



Phased Solicitation **(Revised August 24, 2015)**

BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY

(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)

PHASE 1 OPENING:	TITLE: Group 23000 – Miscellaneous Office Supplies
DATE: September 1, 2015 TIME: 11:00 AM ET	Classification Codes: 14 & 44
PHASED SOLICITATION NUMBER: 22790	SPECIFICATION REFERENCE: As Incorporated in the Phased Solicitation
CONTRACT PERIOD:	Three years with one three year renewal option

DESIGNATED CONTACTS

PRIMARY CONTACT	SECONDARY CONTACT	TERTIARY CONTACT
Lori L. Bahan Contract Management Specialist 1 Telephone: (518) 486-7313 Email: lori.bahan@ogs.ny.gov	Jamie Nusbaum Contract Management Specialist 3 Telephone: (518) 474-5340 Email: edward.nusbaum@ogs.ny.gov	Sean Hume Procurement Manager Telephone: (518) 486-1692 Email: sean.hume@ogs.ny.gov
MWBE INQUIRIES ONLY PRIMARY CONTACT	MWBE INQUIRIES ONLY SECONDARY CONTACT	MWBE INQUIRIES ONLY TERTIARY CONTACT
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This page must be fully and properly executed by a person authorized to legally bind the Bidder. **By signing you certify your express authority to sign on behalf of your company and full knowledge and acceptance of this PHASED SOLICITATION, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

Procurement Lobbying: <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See "New York State Vendor File Registration" clause)</i>			
Legal Business Name of Company Bidding:				
D/B/A - Doing Business As (if applicable):				
Street	City	State	County	Zip Code
If applicable, place an "x" in the appropriate box (check all that apply):		<input type="checkbox"/> Small Business #Employees	<input type="checkbox"/> Minority Owned Business	<input type="checkbox"/> Women Owned Business
If applicable, place an "x" in the appropriate box (check all that apply):		<input type="checkbox"/> Manufactured Within New York State	<input type="checkbox"/> Manufactured Outside New York State	
If you are not bidding, place an "x" in the box and return this page only.				
<input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE:				
Bidder's Signature: Title:		Printed or Typed Name: Date:		

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SECTION 1: INTRODUCTION

1.1 Overview

Since taking office, Governor Andrew Cuomo has committed his administration to implementing enterprise-wide changes that will utilize modern business practices in running New York State government. This Phased Solicitation focuses on implementing best practices and identifying opportunities for savings and Bidders are encouraged to review the information contained in this Phased Solicitation thoroughly to understand the extent of changes from the previously issued Contracts.

This Phased Solicitation is issued by the New York State Office of General Services (OGS) Procurement Services (PS) for the purposes of awarding a statewide commodity Contract for Miscellaneous Office Supplies, available for use by all New York State Agencies and other Authorized Users as authorized by §163(1)(k) of the State Finance Law. Accordingly, references to the State and its Agencies as Authorized Users under this Solicitation and the ensuing Contract encompasses and includes all such entities within the definition of “Authorized User” contained in Appendix B.

There are two (2) phases to this Phased Solicitation. Potential Bidders who successfully pass the pre-qualifications (Phase 1), will be invited to participate in the Reverse Auction/Online Bidding Event (Phase 2). **This is a new way of soliciting Bids and awarding an OGS Contract and Bidders are advised to pay close attention to all requirements and deadlines to prevent disqualification.**

1.2 Phased Solicitation Documents

The following are hereby expressly made a part of this Phased Solicitation as fully as if set forth at length herein.

Phase 1 of the Phased Solicitation is composed of the following documents:

This Phased Solicitation Document (Revised 8-24-15)

Appendix A - Standard Clauses for New York State Contracts (January 2014) (PDF – Attached to Phased Solicitation)

Appendix B - General Specifications (May 2015) (PDF – Attached to Phased Solicitation)

Appendix C - Contract Modification Procedure & Form (PDF – Attached to Phased Solicitation)

Appendix D - Supplier Agreement (PDF – Attached to Phased Solicitation)

Attachment 1 – Office Supplies Workbook (Revised 8-24-15) (Microsoft Excel)

Attachment 2 - General Questions (Revised 8-24-15) (Microsoft Excel)

Attachment 3 - Inquiries Template (Microsoft Excel)

Attachment 4 - New York State Required Certifications (PDF)

Attachment 5 - Insurance Requirements (PDF) (Revised 8-11-15)

Attachment 6 - Administrative Reports (Microsoft Excel)

Attachment 7 - Distributor’s Certificate (PDF)

Attachment 8 - Encouraging Use of NYS Businesses (PDF)

Attachment 9 - Reseller Template (Microsoft Word)

1.3 Key Events/Dates

Event	Date	Time
Phased Solicitation Release	June 18, 2015	N/A
Mandatory Pre-Bid Conference Registration Deadline	June 30, 2015	5:00 PM ET
Mandatory Pre-Bid Conference	July 14, 2015	10:00 AM ET
Closing Date for Inquiries	July 21, 2015	5:00 PM ET
Responses to Inquiries	August 11, 2015	N/A
Phase 1 Bid Opening Date and Time	September 1, 2015	11:00 AM ET
Phase 2 Online Bidding Event	TBD	TBD

1.4 New York State Contract Reporter:

Bidders must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications about this Phased Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account.

1.5 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law §§ 139-j and 139-k, this Phased Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A 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 Phased 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 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 (4) year period, the Bidder is debarred from obtaining governmental procurement Contracts. Further information about these requirements can be found on the OGS website at:

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

1.6 Inquiries

All inquiries concerning Phase 1 of this Phased Solicitation must be submitted to the Procurement Services PRIMARY CONTACT identified on the first page of this Phased Solicitation using the template found in Attachment 3 - *Inquiries Template* by the date and time listed in Section 1.3, *Key Events/Dates*. When e-mailing Attachment 3 to the PRIMARY CONTACT, a Bidder should annotate the subject of its submission as follows: “Inquiry for PHASED SOLICITATION 22790 Miscellaneous Office Supplies.”

Bidder should raise any potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements of both phases of this Phased Solicitation during the inquiry period of the procurement. OGS will not entertain any exceptions to Appendix A. OGS will also not entertain exceptions to this Phased Solicitation, Appendix B and Appendix D - Supplier Agreement that are of a material and substantive nature.

Inquires related solely to the Minority Women-Owned Business Enterprises (MWBE) provisions of this Phased Solicitation may also be made to the MWBE designated contacts identified on the first page of this Phased Solicitation.

1.7 Pre-Bid Conference

A **MANDATORY** pre-bid conference will be hosted by PS at the New York State Empire State Plaza to review this Phased Solicitation and view a demonstration of the Reverse Auction that will be conducted to receive Bidder’s pricing during the Phase 2 Online Bidding Event. **Failure to attend the pre-bid conference will disqualify the Bidder from participating in both phases of this Phased Solicitation.**

In order to attend the pre-bid conference, Bidders must register by submitting the following information via e-mail to the PRIMARY CONTACT at lori.bahan@ogs.ny.gov by the date and time listed in Section 1.3, *Key Events/Dates*:

1. Company Name
2. Attendee Name(s)
3. Title(s)
4. E-mail Address(es)

Registrants will be notified via email in advance of the conference as to the room location of the MANDATORY pre-bid conference. Bidders who fail to register for the pre-bid conference by the date and time listed in Section 1.3, *Key Events/Dates* shall not be permitted to attend the pre-bid conference. **There will be no day of event or on-site registration.**

Each Bidder is permitted to send no more than two (2) representatives to the pre-bid conference. Any individuals arriving on site later than 10 minutes after the start time of the pre-bid conference will not be admitted.

Bidders are advised that photo identification is required for parking at the Empire State Plaza and for security screenings. Directions to the Empire State Plaza can be found at the following link: <http://www.ogs.ny.gov/ESP/Directions.asp>.

Parking pricing and location information for Empire State Plaza can be found at the following link: <http://www.ogs.ny.gov/BU/BA/Parking/Visitor>. Bidders are encouraged to allow plenty of extra time for parking at or near the Empire State Plaza and OGS provides no guarantee of parking spaces. In addition, Bidders are advised that all parking fees and fines are solely at the Bidder's expense.

At the discretion of PS, materials may be provided prior to the pre-bid conference to the e-mail address submitted with registration or materials may be posted to the OGS website for viewing. At the discretion of PS, inquiries submitted prior to the pre-bid conference may be addressed by OGS during the pre-bid conference. Any inquiry responses provided during the pre-bid conference are unofficial. Only written inquiry responses issued in accordance with Section 1.6, *Inquiries*, and posted and released through the New York State Contract Reporter website shall be official.

1.8 Definitions

Terms used in the Phased Solicitation documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2, Definitions, which is hereby incorporated by reference. In addition, the following definitions shall apply:

1. **“Authorized Dealer”** shall refer to a company that is authorized to market and sell a Distributor's products.
2. **“Awarded Supplier”** for the purposes of the Supplier Agreement, Awarded Supplier is synonymous with Contractor. See also “Contractor.”
3. **“Buyer”** for the purposes of the Supplier Agreement, Buyer shall refer to OGS.
4. **“Contractor”** shall refer to a responsive and responsible Bidder who has offered the lowest Grand Total Bid price at the conclusion of the Reverse Auction and is working under an executed Contract with New York State. Contractor is a general term. For the purposes of the Supplier Agreement, Awarded Supplier is synonymous with Contractor. See also “Awarded Supplier”.
5. **“Core List”** shall refer to the list of Products specifically identified by name, SKU, historical annual purchases, etc., and for which a set price will be bid during the Reverse Auction and the winning Bidder's price shall remain firm for the first three (3) years of the Contract.
6. **“Delivery Compliance Rate”** shall mean the ratio of the number of deliveries of Products under the Contract made in full conformance, without any error, pursuant to the terms of Section 6.10, *Orders*, Section 6.18, *Delivery*, and the Authorized User's Purchase Order, to the total number of orders of Products under the Contract within a period specified by OGS.
7. **“Distributor”** shall refer to a company that publishes one of the hard-copy Prequalified Catalogs specified in Section 2.4, *Prequalified Catalogs*.
8. **“Grand Total Bid”** shall refer to the total sum of the Bid prices of the Core List and the Non-Core List during the Reverse Auction.
9. **“List Price”** shall mean the nationally published price in a Distributor's Prequalified Catalog and/or Online Marketplace (whichever is lower). .”
10. **“Miscellaneous Office Supplies”** shall refer to a wide range of small, expendable materials that are used on a regular or daily basis by Authorized Users and includes, but is not limited to, office supplies, break room supplies, paper, technology/electronics and accessories, janitorial/sanitation supplies, and ink/toner cartridges (excluding items identified in Section 2.1, *Scope/Excluded Products*), Further detail on subcategories can be found in Attachment 1 – *Office Supplies Workbook (Revised 8-24-15)*.
11. **“MWBE”** shall refer to a business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
12. **“N/A”** is a common abbreviation for not applicable or not available, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

13. **“Net Price”** shall be (1) for Core List Products, the exact price bid, (2) for Non-Core Products, the List Price, less the applicable discount bid by the Bidder/Contractor and approved by OGS, and (3) shall be the price paid by Authorized Users of the resultant Contract.
14. **“Non-Core List”** shall refer to the subcategories and associated Products identified by name, SKU, historical annual purchases, etc., and shall not include Core List Products. Bidders shall bid a single discount for each subcategory of Non-Core List Products during the Reverse Auction and the winning Bidder’s discounts may not decrease for the life of the Contract.
15. **“NYS Holidays”** refers to the legal holidays for State Employees in the classified service of the Executive Branch, as more particularly specified on the website of the NYS Department of Civil Service (http://www.cs.ny.gov/attendance_leave/2015_legal_holidays.cfm). This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day. This list is updated annually.
16. **“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a Bidder/Contractor is registered on the Vendor File.
17. **“Online Marketplace”** shall mean the Internet site where a Bidder conducts online sales and other business transactions.
18. **“Phase 1”** shall refer to the first phase of the bidding process whereby the Bidder shall submit all administrative requirements of the Bid. Bidders deemed responsive and responsible under Phase 1 will qualify to participate in Phase 2.
19. **“Phase 2”** shall refer to the Reverse Auction whereby Bidders deemed responsive and responsible under Phase 1 will be eligible to participate in an Online Bidding Event and submit set prices for the Core List Products and a single discount percentage off of List Price for each of the Non-Core List subcategories.
20. **“Phased Solicitation”** shall refer to this document, its appendices and attachments as well as all documents and electronic records associated with the Reverse Auction.
21. **“Preferred Source Core List Products”** shall refer to the identified Core List Products Contractor will be required to purchase from designated preferred source organizations and sell to Authorized Users through the Contract.
22. **“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law §162 that requires Authorized Users to purchase select Products from designated organizations when the Products meet the "form, function and utility" requirements of the Authorized User. Under State Finance Law §163, purchases of Products from preferred sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State preferred sources include: Corcraft; New York State Preferred Source Program for People who are Blind (NYSPSP); New York State Industries for the Disabled (NYSID); and the Office of Mental Health (OMH). These requirements apply to Authorized Users, including, but not limited to, State Agencies, political subdivisions and public benefit corporations (including most public authorities).
23. **“Preferred Source Supplemental Products”** shall refer to the identified supplemental Core List Products Contractor will be required to purchase from designated preferred source organizations and sell to Authorized Users through the Contract.
24. **“Prequalified Catalog”** shall refer to the mass produced, physical, nationally published copy of a Distributor’s listing of all available Products.
25. **“Price Realism”** shall refer to an evaluative concept of whether a Bidder’s proposed prices are too low, such that there may be a risk of poor performance.
26. **“Procurement Services (PS)”** refers to a division of the New York State Office of General Services which, among other things, lets centralized, statewide Contracts for use by Authorized Users.

