

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

INVITATION FOR BIDS
IMPORTANT: SEE “NOTICE TO BIDDERS” CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY
(E-Mail and Facsimile Bid Submissions Are NOT Acceptable)

BID OPENING: DATE: December 4, 2014 TIME: 11:00 AM	TITLE: Group 38232 Hazardous Incident Response Equipment (HIRE) (Statewide) Classification Codes: 41, 42, 43, 46, 85, 92
INVITATION FOR BIDS NUMBER: 22872	SPECIFICATION REFERENCE: As incorporated herein-See DHS AEL List
CONTRACT PERIOD: Five Years (June 1, 2015 through May 31, 2020)	

DESIGNATED CONTACTS:		
PRIMARY CONTACT: Melissa Gretten melissa.gretten@ogs.ny.gov	SECONDARY CONTACT: Bruce Hallenbeck bruce.hallenbeck@ogs.ny.gov	TERTIARY CONTACT (For M/WBE Inquiries Only): Anuola Surgick Anuola.surgick@ogs.ny.gov

The bid must be fully and properly executed by an authorized person. **By signing, you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying Law), 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).**

Additional Procurement Lobbying information may be accessed at:
http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

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	Zip	County
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:		
Phone: ()	ext ()	Toll Free Phone: ()	ext ()	
Fax: ()	ext ()	Toll Free Fax: ()	ext ()	
E-mail Address:		Company Web Site:		
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

Contractor Information Page

This page should be completed electronically and saved in MS Word Format as 'Contractor Information Page Company Name' (not pdf) and submitted on electronic media; CD or memory stick. A hard copy should also be included within your loose leaf binder submission, Tab 2.

Contractor Name:	
Contract Number:	PCxxxxx (to be determined/entered by NYSPro)
Categories Offered: (Refer to DHS AEL-Enter Category Number(s))	
Price List Identification/Name/Date:	
Minimum Order: Does contractor accept orders for less than the \$100 minimum order (Y/N).	
Shipping on less than minimum order:	
Volume Discount (if offered):	
Contract Number: TBD Company Name: Company Address: Toll Free Number (If Avail): Fax Number (If Avail): Main Contact Name: Main Contact Phone: Main Contact Email: Emergency Contact Name: Emergency Contact Phone: Emergency Contact Email: Federal ID: xxxxxxxx; Vendor ID: xxxxxxxx Website: www.	Orders should be directed to: Name: Toll Free Number: Cell Phone: Fax: E-mail: Website:
Additional services offered by contractor to Authorized Users at no added cost:	
<u>Vendor offers</u>	
Service:	
Maintenance:	
Calibration:	
Training:	
Accepts NY State Credit Card for purchases under \$15,000 (Y/N):	
Discount percentage for use of NY State credit card:	
Guaranteed Delivery:	
Electronic Access Ordering Offered (Y/N):	
Price list available on contractor website (enter Y/N; website):	
Discount for payment within 15 days of delivery and/or receipt of invoice:	

Appendices

- APPENDIX A – Standard Clauses for New York State Contracts**
- APPENDIX B – General Specifications**
- APPENDIX C – Equal Employment Opportunity Staffing Plan**
- APPENDIX D – Pricelist Update Procedure (HIRE)**

Attachments

1. Attachment 01-Pricing Pages
2. Attachment 02-General Questions
3. Attachment 03-Vendor Questions and NYS Certifications
4. Attachment 04-Insurance Requirements
5. Attachment 05-M/WBE Utilization Plan
6. Attachment 06-Report of Contract Sales Template
7. Attachment 07-Department of Homeland Security Authorized Equipment List (DHS AEL)
8. Attachment 08-Bidder Questions Template
9. Attachment 09-Bidder Distributor List Template
10. Attachment 10-Category Matrix-Intent to Bid
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SECTION 1. INTRODUCTION

The New York State Office of General Services Procurement (NYSPRO) issues this Invitation for Bid (IFB) for the purpose of establishing multiple award contracts to be used by New York State, New York State Authorized Users, other Participating States and their eligible entities that are named herein or have signed a Participating Addendum. Additional States not named within this IFB may join at a later time by signing a Participating Addendum, and may have additional terms and conditions not outlined herein. The commodities Contracts awarded as a result of this IFB will be centralized Contracts for use by New York State Agencies and other Authorized Users (see Section 7.11 – Non-State Agencies Participation in Centralized Contracts). Accordingly, references to the State and its Agencies as Authorized Users under this solicitation and the ensuing Contracts shall encompass and include all such entities within the definition of “Authorized User” set forth in Appendix B.

