two year extension, said options to be exercisable in the sole discretion of the State.

7.10 Centralized Contract Modifications

OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

- A.** Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- B.** OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- C.** Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §40.

7.11 Notices

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- A.** via certified or registered United States mail, return receipt requested,
- B.** by personal delivery,
- C.** by expedited delivery service,
- D.** by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

For the State:

Albany, NY _____

Telephone Number: (518) _____

Facsimile: (518) _____

Email Address: _____

For Contractor, to the Point of Contact identified in its Proposal, which shall include the following data:

- Individual Name
- Title
- Company Name
- Street Address
- City, State, Zip code
- Telephone Number
- E-mail Address

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt.

Contractor and the State may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under the Contract by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Contract. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

7.12 Performance of Services

- A.** The Contractor is responsible for fully meeting all Contract obligations set forth in the Contract and for providing services in accordance with the Contract or any Purchase Order/Statement of Work.
- B. Subcontracting.** The following requirements shall supplement the requirements of Appendix B, sections 42 and 44:

Contractor agrees that all Contracts between the Contractor and its Subcontractors shall be by bona fide written Contract. All such contracts shall contain provisions specifying: (i) that the work performed by the Subcontractor must be in accordance with the terms of the Contract, including but not limited to Appendix A; (ii) that the subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier subcontracts; (iii) that nothing contained in the subcontract shall impair the rights of the State; (iv) that nothing contained in such subcontract or under the Contract shall create any contractual relationship between the Subcontractor and the State; (v) that subcontractors shall maintain and protect against any unauthorized disclosure all records with respect to work performed under the subcontract in the same manner as required of the Contractor; (vi) that the State shall have the same authority to audit the records of all subcontractors as it does those of the Contractor; and (vii) that the subcontractor shall cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto.

1. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract.
2. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including those relating either directly or indirectly to the Deliverables to be provided and the materials to be furnished or Services provided pursuant to its respective subcontract, and every such subcontract shall expressly stipulate that all labor performed and materials furnished pursuant thereto shall strictly comply with the requirements of the Contract.
3. Failure to disclose the identity of any and all Subcontractor(s) used by the Contractor as required hereunder may, at the sole discretion of the State Project Manager, result in a disqualification of the Subcontractor, if not immediately cured, or may result in termination of the Contract for cause.
4. The Contractor shall pay all Subcontractors for and on account of Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the State, the Contractor shall submit satisfactory evidence that it has made such payment.
5. The Contractor shall be solely responsible to the State and Authorized Users for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any

Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.

6. The Contractor, within three business days of the State Project Manager's request, shall file promptly with the State a copy of any subcontract.

7.13 Deliverable Acceptance

Deliverables for work performed under SOWs, shall meet all applicable Authorized User Acceptance Criteria developed in accordance with the Statement of Work.

7.14 No Removal of Records from Premises

Where performance of the Contract involves use by the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or subcontractors) of Authorized User owned or licensed papers, files, computer disks or other electronic storage devices, data or records at Authorized User facilities or offices, or via remote access, the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or subcontractors) shall not remotely access, modify, delete, copy or remove such Records without the prior written approval of the Authorized User.

7.15 Contractor Staff

All employees of the Contractor, or of its subcontractors, who shall perform Services under the resulting Contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under the resulting Contract on behalf of Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

The following requirements shall apply in addition to the requirements of Appendix B, paragraph 42:

A. Staffing Changes

1. If the Contractor wishes to remove any of the Project Staff from the Project prior to commencement of his or her assignment or during his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the approval of the State Project Manager. If, after said consultation, it is mutually agreed that such removal shall take place, the Contractor shall immediately provide the resumes of three or more potential replacements with similar or better qualifications for the State Project Manager's review and approval.

If the Project Staff member's work has already commenced the Contractor shall offer the State a mutually agreed upon transition period up to two (2) weeks during which the Contractor staff who is leaving shall, at no cost to the State, train the replacement Contractor staff at the State's facilities. At the commencement of the transition period, the departing staff and the new staff will work together to

develop a written transition plan to transition the responsibilities. The State reserves the right to approve this transition plan.

2. The State shall also have the right in its reasonable discretion to request removal of a Contractor Staff member at any time, and the Contractor must immediately provide the resumes of three or more potential replacements with similar or better qualifications for the State Project Manager's review and approval.
3. Where Contractor Staff ceases work for reasons beyond the control of the Contractor, the Contractor must immediately notify the State Project Manager and provide the resumes of three or more potential replacements with similar or better qualifications for the State Project Manager's review and approval.
 - a) Reasons beyond the control of the Contractor shall be defined as: (i) death of the Contractor Staff member; (ii) disability or illness; (iii) Contractor Staff member resigns his or her position; (iv) termination for cause by the Contractor; or (v) any other reason deemed acceptable by the State's Project Manager.
 - b) The provisions of this section do not preclude any Contractor Staff member from reasonable sick leave or annual leave.
4. Upon the State Project Manager's approval, replacement staff will become Project Staff and will be subject to the terms and conditions of the Contract.

If the State Project Manager does not approve one of the proposed replacement candidates, the Contractor must immediately provide additional candidates for the State Project Manager's review. If the State Project Manager still does not find a proposed replacement acceptable, the State reserves the right to either suspend activities under the Contract or terminate the Contract for cause pursuant to Appendix B paragraph 60, Termination.

B. Contractor Staff Conduct

1. For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its agents, employees, partners or Subcontractors shall not be permitted while performing any phase of the work herein specified.
2. The State will not be liable for any expense incurred by the Contractor or its agents, employees, partners or Subcontractors for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor or its agents, employees, partners or Subcontractors.

7.16 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, OSC, DOB and CS. The effective date of these amendments was June 19, 2006. The requirements will apply to the covered Contracts awarded on and after such date.

To meet these requirements, the Contractor agrees to complete:

A. 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.

B. 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.
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 CS and OSC 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

Fax: (518) 474-8030 or (518) 473-8808

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 Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), "Consultant Disclosure Legislation."

INSTRUCTIONS FOR COMPLETING FORM A AND B:

Form A and Form B should be completed for Contracts for consulting services in accordance with Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), "Consultant Disclosure Legislation," and the following:

- A. Form A - Contractor's Planned Employment Form** (available from and submitted to the using Agency, if necessary.) (Form AC-3271-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)
- B. 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 CS, OSC and procuring Agency.) (Form AC-3272-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)

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 online.onetcenter.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.

7.17 FERPA/HIPAA/HITECH

The Contractor and its staff shall comply with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations, including but not limited to the Family Educational Rights and Privacy Act (FERPA), the Health Insurance and Portability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH).

Contractor shall cooperate in executing a written confidentiality agreement under FERPA and/or a Business Associate Agreement (HIPAA/HITECH) upon request by the State or any Authorized User.

7.18 Federal Funding

Contractor shall reasonably cooperate in the addition to any Tier 2 RFQ/SOW adding to any Federal funding contract requirements necessary for this Project or an Authorized User's Project or required for an Authorized User to purchase services from the resulting Contract.

7.19 Required Insurance

Upon tentative award, Bidder shall be required to procure, at their sole cost and expense, all insurance required by this section. In addition, Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this solicitation, policies of insurance required by this section. All insurance shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and which have an A.M. Best Company rating of "A-" Class "VII" or better. If, during the term of a policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and which is rated at least "A-" Class "VII" or better in the most recently published Best's Insurance Report.

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

7.19.1 General Conditions

- A. **Conditions Applicable to Insurance.** All policies of insurance required by this solicitation or any Contract resulting from this solicitation must meet the following requirements:
 1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidder and Contractors are specified in Paragraph B *Insurance Requirements* below.
 2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by OGS, policies must be written on an occurrence basis.
 3. **Certificates of Insurance/Notices.** Bidder and Contractors shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS, upon tentative award, and thereafter within three (3) business days of request. Certificates shall reference the Solicitation or Contract Number. As applicable, the requested forms must name The New York State Office of General Services,

New York State Procurement, 38th Floor, Corning Tower, Albany, New York 12242 as the Certificate Holder. Certificates shall be submitted to The New York State Office of General Services, New York State Procurement, Corning Tower-38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed to in writing, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice to OGS, except in cases of cancellation for non-payment, in the event of which notice shall be provided as required by law to OGS.

Bidder and Contractors shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, Bidder and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- Be in the form acceptable to OGS (i.e. an Acord form);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this solicitation or any Contract resulting from this solicitation;
- Be accompanied by an Additional Insured and a Waiver of Subrogation Endorsement as required herein;
- Refer to this solicitation and any Contract resulting from this solicitation by number and any other attachments on the face of the certificate; and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, endorsements & other attachments) or electronic forms, that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution or similar means, will be accepted.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from a Contractor's work under any Contract awarded as a result of this solicitation, or as a result of a Bidder or Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Bidder/Contractor's insurance.

5. If, during the term of any Contract awarded as a result of this solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this solicitation or any Contract resulting from this solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor

not having insurance required by this solicitation or any Contract resulting from this solicitation or not providing proof of the same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should a Contractor fail to provide or maintain any insurance required by this solicitation or any Contract resulting from this solicitation, or proof thereof is not provided, OGS or an Authorized User may withhold further contract payments, treat such failure as a breach or default of the Contract.

- 6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS, which shall not be unreasonably withheld, conditioned or delayed. Bidder and Contractors shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
- 7. Subcontractors.** Should a Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of work by the Subcontractor, to secure and keep in force during the term of any Contract resulting from this solicitation, the insurance requirements of this document, as applicable. Proof thereof shall be supplied to OGS as required by this Section.