27. **“Resellers”** shall refer to any model for distribution of Contractor’s Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), dealers, sales agents, and alternate channel partners.
28. **“Reverse Auction”** shall refer to the Phase 2 portion of this Phased Solicitation. Also referred to as “Online Bidding Event.”
29. **“Supplier Agreement”** shall refer to Appendix D which is the agreement between Bidder and Electronic Auction Services, Inc. (“EASI”) permitting Bidder to participate in the Reverse Auction conducted by EASI on behalf of OGS.
30. **“Transaction Fee”** shall refer to the sum of money that must be paid by the Contractor to EASI as a result of sales under the resulting Contract.
31. **“0 (Zero)”** is both a number and the numerical digit used to represent that number in numerals. It is the integer immediately preceding 1 (one).

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

1. **“May”** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.
2. **“Must”** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”.
3. **“Shall”** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Must” and “Mandatory”.
4. **“Should”** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.

1.9 Order of Precedence

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

1. Appendix A (Standard Clauses for New York State Contracts)
2. This Phased Solicitation Including:
 - a) Attachment 1 – Office Supplies Workbook (Revised 8-24-15)
 - b) Attachment 4 - New York State Required Certifications
 - c) Attachment 5 - Insurance Requirements (Revised 8-11-15)
 - d) Attachment 6 - Administrative Reports
 - e) Attachment 7 - Distributor’s Certificate
 - f) Attachment 8 - Encouraging Use of NYS Businesses
 - g) Attachment 9 - Reseller Template
 - h) Appendix C - Contract Modification Procedure & Form
 - i) Appendix D - Supplier Agreement
3. Appendix B (General Specifications)
4. Bidder’s Bid

SECTION 2: SCOPE OF WORK & BIDDER QUALIFICATIONS**2.1 Scope/Excluded Products**

The purpose of this Phased Solicitation and resultant Contract is to provide Authorized Users with a means of acquiring Miscellaneous Office Supplies on a statewide basis. There are two (2) phases with the first being a pre-qualification of Bidders for responsiveness and responsibility. Only Bidders deemed responsive and responsible at the conclusion of Phase 1 will be eligible to participate in the Phase 2 Reverse Auction/Online Bidding Event. OGS will provide written notification to those Bidders who qualify for participation in the Reverse Auction event. One Contract award will be made to the Bidder having the lowest Grand Total Bid, at the conclusion of the Reverse Auction.

The online Reverse Auction will be managed and hosted by Electronic Auction Services, Inc. (hereinafter referred to as "EASI"). All Bidders must sign and submit Appendix D - *Supplier Agreement*, with the Phase 1 Bid materials. Pursuant to this Agreement, EASI will work with each Bidder that is qualified in Phase 1, to prepare for the Reverse Auction. Preparation may include, but is not limited to: configuration of the auction computer system, testing of the Bidder interface, review and discussion of online Reverse Auction event procedures, placeholder bids and other documentation, and training. The Contractor is required to pay a Transaction Fee of 1% to EASI for all payments received from Authorized Users resulting from the subsequent Contract. The total Transaction Fee paid to EASI shall not exceed \$42,500.00.

At least two (2) weeks prior to the start of the Reverse Auction, Bidders will submit to EASI an Office Supplies Workbook identifying Bidder's current List Prices for the Core and Non-Core Products OGS has identified as available by Bidder in its Prequalified Catalog and Online Marketplace. At least forty-eight (48) hours prior to the start of the Reverse Auction, Bidders will submit a placeholder bid with EASI containing Bidder's initial offering prices and discounts to ensure the systems are operating correctly, that the Bidder understands the bidding process and has bid every Product and there are no deviations triggering a price realism analysis. During the Reverse Auction, Bidders shall provide itemized pricing on all Core List Products. Some Core List Products are Preferred Source Products that the Contractor will be required to stock and ship to Authorized Users that purchase them under the resultant Contract (see Section 6.29, *Preferred Source Products*). No Core List Product price may be above current List or Preferred Source approved prices as identified in the Office Supplies Workbook. Bidders shall also provide a discount from List Prices on Non-Core List Products, which shall consist of approximately 900 Products subdivided into fourteen (14) separate subcategories. A single discount shall be bid for each subcategory for all Non-Core List Products listed in the respective subcategory. All Core List and Non-Core List Products and subcategories are set forth in Attachment 1 – *Office Supplies Workbook (Revised 8-24-15)*. As part of the Reverse Auction, each Bidder's Workbook will only reference that particular Bidder's SKU. More detailed information is set forth in Section 5.1, *Method of Award*.

All prices shall be held confidential by EASI and OGS from the time of receipt of the placeholder bids through the completion of the Reverse Auction. During the Reverse Auction, Bidder will be advised as to its rank as against other Bidders relative to individual line items as well as Grand Total Bid but will not be advised of other Bidder's names, actual bid prices, discounts, or Grand Total Bid.

Contractor will be required to maintain an approved New York State Contract dedicated website with a web-based ordering system from which all Authorized Users are able to make purchases. In addition, Contractor must post on this website the Core List of Products, with Contract pricing and live links, which, when clicked on, will open the page displaying the ordering information for each such Core List Product. Contractor shall also post a pricelist of all other products being offered by Contractor with prices consistent with the discount structure applicable to each Non-Core List subcategory in which the Product falls. Initial copies of both lists shall be provided by the winning Bidder to the Contract administrator within five (5) business days of the conclusion of the Reverse Auction. Failure to do so may result in OGS moving on to the next low Bidder for possible Contract Award.

There are numerous Products excluded from the scope of this Contract. The State reserves the right to delete or add Products before or after award. A summary of the excluded Products follows:

1. All services (except delivery);
2. Furniture such as desks, workstations, chairs, tables, chair carts, book cases, commercial shelving, file cabinets, storage cabinets, lockers, and privacy screens;
3. Hand and platform trucks;
4. Products weighing over 50 lbs;
5. Computers;
6. Printers (not including desktop label printers), copiers, facsimile machines;

7. Software requiring a licensing agreement; and
8. Promotional products.

2.2 Historical Annual Purchases

The Contract resulting from this Phased Solicitation will be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within Attachment 1 - *Office Supplies Workbook (Revised 8-24-15)* are historical annual purchases of Core List and Non-Core List Products and are **listed for evaluation purposes only and are not estimates of future purchasing patterns**. Numerous factors could cause the actual volume of Products purchased under the Contract to vary substantially from the values identified in Attachment 1 and OGS makes no guarantee or warrantee that the purchases under the Contract will be similar in volume. PS advises all Bidders of the following:

1. There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
2. The actual value of the resultant Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period;
3. The pricing offered by the Contractor may affect the purchasing volumes;
4. The Contractor is deemed to be a knowledgeable seller of Office Supplies and aware of the risks and rewards involved in a New York State statewide IDIQ Office Supplies Contract.

In PS's experience, depending on the price of a particular Product, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, the historical values identified herein and such values are included solely for evaluation purposes. Specifically, if Contract pricing is lower than historical pricing, actual quantities purchased could be substantially greater than the historical amounts. If Contract pricing is higher than historical pricing, actual quantities purchased could be substantially lower than the historical amounts. By participating in the Reverse Auction, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially from the evaluation historical values provided in this Phased Solicitation. By participating in the Reverse Auction, Bidder further acknowledges that it will fully deliver all orders placed by the more than 5,000 Authorized Users for the Products at the prices approved by OGS throughout the life of the Contract, pursuant to the delivery terms contained herein.

2.3 Qualification of Bidder

1. Bids will be accepted only from Distributors who publish one of the Prequalified Catalogs specified in Section 2.4, *Prequalified Catalogs* below, or an Authorized Dealer thereof.
2. An Authorized Dealer intending to participate in this Phased Solicitation must guarantee during Phase 1 that it has a source of supply from a Distributor who publishes one of the Prequalified Catalogs specified in Section 2.4, *Prequalified Catalogs* and that the Distributor has agreed to supply the Authorized Dealer with all quantities of Products required by the Authorized Dealer in fulfillment of its obligations under the resultant Contract. Authorized Dealer must submit a completed Distributor's Certificate, as set forth as Attachment 7 - *Distributor's Certificate*, for the Prequalified Catalog it is basing its Bid on to establish its authority to sell from such catalog.
3. Bidder, other than Distributors who publish one of the Prequalified Catalogs, must confirm [(via Attachment 2 - *General Questions (Revised 8-24-15)*)] that it has maintained a business establishment capable of performing the work herein described for the past three (3) years and is capable of processing and shipping large numbers of orders to over 5,000 destinations throughout the State of New York.
4. Bidder shall provide evidence [(via Attachment 2 - *General Questions (Revised 8-24-15)*)] that it has held at least one contract with a government entity for the sale of Miscellaneous Office Supplies and provided a dedicated Internet site for such contract within the past five (5) years. Information shall include, but not be limited to name of government entity, government contact name, number and email as well as start and end date of each such contract. Bidder must provide a copy of such contract within five business days of request.
5. Bidder, other than Distributors who publish one of the Prequalified Catalogs, shall provide, upon request, documentation confirming financial capacity and years of business from an independent financial rating service or similar entity (e.g. Dunn and Bradstreet, IDC, or Gartner) or audited annual reports. In addition, current financial statements may be requested and must be provided within five business days of request.

6. A Bidder must certify its commitment to obtain all necessary proof of insurance with its Bid via Attachment 2 - *General Questions (Revised 8-24-15)*. See also Attachment 5 - *Insurance Requirements (Revised 8-11-15)* for detailed insurance requirements.
7. OGS reserves the right to request any additional information regarding a Bidder's abilities, qualifications and procedures as it deems necessary to ensure satisfactory performance under a resultant Contract.
8. OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract based upon prior experience and waive the three (3) year requirement specified above.

Failure by a Bidder to provide any of the above information or to meet any of the above qualifications in whole or in part may result in disqualification of Bidder from participating in Phase 2.

2.4 Prequalified Catalogs

Bidder shall offer pricing based on any one of the following Prequalified Catalogs (excluding the list of excluded Products noted in Section 2.1): Office Depot Business Solutions; SP Richards; Staples Advantage; United Stationers Supply; and WB Mason Office Products Catalog. No other catalogs are prequalified and shall not be accepted. In addition, Contractor is required to supplement the Prequalified Catalog with its Online Marketplace offerings for sale of Products to Authorized Users.

2.5 Supplier Agreement

As a condition of participation in the Reverse Auction event, Bidders must sign and return Appendix D - *Supplier Agreement*. OGS requests it be submitted with the Bid during Phase 1. Appendix D - *Supplier Agreement* outlines the terms and conditions of the Reverse Auction event including, but not limited to, use of EASI's Reverse Auction solution; information security, audit rights, and the provision of a Transaction Fee of 1% to EASI for all payments received from Authorized Users resulting from the subsequent Contract, which shall not exceed \$42,500.

FAILURE TO SIGN AND RETURN APPENDIX D – SUPPLIER AGREEMENT PRIOR TO THE CONCLUSION OF PHASE 1 SHALL DISQUALIFY BIDDER FROM PARTICIPATING IN THE REVERSE AUCTION.