The resultant contracts will be for a five (5) year period.

Participating States as of the date of this IFB issuance: New York State - Lead State- (As "Lead State" all NYS laws, regulations and requirements take precedence).

Other participating States: Alaska, Arkansas, California, Connecticut, Delaware, Commonwealth of Massachusetts, Commonwealth of Virginia, Maine, South Dakota, Vermont.

This IFB outlines the terms and conditions, and all applicable information required for submitting bids for the commodities described herein. Bidders should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, Bidders must follow the format and instructions described in Section 5.

1.1 OVERVIEW AND SCOPE

The purpose of this IFB and the resultant Contracts is to provide Authorized Users (including other participating states) with a means of acquiring various types of Hazardous Incident Response Equipment as per, but not limited to, the **Department of Homeland Security (DHS) Authorized Equipment List (AEL)**. Products submitted must be within the general scope of a specific AEL category.

It is the State's intent to award multiple Contracts to responsive and responsible Bidders who are able to meet the terms and conditions of this IFB, and whose product offerings meet the scope of this IFB.

The awarded Bidders will be awarded five-year Contracts.

The following Authorized Equipment, as per the categories and specifications listed in **Attachment 07 - Department of Homeland Security Authorized Equipment List (DHS AEL)**, and described in the federal grant requirements, is requested. See Section 8.0 Standards for reference:

1. Personal Protective Equipment (PPE)
2. Explosive Device Mitigation and Remediation Equipment
3. CBRNE Operational and Search and Rescue Equipment
4. Information Technology (Equipment Only; Example: Simulators such as Portable Meteorological Devices)
5. ~~Cyber Security Enhancement Equipment~~ (Category excluded from this IFB)
6. Interoperable Communications Equipment (Limited to Satellite Phones, Satellite Communication & Accessories)
7. Detection Equipment
8. Decontamination Equipment
9. Medical Equipment (Equipment Only; No pharmaceuticals)
10. Power Equipment
11. CBRNE Reference Materials
12. CBRNE Incident Response Vehicles (Limited to All-Terrain Vehicles, Water Storage, Water Trailers, Foam Trailers, Storage Trailers, Pumpers & Accessories)
13. ~~Terrorism Incident Prevention Equipment~~ (Category excluded from this IFB)
14. Physical Security Enhancement Equipment (Limited to Blast Resistant Receptacles/Jersey barriers, etc.)

15. Inspection and Screening Systems
16. Animal and Plants (Equipment Only)
17. CBRNE Prevention and Response Watercraft (Limited to Fiberglass and Rigid-Hulled Inflatable Boats)
18. ~~CBRNE Aviation Equipment~~ (Category excluded from this IFB)
19. CBRNE Logistical Support Equipment
20. Intervention Equipment
21. Other Authorized Equipment (Limited to MRE's, Water; Maintenance, Calibration, & Training for Equipment only)

In addition to products on the AEL which are eligible for federal funding, Bidders may propose products not meeting federal funding requirements, provided such products are within the general scope of a specific AEL category. All items submitted must be related to at least one of the 18 product categories. Bidders may be required to provide additional product information in order to show relevance to the scope of the IFB.

1.2 ESTIMATED QUANTITIES

The Contracts resulting from this IFB will be Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. Any quantities or dollar values listed within this IFB are estimates. Numerous factors could cause the actual volume of product purchased under the Contracts resulting from this IFB to vary substantially from estimates in the IFB. Such factors include, but are not limited to, the following:

- Such Contracts will be nonexclusive Contracts;
- There is no guarantee of volume to be purchased in any category group, and there is no guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User or other non-New York State entity user demand and actual quantities ordered during the Contract period;
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In NYSPro's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated pricing, actual quantities purchased could be substantially lower than the estimates. By submitting its bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from any estimates provided in this IFB.

1.3 DETAILED SCOPE

This IFB consists of eighteen (18) specified category types. Each category and its associated allowable items and specification is outlined in the included **Department of Homeland Security (DHS) Authorized Equipment List (AEL)**. Contracts for Hazardous Incident Response Equipment will include, but not necessarily be limited to, the item sub-categories listed herein as authorized equipment. Submissions for any equipment not specifically listed in the DHS Authorized Equipment List categories included in this IFB will be evaluated on a case by case basis as to eligibility for inclusion on the NYS HIRE contract. OGS reserves the right to exclude any item(s) deemed to be out of scope of this IFB.