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

B. Insurance Requirements

Bidder and Contractors shall obtain and maintain in full force and effect, at their own expense, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a) Commercial General Liability Insurance** with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01 01 96, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
 1. Policy shall include bodily injury, property damage and broad form contractual liability coverage.
 - General Aggregate \$2,000,000
 - Products – Completed Operations Aggregate \$2,000,000

- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000

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

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the contract;
- Explosion, collapse and underground hazards; and
- Contractor means and methods.

The following ISO forms must be endorsed to the policy:

- a) CG 00 01 01 96 or an equivalent Commercial General Liability Coverage Form;
- b) CG 20 10 11 85 or an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B); and
- c) Waiver of Subrogation Endorsement.

Limits may be provided through a combination of primary and umbrella/excess liability policies.

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

Waiver of Subrogation. Contractor shall cause to be include in each of the above referenced policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS. A Waiver of Subrogation Endorsement shall be provided upon tentative award, and thereafter, within three (3) days of request.

c) Technology Errors and Omissions :

Professional Liability insurance in the amount of \$2,000,000.00 for damages arising from computer related services including the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured,

distributed, licensed, marketed or sold.

d) Crime Insurance

Policy Limit: \$50,000.00

1. The policy shall include coverage for all directors, officers, agents and employees of the Contractor.
2. The policy shall include coverage for third party fidelity and name the State of New York as loss payee.
3. The policy shall include coverage for extended theft and mysterious disappearance.
4. The policy shall not contain a condition requiring an arrest and conviction.
5. Policies shall be endorsed to provide coverage for computer crime/fraud.

C. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts, document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of a bid or renewal. **A Bidder may not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.**

1. **Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form (certificate of insurance) is NOT acceptable proof of workers' compensation coverage.** In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a Bidder/Contractor shall:
 - A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
 - B) Obtain such coverage from an insurance carrier; or
 - C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Bidder seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS at the time of bid submission, and thereafter, within three (3) days of request:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov); (Reference applicable Solicitation and Group #s on the form.);

- B) Certificate of Workers' Compensation Insurance:
 - 1) Form C-105.2 (9/07) if coverage is provided by the Bidder/Contractor's insurance carrier, the Bidder/Contractor must request that its insurance carrier send this form to OGS, or
 - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, the Bidder/Contractor must request that the State Insurance Fund send this form to OGS;
 - C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office; or
 - D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Bidder/Contractor's Group Self-Insurance Administrator.
- 2. Proof of Compliance with Disability Benefits Coverage Requirements:** In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a Bidder/Contractor shall:
- A) Be legally exempt from obtaining disability benefits coverage; or
 - B) Obtain such coverage from an insurance carrier; or
 - C) Be a Board-approved self-insured employer.

A Bidder seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS at the time of bid submission and thereafter, within three (3) days of request:

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

Proof of coverage or an exemption shall be submitted to The New York State Office of General Services, New York State Procurement, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

7.20 Termination Closeout Plan

Within thirty (30) calendar days of receipt of a notice of termination as set forth in the Contract, or at the end of the contract term, the Contractor shall provide for approval by the

State a detailed written plan for transition. The closeout plan shall outline, at a minimum, the tasks, milestones and deliverables associated with the smooth transition of the Project to a successor Contractor or to identified persons within the State. The closeout plan shall include all other information mutually agreed upon by the Parties to the Contract. Consideration for the closeout plan shall be considered paid as part of the payments for the Deliverables in the Contract. No further compensation shall be due for the completion of the closeout plan.

7.21 Transition

The State may require the Contractor to provide uninterrupted Services after Contract termination/expiration as State deems reasonable and necessary and/or as necessary for State to comply with all legal requirements for establishing a new contract to continue the provision of Services (Transition Period). Transition Services, as defined below, shall be governed as follows:

A Transition Period

Unless otherwise agreed to by the Parties, the Transition Period shall not exceed one hundred eighty (180) days beyond the termination/expiration of the Contract.

B No Interruption in Service

At all times during the Transition Period and unless directed otherwise in writing by State, the Contractor shall continue all contractual obligations set forth in the Contract until such time as the State (i) has approved the Contractor's proposed Transition Plan, and (ii) an orderly transition to the State, a third party, or the successor contractor has been completed pursuant to the approved Transition Plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

C Transition Plan

Within fifteen (15) days of receipt of a notice of termination as set forth in Section 7.12, above, or three (3) months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall provide for approval by the State a detailed written plan for Transition (Transition Plan) which outlines, at a minimum, the tasks, milestones and deliverables associated with the smooth transition of Services to the State, a third party or the successor contractor. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by State.

D Contractor Transition Services

"Transition Services" shall be deemed to include Contractor's responsibility for all tasks and services outlined in the Contract, and for transferring in a planned manner specified in the Transition Plan all tasks and services to State, a third party or the successor contractor. It is expressly agreed between the Parties that the level of service during the Transition Period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where, during the Transition Period, tasks or services are transitioned to or assumed by State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of State, a third party or the

successor contractor or for service degradation resulting from the negligent acts or negligent omissions of State, a third party or the successor contractor.

E Compensation for Transition Services

Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Contract.

F State Responsibilities for Transition

State shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed. Weekly project review meetings shall be held with representatives of the Contractor, State, and the third party or the successor contractor.

7.22 Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises

The New York State Office of General Services (OGS), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation 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" ("the 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 this 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 the Authorized User, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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 NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)

For purposes of this procurement, OGS hereby establishes a goal of 10% for Minority-owned Business Enterprises (MBE) participation and TBD% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total Contract MWBE goal of 10%. The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/frontend/diversityusers.asp>.

Pursuant to 5 NYCRR § 142.8, a Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract and ensure that the MWBEs utilized under the Contract perform commercially useful functions. Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation.

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies

used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

- (1) the amount of work subcontracted;
- (2) industry practices;
- (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
- (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
- (5) any other relevant factors.

In accordance with 5 NYCRR §142.13, Bidder/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OGS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, Bidder/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

A. A Bidder is required to submit a Utilization Plan on Form MWBE 100 with their bid or proposal. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State Contract, a description of the Commercially Useful Function the Contractor intends the MWBE to perform to meet the goals on the State Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE and performance dates of each component of a State Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that the utilization of MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of the Contract; and, that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

B. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.

C. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy

in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. OGS may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If OGS determines that the Bidder has failed to document good faith efforts.

A Bidder who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver on Form BDC 333, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses B-D above, will apply.

Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

E. Monthly MWBE Contractor Compliance Report

Contractors are required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (NYSCS) to report subcontractor and supplier payments made by Contractor to MWBEs performing commercially useful functions under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State. If a Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS. More information about the NYSCS will be provided if Bidder is awarded a Contract.

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>.

7.23 Administrative and Reporting Requirements

The Contractor shall provide the following reports to OGS at the e-mail address listed on the Notice of Contract Award. Failure to submit reports on a timely basis may result in contract cancellation and designation of Contractor as non-responsible. OGS and the Contractor agree that OGS reserves the right to amend the data elements collected in these reports in its sole discretion. Such amendments shall not be substantive in nature and shall reflect information relevant to monitoring the expenditures under the Contract.

- A. Report of Contract Purchases:** Contractor shall furnish quarterly reports containing total sales for both state agency and authorized non-state agency contract purchases no later than fifteen (15) days after the close of each calendar quarter.

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

The required reporting elements may be found in Attachment 25. Reports will consist of an itemized report of all orders shipped and invoiced, shall be forwarded electronically in Excel (.xls or .xlsx) Format to the Contract Administrator containing the information requested within the attachment workbook.

Should within the term of the Contract appropriate means be integrated into the NYS Statewide Financial System (SFS) Portal that allow for direct input of the required reporting information, submission of the Report of Contract Purchases will migrate to that venue and Contractors will follow the reporting format established within the SFS Vendor Portal. Announcement of any such new capability and reporting requirement will be made via a purchasing memorandum which will be forwarded to Contractor.

- B. M/WBE Contractor Compliance & Payment Report:** As specified in Section 7.22 of this Solicitation, the Contractor shall submit quarterly comprehensive reports to OGS demonstrating the total Executive Agency purchases made through M/WBE suppliers (see Appendix C – Report of Contract Purchases). Contractor shall also complete and submit tab “M/WBE 102” Commodity and Service Contracts Monthly Payment report.
- C. Authorized User Sales Reports:** Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a quarterly basis, a report listing the following: name of Products purchased, quantity purchased, unit price and total dollar volume of purchases.
- D. Updated Certification of Required Insurances:** As insurance coverage is traditionally of a term nature, it is the Contractor’s responsibility to maintain not just the appropriate insurance coverages, but also their filed certifications with NYSPRO. The Contractor shall furnish to the State up to date certifications of coverages for all insurance requirements per Attachment 20 - Insurance Requirements.

7.24 New York State Statewide Financial System

New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs, to integrate Contractor-hosted punch-out catalogs, and/or to submit and process invoices electronically. OGS reserves the right to integrate any or all of these future catalog functions with a Contractor during the contract period, and by submittal of a bid, a Bidder agrees to coordinate with SFS, OGS and/or a third party host, for integration, if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS, OGS and/or a third party host during integration. For more information on SFS, its use, and its capabilities please visit the SFS website here: <http://www.sfs.ny.gov/>.

7.25 New York State Vendor File Registration

Prior to being awarded a Contract, the Contractor 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 Contractor is already registered in the Vendor File, the Contractor must enter its ten-digit Vendor ID on this Contract.