SECTION 3: PHASE 1 BID SUBMITTAL

3.1 Notice to Bidders

The Commissioner of OGS shall receive Bids pursuant to the provisions of Article XI of the State Finance Law. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned. Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review the documents being submitted in Phase 1 prior to submittal as well as the prices being quoted during the Reverse Auction.

3.2 Performance and Bid Bonds

There are no bonds for this Contract. In accordance with Appendix B, §44 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Term of the resulting Contract.

3.3 Bid Deviations

In addition to the requirements set forth in Appendix B, §6, *Extraneous Terms*, all deviation(s) or qualification(s) of a Bidder's Bid must be submitted with the Phase 1 documents; and, if necessary, Bidder must provide details as part of the Phase 1 Bid submission. Bidder is advised that OGS will not entertain any exceptions to or deviations from Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions to the Solicitation, Appendix B (General Specifications) and Appendix D - Supplier Agreement that are of a material and substantive nature. A Bidder should note that all clarifications and exceptions including those relating to the Phased Solicitation and resulting Contract are to be resolved prior to the Phase 2 Online Bidding Event. Bids that contain material changes to the terms and conditions, specifications, and requirements set forth throughout this Phased Solicitation may be disqualified as non-responsive.

3.4 Responsiveness

A Bidder must submit all information and documents that satisfy and address all requirements stated herein. Failure to conform to all requirements may be considered non-responsive and Bidder may be rejected from participation in Phase 2. To be considered responsive in Phase 2, a Bidder must submit at least two (2) weeks prior to the start of the Reverse Auction an Office Supplies Workbook identifying Bidder's current List Prices for the identified Core and Non-Core Products OGS has identified as available by Bidder in its Prequalified Catalog and Online Marketplace. At least two weeks prior to the start of the Reverse Auction, all prequalified Bidders shall also submit to OGS List Prices for all Products available through their Prequalified Catalogs and Online Marketplace (except Products excluded herein) that Bidders will offer under a resultant Contract if awarded to Bidder. Bidders shall also submit one copy of its current Prequalified Catalog at this time. At least forty-eight (48) hours prior to the start of the Reverse Auction, Bidders must submit a placeholder bid with EASI containing Bidder's initial offering prices and discounts to ensure the systems are operating correctly, that the Bidder understands the bidding process and has bid every Product and there are no deviations triggering a price realism analysis. Bidder must also submit a price for each Core List Product and a discount for each Non-Core List Category during the Reverse Auction. No Core List Product price may be above current List or Preferred Source approved prices as identified in the Office Supplies Workbook.

3.5 Incorporation

Portions of the successful Bidder's Bid and of this Phased Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. The first page of this Phased Solicitation document must be signed by a partner, corporate officer, or other person legally authorized to commit the Bidder to all provisions of the Phased Solicitation and to the prices bid during the Reverse Auction. The signed first page of this Phased Solicitation must be submitted with the Phase 1 Bid.

3.6 Liability

The State of New York will not be held liable for any cost incurred by a Bidder for work performed in the production of a response to the Phase 1 Solicitation and participation in the Reverse Auction or for any work performed prior to the formal execution of a Contract.

Bidder also assumes all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of Phase 1 documents to OGS prior to the date/time of the Phase 1 Bid opening. Late Bids shall be rejected except as provided in Appendix B, §5 *Late Bids Rejected*. E-mail or faxed Bids are not acceptable and shall not be considered. The received time of Bids for Phase 1 will be determined by OGS by the clock at the final receiving location. EASI will determine the received times of Bids during the Reverse Auction.

3.7 Format and Content of Bid Submittal under Phase 1

It is recommended that the Bidder open, review and save/download all electronic files (identified in Section 1.2) that make up this Phased Solicitation to the Bidder's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to portable electronic media. Do not return copies of Appendices A and B to OGS.

Bidder shall submit the entire offering on portable electronic media (CD or memory stick) in accordance with the instructions below. **Only those items listed below in Part 2 are required in paper copy.**

A complete Bid consists of TWO (2) copies of each of the following:

1. Portable electronic media containing:
 - a. Completed Attachment 1 – *Office Supplies Workbook (Revised 8-24-15)* (Microsoft Excel);
 - b. Completed Attachment 2 - *General Questions (Revised 8-24-15)* (Microsoft Excel);
 - c. Completed Attachment 8 - *Encouraging Use of NYS Businesses* (scanned) (PDF);
 - d. Completed Attachment 9 - *Reseller Template* (Microsoft Word), if Bidder will be utilizing Resellers.
2. Bound, original versions of each of the following:
 - a. Pages 1 and 2 of the Phased Solicitation with original ink signatures;
 - b. Completed MWBE Utilization Plan (Form MWBE 100) with original ink signatures;
 - c. Completed Equal Employment Opportunity Staffing Plan (Form EEO 100) with original ink signatures;
 - d. Completed Appendix D - *Supplier Agreement*, with original ink signatures;
 - e. Completed Attachment 4 – *New York State Required Certifications* with original ink signatures;
 - f. All necessary proof of insurance (see Attachment 5 – *Insurance Requirements (Revised 8-11-15)* for detailed requirements)

- g. Completed Attachment 7 - *Distributor's Certificate* with original ink signatures, if Bidder is not a Distributor;
- h. Completed Attachment 8 - *Encouraging Use of NYS Businesses*;
- i. Completed Form ST-220-CA, *Contractor Certification* notarized with original ink signatures;
- j. Completed, signed and notarized paper copy with original ink signatures of Vendor Responsibility Questionnaire For-Profit Business Entity if online Questionnaire has not been completed.

Also, please note that in the case of discrepancies between paper copies and electronic media submissions of the documents required in both formats, the electronic copy shall take precedence over the paper copy.

Phase 1 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Group Number (Group 23000)
3. Bid number (PHASED SOLICITATION #22790)
4. Bid Opening Date and Time (September 1, 2015 11:00 AM)
5. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or packages may necessitate the premature opening of the Bid and may compromise confidentiality. Bids shall be delivered to:

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

3.8 Hand Deliveries

A 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 hand deliveries.

3.9 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. A Bidder attending Bid openings is encouraged to pre-register for building access by contacting the PS Receptionist at (518) 474-6262 at least 24 hours prior to the Bid opening. Visitors who are registered can check in directly with the Security Desk. Visitors who are not pre-registered will be directed to a designated phone to call the PS Receptionist. The Receptionist will register the visitor at that time but delays may occur. Individuals who intend to deliver Bids or conduct PS business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. **Note:** Phase 1 documents not received by OGS by the Phase 1 Bid opening time and date specified will be considered late.

SECTION 4: PHASE 2 REVERSE AUCTION

4.1 Reverse Auction Information

OGS will accept Bid pricing for Miscellaneous Office Supplies via an online Reverse Auction managed and hosted by EASI. Upon determination that a Bidder is deemed responsive and responsible under Phase 1, OGS will provide written notification to each responsive and responsible Bidder that it is qualified for participation in the Reverse Auction event. The Reverse Auction will be the process used to determine Grand Total Bid pursuant to Section 5.1, *Method of Award*.

4.2 Reverse Auction Procedures

1. OGS will designate an EASI representative as a Procurement Lobbying Law Designated Contact to work with the Bidders to prepare for the Reverse Auction event. Bidders may not contact EASI about this Phased Solicitation prior to notification of such designation. Preparation may include, but is not limited to: configuration of the auction computer system, testing of the Bidder interface, one-on-one phone discussion and review of online Reverse Auction event procedures, placeholder bids and other documentation, and training.

2. Only those Bidders on the qualified Bidders list will be allowed to participate in the auction event. EASI will provide the necessary administrative support to ensure that the integrity of the Reverse Auction event is not compromised.
3. EASI will keep an event record, which will include the prices offered by the Bidders.
4. The EASI Bidder interface will be configured such that a Bidder will not know the identity of competing Bidders.
5. At least two (2) weeks prior to the start of the Reverse Auction, Bidders will submit to EASI an Office Supplies Workbook identifying Bidder's current List Prices for the identified Core and Non-Core Products OGS has identified as available by Bidder in its Prequalified Catalog and Online Marketplace. At least two weeks prior to the start of the Reverse Auction, all prequalified Bidders shall also submit to OGS List Prices for all Products available through their Prequalified Catalogs and Online Marketplace (except Products excluded herein) that Bidders will offer under a resultant Contract. Bidders shall also submit one copy of their Prequalified Catalog at this time. At least forty-eight (48) hours prior to the start of the Reverse Auction, Bidders will submit a placeholder bid with EASI containing Bidder's initial offering prices and discounts to ensure the systems are operating correctly, that the Bidder understands the bidding process and has bid every Product and there are no deviations triggering a price realism analysis. During the Reverse Auction, Bidders shall provide itemized Pricing on all Core List Products. No Core List Product price may be above current List or Preferred Source approved prices as identified in the Office Supplies Workbook. Following a price realism and compliance analysis, EASI will confirm the start of the event through electronic notification to all qualified Bidders. Bidders may submit multiple prices during the event. The lowest price offered by each qualified Bidder will become the price Bid.
6. Bid pricing must be submitted by, or under the direction of, an authorized representative of the Bidder.
7. Throughout the Reverse Auction, Bidders will be able to view their own prices as well as their ranking against other Bidders by individual line item and overall Grand Total.
8. The Reverse Auction will have a scheduled stop time. The Reverse Auction may be extended if Bids are received within a predetermined amount of time prior to the scheduled stop time. Specific procedures on time extension will be contained in the event procedures that will be reviewed and discussed with all qualified Bidders.
9. The event will conclude at either the scheduled stop time or at the time at which all extensions are completed, whichever is later.
10. After the conclusion of the Reverse Auction event, OGS will consider the pricing offered during the Reverse Auction event to determine the lowest Grand Total Bid for which a Contract award will be made.

4.3 Proposal Validity

Final Reverse Auction Bid prices must remain open and valid for at least 90 calendar days from the completion of the Reverse Auction, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. Bidder's Reverse Auction Bid prices shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar day period until either the Contract is executed and awarded by OGS or withdrawal of the Bid in writing by Bidder.

4.4 Debriefing

Unsuccessful Bidders shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings following completion of Phase 1 must be made by email to the PRIMARY CONTACT listed on the front page of this Phased Solicitation within ten (10) Business days of the issuance of the email notification of a Bidder's disqualification from participation in Phase 2. Requests for debriefings by unsuccessful Bidders at the close of the Reverse Auction must be made by email to the PRIMARY CONTACT listed on the front page of this Phased Solicitation within five (5) Business days of the completion of the Reverse Auction.

4.5 New York State Procurement Rights

New York State reserves the right to:

1. Reject any or all Bids received in response to the Phased Solicitation;
2. Withdraw the Phased Solicitation at any time at the sole discretion of the Agency;
3. Make an award under the Phased Solicitation in whole or in part;
4. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Phased Solicitation;
5. Seek clarifications and revisions of the Phased Solicitation;
6. Amend the Phased Solicitation requirements prior to the Reverse Auction to correct errors or oversights, or to supply additional information, as it becomes available;
7. Change any of the schedule dates with notification through the NYS Contract Reporter;
8. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
9. Waive any requirements that are not material;
10. Utilize any and all ideas submitted in the Bids received;
11. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
12. Negotiate with the Bidder responding to this Phased Solicitation within the Phased Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' Bids;
13. 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 Bid and/or to determine a Bidder's compliance with the requirements of the Phased Solicitation;
14. If an incorrect reference/parameter/component/Product/etc. is stated by the State or by the Bidder, the evident parameter/component/Product shall prevail; the proper alternative or corrected parameter/model/code number(s) shall be considered;
15. Have the flexibility to consider Bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the Phased Solicitation. This flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a Contract is threatened due to a minor technicality or a minor deviation;
16. Reject any Reverse Auction Bid containing proposed prices that are unrealistically low as determined by PS.
17. Reject an obviously unbalanced Bid as determined by the State;
18. Make "NO AWARD" for any Product or subcategories for reasons including, but not limited to unbalanced or excessive Bidder pricing, a change in Authorized User requirements and/or Product(s), or an error in the Phased Solicitation (i.e., use of incorrect reference, pack size, description, etc.); and
19. Modify the Products identified in Attachment 1 – Office Supplies Workbook (Revised August 24, 2015) prior to the prequalified Bidders' submittal of placeholder bids.