All items submitted must be within the scope of this IFB. Offerings found to be out of scope will be rejected at the sole discretion of OGS NYSPro.

Bidders able to supply items in nine (9) of the eighteen (18) approved categories listed herein (see DHS AEL) will be awarded as **Level One Contractors**. Bidders must show \$300,000 in total sales to governmental entities during the past year for items related to the product categories for which they are submitting a bid. An MS Excel spreadsheet, in electronic format, is preferred.

Bidders that do not qualify for Level One award but are able to show \$300,000 in sales to governmental entities for this kind of equipment will be considered as **Level Two Contractors** and may be awarded in a second group of awards. This is meant to take into account those smaller distributors or manufacturers that specialize in certain commodity lines.

1.4 DEFINITIONS AND ACRONYMS

CBRNE: The acronym “CBRNE” shall be used as a designation for Chemical, Biological, Radiological, Nuclear, and Explosives.

DHS: The acronym “DHS” shall be used as a designation for the Department of Homeland Security.

DHS AEL: The acronym “DHS AEL” shall be used as a designation for the Department of Homeland Security Authorized Equipment List.

IFB: The acronym “IFB” shall be used as designation for Invitation for Bids.

NIOSH: The acronym “NIOSH” shall be used as a designation for the National Institute for Occupational Safety and Health.

NYSPro: The acronym “NYSPro” shall be used as a designation for the Office of General Services New York State Procurement.

OGS: The acronym “OGS” shall be used as a designation for the Office of General Services.

SHSP: The acronym “SHSP” shall be used as a designation for the State Homeland Security Program.

State: The word “STATE” shall be used as is described in Appendix B.

Volume Discount: shall refer to the discount offered for purchases of items above quantity one, and as per the contractors specified amounts, as per Attachment 01 – Pricing Pages. If no Volume Discount is entered, it will be presumed that the Bidder is not offering a volume discount.

SECTION 2. PROCUREMENT SCHEDULE

2.1 INQUIRIES AND ISSUING OFFICE

All inquiries concerning this IFB must be addressed to the following OGS Designated Contacts:

DESIGNATED CONTACTS
Only The Following Individuals May Be Contacted To Discuss This IFB Prior To The Bid Opening
PRIMARY CONTACT: Melissa Gretten melissa.gretten@ogs.ny.gov
SECONDARY CONTACT: Bruce Hallenbeck bruce.hallenbeck@ogs.ny.gov
NYS Office of General Services
NYS Procurement
Corning Tower – 38 th Floor
Empire State Plaza
Albany, New York 12242

**TERTIARY CONTACTS:
(For M/WBE Related Inquiries Only)**

Anuola Surgick
anuola.surgick@ogs.ny.gov
Tryphina Ramsey
Tryphina.ramsey@ogs.ny.gov
William Hill
William.hill@ogs.ny.gov

All questions pertaining to this solicitation must be submitted in writing using the attached Bidder Questions Template - Attachment 08. Bidder shall cite the applicable IFB document name, document page number and document Section and shall **email the completed template** to OGS.sm.PSGHIRE_Renewals@ogs.ny.gov by the “Closing Date for Inquiries” indicated in Section 2.2. A Bidder is strongly encouraged to submit questions at the earliest convenience. A Bidder should note that all clarifications and exceptions, including those relating to the terms and conditions of the resultant Contract, are to be resolved prior to the submission of a Bid. A Bidder entering into a Contract with the State shall comply with all terms and conditions contained herein. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document, which will be posted on the OGS Bid Calendar website <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>.

2.2 KEY EVENTS AND DATES

The schedule for this IFB is set forth in Table 1 below. A Bidder should pay strict attention to the Bid Submission/Bid Opening date and time to prevent disqualification.

Table 1: Procurement Schedule

Event	Date	Time
IFB Release	October 29, 2014	
Closing Date for Intent to Bid	November 5, 2014	11:00 A.M. ET
Closing Date for Inquiries	November 10, 2014	5:00 P.M. ET
OGS Responses to Bidder Inquiries (estimated)	November 14, 2014	
Submission of Bids Due/Bid Opening	December 4, 2014	11:00 A.M. ET
Evaluation and Tentative Awardee Notification (estimated)	April 20, 2015	
Contract Award (estimated)	June 1, 2015	

2.3 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

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

2.4 PRE-BID CONFERENCE

There will be no pre-bid conference for this IFB.