If the Contractor is not currently registered in the Vendor File, it 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. 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 companies 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/.

7.26 New York State Vendor Responsibility

OGS conducts a review of prospective Contractors ("Bidder") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is

designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

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

Please note that a Vendor ID is required to enroll in the VendRep System. Please see §1.12 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>. Bidder opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

The Bidder agrees that if it is awarded a Contract the following shall apply: the Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the

Commissioner of OGS or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or his or her designee to be non-responsible. In such event, the Commissioner of OGS or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

7.27 Tax Law Section 5-A

§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.

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 the NYS Department of Taxation and Finance (DTF). Please note that the NYS Department of Taxation and Finance should receive the completed Form ST-220-TD, not OGS. OGS should only receive the Form ST-220-CA. 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. Each Bidder shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at 518-485-2889 for any and all questions relating to §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>.

7.28 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS NYSPRO's Customer Services at 518-474-6717.

7.29 Accessibility of Web-Based Information and Applications

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by the New York State Office of Information Technology Services (ITS) and the results of such testing must be satisfactory to ITS before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

8 IT Project Consulting Terms and Conditions

The terms and conditions set forth in this section are expressly incorporated in, and applicable to, the Contract resulting from this solicitation. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

8.1 Lot Determination

An Authorized User with defined project needs may request quotes from the awarded Contractors. The estimated value of the project determines which lot shall be used. The request for quote (RFQ) must be sent to all contractors in the lot. The RFQ must include the Statement of Work Document template attached herein.

8.2 Statement of Work

Authorized Users may add terms and conditions to the Scope of Work and resultant Tier 2 contract. Authorized Users may not delete, edit, or remove any of the Terms or Conditions found in the resultant OGS contract.

The creation of multi-agency service agreements (MASA) or short-list “body-shop” contracts is prohibited and shall not be executed against this contract.

The Due Date for any Tier 2 RFQ/SOW may be no longer than six (6) months after the the issuance of the Tier 2 RFQ/SOW by an Authorized User.

Scope of Work evaluation weights will be assigned by Authorized User in the Tier 2 request. However, the evaluation weights shall not exceed 70% for the Technical Proposal and 30% for the Financial Proposal.

8.3 Contract Survival

The starting date for each Tier 2 Authorized User’s project will vary according to the date of Tier 2 RFQ award. Tier 2 contract awards may survive to project completion, are able to extend and survive beyond any expiration date of the Tier 1 master contract and are governed by the terms of that contract, notwithstanding its expiration and the total contract value as determined by the lot award.

No additional funding or time may be added to the Tier 2 contract after the Tier 1 OGS master contract has expired.

8.4 Not to Exceed Hourly Rate

OGS encourages Authorized Users to negotiate for better pricing as the total hourly rate established the Tier 1 master contract is a “Not to Exceed” total hourly rate.

Hourly rates are not to exceed \$250.00 for the life of the Tier 1 master contract and the resultant Tier 2 contract.

8.5 CPI Adjustments

Annual cost adjustments based on hourly rates are subject to an increase equal to the percentage increase, not to exceed 2%, in the Consumer Price Index (CPI) for all urban consumers (CPI-U) as published 90 days prior to the anniversary date for the preceding 24 month period by the U.S. Department of Labor, Bureau of Labor Statistics, Washington D.C. 20212.

In the event the CPI reflects a negative adjustment, the hourly rates for the preceding twenty-four month period will remain flat. 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."

At no time may hourly rates exceed \$250.00.

8.6 Administrative Fee

A Contractor is required to pay an Administrative Fee to the State in the amount of 0.25% for all sales under this Contract.

Payment No.	Billing Period for Each Calendar Year	Administrative Fee Due Date
1 st Payment	January 1 – March 31	May 1
2 nd Payment	April 1 – June 30	August 1
3 rd Payment	July 1- September 30	November 1
4 th Payment	October 1 - December 31	February 1 (following calendar year)

Failure to remit payment in accordance with the above listed schedule shall affect the Contractor's yearly performance score. Repeated failure to remit the Administrative Fee may result in OGS terminating the Contract for cause. OGS shall communicate details of remittance payments upon award of Contracts, including form of acceptable payment and to what New York State Entity payments shall be remitted.

The State shall have the right to verify fee payments and to take any action(s) necessary to enforce its rights under the Contract and the requirements of this initiative, including but not limited to the right to stop payments until such fees are received, review Contractor's financial records pertaining to sales under their Contract and/or this initiative or suspend further sales under the Contract.

8.7 Ownership of Work Product

Contractor agrees that its Consultants are engaged to perform services and that the Authorized User shall have full and complete ownership of all deliverables prepared by such Consultant. At the end of the Tier 2 engagement, Contractor agrees to provide all

deliverables and materials to the Authorized User. Any Open Source Software/Customized product becomes the property of the State.

8.8 Contractor Responsibilities

8.8.1 Designated Personnel

The Contractor shall provide a designated Account Manager for the Tier 1 contract. The Account Manager is responsible for the overall relationship with the State during the course of the contract and shall act as the central point of contact.

The Contractor shall provide a designated Bid Contact for the Tier 1 contract. The bid contact will become the single point of contact between the bidder and the state, and will be responsible for all correspondence related to the Tier 1 process.

The Contractor shall provide a designated Billing Contact, who may not be the same person as the bid contract or the account manager. The billing contact will become the single point of contact between the Tier 2 Awardee and the state for matters related to invoices, billing and payment in the Tier 2 process.

Bidder must develop and submit a project organization chart with each proposal. The project organization chart should identify all the proposed key personnel of each team component and how the team will be managed. The Project organization chart must include both Contractor and state staff roles

Prime vendors must directly perform at least 50% of all work under the resultant Tier 2 contract. Subcontractors must be disclosed by the Prime Contractor in any proposal response.

8.8.2 Additional Requirements from Authorized Users

An Authorized User may have distinct requirements that must be met by all individuals employed by or working at the Authorized User. The Contractor's Consultants will be expected to comply with these requirements as a condition of the placement.

1. An Authorized User may at its discretion request additional background checks to be conducted, at the expense of the Authorized User, including, but not limited to, finger-printing and the signing of a confidentiality and/or a non-disclosure agreement.
2. An Authorized User may also conduct its own background checks at the expense of the Authorized User.
3. An Authorized User may require Candidates to provide photo identification such as a NYS Driver's License, Non-Drivers Identification Card, Passport, etc. in order to receive a State Identification card used for entrance into the Authorized User's building and/or facilities.
4. An Authorized User may require its Consultants to attend training, both for professional development and as required by State law or in accordance with the policy of the Authorized User. If required by an Authorized User, attendance at

- training sessions, during the course of a placement, will be mandatory. For trainings in which attendance will incur a cost on the attendee, the Authorized User shall pay for the Consultant's attendance.
5. Authorized User-mandated training is intended to augment a Consultant's skills in order to better perform on a current engagement. It is not intended to provide Consultants with the skills originally specified by the Authorized User in the Requisition Form.
 6. An Authorized User may specify the manner and method by which the Consultant shall participate in knowledge transfer at the time of placement or at any time during the Consultant engagement.

8.9 Tier 2 Engagement Requirements

1. The Authorized User is responsible for the provision of reasonable office space, utilities, janitorial services, security, work-related telephone service and furniture (desks, chairs, work tables) necessary for the Contractor's performance of services under this Contract. The Authorized User will also provide forms, equipment, including necessary computer hardware and software, and supplies necessary for the consultant to complete the tasks associated with the project.
2. The Authorized User shall provide all workplace rules to the Contractor. This includes, but is not limited to, the following: Time and attendance policy, time card submission, building access procedures, request for leave, computer/phone usage guidelines, and other agency policies (such as Drug-free Workplace Policy Statement, Workplace Violence Policy, and smoking policy).
3. Any contractor that an Authorized User deems unfit to perform after a project start date shall be recorded by writing the Contractor and OGS, this may result in a request for replacement or termination under this engagement.
4. The Authorized User shall have prior approval of any and all Consultant absences, such as vacation days not previously identified during the requisition process.
5. The Authorized User shall indicate the manner in which it requests knowledge transfer to occur from the Project team to the Authorized User's staff.
6. The Authorized User shall indicate any training that the Project Team members must attend.
7. The Authorized User shall indicate a change in working hours where appropriate, not previously specified during the requisition process.
8. IT Project Consultants and subcontractors must work cooperatively with AU staff and other vendors working at AU sites.

8.10 Deliverables

Contract payments must be based on project deliverables.

8.11 Mandatory Retainage

There will be a mandatory 10% retainage accessed on every project. This retainage will be deducted during the billing process and may be released following completion and acceptance of all project deliverables. A Contractor must show a running balance of retainage on invoices. Late payment fees and interest may not be applied to retainage.

All projects will be required to include a Change Order Budget of 5%. Statement of Work documents will define specific criteria for use of the budget.

8.12 Reasonableness of Price

An Authorized User will be required to demonstrate reasonableness of cost for all projects. "Reasonableness of Cost" means that for a specific project, the vendor is offering its most favored pricing to the NYS Authorized User when compared to the pricing offered other best customers for similar projects (e.g. dollar value, length of project, scope, etc.).

Reasonableness of Cost may be demonstrated by referencing similarly-situated projects for other customers (similar dollar value, length of project, scope, etc.) by providing copies of invoices, agreements, etc.; Or by indicating the number of hours estimated for the project and how this estimate is reasonable (e.g. based on similar projects); and Vendors must certify they are providing similar pricing for similar skill sets to all contract users.