SECTION 5: METHOD OF AWARD

5.1 Method of Award

OGS will accept Bid pricing for Miscellaneous Office Supplies via an online Reverse Auction event managed and hosted by EASI. Award shall be made by Grand Total Bid to the lowest responsive and responsible Bidder resulting from the Reverse Auction event.

For evaluative purposes, a Core List of approximately 300 Products and a Non-Core List of consisting of approximately 900 Products will be used. During the Reverse Auction, Bidders shall provide itemized pricing on Core List Products, which will include a number of Preferred Source Products that the Contractor will be required to stock and ship to Authorized Users that purchase them under the resultant Contract (see Section 6.29, *Preferred Source Products*). The Office Supplies Workbook will contain Bidder's List Prices (which shall not be exceeded during the Reverse Auction) and not to exceed pricing on all Preferred Source Products. Bidders shall also provide a discount from List Prices on Non-Core List Products, which shall consist of approximately 900 Products subdivided into fourteen (14) separate subcategories. A single discount shall be bid against each subcategory for all Non-Core List Products listed in the respective subcategory. For evaluation purposes, the most current List Prices for each Bidder's identified Prequalified Catalog will be utilized for Non-Core List Products. The totals for the Core List and Non-Core List subcategories will be summed together to arrive at the Grand Total Bid price.

The Core and Non-Core Lists and subcategories are set forth in Attachment 1 – *Office Supplies Workbook (Revised 8-24-15)*. Based on historic annual purchases, Core List Products represent approximately 75% of overall spend against the Contract. Bidders will be provided with the Office Supplies Workbook and are required to bid every Product in the Core List and provide a discount for each subcategory in the Non-Core List during the Reverse Auction. Failure to do so will result in a nonresponsive Bid and disqualification.

A Price Realism analysis may be conducted of the submitted prices and discounts to determine if Bidders are proposing prices so low that the performance of a Contract by the Bidder will be at risk.

5.2 Notification of Award

The successful Bidder shall be advised by OGS in accordance with Appendix B, §24 *Contract Creation/Execution*. Tentative award of the Contract shall consist of written notice to that effect by OGS to the successful Bidder.

SECTION 6: TERMS AND CONDITIONS

6.1 Price

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the Authorized User including 72 hour delivery (excluding Saturday, Sunday and NYS legal holidays) for orders to either an inside storeroom, inside desk or a single dock based upon the needs of the Authorized User which must be provided at no additional cost to all Authorized Users.

In addition, upon mutual agreement of the Contractor and OGS, delivery locations may be expanded per the "Extension of Use" clause.

6.2 Contract Period and Renewal

The Contract resulting from this Phased Solicitation shall commence after all necessary approvals and shall become effective upon mailing or electronic communication to the Contractor's address on the Bid/Contract of a fully executed Contract (see Appendix B, §24 *Contract Creation/Execution*). The Contract shall be in effect for three (3) years. If mutually agreed upon between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for an additional three (3) year period.

6.3 Short Term Extension

In the event a replacement Contract has not been issued at the time of Contract expiration, any Contract let and awarded hereunder by OGS, may be extended unilaterally by OGS for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the then existing Contract with all approved modifications including, but not limited to pricing, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should the replacement Contract be issued in the interim.

6.4 Contract Termination

During the first eighteen (18) months of the Contract, in the event of Contractor poor performance, OGS reserves the right to terminate the Contract in accordance with Appendix B, §46, *Termination* and proceed with an award to the next lowest Bidder.

6.5 Contract Pricelists

Prior to the execution of a Contract, the successful Bidder will be required to develop for OGS's review and approval both a Core List and a Non-Core, all-inclusive Contract pricelist in Microsoft Excel (2013 or lower format) resulting from Phase 2 in a format satisfactory to OGS. There will be separate tabs within the Excel pricelist for the Core List and each of the Non-Core List subcategories. The Contract pricelist must be submitted to OGS within five (5) business days of the announcement of the winning Bidder at the conclusion of the Reverse Auction. OGS reserves the right to award the Contract to the second low Bidder should Bidder fail to provide satisfactory pricelists, and receive approval by OGS within thirty (30) calendar days of the announcement of the winning Bidder at the conclusion of the Reverse Auction. Contractor may provide an updated Non-Core pricelist to OGS whenever a revised version of the Contractor's Prequalified Catalog is issued, however, List Prices may not increase without prior approval of OGS.

The Core List pricelist must include the following information: all categories of information displayed within the Core List and the Preferred Source Core List contained within the Office Supplies Workbook herein as well as during the Reverse Auction; Contractor's winning price; Preferred Source designation as well as live/active links for each Product which, when

clicked on, will open the page within Contractor's on-line catalog displaying the Product and ordering information for each such Product. The Core List Prices must remain firm for the first three years of the Contract.

OGS reserves the right to require Contractor to add up to ten (10) additional Preferred Source Core List Products per Preferred Source that are identified by OGS as being in the best interest of the state. The Contractor and the Preferred Source shall negotiate the pricing charged by the Preferred Source to the Contractor and the price charged to Authorized Users shall be approved by OGS prior to addition to the Core List. Such price shall not exceed the Preferred Source OGS approved price.

The Non-Core pricelist must include the following information: all categories of information displayed within the Non-Core list herein as well as during the Reverse Auction; the same information for all other Products available either through Contractor's Prequalified Catalog or Online Marketplace during Contractor's normal course of business that are within the scope of the Contract and not excluded by OGS; and, the price for each such Non-Core Product offered at the discount structure consistent with the applicable Non-Core List subcategory in which the Product falls. A Contractor may request to add or remove Products from the Non-Core Pricelist that are within the scope of the Contract whenever a revised version of the Contractor's Prequalified Catalog is issued. Non-Core pricelist update requests shall be made using the applicable Non-Core List subcategory discount or better. Contractor may supplement the Products offered in its Prequalified Catalog with any Products offered through its Online Marketplace during their normal course of business (other than those Products OGS blocks as essentially the same as Preferred Source Core List Products or as identified in Section 2.1) in order to sufficiently meet Contract requirements. Contractor shall submit a Contract Modification Form (Appendix C) to facilitate Non-Core List Product updates. Non-Core List Product updates shall not take effect without prior written authorization from OGS and no discounts shall be decreased at any time.

6.6 Substitutions of Core List Products

The Contractor shall maintain for sale throughout the life of the Contract the Products identified on the Core List which are generally available in the marketplace and to the extent practicable as determined by OGS. Product substitutes may be proposed by the Contractor during the Contract period; however, they may only be offered as a Core List Product after written approval by OGS. OGS shall only approve such substitutions if it determines that the Product is of equal or better quality and it is equal to or lower in price than the current Core List Product being substituted. OGS reserves the right to reconcile any variations in pack size and/or unit of measure for substituted Products to arrive at the Contract Price. Contractor shall submit a Contract Modification Form (Appendix C) to facilitate substitutions for Core List Products. Unauthorized substitutions of Core List Products are not acceptable and shall not be offered to Authorized Users.

OGS reserves the right to require Contractor to sell Preferred Source Core List Product substitutions and pricing for such substitutions when the Product is of equal or better quality and equal to or lower in price than the current Preferred Source Core List Product being substituted. OGS shall confirm the pricing charged by the Preferred Source to the Contractor is equal to or lower in price than the current Preferred Source Core List Product being substituted.

6.7 Price Adjustments for Core List Products

All Core List Product pricing shall not increase during the original three-year term of the Contract. Price decreases are permitted at any time and do not need prior written authorization from OGS. In the event of a Contract renewal/extension, OGS will consider price adjustments for Core List Products. However, price increases shall be at most equal to the percentage increase in the List Price for each Product. Contractor shall submit a Contract Modification Form (Appendix C) to seek price adjustments for Core List Products and shall not increase such prices prior to written authorization from OGS. Contractor shall work with the Preferred Sources to establish price adjustment requests and provide such request(s) to OGS for review and approval. No price increases may be implemented without the prior written approval of OGS.

6.8 Price Adjustments for Non-Core List Products

Discount reductions will not be allowed and are specifically excluded from the terms and conditions of the Contract. Price decreases or discount increases are permitted at any time and do not need prior written authorization from OGS. A Contractor may request to change the List Prices in the Non-Core Pricelist that are within the scope of the Contract whenever a revised version of the Contractor's Prequalified Catalog is issued and the price change is based upon changes in the List Price for each Product. Contractor shall submit a Contract Modification Form (Appendix C) to facilitate Non-Core List Product updates. Non-Core List Product updates shall not take effect without prior written authorization from OGS.

6.9 Contract Modification Procedure

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Contract. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of OGS and the Contractor. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Contract terms and conditions. The addition/deletion of Products from the Non-Core Pricelist that are within the scope of the Contract whenever a revised version of the Contractor’s Prequalified Catalog is issued is an example of updates. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Contract, but inclusion is found to be in the best interest of the State. A change to a contractual term and condition is an example of an amendment.
2. Updates to the Contract may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established 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.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure.
5. The form contained within Appendix C is subject to change at the sole discretion of OGS.
6. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Contract and Appendix B, §27 *Modification of Contract Terms*.

6.10 Orders

Orders must be accepted by the Contractor (and any approved Resellers) between the hours of 8:00 a.m. through 5:00 p.m. ET, Monday through Friday, except NYS Holidays. Contractor (and any approved Resellers) shall be capable of accepting orders verbally via toll-free number; manually, via facsimile; and electronically via the Internet through a web-based ordering system on a NYS dedicated website. All orders (verbal, fax, electronic) shall reference Contract number, requisition and/or Purchase Order number as required. For all orders, that cannot be fully delivered in compliance with the terms of Section 6.18, *Delivery*, the Contractor (and any approved Resellers) shall inform the ordering Authorized User, within 48 hours (excluding Saturday, Sunday and NYS legal holidays) after receipt of the order(s), of the date when such order(s) will be fully delivered.

6.11 Minimum Order

Minimum order shall be \$50.00 dollars. Bidder may choose to offer a lower minimum order; however, no additional shipping charges shall be allowed.

6.12 Dedicated NYS Website

The State requires that the Contractor (and any approved Resellers) establish and maintain a dedicated NYS website specifically for the resulting Contract that has a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users via the Internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User’s order. The website shall also contain an electronic version of the Contractor’s Prequalified Catalog, Online Marketplace and Preferred Source Products, with NYS Net Prices reflected. Contractor (and any approved Resellers) shall be required to post a copy of the complete Contract Pricelist, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor’s (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The Contractor’s website shall be operational within 30 calendar days of Contract execution and the State reserves the right to request a demonstration before final Contract approval.

The resultant Contractor (and any approved Resellers) shall predominately display on all pricelists and on the home screen of this website the following bolded information:

Ordering Entity Note: Authorizes Users are encouraged to review and, to the extent practicable, buy Office Supplies from the Core List located at (Insert website link here)_____

Some Core List Products are Preferred Source Products and Authorized Users may not purchase Contractor's Products which are essentially the same as the Core List Preferred Source Products under this Contract. Other Office Supply Products in this Contract may be available from one or more Preferred Source agencies and Authorized Users are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to Products/services available from Preferred Sources which meet your form, function and utility.

Products that are the same as or are similar to Products available from the Preferred Sources are identified by the following letter codes:

- 'B' represents Products available from New York State Preferred Source Program for People who are Blind (NYSPSP);
- 'C' represents Products available from Corcraft, the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries;
- 'D' represents Products available from New York State Industries for the Disabled (NYSID).

The web-based ordering system must be capable of controlling, documenting and reporting on the following minimum data elements:

Contractor Name and Address
 Contract Number
 Ordering Agency/Facility/Political Subdivision, etc. and Address
 Purchase Order/Requisition Numbers
 Contact (individual placing order)
 Delivery Location
 Delivery Instructions
 Stock Number
 Manufacturer
 Description
 Unit of Measure
 List Price (unit)
 Net Price (unit)
 Discount for Non-Core List Products
 Extended and Total Amounts
 Core List Purchases
 Non-Core List Purchases

In the event the Contractor utilizes Resellers under the resulting Contract, Contractor must provide on the landing page of its dedicated NYS website, a link to each Resellers' website. All Resellers must provide a dedicated NYS website that mirrors that of the Contractor as set forth above.