SECTION 3. PROPOSAL REQUIREMENTS

3.1 QUALIFICATIONS OF PROSPECTIVE BIDDERS

A Bidder shall meet the following minimum qualifications. No Bid will be considered unless the Bidder can meet the following conditions:

Bidder must be able to satisfy orders from all Authorized Users including orders by New York State, New York State Authorized Users, Participating States and their eligible entities that have signed a Participating Addendum. Additional States may join at a later time by signing a Participating Agreement. By submitting a Bid you are confirming that you are able to meet this qualification.

Bids will be accepted only from manufacturers or their authorized dealers. Any dealer submitting a Bid hereby guarantees that it is an authorized dealer of the manufacturer, that the manufacturer has agreed to supply the dealer with all quantities of products required by the dealer in fulfillment of its obligations under any resultant contract with the State, and that it will provide, within five (5) days of request, a certificate from the manufacturer acknowledging this level of support.

Bidder must be capable of processing orders to various destinations, potentially nationwide, on a regular basis and/or within an emergency situation.

The Commissioner may require a certificate from the Bidder showing the number of years the Bidder has been active in selling the products offered and the size and location of the inventories regularly maintained, and that it will provide, within five (5) days of request, such information.

The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

Note: OGS must determine that the Bidder meets all of the above requirements in order for the Bidder to be found responsive, as that term is defined in State Finance Law §163(1)(d). OGS reserves the right to verify all information provided by Bidder.

Bidders, if requested, shall provide a minimum of three references from their largest customers within five days of request. References shall be commercial or governmental accounts, and shall demonstrate the ability of the vendor to fulfill contract requirements similar in scope to the size, nature and complexity of the outlined Bid. References shall include:

- Company name, address, contact person, telephone number, email, and number of years Bidder has serviced the referenced account;
- Volume of business within the past three years for each referenced account including type of products purchased by the customer.

References will be evaluated by OGS only for the purpose of determining whether the Bidder is responsible, as that term is defined in State Finance Law §163(1)(c). OGS reserves the right to verify all information provided by Bidder.

3.2 PRICING PROPOSAL DETAILS

A Bidder shall submit its proposed products and pricing within Attachment 01 – Pricing Pages.

Note: Failure by a Bidder to submit pricing within Attachment 01 – Pricing Pages will result in automatic rejection of that Bidder's bid and no further consideration for award. Failure to submit pricing includes electronic media that does not allow for review/retrieval of information contained within; failure to complete all tabs and columns, as per the Instructions within the Pricing Pages Excel Worksheet and/or failure to provide Pricing Pages in Excel Format.

Price shall include all customs duties and charges and be net, F.O.B. destination any point, potentially nationwide (participating states). See Section 7.20 Price.

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

3.2.1 Attachment 01 – Pricing Pages - Instructions

Bidder must offer discount(s) from their nationally published and regularly distributed catalog(s)/price lists in effect and identified at the time of the bid opening.

Pricing must be provided in Excel Format only within Attachment 01 - Pricing Pages.

The Bidder may bid in **one** of the following two ways:

1. Option I – uniform percentage discount per entire catalog/pricelist.

OR

2. Option II- uniform percentage discount per each manufacturer product line. The same manufacturer can have different discounts per product line, per sub-section; see below example.

Example:

DHS AEL Section 01-Personal Protective Equipment; Sub-section-Respiratory Protection Equipment:

Manufacturer A	Manufacturer B
13% Discount	15% Discount

DHS AEL Section 07-Detection Equipment; Sub-section-Biological Detection:

Manufacturer A	Manufacturer B
18% discount	20% Discount

Bidders must submit itemized pricing in the provided Attachment 01 - Pricing Pages, in Excel format only, on either CD or other electronic media, such as a memory stick.

Receipt of pricing in a format other than the approved format will result in rejection of the bid in its entirety.

Price list title should be included on the Excel spreadsheet (Example: IFB #22872, NYS price for “Supplier name dated xx/xx/xxxx”). See Instructions tab within Attachment 01.

A copy of the Bidders Internal Pricelist and/or Manufacturers Pricelist for all items bid (Named and dated) MUST also be included in both electronic and hard copy.

The Following information is **REQUIRED to be entered into the Excel Spreadsheet:**

- Contractor Item Number (from Bidders Catalog/List Price Sheet)
- Item Description
- Manufacturer Name
- Manufacturer Item Number (use mfg. number as mfg. lists it; no spaces, dashes, or any added letters not normally used by the manufacturer.)
- Category Number (Per DHS AEL)
- Discount Option (Per Discounts; Option 1 or 2 noted above)
- Unit of Measure (i.e. each, case, etc.)
- Catalog or List Price
- Manufacturer Pass through discount (these are discounts that the distributor/Bidder is required by the manufacturer to offer to customers under any award resulting from this contract)
- HIRE Discount Percentage (the total discount percentage offered)
- HIRE Contract Price (item price after discount applied; resultant contract price)

Note: Pricing must be held for a period of one (1) year from date of submission.