Authorized Users must follow the internal procurement guidelines of their organization and obtain all required control agency approvals when purchasing off of NYS Centralized Contracts.

Authorized User shall document reasonableness of cost prior to Tier 2 contract execution.

8.13 Mandatory Close out Procedures

Contractors must comply with mandatory close out procedures for expiration of the Tier 1 OGS master contract. Contractors shall complete and submit both an inventory of equipment and property used and a Final statement and report; as well as returning all records relating to the contract. Contractors must also comply with and respond to all reasonable requests from or inquiries by the Agency for assistance or information in connection with the contract.

Authorized Users will identify specific close out requirements for any resultant Tier 2 Contract.

8.14 Travel, Meals and Lodging

Contractor assumes all liability and cost for all transportation and lodging required to locate, or relocate, resources to New York State for the purposes of providing services under this contract. Consultants will not be separately reimbursed for expenses incurred for travel to and from a designated work location (commuting expenses).

During the course of a Project the Consultant may be required to perform services at a location other than the assignment's designated work location (e.g., the designated work location is the Authorized User's main offices in the Corning Tower on the Empire State Plaza, however, the Consultant is required to attend a meeting in New York City). In such cases, with the prior written approval of the Authorized User, the Contractor shall be

reimbursed for mileage, lodging and meals to the extent authorized by the NYS Office of the State Comptroller as further set forth at: <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of a Tier 2 contract. Parking fees and/or parking tickets may not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Consultant for travel. Therefore, the Contractor will be responsible for ensuring that the Consultant has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor shall provide evidence of three (3) written or telephone price quotes, and the paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return. The Contractor is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services.

All services provided under the resultant Tier 2 contract must be performed within the United States.

8.15 Contract Assignment

Resultant Tier 2 Contracts between NYS Executive Agencies and Contractors may be assigned to the NYS Office of Information Technology Services (ITS) by an Authorized User.

8.16 Payment Schedule

Contractors may submit no more than one invoice per month. Monthly invoices must include subcontractor and/or prime contractor timesheets. Invoices submitted to NYS Agencies must include backup documentation for any costs incurred and claimed for reimbursement.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE
CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, 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). However, such pre-approval shall not be required for any contract established as a centralized

contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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 Bidder, 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

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
633 Third Avenue
New York, NY 10017
212-803-2414
Email: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidder/Offerer pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regis/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX B
GENERAL SPECIFICATIONS

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GENERAL

1. ETHICS COMPLIANCE All Bidder/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.

2. DEFINITIONS Terms used herein shall have the following meanings:

a. 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.

b. AUTHORIZED USER(S) Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

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

d. 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:

- 1. 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).
- 2. 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.
- 3. 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.

4. 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.

5. 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).

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

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

g. 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.

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

i. 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(s).

j. 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.

k. 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.

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

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

n. 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).

o. LICENSEE(S) 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(s)" 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.

p. 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.

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

r. 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.

s. OGS The New York State Office of General Services.

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

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

v. 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).

w. 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 award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

x. 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).

y. 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.

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

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

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

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

dd. 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.

ee. STATE State of New York.

ff. 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.

gg. 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.

hh. 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

3. 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.

4. 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.

5. 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 Group Number, 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.

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).

6. LATE BIDS REJECTED 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.

7. 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.

8. 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, deletion, counter-offer, deviation, or modification 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).

9. 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. Bidder/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. The State's receipt/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 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 without the written consent of the Commissioner or Authorized User. 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 Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

10. 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. 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. Bidder 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. Bidder 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.

b. 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.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS 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. Day's Labor 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.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. 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. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.

ii. **Overtime** Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

11. 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. 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.

12. **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, cost proposal revision, or for any work performed prior to Contract execution.

13. **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.

14. 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.

15. **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.

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

17. 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.

g. Specific price decreases:

(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after 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, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after 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 having any obligation to comply on a global basis with, the terms of this clause.

h. Cost Proposal Revisions A Contractor may be solicited prior to contract award to propose the best possible offer for the Product or service being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

18. 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.

19. 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.

20. 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 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.

21. 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 the 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 Samples 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 fail 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

22. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, 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 Bid.

23. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. 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. If two or more Bidder 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 Bidder shall be final.

24. 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.

25. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty 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.

TERMS & CONDITIONS

26. 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.

27. PARTICIPATION IN CENTRALIZED CONTRACTS

a. Agencies All State Agencies may utilize and purchase under any 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 Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a 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)(a)(iv) of the State Finance Law.

d. Responsibility for Performance Participation in 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 the non-State Agency Authorized User's or Contractor's 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.

28. 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.

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in

the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

Estimated quantity contracts, also referred to as indefinite delivery / indefinite 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 is implied or given.

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.

31. 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 clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

32. 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 Contractor'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 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.

33. 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. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and 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 a 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.

34. 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.

35. SHIPPING/RECEIPT OF PRODUCT

a. Packaging 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.

36. 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.

37. 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.

38. 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 termination of Contract.

39. 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.

40. 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 Product or render it 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.

41. 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 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 manufacturers 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.

42. 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 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 any facility for cause any employee, Subcontractor, or agents of the Contractor.

43. 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); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. 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 for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

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.

44. SUBCONTRACTORS AND SUPPLIERS

The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

45. 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, 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.

46. 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 in State spending, declaration of emergency, contract compliance issues or other 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.

47. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty calendar 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 respectively, 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 Commissioner for convenience upon sixty calendar 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 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 his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law: 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 Section 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 his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility: The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any

manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

48. SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, 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 where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence:

- a. The Commissioner may 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
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force

Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

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 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. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

a. **Invoicing.** 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 a commercially reasonable manner as requested by the Commissioner. 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 HelpDesk@sfs.ny.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. 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.

50. DEFAULT – AUTHORIZED USER

a. **Breach by Authorized User.** 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 thirty calendar days of such delivery and acceptance, the Contractor may, upon five business 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 ten business 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. **Insufficient basis.** If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

51. PROMPT PAYMENTS

a. **State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30)

calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law 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.

52. 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, uncured 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 service or Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, 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, be credited 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, including reasonable attorney's fees awarded by a court of competent jurisdiction, 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 obtain substitute Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

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, damages, etc., that arise from the administration of the Contract.

53. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that 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.

54. 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 representative.

55. 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.

56. 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.

57. 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 or performance of Product.

58. 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.

59. WARRANTIES

a. Product Performance 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.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

Unless recycled or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable 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. Contractor further warrants and represents that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty for Deliverables 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).

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, 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(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any Product or parts thereof 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 set forth under paragraph (a) above; or b) if a separate warranty for that Product or parts thereof is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

e. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

f. Date/Time Warranty Contractor warrants that Product 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 as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

g. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

h. Miscellaneous The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

60. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable 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 terminate 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.

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold 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, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of 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, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, 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 New York State 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 and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS

The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

If usage of a Product 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 such

Product or parts thereof, as applicable, with non-infringing 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 that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

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 Product under the Contract infringes any patent, copyright, trademark, trade secret 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 and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their 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.

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, 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 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) five hundred thousand dollars (\$500,000), 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.

64. DISPUTES

a. Informal Dispute Resolution Process

1. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or

inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

2. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

3. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.

4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

5. The Contractor shall extend the dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

b. Formal Disputes

1. Definitions

a. Filed means the complete receipt of any document by OGS before its close of business.

b. Dispute means a written objection by Contractor to any of the following:

- i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
- ii. The cancellation of the solicitation or other request by OGS.
- iii. An award or proposed award of the Contract by OGS.
- iv. A termination or cancellation of an award of the Contract by OGS.
- v. Changes in the Scope of the Centralized Contract by the Commissioner.
- vi. Determination of "materiality" in an instance of nonperformance or contractual breach.
- vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Disputes

a. A formal dispute by Contractor must be filed in writing to OGS by mail, email or facsimile.

3. The dispute must include:

- a. Name, address, e-mail address, fax and telephone numbers of the filer.
- b. Solicitation or Contract number.
- c. Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.
- d. Copies of relevant documents.
- e. Request for a ruling by the agency.
- f. Statement as to the form of relief requested.
- g. All information establishing that the filer is an interested party for the purpose of filing a dispute.
- h. All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of OGS New York State Procurement (NYSPRO) at the following address:

**New York State Office of General Services
 Director, NYSPRO
 38th Floor, Corning Tower
 Empire State Plaza
 Albany, NY 12242
 Facsimile: (518) 486-6099**

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

4. Agency Response

- 1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a formal dispute decision.
- 2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.
- 3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

4. OGS reserves the right to consider or reject the merits of any dispute.

5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

5. Appeals

a. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

**Chief Procurement Officer
 New York State Office of General Services
 NYSPRO
 38th Floor, Corning Tower
 Empire State Plaza
 Albany, NY 12242
 Facsimile: (518) 486-9166**

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

6. Legal Appeals Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

65. 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) 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.

66. 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. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. 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. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period 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 costs incurred in storage or effecting removal or disposition after the ten calendar day period.

67. 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.

68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this clause, "Products." Deliverables 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 clause, "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 clause, "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 clause.

(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 clause.

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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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 clause.

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.