6.13 New York State Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

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

6.14 Accessibility of Web-Based Information and Applications Policy

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's (and any approved Resellers) website. Contractor is solely responsible for its actions and those of its Authorized Resellers, agents, and employees, or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities. In accordance with such policy, the following language is incorporated into any Contract resulting from this procurement:

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 Procurement Services and the results of such testing must be satisfactory to Office of Information Technology Services f/k/a Office for Technology before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

6.15 Provision of Catalogs

The Contractor shall provide, upon request and at no charge, sufficient hard copies of the Prequalified Catalog to service all Authorized Users.

6.16 Method of Payment and Invoicing

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, §48, *Contract Invoicing*.

6.17 Purchasing Card

Bidders must agree ((via Attachment 2 - *General Questions (Revised August 24, 2015)*)) to accept the NYS Purchasing Card for orders up to \$50,000.00. See Appendix B, §18, *Purchasing Card*. For all purchases executed using a NYS Purchasing Card, Contractor shall provide an itemized receipt with each delivery, identifying each Product shipped and price charged.

6.18 Delivery

Delivery must be completed within 72 hours (excluding Saturday, Sunday and NYS legal holidays) after receipt of order. If the Contractor (and any approved Resellers) determines the order cannot be fully delivered in compliance with this section within 72 hours, the Contractor (and any approved Resellers) shall contact the ordering Authorized User within 48 hours (excluding Saturday, Sunday and NYS legal holidays) after receipt of the order and advise when the order will be fully delivered. If Contractor (and any approved Resellers) fails to make contact and provide a certain delivery date, the Contractor (and any approved Resellers) must deliver the full order within 72 hours to avoid breaching the Contract terms and conditions.

The Contractor must offer (a) inside storeroom delivery, (b) inside desk delivery and (c) single dock delivery. Each delivery shall be delivered to either an inside storeroom, inside desk or a single dock based upon the needs of the Authorized User.

If an Authorized User requires an inside delivery (storeroom or desk), it must clearly indicated on Purchase Order what inside delivery is required and the specific location where inside delivery is required to be made. (Authorized Users should use terminology such as "INSIDE DELIVERY TO ROOM [number] LOCATED ON [number] FLOOR," etc., when inside delivery is required.)

Delivery shall be made in accordance with the instructions on the Purchase Order from each Authorized User and in accordance with Authorized User's security rules, which will be communicated during purchase ordering process. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's (and any approved Resellers) obligation to seek clarification from the Authorized User and, if applicable, from OGS.

Contractor (and any approved Resellers) is required to fully deliver 95% of each and all orders within the time frames set forth in this section, and provide a Delivery Compliance Rate report as referenced in Section 7.1.3, *Contractor Delivery Compliance Rate Report*.

6.19 Contract Advertising

In addition to the requirements set forth in Appendix B, §11, *Advertising Results*, any Contractor (and any approved Resellers) advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by PS prior to issuance.

6.20 Overlapping Contract Products

If the Contractor's pricelist includes Products which overlap with offerings of other State Contracts, OGS reserves the right (in its sole judgment) to exclude or delete such overlapping Products from this Contract; or to include, or continue to include, such Products under this Contract only if the Contractor offers such overlapping Products at, or below, the alternative Contract price.

6.21 Contract Administrator

Contractor must provide a dedicated contract administrator to support the updating and management of the Contract on a timely basis. Information regarding the contract administrator shall be set forth in Attachment 2 - *General Questions (Revised August 24, 2015)*. Contractor must notify OGS within five (5) Business Days if its contract administrator changes, and provide an interim contact person until the position is filled.

6.22 Toll-Free Number

A Contractor must provide a toll-free telephone number for Authorized User usage. Contractor must staff this toll-free number at a minimum from 8:00am to 5:00pm ET Monday through Friday, except NYS Holidays. If Bidder does not currently maintain a toll-free number, the Bidder must certify in Attachment 2 – *General Questions (Revised August 24, 2015)* its willingness to establish one prior to award of Contract.

6.23 Insurance Requirements

With the exception of proof of Workers' Compensation Insurance and Disability Benefits insurance coverage, which must be submitted at the time of Bid submission during Phase 1, within five (5) business days of notification of tentative award following Phase 2, Bidder shall be required to procure at its sole cost and expense all required insurance as detailed in Attachment 5 – *Insurance Requirements (Revised 8-11-15)*. The Contractor shall procure at its sole cost and expense and shall maintain in force at all times during the terms of the resultant Contract, policies of insurance pursuant to the requirements outlined. Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Attachment 5, Paragraph A.3. Bidder shall affirm its agreement to obtain all required Contract-specific insurance in Attachment 2 – *General Questions (Revised August 24, 2015)*.

6.24 Use of Resellers

Contractor must provide sales and support staff to service Authorized Users throughout New York State. Contractor shall ensure that sufficient resources are available directly, or through Resellers to ensure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated Resellers for the Contract. Such participation is subject to the following conditions:

- A. Designation of Reseller(s):** Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary information pursuant to Attachment 9 - *Reseller Template*.
- B. Conditions of Participation:** Reseller(s) must be approved in advance by the State as a condition of eligibility under this section. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time.

Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by Product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, or other

criteria (“qualifying criteria”), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor’s established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance; iii) those qualifying criteria met by the Reseller must be identified on the form provided in Attachment 9 at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller’s status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for Products under this Contract which meet their qualifying criteria. Except as otherwise set forth in Attachment 9, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller’s participation or ability to quote a particular order.

- C. Website, Catalog, and Contract Pricelist Requirements:** All Resellers will be required to maintain a web-based ordering system that mirrors that of the Contractor. The web-based ordering system must provide the same functionality, ease of use, and identical pricing as the Contractor’s web-based ordering system. Resellers are also required to provide Authorized Users with copies of catalogs and Contract Pricelists upon request.
- D. Responsibility for Reporting/Performance:** Contractor shall be fully liable for Reseller(s)’ performance and compliance with all Contract terms and conditions. Product purchased through Reseller(s) must be separately reported by Contractor in the required monthly reports to the State. In addition to inclusion of Reseller(s) volume in the Contractor’s monthly reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with monthly reports of the individual Authorized User’s Contract activity with Reseller.
- E. Applicability of Contract Terms:** Product ordered directly through Reseller(s) shall be limited to Products currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

New York State highly encourages the use of New York State Small Businesses and Certified Minority or Women Owned Business Enterprise (MWBE) as Resellers.

6.25 Use of Recycled or Remanufactured Materials

New York State, as a member of the Council of Great Lakes Governors, supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Phased Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer’s new equipment warranty or industry’s normal warranty when remanufacturer does not offer new equipment. See Appendix B, §13 *Remanufactured, Recycled, Recyclable or Recovered Materials*.

6.26 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://ogs.ny.gov/EO/4/Default.asp>. The Executive Order No. 4 specification for single use food containers and single use food service utensils adopted in May 2010, for example, requires all single use food containers, coatings, and single use food service utensils, to the maximum extent practicable, be compostable as defined under the ASTM Standard Specification for Compostable Plastics (D6400-04) and ASTM Standard Specification for Compostable Plastics Used as Coatings on Paper and Other Compostable Substrates (D6868-03) or, if such standard is not applicable, be biodegradable and where possible certified by the Biodegradable Products Institute (BPI). Similarly, specifications were adopted for hand soap/cleanser. Additional information on green cleaning requirements is set forth at <https://greencleaning.ny.gov/Entry.asp>.

Another example, pursuant to Executive Order No. 4, commencing no later than July 1, 2008 all State agency and authority publications shall be printed on 100% post-consumer recycled content paper. Where paper with 100% post-consumer recycled content is not available, or does not meet required form, function and utility, paper procurements shall use post-

consumer recycled content to the extent practicable. Non-recycled content shall be derived from a sustainably-managed renewable resource to the extent practicable, unless the cost of the Product is not competitive. Attached is a link to the Executive Order No. 4 Approved Specifications: <http://www.ogs.ny.gov/EO/4/ApprovedSpecs.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

To the maximum extent possible, Contractor shall utilize sustainable packaging that is safe and healthy for Authorized Users throughout its life cycle; is sourced, manufactured, transported, and recycled using renewable energy; optimizes the use of renewable or recycled source materials; is manufactured using clean production technologies and best practices; is physically designed to optimize materials and energy; and is effectively recovered and utilized in biological and/or industrial closed loop cycles.

6.27 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. Contractor (and any authorized Resellers) is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

6.28 Surplus/Take-Back/Recycling

- A. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- B. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section C below for specific requirements governing electronic equipment recycling.
- C. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- D. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

6.29 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract(s) are available from one or more preferred sources.

OGS is supporting the Preferred Source Program by including on the Core List, Preferred Source Core List Products and Preferred Source Supplemental Products sold by the New York State Preferred Source Program for People who are Blind

(NYSPSP), and by New York State Industries for the Disabled (NYSID). The Contractor will be required to purchase those Products directly from NYSPSP and NYSID, warehouse those Products and include those Products within its web-based ordering system for sale to all Authorized Users. In addition, Contractor will be precluded from selling essentially the same Products of a different manufacturer/brand from the Preferred Source Core List Products. OGS will identify to the Contractor the essentially the same Products contained within the Contractor's Contract Pricelist and web-based ordering system. Contractor will be required to remove from the Contract Pricelist any Products OGS deems to be essentially the same as a Preferred Source Core List Product. In the web-based ordering system, OGS will require the Contractor to identify the Products as blocked from sale under this Contract and refer the user to the replacement Product that will be shipped (e.g., If an Authorized User attempts to purchase a product offered by Contractor that is essentially the same as a Preferred Source Core List Product offered by a Preferred Source on the Core List, a pop-up window must display the Preferred Source Product information and advise the Authorized User that it cannot purchase the Contractor's Product and must instead purchase the Preferred Source Product). The Contractor must enable this block and information function within twenty (20) business days of the identification of the Products to be blocked and the substituted Preferred Source Product.

The Core List also includes Products offered by NYSPSP and NYSID under the heading of Preferred Source Supplemental Products. These Preferred Source Supplemental Products must be offered by the Contractor, but the Contractor has no obligation to block similar type Products and require Authorized User to purchase these Supplemental Products. (e.g. Preferred Source Supplemental Product is sold only by the case and Contractor sells individually). However, when an Authorized User orders a Product that is similar to a Preferred Source Supplemental Product through Contractor's NYS dedicated website, a pop-up window must display the Preferred Source Product information and indicate that consideration should be given to purchasing the Preferred Source Supplemental Product in place of the Contractor's original Product. OGS will identify the similar Products within Contractors' web-based ordering system and Contractor must enable this pop-up information function within twenty (20) business days of the identification of such Products

Prior to the commencement of the Reverse Auction, Bidders will be advised of the price of each Preferred Source Core and Supplemental Product (including shipping charges) which will be charged by the Preferred Source organization to the winning Contractor during the first three years of the Contract. The Office Supplies Workbook will also include the maximum price at which the winning Contractor may sell the Preferred Source Product. During the Reverse Auction, Bidders will be required to identify the Bid price the Bidder is offering for each Preferred Source Core and Supplemental Product, which may be lower than the maximum permissible price. It is anticipated that the Contractor and Preferred Sources will execute their own separate agreement governing the provision of Preferred Source Core and Supplemental Products to the Contractor, with the requirement that the Preferred Source will not charge the Contractor more for the Preferred Source Core and Supplemental Products than the price identified for that Product within Attachment 1 - *Office Supplies Workbook (Revised 8-24-15)*. Bidders must agree (via Attachment 2 - *General Questions (Revised 8-24-15)*) to purchase, warehouse and sell through the web-based ordering system all Preferred Source Products identified on the Core List throughout the life of the Contract.

6.30 New York State Vendor File Registration

Prior to being awarded a Contract pursuant to this Phased Solicitation, the Bidder(s) and any Authorized Resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers (Vendor ID) will be assigned to your company and to each of your Authorized Resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the vendor must enter the vendor's ten-digit Vendor ID number on the first page of this Solicitation. Authorized Resellers already registered should list the ten-digit Vendor ID number along with the Authorized Reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Complete the OSC Substitute W-9 Form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf and submit the form to OGS in advance of Bid submittal. Please send this document to the Designated Contact in the Phased 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/ac3237s_fe.pdf should be completed by each designated Authorized Reseller and

submitted to OGS. The OGS will initiate the vendor registration process for all Bidders and their Authorized Resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website: http://www.osc.state.ny.us/vendor_management

6.31 New York State Vendor Responsibility Questionnaire For-Profit Business Entity

OGS conducts a review of prospective Contractors (“Bidders”) 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 will conduct its vendor responsibility review during Phase 1 and a determination of responsibility will be required in order for a Bidder to be deemed a qualified Bidder eligible to participate in Phase 2.