3.2.2 Price Sheet Rounding Details

Attachment 01 – Pricing Pages may not limit the number of decimal places for a dollar amount that a Bidder enters. However, only two (2) decimal places will be displayed in the cells and used for net contract price posted on the OGS website for any resultant contract.

3.2.3 Additional Offerings

This IFB allows for the inclusion of services such as maintenance, calibration and training for products being bid only. All such offerings must be included within Attachment 01 – Price Pages. Detailed information should be provided with your bid submission in electronic and hard copy format (hard copy should be included in same section of binder as Pricing Pages).

3.2.4 Reasonableness of Price

Pricing/discounts received under this Solicitation will need to be justified as reasonable. To expedite review and award of contracts under this award Bidders are requested to:

- Supply a copy of their federal contract along w/discounts offered to the federal government under that contract.
or
- List and supply a copy of information on two other State contracts (for States similar in size to NYS) which Bidder presently has awarded and the discounts offered.
or
- List and supply a copy of information on local government contracts (population of 100,000 or more) which Bidder presently had awarded along with the discounts offered under those contracts.
or
- Other documentation may be considered.

3.2.5 Exclusions

NYSPro reserves the right to delete, before or after award, any of the products included in the Bidder's offerings under this IFB and any resulting contract. Bidder's pricelist may list products covered by other State contracts as well as those available from preferred sources. It is the obligation of the Authorized User to order from the appropriate source.

3.3 VOLUME DISCOUNT

A Bidder may provide a Volume Discount in Attachment 01 – Pricing Pages; Volume Discounts tab.

Bidders should offer their best possible pricing. Bidders are encouraged to offer additional discounts for volume purchases (volume discounts). Volume discounts may be applied per purchase order, cumulatively per customer agency and/or cumulatively statewide. The Bidder shall indicate the basis for applying the volume discount(s) within Attachment 01 – Pricing Pages on the Volume Discounts tab. Volume discounts shall be defined and applied as follows:

Purchase Order Volume Discounts: Shall be additional discounts applied to individual purchase orders over a specified dollar amount.

Cumulative Agency Volume Discounts: Shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency.

Cumulative Statewide Volume Discounts: Shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this contract.

3.4 PERFORMANCE REQUIREMENTS

TOLL-FREE NUMBERS

Contractors must provide a toll-free telephone number for the Authorized Users' usage and shall provide support/assistance at no additional charge. If Bidder does not currently maintain a toll-free number, the Bidder must be willing to establish one prior to award of Contract.

PRICE LISTS AND CATALOGS

The Contractor shall provide, within 30 days of request during the first 45 days of the contract period, sufficient catalogs/media to service all customers who wish to use these contracts. After the first 45 days of the awarded Contract, additional catalogs, or updated catalogs when applicable, shall be provided within 10 calendar days of request.

DISCREPANCIES

The Contractor shall resolve all order and invoice discrepancies within five business days from notification.

PRODUCT RETURNS, PROBLEM PRODUCT

Products returned because of quality problems, duplicated shipments, outdated product, etc., shall be picked up by the contractor within five business days after notification with no restocking charge and shall be replaced with specified products or the agency shall be credited/refunded for the full purchase price. Any additional shipping charges that may apply will be paid by the Contractor.

PRODUCT RETURNS, AGENCY ERROR

Standard stock products ordered in error by agencies must be returned for credit within 15 days of receipt. Product must be in resalable condition (original container, unused). There shall be no restocking fee if returned Product(s) are resalable.

SUBSTITUTIONS

Unauthorized substitutions are not acceptable. Substitution of one catalog product for another catalog product shall require the approval of the ordering agency.

EMERGENCY SERVICE NUMBER AND EMERGENCY CONTACT INFORMATION

The contractor will provide a toll free product emergency service, available seven days a week, twenty-four (24) hours a day. Given the nature of the products, an emergency contact including name, office phone number, cell phone number, fax, and email must be provided.

SALE FLYERS

At the contractor's option sale catalogs and flyers based on the awarded catalog that offer further price reductions may be offered to Authorized Users. Also, at the contractor's option, catalogs/price lists developed for a specific customer's specialized requirements may be offered.