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State of New York Executive Department Office of General Services New York State Procurement (NYSPro) Corning Tower - 38th Floor Empire State Plaza Albany, NY 12242 SOLICITATION BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY E-Mail or Facsimile Proposal Submissions are <u>NOT</u> Acceptable)	
PROPOSAL OPENING DATE: October 17, 2014 TIME: 11:00 AM ET	TITLE: 73012 IT PROJECT CONSULTING
Solicitation NUMBER: 22772	SPECIFICATION REFERENCE: As Incorporated in the Solicitation Document
<p>The Proposal 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 Solicitation of Proposal, Appendix A (Standard Clauses For New York State Contracts), Base Terms and Conditions, Lot-Specific Terms and Conditions, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at: Procurement Lobbying: http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html</p>	

Bidder's Federal Tax Identification Number: (Do Not Use Social Security Number)		NYS Vendor Identification Number: (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 applicable, place an "x" in the appropriate box(es) (<i>check all that apply</i>):	<input type="checkbox"/> NYS Small Business ___ # Employees	<input type="checkbox"/> NYS Minority Owned ___ # Employees	<input type="checkbox"/> NYS Women Owned Business ___ # Employees
	<input type="checkbox"/> Manufactured Within NYS	<input type="checkbox"/> Solely Manufactured Outside NYS	<input type="checkbox"/> Partially Manufactured Outside NYS ___ %
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____			
Bidder's Signature:		Printed or Typed Name:	
		Date:	
Phone: () - ext ()	Toll Free Phone : () - ext ()		
Fax: () - ext ()	Toll Free Fax : () - ext ()		
E-mail Address:	Company Web Site:		
FOR NEW YORK STATE PROCUREMENT (NYSPro) USE ONLY			
P.R. #	LIT <input type="checkbox"/>	MEMO <input type="checkbox"/>	MISSING PAGES
	LET <input type="checkbox"/>	OTHER <input type="checkbox"/>	

RETURN THIS PAGE AS PART OF PROPOSAL OR NO-PROPOSAL

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }
} SS.:
COUNTY OF }

On the _____ day of _____ in the year 20 __, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides in _____, and further that:

[Check One]

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

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

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

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

Notary Public

DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.

Complete all fields in yellow.

Affirmative Statement	Response
1. Bidder affirms that the proposal was signed and executed by an individual with the capacity and legal authority to bind the Bidder in its offer to the State.	
2. Bidder affirms that it accepts all of the terms and conditions set forth in this solicitation, including all amendments, appendices and attachments, and must agree to enter a contractual agreement containing, at a minimum, the terms and conditions identified in this solicitation.	
3. Bidder affirms that its Administrative, Technical and Financial Proposals remain open and valid for at least 270 days from the due date of this solicitation, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder.	
4. Bidder affirms that its Administrative, Technical and Financial Proposals shall continue to remain an effective offer, firm and irrevocable, subsequent to such 270 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.	
5. Bidder affirms that in its fulfillment of obligations as proposed in its response to the solicitation, it does not violate any existing contracts or agreements between the Bidder and the State.	
6. Bidder affirms that, in its fulfillment of obligations as proposed in its response to the solicitation, it does not or will not create any conflict of interest, or perception thereof, with any current role or responsibility the Bidder has with regard to any existing contracts or agreements between the Bidder and the State.	
7. Bidder affirms that, in its fulfillment of obligations as proposed in the response, it does not and will not compromise the Bidder's ability to carry out its obligations under any existing contracts between the Bidder and the State.	
8. Bidder affirms that during the negotiation and execution of any contract resulting from this solicitation, the Bidder will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole, including but not limited to, any action or decision to divert resources from one State project to another.	
9. Bidder affirms that in fulfilling obligations under each of its State contracts, including any contract which results from this solicitation, the Bidder will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including but not limited to, any action or decision to divert resources from one State project to another.	
10. Bidder affirms that the Bidder has provided all necessary proof of insurance with their proposal (see Section 7.19– Insurance for detailed insurance requirements).	
11. Bidder affirms that if awarded a contract, the Bidder must provide proof of current insurance, certifications, licensing, etc. throughout the contract term if requested by an Authorized User or OGS New York State Procurement (NYSPRO).	
12. Bidder affirms that it shall be fully responsible to Authorized Users for the acts and omissions of, and the performance of Project Services by, all subcontractors and/or persons either directly or indirectly employed by such subcontractors. This statement must acknowledge that the Bidder shall not in any way be relieved of any programmatic or financial responsibility under the Contract by the terms of its agreement with any subcontractor.	
13. Bidder affirms that if selected, the successful Bidder is prepared to commence performance of services described herein as of January 2, 2015.	
14. Bidder affirms that it will comply with Federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 508 of the Federal Clean Air Act, and Section 306 of the Federal Clean Water Act.	
15. Bidder affirms that neither it nor its principals are debarred or suspended from Federal financial assistance programs and activities.	
16. Bidder affirms that it will comply with the provisions of Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.).	
17. Bidder affirms that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress.	

NYS Required Certifications

**NONDISCRIMINATION IN EMPLOYEMENT IN NORTHERN IRELAND MACBRIDE FAIR
EMPLOYMENT PRINCIPLES**

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

1. have business operations in Northern Ireland - Select One From Drop Down --->

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.

NON-COLLUSIVE BIDDING CERTIFICATION

In accordance with Section 139-d of the State Finance Law, 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:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

IRAN DIVESTMENT ACT

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 it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should OGS receive information that a person (as defined in Section 165-a in the State Finance Law) is in violation of the above-referenced certifications, OGS will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to an entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

DIESEL EMISSION REDUCTION ACT

Pursuant to §19 0323 of the N.Y. Environmental Conservation Law ("the Law") it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19 0323, and 6 NYCRR Parts 248 and 249.

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 Attachment 1 and that all information provided is complete, true and accurate.

Legal Business Name of Company Bidding:

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

Bidders Signature:

Title:

Printed or Typed Name:

Date:

DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.
A Bidder must address the following, if applicable, as part of the Administrative Proposal. Complete all fields in yellow.

Additional Administrative Statements	Response
<p>1. Freedom of Information Law Redaction Request: If there is specific information in a Bidder's proposal that a Bidder claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Bidder should outline any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law). Please indicate in the Response section if this statement applies.</p>	
<p>If "Yes" was entered for Question #1, please provide a response here:</p>	
<p>2. Disclosure of Pending or Prior Lawsuits: A Bidder should provide a list of any legal proceedings or investigations concerning the Firm over the last five (5) years, including the nature and outcome of any lawsuit if litigation is complete. Bidder should specifically note any prior or pending lawsuit(s) or litigation between the Bidder and any New York State department, agency, board or commission. The nature of the lawsuit and its outcome, if litigation is complete, should be described briefly. Please indicate in the Response section if this statement applies.</p>	
<p>If "Yes" was entered for Question #2, please provide a response here:</p>	

DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.
Section 7.25 of the RFP provides for proof of insurance that must be provided with a Bidder's Response to this RFP. Please provide the start date of the coverage, end date of coverage, and coverage amount for the corresponding insurance requirement. In addition to completing this table, Bidders are instructed to separately attached the required insurance policies with the Attachment 1 submission.

<u>Insurance Requirement</u>	<u>Start Date of Coverage</u>	<u>End Date of Coverage</u>	<u>Coverage Amount</u>	<u>Separately Attached?</u>
General Liability				
Workers Compensation			N/A	
Disability Coverage			N/A	
Non-Owned Auto				
Professional Liability				
Crime				
Errors and Omissions				

Bidders are instructed that only an official authorized to contractually bind the Bidder to the affirmative statements found in Attachment 2 shall complete this form.

Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Bidder's Signature (No Electronic Signautre):	Printed or Typed Name:
Title:	Date:

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }
 } SS.:
 COUNTY OF }

On the _____ day of _____ in the year 20 __, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides in _____, and further that:

[Check One]

- If an individual): __he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation): __he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, __he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, __he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership): __he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company): __he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

 Notary Public

DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.

Please fill in the required supplier information below. Complete all fields in yellow.
A Bidder is not required to bid in all three (3) lots.

Lot 1	Response
Bidder affirms it has submitted a proposal for Lot 1. If the Bidder provides a response of "No", it is not required to provide a response to the following five (5) statements.	
Affirmative Statement	Response
1. Bidder affirms that no total Statement of Work and/or Request for Quote, including extensions and amendments, with an Authorized User will exceed \$200,000 under Lot 1.	
2. Bidder affirms that it shall not bill more than \$250.00/hr for any job title to any Authorized User for work performed under Lot 1.	
3. Bidder affirms that it shall not apply a price escalator and/or cost adjustment greater than 2% between any given contract year for work performed for an Authorized User under Lot 1.	
4. Bidder affirms that any price escalator or cost adjustment applied shall not result in a job title billed to any Authorized User in excess of \$250.00/hr for work performed under Lot 1.	
5. Bidder affirms that no RFQ/SOW with an Authorized User shall exceed three (3) years in duration, including amendments and/or extensions.	
6. Bidder affirms that it shall provide Most Favored Agency Pricing to every Authorized User for work performed under Lot 1. Most Favored Agency Pricing is defined as providing similar pricing for similar job title skill sets and project scopes to every Authorized Contract User for work performed under Lot 1.	