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) web site, http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC web site 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 Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

NOTE: A New York State Vendor File Registry Number is required to access the VendRep site (see previous clause). Bidders who do not have an assigned NYS Vendor File Registration Number must submit a hard copy paper questionnaire with their Bid.

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 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 her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the Contractor’s responses to the 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 of OGS or her designee at the Contractor’s expense where the Contractor

is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

6.32 New York State Tax Law §5-a

Tax Law §5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS 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 is 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.

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the Bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor 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 Contractor non-responsive and non-responsible. Contractor 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 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 ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS with the Phase 1 Bid submission. 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 DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

6.33 New York State Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 4 - *New York State Required Certifications*) with its Phase 1 Bid submission. Failure to submit these documents may result in the Bid being considered non-responsive and may result in a Bid being REJECTED.

6.34 "OGS or Less" Guidelines

Purchases of the Products included in the Phased Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are:

1. lower in price
-and/or-
2. available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's

Office and competitive bidding of requirements exceeding the discretionary bid limit. State Agencies should refer to Procurement Council Guidelines for additional information.

6.35 Potential Empire State Plaza Storefront Opportunity

There may be an opportunity for the successful Bidder to obtain a tenancy at the Empire State Plaza in Albany, New York for a retail store location to service Authorized Users and also sell Miscellaneous Office Supplies to the general public. Any such agreement would be contingent upon the availability of lease space and securing a lease agreement for the retail location.

6.36 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B §26 *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have Delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include Delivery to locations adjacent to New York State.

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

6.37 Extension of Use

Any Contract resulting from this Phased Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead Contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional Discounts based on any increased volume generated by such extensions.

6.38 Contractor Performance

Authorized Users should notify the PS Contract administrator promptly if the Contractor fails to meet the requirements of this Contract. Performance which is otherwise unsatisfactory to the Authorized User should also be reported to PS.

6.39 Disposition of Settlements

The Office of General Services has the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of this Contract.

6.40 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information, such as documentation of eligibility to use New York State Contracts, agency code, name, address and contact person in order to facilitate the opening of a customer account. An Authorized User shall not be required to provide credit references. Contractor shall not permit individuals to establish personal accounts or to purchase from this Contract for personal use.

6.41 Product Returns Because of Quality Problems

Upon written notification by the Authorized User to the Contractor, Products determined to have quality problems, outdated Product, damage, etc., shall be picked up by the Contractor within ten (10) business days after notification with no restocking charge. The Authorized User shall elect whether to receive a replacement Product or a credit/refund for the full purchase price. The Authorized User must conduct its inspection, and notify the Contractor within 30 calendar days of delivery. If a defect is not identified within 30 calendar days after delivery, the Authorized User may be required to contact the manufacturer directly. Contractor shall provide an Authorized User with the manufacturer's contact number, upon request.

6.42 Product Returns Due to Authorized User Error

Products ordered in error by an Authorized User shall be returned by Authorized User at its expense for credit within fifteen (15) business days of delivery. Standard stock Products must be in resalable condition (original container, unused). The Contractor may charge a restocking fee--not to exceed ten percent--for Product returns due to Authorized User error.

6.43 Discrepancies

The Contractor shall resolve all order and invoice discrepancies (e.g., shortages, incorrect Product received, etc.) within five business days from notification.

6.44 Mercury Added Consumer Products

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any Products containing elemental mercury for any purpose under this Contract.

6.45 Appendix B Amendments**1. Appendix B § 5, *Late Bids Rejected*, is hereby deleted and replaced with the following:****5. Late Bids**

For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Solicitation 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 Solicitation 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 Solicitation 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; or (iii) as may otherwise be determined in the Commissioner's sole discretion. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with the Solicitation. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User, generally 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, generally shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

2. Appendix B, § 35, *Title and Risk of Loss*, is hereby deleted and replaced with the following:**35. Title and Risk of Loss**

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 by the Authorize User.

3. Appendix B, § 60, *Indemnification*, is hereby deleted and replaced with the following:**60. 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 is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (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. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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.

SECTION 7: REPORTING

7.1 Administrative and Reporting Requirements

The Contractor shall provide the following reports to OGS PS in Microsoft Excel (2013 or lower version), at the e-mail address listed on the Contract, no later than ten (10) calendar days after the close of each calendar month. If the Contract period begins or ends in a fractional portion of a reporting month, only the actual Contract sales for this fractional period should be reported in the monthly report. Failure to submit reports on a timely basis may result in Contract termination and designation of Contractor as non-responsible. The Bidder agrees that OGS reserves the right to amend the data elements collected in these reports. Such amendments shall not be substantive in nature and shall reflect information relevant to monitoring the expenditures under the Contract.

7.1.1 Report of Contract Purchases

The Contractor shall submit electronically monthly comprehensive reports as outlined in tabs “Core List Purchases and “Non-Core List Purchases” in Attachment 6 – *Administrative Reports*. Contractor agrees that additional related information may be required and shall be supplied upon request of OGS.

7.1.2 Authorized User Sales Reports

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of Products purchased, quantity purchased, unit price and total dollar volume of purchases. Contractor must be able to separately report Core List and Non-Core List purchases at the Authorized User’s written request.

7.1.3 Contractor Delivery Compliance Rate Report

Contractor agrees that it will provide, within 10 business days of request, a report evidencing its Delivery Compliance Rate. *See* Section 1.8, *Definitions*. Failure to maintain a 95% Delivery Compliance Rate may result in Contract termination.

SECTION 8: MINORITY- AND WOMEN-OWNED BUSINESS AND EQUAL EMPLOYMENT

8.1 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

8.1.1 Policy Statement

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 Disparity Study 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 establish 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.

8.1.2 Equal Employment Opportunity Requirements

By submission of a Bid 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 labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor, 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 OGS, 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.

8.1.3 Business Participation Opportunities For New York State Certified Minority- And Women-Owned Business Enterprises (MWBEs)

A. MWBE Contract Goals

For purposes of this procurement, OGS hereby establishes a goal of 10% for Minority-owned Business Enterprises (MBE) participation and 10% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total Contract MWBE goal of 20%. 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/VendorSearchPublic.asp?TN=ny&XID=2528>.

The MWBE Regulations are located at 5 NYCRR § 140 - 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Businesses and Community Relations identified on the front page of the Solicitation.

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract (see clause D below). Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation.

B. By submitting a Bid, Bidder/Contractor agrees to the following:**1. Breach of Contract and Liquidated Damages**

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.

2. Utilization Plan

a. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their Bid.

b. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the Contract, a description of the Contract scope of work the Contractor intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future Bids, and/or withholding of payments. Any modifications or changes to the agreed participation by 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.

c. 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.

d. 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.

3. OGS may disqualify a Bidder's Bid 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.

C. Request for Waiver

1. In accordance with 5 NYCRR § 142.7, a Bidder who is able to document good faith efforts to meet the goal requirements, as set forth in clause D below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation, 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(2)(c) & (d) and C(3) will apply.

2. 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.

3. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office for Minority- and Women-Owned Businesses and Community Relations identified on the front page of the Solicitation for guidance.

D. Required Good Faith Efforts

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

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

E. Monthly MWBE Contractor Compliance Report

In accordance with 5 NYCRR § 142.10, 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 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>.

For inquires related specifically to Minority Women-Owned Business Enterprises (MWBE) provisions of this Solicitation, the designated contacts are identified on the cover page of this Solicitation.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
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: mwbecertification@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 Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
<http://www.ogs.ny.gov/about/regs/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 Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

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

a. AUTHORIZED USER Authorized User shall have the meaning set forth in 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.

b. BID A response to the Solicitation submitted by a Bidder to provide Products.

c. BIDDER Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

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

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

f. CONTRACT The writings that 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 written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.
- 2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS 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 Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. Back-Drop Contracts Multiple-award Centralized Contracts where OGS provides a written description 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 Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

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 group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

5. Contract Letter A letter to the successful Bidder 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 the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

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

h. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Commissioner.

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

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

k. 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.

l. 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.

m. GROUP A classification of a Product that is designated by OGS.

n. INVITATION FOR BIDS (IFB) A type of Solicitation that 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 or Bidders.

o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes

Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

p. LICENSEE An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User 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.

q. 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.

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

s. MINI-BID A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

t. NEW LICENSED SOFTWARE RELEASES (Licensed Software Revisions) Any commercially released revisions to the licensed version of Licensed Software as may be generally offered and available to Authorized Users who are current on technical support/maintenance. New Licensed Software Releases involve a substantial revision of functionality from a previously released version of the Licensed Software. Updates are provided when available, and Contractor is under no obligation to develop any future Product or functionality.

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

v. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

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

x. REQUEST FOR PROPOSALS (RFP) A type of Solicitation 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).

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

z. 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 MAY 2015

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.

aa. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

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

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

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

ee. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

ff. 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.

gg. STATE State of New York.

hh. STATE 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.

ii. SUBCONTRACTOR Any individual or 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.

jj. 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.

kk. 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 Bids, including 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 Bids 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. 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 Solicitation 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 Solicitation 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 Solicitation 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 the Solicitation. 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.

6. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Solicitation. 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 terms 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;
- b.** The writing must identify the particular Solicitation 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 Solicitation, and the reasons therefor.

No extraneous terms, 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 terms in writing. Acceptance and/or MAY 2015

processing of the Bid shall not constitute such written acceptance of extraneous terms.

7. CONFIDENTIAL/TRADE SECRET MATERIALS

a. CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. 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 to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

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

a. PREVAILING WAGE RATE APPLICABLE TO BIDS A copy of the applicable prevailing wage rate schedule is attached to the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

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 for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor 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 the 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 Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. 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.

9. TAXES

a. Unless otherwise specified in the Solicitation, 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.

10. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized User(s) are not liable for any costs incurred by a 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.

11. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Solicitation 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 Solicitation or Contract for press or other media releases.

12. PRODUCT REFERENCES

a. "Or Equal" In all Solicitations or 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 Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

13. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS Upon the conditions specified in the Solicitation 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 Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements or by

the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, 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.

14. PRODUCTS MANUFACTURED IN PUBLIC

INSTITUTIONS Bids offering Products that are manufactured or produced in public institutions will be rejected.

15. PRICING

a. Unit Pricing If required by the Solicitation, 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 Solicitation. 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 Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Solicitation.

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 net pricing under the Contract is 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 net pricing under the Contract is 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 pricing 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 net pricing 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 Solicitation, 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 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.

16. DRAWINGS

a. Drawings Submitted With Bid When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation 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, or carrying out any other requirements of the intended scope of work.

17. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that 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 that 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 provide the required Product.

18. PURCHASING CARD The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

19. SAMPLES

a. 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 Solicitation 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.

b. 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.

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

d. 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 Solicitation, 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.

e. 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

20. 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.

21. 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 Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

22. 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 Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements 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.

23. 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 Solicitation, 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 Solicitation, 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

24. 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 Solicitation, 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.

25. OFFICIAL USE ONLY/NO PERSONAL USE The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

26. PARTICIPATION IN CENTRALIZED CONTRACTS

a. State Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits 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 Contract 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.

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 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.

27. 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.

28. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of MAY 2015

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 notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

29. 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.

30. 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 for 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.

31. 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 a Contract 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.

32. 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.

33. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Contract 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.

34. 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 Contract, 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 MAY 2015

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.

35. 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 Contract 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 Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

36. 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.

37. PRODUCT SUBSTITUTION In the event a specified 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.

38. 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.

39. 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.

40. REPAIRED OR REPLACED PRODUCTS, PARTS, OR 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.

41. EMPLOYEES, SUBCONTRACTORS AND 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 Contract, 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 agent of the Contractor.

42. ASSIGNMENT In accordance with Section 138 of the State Finance Law, 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, any consent 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 assignments with the State 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 State 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.

43. 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.

44. 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.

45. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under the 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.

46. TERMINATION

a. For Cause For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by 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. 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 This Contract may be terminated at any time by the Commissioner for convenience upon sixty (60) calendar days or other longer period as specified by written notice, 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 fulfill any outstanding Purchase Orders.

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 or 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 or 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 at the Contractor's expense where the Contractor is determined by the Commissioner to be non-responsible. In such event, the Commissioner 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. Upon Conviction of Certain Crimes The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

47. 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 to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

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 or 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. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

48. 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.