Lot 2	Response
Bidder affirms it has submitted a proposal for Lot 2. If the Bidder provides a response of "No", it is not required to provide a response to the following five (5) statements.	
Affirmative Statement	Response
1. Bidder affirms that no total Statement of Work and/or Request for Quote, including extensions and amendments, with an Authorized User will be less than \$200,000 but shall not exceed \$5,000,000 under Lot 2.	
2. Bidder affirms that it shall not bill more than \$250.00/hr for any job title to any Authorized User for work performed under Lot 2.	
3. Bidder affirms that it shall not apply a price escalator, cost of living adjustment, between any given contract year for work performed for an Authorized User under Lot 2.	
4. Bidder affirms that any price escalator or cost adjustment applied shall not result in a job title billed to any Authorized User in excess of \$250.00/hr for work performed under Lot 2.	
5. Bidder affirms that no RFQ/SOW with an Authorized User shall exceed three (3) years in duration, including amendments and/or extensions.	
6. Bidder affirms that it shall provide Most Favored Agency Pricing to every Authorized User for work performed under Lot 1. Most Favored Agency Pricing is defined as providing similar pricing for similar job title skill sets and project scopes to every Authorized Contract User for work performed under Lot 2.	

Lot 3	Response
Bidder affirms it has submitted a proposal for Lot 3. If the Bidder provides a response of "No", it is not required to provide a response to the following five (5) statements.	
Affirmative Statement	Response
1. Bidder affirms that no total Statement of Work and/or Request for Quote, including extensions and amendments, with an Authorized User will be less than \$5,000,001 but shall not exceed \$25,000,000 under Lot 3.	
2. Bidder affirms that it shall not bill more than \$250.00/hr for any job title to any Authorized User for work performed under Lot 3.	
3. Bidder affirms that it shall not apply a price escalator and/or cost adjustment greater than 2% between any given contract year for work performed for an Authorized User under Lot 3.	
4. Bidder affirms that any price escalator or cost adjustment applied shall not result in a job title billed to any Authorized User in excess of \$250.00/hr for work performed under Lot 3.	
5. Bidder affirms that no RFQ/SOW with an Authorized User shall exceed three (3) years in duration, including amendments and/or extensions.	
6. Bidder affirms that it shall provide Most Favored Agency Pricing to every Authorized User for work performed under Lot 1. Most Favored Agency Pricing is defined as providing similar pricing for similar job title skill sets and project scopes to every Authorized Contract Users for work performed under Lot 3.	

Bidder's Federal Tax Identification Number: (Do Not Use Social Security Number)		NYS Vendor Identification Number: (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 applicable, place an "x" in the appropriate box(es) (<i>check all that apply</i>):	<input type="checkbox"/> NYS Small Business ___ # Employees	<input type="checkbox"/> NYS Minority Owned ___ # Employees	<input type="checkbox"/> NYS Women Owned Business ___ # Employees
	<input type="checkbox"/> Manufactured Within NYS	<input type="checkbox"/> Solely Manufactured Outside NYS	<input type="checkbox"/> Partially Manufactured Outside NYS ___ %
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____.			
Bidder's Signature:		Printed or Typed Name:	
		Date:	
Phone: () - ext () Fax: () - ext ()		Toll Free Phone : () - ext () Toll Free Fax : () - ext ()	
E-mail Address:		Company Web Site:	
FOR NEW YORK STATE PROCUREMENT (NYSPro) USE ONLY			
P.R. # LIT <input type="checkbox"/> MEMO <input type="checkbox"/> MISSING PAGES LET <input type="checkbox"/> OTHER <input type="checkbox"/>			
INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT			
STATE OF } } SS.: COUNTY OF }			

On the _____ day of _____ in the year 20 __, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides in _____, and further that:

[Check One]

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

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

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

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

Notary Public
Registration No.

Attention Bidders: Please complete, sign and return this signature block with your Technical Proposal.

Mandatory Requirements from Solicitation**Lot 1 – For projects not-to-exceed \$200,000 total**

1. At least three (3) years' continuous operation as a business.
2. At least three (3) years' continuous experience delivering consultant services for IT projects
3. Successfully completed at least three (3) IT projects as a Prime Vendor
 - a. After January 1, 2009 with Governmental Entities and
 - b. Each with a value greater than \$50,000 per project
 - c. Projects must have begun on or after 1/01/2009
 - d. Project value must not include hardware and/or software sales
4. Awarded as a Prime Vendor since January 1, 2009, Total Cumulative Contract Value greater than or equal to \$500,000

Lot 2 – For projects greater than \$200,000 but not-to-exceed \$5,000,000 total

1. At least six (6) years' continuous operation as a business.
2. At least six (6) years' continuous experience delivering consultant services for IT projects
3. Successfully completed at least six (6) IT projects as a Prime Vendor
 - a. After January 1, 2009 with Governmental Entities
 - b. Each with a value greater than or equal to \$1,000,000 per Project
 - c. Projects must have begun on or after 1/01/2009
 - d. Project value must not include hardware and/or software sales
4. Awarded as a Prime Vendor since January 1, 2009, Total Cumulative Contract Value greater than or equal to \$10 million

Lot 3 – For projects greater than \$5,000,000 but not-to-exceed \$25,000,000 total

1. 10 years' continuous operation as a business.
2. 10 years' experience delivering consultant services for IT projects
3. Completed 10 IT projects as a Prime Vendor
 - a. After 01/01/2009 with Governmental Entities
 - b. Each with a value greater than or equal to \$5,000,000 per Project
 - c. Projects must have begun on or after 1/01/2009
 - d. Project value must not include hardware and/or software sales
4. Awarded as a Prime Vendor since January 1, 2009, Total Cumulative Contract Value greater than or equal to \$20,000,000

Bidder shall use the format below for Technical Proposal responses. Bidder's responses shall only be contained within this document. Cells on the following pages will expand to include any narrative provided.

A Bidder shall embed contract documents within the contract file column for all lots being bid on.

Bidder Name:	
---------------------	--

<u>LOT NUMBER 1</u>	<u>Bidder Applying (Yes/No)</u>
For projects not-to-exceed \$200,000 total	

<u>Question/Topic:</u>	<u>Bidder Response:</u>
Please demonstrate how the Bidder meets the following qualification: At least three (3) years' continuous operation as a business.	
Please demonstrate how the Bidder meets the following qualification: At least three (3) years' continuous experience delivering consultant services for IT projects	
Please demonstrate how the Bidder meets the following qualification: Successfully completed at least three (3) IT projects as a Prime Vendor: a. After January 1, 2009 with Governmental Entities b. Each with a value greater than \$50,000 per project c. Projects must have begun on or after 1/01/2009 d. Project value must not include hardware and/or software sales	

Please demonstrate how the Bidder meets the following qualification: Awarded as a Prime Vendor since January 1, 2009, Total Cumulative Contract Value greater than or equal to \$500,000.

<u>Contract File* (Must Insert Copy of Contract)</u>	<u>IT Project/Contract Name</u>	<u>Project/Contract Start Date**</u>	<u>Project/Contract End Date</u>	<u>Gov't Entity Name</u>	<u>Initial Contract Value</u>

*Embed the project contract in this row only.

**Only list projects with a start date on/or after 01/01/2009

Bidder Name:	
---------------------	--

<u>LOT NUMBER</u>	<u>Bidder Applying (Yes/No)</u>
LOT 2 For projects greater than \$200,000 but not-to-exceed \$5,000,000 total	

<u>Question/Topic:</u>	<u>Bidder Response:</u>
Please demonstrate how the Bidder meets the following qualification: At least six (6) years' continuous operation as a business.	
Please demonstrate how the Bidder meets the following qualification: At least six (6) years' continuous experience delivering consultant services for IT projects	
Please demonstrate how the Bidder meets the following qualification: Successfully completed at least six(6) IT projects as a Prime Vendor: a. After January 1, 2009 with Governmental Entities b. Each with a value greater than \$1,000,000 per project c. Projects must have begun on or after 1/01/2009 d. Project value must not include hardware and/or software sales	

Please demonstrate how the Bidder meets the following qualification: Awarded as a Prime Vendor since January 1, 2009, Total Cumulative Contract Value greater than or equal to \$10,000,000.

<u>Contract File*</u>	<u>IT Project/Contract Name</u>	<u>Project/Contract Start Date**</u>	<u>Project/Contract End Date</u>	<u>Gov't Entity Name</u>	<u>Initial Contract Value</u>

*Embed the project contract in this row only.

**Only list projects with a start date on/or after 01/01/2009

Bidder Name:	
---------------------	--

LOT 3	Bidder Applying (Yes/No)
Greater than \$5,000,000 but non-to-exceed \$25,000,000 total.	

Question/Topic:	Bidder Response:
Please demonstrate how the Bidder meets the following qualification: At least ten (10) years' continuous operation as a business.	
Please demonstrate how the Bidder meets the following qualification: At least ten (10) years' continuous experience delivering consultant services for IT projects	
Please demonstrate how the Bidder meets the following qualification: Successfully completed at least ten (10) IT projects as a Prime Vendor: a. After January 1, 2009 with Governmental Entities b. Each with a value greater than \$5,000,000 per project c. Projects must have begun on or after 1/01/2009 d. Project value must not include hardware and/or software sales	

Please demonstrate how the Bidder meets the following qualification: Awarded as a Prime Vendor since January 1, 2009, Total Cumulative Contract Value greater than or equal to \$20,000,000

<u>Contract File*</u>	<u>IT Project/Contract Name</u>	<u>Project/Contract Start Date**</u>	<u>Project/Contract End Date</u>	<u>Gov't Entity Name</u>	<u>Initial Contract Value</u>

*Embed the project contract in this row only.

**Only list projects with a start date on/or after 01/01/2009

[Agency Name]

[Insert Agency Logo here]

[STATEMENT OF WORK NAME]

[DATE ISSUED:]

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1. Introduction

1.1 Purpose of This Statement of Work

Please provide a high-level overview of the procurement in this Statement of work (SOW). This section should not exceed 1-2 pages.