49. 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 provision of Products 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 provide Products to an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

50. 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 Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 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 (30) 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 State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency 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.

51. 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 issuing a formal Solicitation: (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 replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement 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 to be resolved in accordance with the OGS Dispute Resolution Procedures.

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 their 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 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, 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 replacement 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.

52. 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.

53. 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.

54. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its Subcontractors, 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.

55. 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.

56. 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.

57. 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 mutual agreement of the Commissioner and the Contractor for an additional period(s) of up to one year. Such extension may be exercised on a month-to-month basis or in other stated periods of time during the one year extension.

58. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the
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Documentation fully describes the proper procedure for using the Products.

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) arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one (1) year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Where Contractor, the independent software vendor (ISV), or other third-party manufacturer markets any Product 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 Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with ISV or other third-party manufacturers for warranty repair or replacement of ISV or other third-party manufacturer's Product.

Where Contractor, ISV or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through the standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, 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 component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at Licensee's Site.

e. 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.

f. 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.

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

h. Prompt Notice of Breach The Authorized User shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

j. No Limitation of Rights 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.

59. 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 Solicitation 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.

60. 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 Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (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. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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.

61. INDEMNIFICATION RELATING TO INFRINGEMENT 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 the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, and (b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

The Authorized User shall give Contractor 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 an 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 User's 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 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 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.

62. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement 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 forming the basis of the Authorized User's claim 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, MAY 2015

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.

63. DISPUTE RESOLUTION PROCEDURES

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at: <http://nyspro.ogs.ny.gov/content/dispute-resolution-procedures>. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

64. 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; and (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 terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, fixes, upgrades and New Licensed Software 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 Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the technical support/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: (i) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and (ii) 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 (iii) 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 that require Licensee to restore backups 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. The phrase “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; or (iii) export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

65. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User 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 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 Authorized 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.

66. 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 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 MAY 2015

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 net pricing in effect under the Contract 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.

67. 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 Solicitation 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 Products 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 purposes stated in the Solicitation 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 purchases 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.

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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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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: (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) 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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APPENDIX C**CONTRACT MODIFICATION PROCEDURE**

The following guidelines are subject to change at the discretion of OGS. A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form.

- (1) **TYPES OF CONTRACT MODIFICATIONS:** In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.
 - a) **UPDATES:** “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: substitutions of Core List Products; price adjustments for Core List Products; price adjustments for Non-Core List Products; and addition/deletion of Products from the Non-Core Pricelist that are within the scope of the Contract whenever a revised version of the Contractor’s Prequalified Catalog is issued, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.
 - b) **AMENDMENTS:** “Amendments” are 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. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.
- (2) **CONTRACTOR’S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:
 - Request additional information
 - Reject Contract modifications
 - Remove Products from Contract modification requests
 - Request additional discounts for new or existing Products
- (3) **PRICELIST FORMAT:** Contractor is required to submit Contract Pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS PS contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor’s approved Contract Pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):
 - Price increases
 - Price decreases
 - Products being added
 - Products being deleted
- (4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.
- (5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., substitutions of Core List Products). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

CONTRACT MODIFICATION FORM	
OGS CONTRACT NO.: _____	DATE OF SUBMISSION: _____
CONTRACT DESCRIPTION: _____	
CONTRACT PERIOD: From: _____ To: _____	CONTRACTOR CONTACT: NAME: _____ PHONE NO: _____ E-MAIL: _____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

1. This form is to be used for all Contract modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price information for the update electronically via e-mail in an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request. The Contract modification request must be accompanied by the relevant current contract pricing discount information.

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

1. This request is for an: ____ Update ____ Amendment See Contract Modification Procedure for an explanation of these terms.	2. The intent of this submittal is to request: ____ Addition of new products ____ Deletion of products ____ Price increases ____ Price decreases ____ Other Update ____ Other Amendment
3. All discounts are: ____ GSA ____ Most Favored Nation* ____ Other (provide explanation) _____ *Prices offered are the lowest offered to any similarly situated entity.	4. Attached documentation includes: ____ Current approved GSA (labeled "For information only") ____ Current NYS Contract Pricelist ____ Revised NYS Contract Pricelist in same format required for this Contract.
5. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to Authorized Users, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.	

**Phased Solicitation 22790- Miscellaneous Office Supplies
Appendix D - Supplier Agreement**

**Electronic Auction Services, Inc. (“EASI”)
SUPPLIER AGREEMENT TERMS AND CONDITIONS**

The following terms are used in this document:

Authorized User shall have the meaning set forth in NY State Finance Law §163(1)(k).

Awarded Supplier shall refer to an entity that enters into a resulting contract with the Buyer.

Buyer shall refer to the New York State Office of General Services

Reverse Auction or Online Bidding Event shall refer to the methodology used to collect pricing or quotation information from Suppliers.

EASI shall refer to Electronic Auction Services, Inc.

Solution shall refer to EASI's Reverse Auction or Online Bidding Event methodology used to collect pricing information from Suppliers.

Supplier shall refer to the entity executing this Supplier Agreement. Supplier is also referred to as “you.”

Suppliers shall refer to all entities that executed this Agreement for the same solicitation.

Transaction Fee shall refer to the sum of money that must be paid by the Awarded Supplier(s) as a result of sales under the resulting contract(s) with the Buyer.

EASI does not verify or validate any Buyer information provided or representations made by Buyer on the Solution, and makes no warranty of any kind to you concerning Buyer's offerings using the Solution. You acknowledge EASI, its employees, agents and partners make no warranty of any kind, either express or implied, regarding the quality, accuracy or validity of any data and information available on the Solution, or residing or passing through its network, other than information and data that is provided directly to you from EASI. You further acknowledge any agreement entered into by you as the Supplier of goods or services from Buyer is an agreement solely with such buyer, and EASI is in no way a party to or responsible for the performance of such agreement. Therefore: 1) EASI DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO ANY TRANSACTION ENTERED INTO BETWEEN BUYER AND AN AWARDED SUPPLIER, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; AND 2) EASI FURTHER DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, CONCERNING INFORMATION SUPPLIED, OR REPRESENTATIONS MADE, BY BUYER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION RELATING TO PRODUCT SUITABILITY, SPECIFICATIONS, OR REQUESTED AVAILABILITY, OR THE TRUTHFULNESS OR ACCURACY OF ANY OTHER INFORMATION OR REPRESENTATION MADE OR SUPPLIED BY BUYER OR ANY OTHER SUPPLIER INVOLVED IN THIS SUPPLIER AGREEMENT.

BY YOUR SIGNATURE BELOW, AND BY SUBSEQUENTLY USING THE SOLUTION, YOU AGREE TO COMPLY WITH ALL TERMS AND CONDITIONS SET FORTH BELOW AND WITH ALL INSTRUCTIONS FOR USE POSTED ON THE SOLUTION.

READ THIS AGREEMENT (“SUPPLIER AGREEMENT”) CAREFULLY BEFORE SIGNING. BY SIGNING, YOU WILL BE PERMITTED TO UTILIZE THE EASI SOLUTION FOR THE PURPOSE OF PARTICIPATING IN THIS ONE-TIME, ON-LINE BIDDING EVENT. YOU WILL BE ALLOWED TO RECEIVE REQUESTS FOR PRICES AND QUOTATIONS AND TO SUBMIT PRICES AND QUOTATIONS NECESSARY IN PARTICIPATING IN THE ONLINE BIDDING EVENT. FAILURE TO SIGN AND RETURN THIS SUPPLIER AGREEMENT WITH YOUR INITIAL PROPOSAL SHALL DISQUALIFY YOU FROM PARTICIPATING IN THE ONLINE BIDDING EVENT.

1. Utilization. You are granted a one-time, non-transferable, non-exclusive right to access the Solution through EProcureLive website by the use of a password(s) and/or access code(s) for the purpose of participating in a specific Online Bidding Event. Any subsequent rights to access the Solution will require you to accept a new "Supplier Agreement Terms and Conditions". EASI reserves the right to terminate your access to the Solution or any of its services at any time, if EASI shall determine, and the State concurs in writing, that you have violated any term(s) of this Supplier Agreement with respect to your access to and use of the Solution. In the event of such termination, EASI shall notify you immediately.

2. Responsibilities of the Parties. Subject to the terms and conditions of this Supplier Agreement, EASI will make available to you electronic access and use of the Solution for you to participate in a one-time, Online Bidding Event. EASI will also provide such other assistance in the way of customer support and service as are set forth below. It is solely your responsibility when using the Solution to comply with all applicable local, state and federal statutes, ordinances, regulations, and policies governing the sales of goods or services by your company. EASI shall have no responsibility for ensuring sales of goods or services using the Solution will comply with such laws, ordinances, regulations, or policies. The Supplier, in using the Solution, has the responsibility for the sale including, but not limited to, the following:

- Accepting the terms and conditions of this Supplier Agreement as contained in the Buyer's solicitation
- Selecting appropriate procurement opportunities to participate
- Preparing and assuring the completeness of any bid prices, quotes or proposals
- Submitting any bid prices, quotes or proposals electronically within the Buyer established deadlines
- Maintaining with the Buyer, the security and the integrity of the bid procurement process
- Participating in any mandatory Pre-bid Conference(s) and telephonic or web conference tutorials for Suppliers prior to the Online Bidding Event
- Complying with all applicable legal requirements
- Establishing and adhering to the terms and conditions of Buyer contracts
- Assuring proper authorization to enter into a contract and the proper administration of any resulting contract

As a Supplier, you also acknowledge that EASI's responsibilities are, but not limited to, the following:

- Hosting telephone or web conference tutorials with all Suppliers on utilization of the electronic bid process
- Participating in any Pre-bid Conference(s)
- Conducting the Online Bidding Event and providing help desk support during the event
- Publishing appropriate results to the Buyer and obtaining feedback from participants

3. Conduit Services Only. The Solution provides only an Internet conduit through which the following may take place: (a) you may communicate the availability of your goods and services to the Buyer, (b) the Buyer may communicate their procurement needs to you and (c) you may respond to requests for prices and quotations in Online Bidding Events. You will be entitled only to respond to requests of prices and quotations if you have accepted the terms and conditions of the Supplier Agreement. EASI makes no representation of any kind concerning the reputation, reliability or any other matter concerning the Buyer. EASI recommends you conduct your own inquiries concerning the qualifications and reputation of the Buyer, and you must look only to the Buyer with whom you choose to transact business for performance of any agreements with them.

4. Buyer Representations and Warranties. EASI does not verify the information supplied or representations made by the Buyer on the Solution and makes no warranty of any kind to you concerning any buyer using the Solution. EASI recommends you look solely to the Buyer with respect to any Buyer-related information, representations and warranties.

5. Coded Access. Participation in the Online Bidding Event is available only to persons and entities who have read and agreed to the terms of this Supplier Agreement and who have been assigned access code(s) and/or password(s). You agree not to divulge your access codes or passwords to any other person or entity. EASI is not responsible for such unauthorized use of the Solution.

6. Availability and Operation of the Solution. While every effort will be made to keep the Solution operating during all scheduled hours of operation, no guarantee of uninterrupted operation can be given. You agree the services provided on the Solution are provided as is and that neither you nor your business will have any claim against EASI as a result of any non-availability of the Solution at a particular time or times or any failure of the Solution to operate as intended.

7. Sole Remedy. If you are dissatisfied with the functionality of this Solution or the services EASI provides, your sole remedy is to cease

using the Solution. YOU AGREE THAT YOU HAVE, AND WILL HAVE, NO CLAIM OR RIGHT OF ACTION OF ANY KIND AGAINST EASI RELATED TO YOUR USE OF THE SOLUTION.

8. Virus. You hereby agree EASI will not be liable for any harm that may be caused by the inadvertent or deliberate transmission of any malicious computer software, or such other computer program transmitted through its website from a third party.

9. Information You Provide. You agree any information you provide about yourself or your agents when registering to use the Solution is accurate, current and complete and you will maintain and update that information to ensure that it remains as such. If EASI suffers any claim or incurs any liability as a result of gross negligence or willful misconduct associated with information entered into the Solution by users of your account, you and your business will indemnify EASI against such claim or liability including costs and attorney's fees incurred in defending against it.