Use this section to explain to the Contractors why the Authorized User seeks a consultant for this deliverables-based service. This overview information may:

- Identify the project in very general terms;
- Provide useful information regarding the customer organization;
- Describe why the project is being pursued and how it relates to other past, current and future projects;
- Summarize any statutory authority or regulations affecting the overall requirement; and
- Identify any background materials attached to the SOW

1.2 Definitions

Please use this section to list any terminology, abbreviations, programs, etc. that is not included in the OGS contract. Do not amend definitions in the OGS contract.

1.3 The Future State

An Authorized User should use this section to describe the expected “End-State” after this project is completed.

1.4 Key Events and Dates

An Authorized User will complete a list of the key dates for this SOW. The chart below lists the mandatory dates that must be included in the SOW.

Note: The Authorized User reserves the right to change any of the dates stated in this SOW.

Event	Date/ Time
SOW Release	
Closing Date for Inquiries	
Proposal Submission Deadline	

Additional events that can be added include the following: Release date of answers, Key Personnel Interviews, Benchmarking, Pre-Bid Conference (Optional or Mandatory) and Contractor Presentations.

2. Administrative Information

2.1 Designated Contacts

An Authorized User must specify the Primary (and Secondary) contacts for this solicitation and provide contact information in this section. A Minority and Women Business Owned Enterprise contact may also be included, if applicable.

Sample Language: In compliance with the Procurement Lobbying Law, xxx , [Authorized User] has designated the following person as PRIMARY contact for this procurement solicitation and may be reached by email for all questions regarding this solicitation.

[Primary Contact Name]
 [Agency Name]
 [Address 1]
 [City],NY [Zip]
 Email:[]

In the event the primary designated contact is not available, the SECONDARY Designated Contact is:

[Secondary Contact Name]
 [Agency]
 [Agency Name]
 [Address 1]
 [City],NY [Zip]
 Email:[]

The Authorized User should also identify the contact(s) for any questions dealing with the Technical or Financial specifications if different than the Primary/Secondary contact.

Identify how questions will be accepted and how the answers to submitted questions will be provided.

The deadline for submission of questions will be as stated in 1.4 Key Events and Dates.

2.2 Term of Contract

An Authorized User shall specify when work shall commence under the SOW and the length of the SOW. Also include any renewals/extensions that are authorized.

Bidders and Authorized Users are reminded that no SOW may exceed three (3) years in duration.

2.3 Pre-Bid Conference

An Authorized User should enter the details for a pre-bid conference if one will be held. If held, the Authorized User must identify if it is mandatory or optional. Include details such as:

- Date, Time and Location of the conference;
- Whether participation is mandatory/optional for Bidders;
- How to register; andr
- Requirements for submission of questions in writing;

2.4 Summary of Policy and Prohibitions on Procurement Lobbying

Authorized User must should inform Bidders of statutory limitations on communications between an Agency and a Bidder in this section.

Sample Language: *[Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between [Authorized User] and an Bidder/bidder during the procurement process. An Bidder/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 [Agency]] and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this agreement. [Agency] employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder/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 Bidder/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the [Agency] website.*

2.5 Authorized User Procurement Rights

An Authorized User should include in this section the additional reserved rights, beyond those included in the OGS contract, that they wish to include in order to provide additional protections to the agency publishing this SOW.

Sample Language: *In addition to the Reserved Rights as contained in the OGS contract, the Authorized User also reserves the right to:...*

2.6 Cost and/or Technical Proposal Revisions

Sample Language: *Prior to award, the [Authorized User Name] reserves the right to request a Cost and/or Technical Proposal clarification or revision, in accordance with State Finance Law §163.9(c), from any Bidder determined by the State to be susceptible of being selected for Contract award.*

2.7 State Ethics Law Provision

Sample Language for Authorized User that is a State Agency: *By submitting a proposal in response to this SOW the person signing the proposal certifies, for and on behalf of the Bidder, that:*

- A.** *He/she is familiar with provisions applicable to post-employment restrictions affecting former State employees, available using the link below¹:*
 - 1.** *Public Officers Law § 73(8)(a)(i), (the two-year bar),*
 - 2.** *Public Officers Law § 73(8)(a)(ii), (the life-time bar).*
- B.** *Submission of this proposal does not violate either provision;*
- C.** *He/she is familiar with the Bidder's employees, and its agents,*
- D.** *He/she understands that the State intends to rely on this certification,*
- E.** *No violation shall occur by entering into a Contract or in performance of the contractual services,*
- F.** *This certification is material to the proposal.*

The Bidder shall fully disclose to [Authorized User], within the proposal and on a continuing basis, any circumstances that could affect its ability to comply with the cited laws. A Bidder shall address any questions concerning these provisions to:

NYS Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

¹ <http://public.leginfo.state.ny.us/menuf.cgi> (When the page opens, under “**Search**”, click on “**Laws of New York**”. On the next page, select “**PBO Public Officers**”. When this page opens, select “**Article 4 – (60 - 79) POWERS AND DUTIES OF PUBLIC OFFICERS**” and choose **Sections 73 (8-a) (i) and 73 (8-a) (ii).**)

Telephone #: (518) 408-3976

2.8 SOW Documents

Authorized User will provide a list of the documents that compose the SOW.

Sample Language: This Statement of Work is comprised of the following:

[List all Appendices, Exhibits and Attachments by name.]

3. Current (Existing) System/Project Description

3.1 Requesting Authorized User Background

Provide Bidders with information on the Authorized User and/or program unit responsibilities. Take care to include how the scope of work fits into these responsibilities.

3.2 Project Background

- Concisely describe specific information about the project to help a Contractor understand the project's technical and operational environment. If the Authorized User has specific expectations regarding how the project will be approached, describe these expectations as assumptions.
- Include descriptions of the current technical operating environment if it will help the Contractor provide a more precise bid.
- Address the business needs that the Contractor will satisfy and why state staff cannot perform this work.

3.3 Existing System Description

- Describe the system to be supported. Describe the background and system technology, components, interfaces, etc. that would be pertinent for the Contractor to provide adequate maintenance support.
- Clearly indicate what additional resources are supporting this system. Include what business processes it supports, identify users, system products, etc.

4. Scope of Work

4.1 Contractor Responsibilities

4.1.1 Requirements

An Authorized User will use this section to define the tasks that the Contractor must complete during contract performance. This section must describe requirements in a way that permits Contractor personnel to perform the service.

Other items to consider:

- Specify requirements clearly so that all readers can understand them.
- Reference applicable specifications and standards needed.
- Tailor specifications and other documents.

- Separate general information from direction.

4.1.1.1 Functional / Business Requirements

Functional requirements relate to what business processes shall be provided or supported under the SOW.

<u>ID #</u>	<u>Functional / Business Requirements</u>	<u>Associated Deliverable ID # from Section 5.1.2.3 below as applicable</u>
	Requirement A	
	Requirement B	
	Requirement C	
	<i>Add rows as needed</i>	

4.1.1.2 Technical Requirements

Technical requirements relate to IT system design or performance required under the SOW.

<u>ID #</u>	<u>Technical Requirements</u>	<u>Associated Deliverable ID # from Section 5.1.2.3 below as applicable</u>
	Requirement A	
	Requirement B	
	Requirement C	
	<i>Add rows as needed</i>	

4.1.1.3 Non-Functional, Non-Technical Requirements

Non-functional, non-technical requirements may include any requirements not related to IT system make-up or business processes. Examples are personnel tasks, documentation, required meetings, etc.

<u>ID #</u>	<u>Non-Functional, Non-Technical Requirements</u>	<u>Associated Deliverable ID # from Section 5.1.2.3 below as applicable</u>
	Requirement A	
	Requirement B	
	Requirement C	
	<i>Add rows as needed</i>	

- Following these comprehensive lists of requirements, the Authorized User should identify or propose sub-requirements where applicable.

4.1.2 Deliverables

- Clearly link deliverables to requirements.
- Consolidate all deliverables into the deliverable table from across the entire CONTRACT with concise, fact based acceptance criteria that make it easy to determine when the deliverable meets your quality standard.
- Link deliverables to the pricing table, so the “price to be paid” when the deliverable is approved is clear. You can link some deliverables together for payment purposes, but they all need to be delivered at about the same time, so they can be invoiced together.
- Use a Deliverable Expectation Document (DEDs) to formally approve each deliverable, so there is no ambiguity about when the deliverable is approved.

- Require that the DEDs themselves should be a contract deliverable and be developed in tangent with the Contractor.
- If there is a chance that the deliverable will need to be updated at a later time, be sure to put words in the requirements that state that the Contractor is responsible for updating the document as needed.

4.1.2.1 Deliverable Expectation Documents (DEDs)

- There should be DEDs associated with project-specific artifacts such as: Proof of Concept; Quality Control test plans and test scenarios; execution of testing; regression testing; training plans and training materials; post implementation testing plan; post implementation test plan; knowledge transfer, etc.
- All DEDs should identify specific dates for deliverable interim review periods, deliverable review process (who will review, the criteria against which the deliverable will be reviewed, how the review will be conducted, review timeframes, etc.) deliverable completion, final deliverable review, state approval timeframes, Contractor response timeframe and Authorized User final acceptance time frame. They should also specify DED issue escalation procedures and both Contractor and Authorized User contacts for issue resolution.
- Authorized User should create and provide a DED and attach to the SOW as an Appendix or Exhibit.