10. Security. EASI uses industry-standard security measures to safeguard any information you may provide to us on our website. You, your organization and/or your agents have the responsibility to manage your internal security by safeguarding passwords and establishing your own internal security procedures, to assure the proper use of the Solution. In the event of any compromise in the security of the Solution, you agree to immediately report the same to EASI and a new password will be assigned for your use. EASI does not and cannot guarantee that information will remain secure.

11. Fees. The design, maintenance and operation of the Solution requires substantial costs and investment by EASI. The Transaction Fee for specific products and services for each event shall be owed by you and your company upon the execution of each awarded contract resulting from your submission of any request for bid prices or quotations through this Solution. You hereby acknowledge that once you have viewed or received a request for quotation through or as a result of the Solution, and submitted an initial quotation of which a sale has ultimately been consummated as a result thereof, whether or not consummated through the Solution or other forms of bids or negotiations, you are obligated to pay the Transaction Fee to EASI if you are the Awarded Supplier. . Transaction Fees will be billed and are to be paid to EASI by the Awarded Supplier in the following manner:

A) Awarded Supplier Reporting and Payment Terms and Conditions: The Awarded Supplier(s) will be responsible to pay the Transaction Fee of 1% to EASI for all payments received from the Buyer, any of its political subdivisions or any other entity (the "Authorized User") resulting from this Online Bidding Event or subsequent contract. The total Transaction Fee

collections received by EASI shall not exceed \$42,500 total for each Online Bidding Event. Upon notification of award from the Buyer, the Awarded Supplier is required to provide ACH or credit card information ("Preferred Transaction Fee Payment Method"). For Term Purchase contracts, the Transaction Fee is due within fifteen (15) days of the end of each month. The Awarded Supplier, by the 10th of each calendar month, is required to upload a report detailing the payments and credits as well as a summary of total net payments received by the Buyer and all Authorized Users for this contract during the previous calendar month.

B) Audit Right: the Authorized User and EASI reserve the right to audit the accuracy of the Transaction Fees. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business day's prior written notice, and in such a manner as not to unreasonably interfere with the Awarded Supplier's normal business activities. Transaction Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Transaction Fees are determined to have been underpaid by more than five percent (5%) for the period audited, Awarded Supplier shall pay for the costs of such audit. Otherwise, the audit shall be paid for by the entity requesting the audit.

Awarded Supplier shall make payment to EASI via either ACH or credit card information. This Supplier Agreement is binding on all extensions, renewals and amendments to the resultant contracts until and unless such time Buyer re-bids same in a manner consistent with acceptable procurement procedures.

Supplier shall ensure this Transaction Fee is included in every price bid they submit before or during an Online Bidding Event. You further acknowledge any payment made under the resulting contract in which you were the winning bidder, whether or not such payment is made directly to you or a third party, will cause you to be immediately liable to EASI for the Transaction Fee. Because the Transaction Fee is INCLUDED in your pricing, a Transaction Fee shall not be delineated in your invoicing to the Buyer.

12. Disclosures. You acknowledge by using the Solution, that you agree to provide EASI accurate and complete information regarding: (a) any agreement entered into by you with the Buyer through or as a result of any Online Bidding Event conducted through the Solution; (b) the final price agreed upon between you and the Buyer with respect to the product or service sold under the resulting contract ; and (c) the date payment (whether a payment in full or a partial or installment payment) is delivered to you by any Authorized User pursuant to any transaction from a resulting contract with Buyer through or as a result of any Online Bidding Event conducted through the Solution. You understand and acknowledge

you are to provide this information to EASI immediately upon becoming aware of such information and EASI relies upon your delivery of such information for the calculation and payment of its Transaction Fees as set forth in Section 11.

You acknowledge and agree the Buyer conducting Online Bidding Events through the Solution may be a governmental or quasi-governmental entity, and that, prior to entering into any binding agreement with you for the purchase of any product or service, such Buyer may be required to comply with numerous state and local laws, regulations and ordinances with respect to the procurement of goods and services by governmental entities. You acknowledge and agree such compliance by Buyer may involve public notice, public hearings, counsel meetings, and other lengthy processes.

13. Privacy Policy. You hereby acknowledge EASI has the right to monitor the Solution electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other government request, to operate its service properly, or to protect itself or its users. EASI reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable or in violation of this Supplier Agreement.

The information we receive depends on what you do when visiting the Solution. If you visit the Solution to read or download information, we collect and store only the following information about you: the name of the domain and host through which you access the Internet (for example, aol.com if you are connecting from an America Online account), and the date and time you access the Solution. We use this information to measure the number of visitors to different sections of the Solution, so that we can make the Solution more useful to our visitors. If you actively participate in using or providing any of the services offered through the Solution, we collect and store the personally identifiable information needed to facilitate this participation (typically your name, company name, mailing address, email address).

14. Reselling or Transfer. You agree not to resell or transfer your right to use the Solution to anyone, and you will not allow your access code or password to be used by any other company or unauthorized person.

15. Access to Internet. You agree that in order to use the Solution you must: (a) provide your own access to the Internet, and (b) provide all equipment necessary for you to make the connection to the Internet. EASI is not responsible for the speed, reliability and/or quality of your connectivity to the Internet.

16. Interference with Others. You agree not to use the Solution in a manner that would restrict or inhibit any other party's use of such services.

17. Links to Other Sites. Reserved.

18. Copyright – How you May Use the Content of the Solution. The content of this Solution (the "Content") is protected by intellectual property laws of both the United States and foreign jurisdictions. You may download, use, and copy the materials found on the Solution for your internal business use only, provided that all copies that you make of the material must bear any copyright, trademark, or other proprietary notice located on the Solution which pertains to the material being copied. This material is not for republication, except as authorized in this paragraph. You are not being granted a license under any copyright, trademark, patent, or other intellectual property right in the material or the services, processes, or technology described therein. All such rights are retained by EASI and/or any third party owner of such rights. You may not sell or modify the Content or reproduce, display, publicly perform, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use of the Content on any other website or in a networked computer environment for any purpose is prohibited. None of the Content, including any software, may be reverse engineered, disassembled, decompiled, reproduced, transcribed, stored in a retrieval system, translated into any language or computer language, retransmitted in any form or by any means, resold, or redistributed without the prior written consent of EASI, except as described herein. Nothing in this paragraph prohibits you from printing, using or reproducing any records or reports of your transactions using the Solution.

19. Framed Links. You may not create framed links to the Solution without express written permission from EASI.

20. Modification. Reserved.

21. Non-Circumvention. You agree you will not, directly or indirectly, take any action with the Buyer or any other suppliers involved in this specific event which circumvents or attempts to circumvent the intent or purpose of this Supplier Agreement. Further, you agree that once (1) you have agreed to the terms and conditions of the Supplier Agreement and (2) electronically viewed or received a specific request for bid prices or quotations from Buyer through the Solution, you will not, directly or indirectly, enter into any agreement related to such specific request with such Buyer outside the Solution or in any manner such as paper or verbal bids which would result in your failure to pay to EASI the Transaction Fee set out in Section 11 hereof. You agree to maintain confidentiality

between the Buyer, your company and its representatives and EASI regarding the submission of quotations and subsequent pricing before and during the Online Bidding Event.

22. Governing Law. This Supplier Agreement and the rights of the parties to this Supplier Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to or application of its conflict of laws principles.

23. Partial Enforceability. If any provision of this Supplier Agreement, or the application of any provision to any person, entity or circumstance shall be held invalid, illegal or unenforceable, then the remainder of this Supplier Agreement, or the application of that provision to persons, entities or circumstances other than those with respect to which it is held invalid, illegal or unenforceable, shall not be affected thereby.

24. Entire Agreement. This Supplier Agreement represents the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements, negotiations, correspondence, undertakings and communications between such parties representing such subject matter.

25. No Consequential Damages. Except as prohibited by law, each party hereto waives any right it may have to claim or recover any special, exemplary, punitive or consequential (including business interruption), or any damages other than, or in addition to, actual damages.

26. Headings. The headings in this Supplier Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Supplier Agreement.

YOUR SIGNATURE BELOW IS YOUR ACKNOWLEDGEMENT THAT YOU HAVE READ AND FULLY UNDERSTAND THE FOREGOING AND AGREE TO ABIDE BY ITS TERMS AND CONDITIONS IN THEIR ENTIRETY.

❖ ***I understand that if "I Do Not Accept" the terms listed in this Supplier Agreement or if I do not respond to this Supplier Agreement, EASI cannot allow me or my company to participate in the Reverse Auction.***

I accept the terms listed in this Supplier Agreement.

Supplier Company Name

Name _____

Title _____

Signature _____

Date _____

Please review the following rules for participating in the Online Bidding Event:

- I acknowledge that I will receive training on system usage via telephone or web conference. If someone else is designated by me to bid in this event, I take responsibility for that bidder's capabilities, will notify EASI, and I acknowledge that this Supplier Agreement will apply to the designated bidder.
- I understand that I should not attempt to troubleshoot any technical problems on my own, especially problems I am experiencing in the Online Bidding Event and that I should call EASI IMMEDIATELY at 855-405-2253.
- I understand that if I encounter any difficulties in placing a bid that I am to contact EASI via phone immediately and that, if necessary, EASI will assist me in placing a bid. I understand that adequate time must be provided to EASI to assist me and agree that EASI is not liable if I am unable to place a bid for any reason before the Online Bidding Event closes.
- I understand that the official Online Bidding Event clock is maintained by EASI's server and due to Internet connection speeds the Online Bidding Event clock on my computer may vary. For this reason, it is important that I submit my bid with ample time remaining in the Online Bidding Event to prevent late bids from being rejected due to the lag in connection speeds and clock times. Ultimately, EASI's server is the official clock and by following instructions in this document, I will minimize the possibility that my intended bid will not be accepted.

- I understand that there are extensions built into this Online Bidding Event in order to allow fair and ample opportunity for all bidders to counter last-minute bids. This is done to leverage Internet connection speeds. If a bid is placed within the extension period of the Online Bidding Event the clock will reset to the defined extension time until no further bids are placed and the time expires.
- I understand that I should not wait until the last 60 seconds of an Online Bidding Event to place a bid. I also understand that by waiting until the last 60 seconds to place a bid I risk problems associated with Internet transmission speeds and take the chance of having my bid rejected. I agree that neither EASI nor the Buyer using the Online Bidding Event is responsible or liable if my bid is submitted too late or improperly and is not accepted by the software.
- I understand that in some cases, an Online Bidding Event might be re-opened if technical issues prevented a bidder or bidders from placing bids and those issues were brought to EASI's attention immediately. I acknowledge that a re-opening decision will be at the discretion of EASI and the Buyer. Due to the possibility of a re-opening, I understand that I should remain logged on and attentive to the Solution until a broadcast message announces the bid has officially closed.
- I understand that EASI is under no obligation to re-open an Online Bidding Event for a bidder to place a bid for any reason, particularly if a bidder does not contact EASI immediately after attempting to place a rejected bid.
- I understand that there may be an opening price in the Online Bidding Event and that I cannot place a bid higher than this price. This price represents the maximum allowable price that the system will accept in the Online Bidding Event.
- I understand that the Buyer has the right to reject any and all bids and that possessing the low bid in the Online Bidding Event does not necessarily guarantee that the low bidder will be awarded a contract.
- I understand that there is a minimum bid decrement and that I must bid according to this decrement for my bid to be accepted. In a dynamic reverse formatted auction, this means that each subsequent bid I make must be the minimum bid decrement less than my last bid or lower.
- I understand that if I do not provide a placeholder bid during the course of the training for the Online Bidding Event (using the same machine I will use for the live Online Bidding Event), EASI will not provide assistance, including placing bids on my behalf (proxy bidding) should I experience technical problems before or during the Online Bidding Event.
- I understand that EASI recommends I make the following precautions to avoid any technical issues during the Online Bidding Event:
 - I should arrange for another computer to act as a backup in case something happens to my computer during the Online Bidding Event. I should log into <http://ra.eprocurelive.com> prior to the live Online Bidding Event and place test bids in the Online Bidding Event using this backup computer to make sure it will function properly in case it needs to be used as a backup during the live Online Bidding Event.
 - I should make sure no other programs are running during the Online Bidding Event to prevent my computer from running slowly and not getting my bid submitted in time.
- I understand that important changes to the configuration of the Online Bidding Event or terms of the bid may be made after this communication is sent and that I must review all Bid Manager messages, emails, calls, and Online Bidding Event site broadcast messages sent from EASI and the Buyer carefully and diligently.