4.1.2.2 Deliverable Submission

Authorized User will define the method for submission of deliverables by the Contractor to it. This section must include timelines by Business days.

4.1.2.3 Deliverable Acceptance

Authorized User will define the review process for a final deliverable, including communication requirements to the Contractor and the consequences of the rejection of a deliverable. This section must include timelines by Business days.

4.1.2.4 Minimum Deliverable Quality

Authorized User will define the minimum acceptance criteria for a final deliverable. Such criteria may include that the deliverable:

- Be presented in a format appropriate for the subject matter and depth of discussion.
- Be organized in a manner that presents a logical flow of the deliverable’s content.
- Represent factual information reasonably expected to have been known at the time of submittal.
- In each section of the deliverable, include only information relevant to that section of the deliverable.
- Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
- Meets the acceptance criteria applicable to that deliverable, including any Authorized User policies, functional or non-functional requirements, or industry standards.
- Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.

**TABLE 2
Deliverables and Tasks**

<u>Deliverable or Task</u>	<u>Description</u>	<u>Acceptance Criteria</u>
1.1	[For each deliverable or task, describe deliverable]	
1.2		

Each component will be evaluated separately and independently. **Define the relative weights and sub-weights for each section below.**

5.1 Administrative Evaluation

The Authorized User must ensure that the SOW submission is complete and accurate with the Administrative Evaluation.

Describe the process which will be used to review proposals received in this section and identify the pass/fail criteria used in the evaluation.

5.2 Technical Evaluation

Describe the criteria selected for evaluation. The criteria selected must reflect the Authorized User's objectives, scope of services, and requirements identified earlier in this document. This section must incorporate the deliverables, tasks and milestones contained in Table 2 and 3 found in Section 4.1.2.

These criteria shall include, at a minimum:

- Contractor agreement with the Terms and Conditions included in the SOW; and
- Compliance with Bid submission requirements.

Additional criteria include:

- Work plan and methodology to achieve desired end results;
- Experience of the Contractor in providing the required services and/or technology;
- Management capability of the Contractor;
- Contractor's overall past performance;
- Qualifications and experience of the Contractor's proposed staff;
- Conformance with the schedule of work set forth in the SOW;
- Contractor references;
- Key personnel; and
- Bidder presentations.
- MBE/WBE Diversity Points

Values must be assigned to the criteria and any sub-criteria identified.

5.3 Financial Evaluation

Describe the method to be used for conducting a comparison of the price proposed (and, at the Authorized User's option, other costs of the project) to the prices and costs of other competing proposals. Examples include conversion of price to a weighted point score and comparison of life cycle costs.

5.4 Notification of Award

Once a successful bid is identified by the Authorized User, the Authorized User will issue an award in accordance with the applicable statutory guidelines. The Authorized User must notify all bidders of the name of the tentative awardee prior to contract execution. Notifications must also be sent to all bidders who are non-awardees.

6. Proposal Requirements

6.1 Administrative Proposal Requirements

The Authorized User will detail all qualifications and documents that will be required for completeness of a proposal. Bids not meeting with the stated requirements may be deemed nonresponsive and may be denied further consideration for award.

6.2 Technical Proposal Requirements

This section of the SOW provides instructions to Bidders regarding information that is to be included in the Technical Proposal.

6.3 Financial Proposal Requirements

This section of the SOW provides instructions to Bidders regarding information that is to be included in the Financial Proposal.

6.4 Payment Schedule

Authorized User will specify when and how payment will be provided to the Contractor. Authorized Users are encouraged/required to tie payments to the acceptance of deliverables by the Authorized User's designated representative

Below is a sample payment schedule to complete and include in the SOW.

Deliverable or Task Number	Deliverable or Task Name	Milestone Payment
1.1		
1.2		

7. Format and Content of Bid Submittal

7.1 Proposal Format

Authorized User will describe in detail what a complete proposal to satisfy the requirements of this SOW will include. This should include the Authorized User's requirements regarding the number of paper and electronic copies to be submitted, format and requirements for labeling and sealing requirements. Also include the required versions of the programs utilized to submit a bid (i.e. MS Word 2010, PDF, etc.)

7.2 Required Documentation

Authorized User will detail the documents, separated into three sections that must be submitted for each section of the proposal in order for the bid to be considered a complete proposal.

7.2.1 Administrative Proposal

[List all documents by name]

7.2.2 Technical Proposal

[List all documents by name]

7.2.3 Financial Proposal

[List all documents by name]

7.3 Bid Delivery Instructions

Authorized User will describe packaging, sealing and delivery requirements for Bids to be submitted in response to this Proposal.

7.4 Proposal Liability

*Sample Language: The State of New York will not be held liable for any cost incurred by the Bidder 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 the Bid Opening date. Bidder assumes all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to [Agency] prior to the date of the bid opening. **LATE BIDS shall be rejected.** The received time of proposals will be determined by [Agency] by the clock at the above noted location.*

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

8. Additional Terms and Conditions

In this section, Authorized User can add terms and conditions specific to this Tier 2 award. Terms and conditions cannot supersede OGS contract terms. Examples include terms and conditions tied to funding requirements, policies, best practices, etc. as related to the scope of work.

8.1 Agency Dispute Resolution Policy

If a Bidder formally (in writing to the Authorized User) protests the selection of a winning bid, the Authorized User must follow its dispute procedures or those of the Office of the State Comptroller.

8.2 Bidder Debriefing

The Authorized User must comply with the State Finance Law debriefing requirements. An Authorized User shall include its debriefing policy within this section.

Attachment 6

How to Use This Contract

Attention Authorized Users:

The following bulleted list was created to provide assistance with using this contract.

1. Create a Statement of Work (SOW)
Refer to Attachment 5 for details. Do not change the order of the sections.
2. Get all pre-approvals from applicable control agencies (Executive Chamber, DOB, Federal and Local)
Helpful links:
 - http://www.budget.ny.gov/guide/bprm/bulletins/b-1184_revised.html
 - <http://www.its.ny.gov/policy/NYS-P08-001.pdf>
3. Select Lot based on budget estimates
4. Download Bidders List for Lot from OGS website (Choose one lot only)
5. Post all bidders to entity website
6. Email RFQ/SOW to all bidders
7. Receive bids
8. Conduct Proposal Evaluations
9. Make Awards and Execute Contract
10. Prepare and complete all required documentation in the Documentation Checklist. Some documentation is required as part of steps 4-9.

Documentation Checklist: The following documentation must be created and retained by Authorized User for any Request for Quote or Statement of Work issued against this contract.

<u>No</u>	<u>Item</u>	<u>State Agency</u>	<u>Non-State Agency</u>
1	SFS- Single Transaction Summary (STS); AC340-S, with Intended Encumbrance, if applicable; or Purchase Order	X	
2	DOB 1184 Attachment A or B http://www.budget.ny.gov/guide/bprm/bulletins/b-1184_revised.html	X	
3	Procurement Record Checklist	X	X
4	Preferred Source Documentation or Waiver, if applicable	X	X
5	ITS PTP Approval, if applicable http://www.its.ny.gov/policy/NYS-P08-001.pdf	X	
6	Cover Letter / Recommendation of Award	X	X
7	Bid Protests and Agency Response, if applicable	X	X
8	Memo/ Justification for Rejecting Bids or Proposals	X	X
9	Vendor Responsibility Profile	X	X
10	Vendor Responsibility Questionnaire (VRQ), if over \$100,000 *Contractors submitting an online VRQ do not need a paper copy of the VRQ documentation.	X	X
For Items 11-13, The ACORD form is not acceptable proof of Workers compensation. Proof is required for all new agreements, and anytime a term is being extended.			
11	Workers Compensation Coverage Form C-105.2; U-26.3; SI-12; or GSI-105.2	X	X
12	Disability Benefits Coverage Form DB-120.1or DB-155, Certificate of Disability Benefits Insurance	X	X
13	WC/DB Exemption CE-200 - Certificate of Attestation of Exemption from New York State Workers” compensation and/or Disability Benefits Coverage	X	X
14	Blank Solicitation Document (including appendices); Questions & Answers; and Addendums, if applicable	X	X
	A. Prevailing Rate Case number, if applicable	X	X
15	Evaluation Instrument, Completed Evaluation Score Sheets & Evaluation Summary	X	X
16	Certified Bid Tabulation (or 3 quotes for Emergency)	X	X
17	Solicitation List /Bidders List	X	X
18	Mandatory Letters of Intent; Mandatory Pre-bid Conference Sign-In Sheet &. Transcript, if applicable	X	X
19	If less than 3 bids received: canvass of No Replies	X	X
20	If less than 3 bids received: Justification of Award with limited competition	X	X
21	Price justification	X	X
22	Original Signed Awarded Bid /Original Signed Technical Proposal	X	X
23	All Original Cost Proposals, if applicable	X	X
24	Price Lists, if applicable	X	X
25	Any Proposer Correspondence (e.g. clarifications)	X	X

26	Any Rejected Original Bids/Proposal with Justification, if applicable	X	X
27	Non-award Letters	X	X
28	Contract Agreement or Amendment	X	X
	A. Civil Service Approval for Service with Individuals	X	
	B. Most Current Appendix A	X	X
	C. Consultant Disclosure Form A &. Form B Reporting Requirements, if applicable	X	X
29	Lobbying Law Vendor Affirmation	X	X
30	Lobbying Law Vendor Disclosure	X	X
31	Lobbying Law Vendor Certification	X	X
32	OSC Governmental Entity Representation Form	X	
33	Lobby Law Termination Language	X	X