3.5 M/WBE INTEREST IN PARTNERSHIP AND INTENT TO BID

M/WBE vendors are encouraged to bid on this IFB; those who cannot meet the requirements of a full bid are encouraged to partner with a prime vendor.

Both potential Bidders and M/WBE entities interested in this IFB should complete Attachment 10 - Category Matrix Intent to Bid, and Attachment 11 - Intent to Bid Form, and send them in an email with the subject line M/WBE INTEREST [COMPANY NAME] OR INTENT TO BID (COMPANY NAME) to OGS.sm.PSGHIRE_Renewals@ogs.ny.gov on or before the "Intent to Bid" date (see Section 2.2). The email should include the Company Name, the Contact Name and Contact Information, and completed Attachments 10 and 11. Intent to Bid documentation is not mandatory or a prequalification to bid, but is highly recommended.

A list of all M/WBE entities who have expressed interest in this IFB through the above Interest in Partnership will be included on the NYSPRO Bid Calendar website along with a list of all interested potential prime vendors <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>.

This information will be provided with the purpose of assisting potential Bidders with meeting the required M/WBE goals set forth within this IFB.

This listing is not all inclusive, may be subject to change and may contain names of entities that may not be able to satisfy the intended requirement. It is strongly suggested that all potential Bidders perform their own research with regard to finding M/WBE entities to assist with meeting the required M/WBE goals outlined within this IFB. OGS will not post areas of expertise and will not be responsible to verify that the interested vendors are a registered M/WBE company able to do business in New York State.

3.6 BID DEVIATIONS

Pursuant to Appendix B, Clause 8, a Bid must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid. If your Bid differs from any terms or specifications in this IFB, explain such deviations or qualifications and if necessary, attach a separate sheet.

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

SECTION 4. PROCUREMENT/ADMINISTRATIVE BACKGROUND

4.1 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

1. Reject any or all proposals received in response to the IFB;
2. Withdraw the IFB at any time, at the Agency's sole discretion;
3. Make an award under the IFB in whole or in part;
4. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
5. Seek clarifications and revisions of Bids;
6. Prior to the Bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the Bid opening, direct Bidders to submit proposal modifications addressing subsequent IFB amendments;
8. Change any of the schedule dates with notification through the Bidder Notification System and/or the New York State Contract Reporter;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
10. Waive any requirements that are not material;
11. Utilize any and all ideas submitted in the Bids received;
12. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration;
13. Negotiate with the Bidder within the IFB requirements to serve the best interests of the State;
14. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation;
15. Request current Bidder financial statements documenting past sales history that demonstrates ability to service a contract with dollar sales volume similar to the scope of this IFB; documents must be provided upon request;
16. Request additional documentation from the Bidder or request reports on financial stability from independent financial rating services;
17. Reject any Bidder who does not demonstrate financial stability sufficient for the scope of this IFB;
18. Reject an obviously unbalanced bid as determined by the State. An unbalanced bid is one based on Bid prices that are significantly understated for some items or products and/or significantly overstated for other items or products such that there is a reasonable doubt that the Bid will result in the lowest overall cost to the State;
19. Reject any Bid submission or portion(s) thereof determined to have been altered or modified from the original format by the Bidder. Such alterations or modifications include but are not limited to: any changes to document

headers, footers and/or cells, unprotecting worksheets or workbooks, hiding or un-hiding cells, columns, rows, or worksheets, and locking or unlocking cells;

20. Reject an unbalanced bid, or a bid containing incomplete, unreasonable or unrealistic pricing, as determined by the State;
21. Offer a Bidder the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to explain or justify the balance, realism and/or reasonableness of its pricing;
22. Upon discovery of non-material completeness or conformance issues with a Bidder's Proposal, contact the Bidder to attempt to cure the issue prior to completion of the evaluation of the Bidder's Proposal.

4.2 DISPUTE RESOLUTION POLICY

a. Informal Dispute Resolution Process

1. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.
2. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.
3. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.
4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.
5. The Contractor shall extend the dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

b. Formal Disputes

1. Definitions

- a. Filed means the complete receipt of any document by OGS before its close of business.
- b. Dispute means a written objection by an Interested Party to any of the following:
 - i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
 - ii. The cancellation of the solicitation or other request by OGS.
 - iii. An award or proposed award of the Contract by OGS.
 - iv. A termination or cancellation of an award of the Contract by OGS.
 - v. Changes in the Scope of the Centralized Contract by the Commissioner.
 - vi. Determination of "materiality" in an instance of nonperformance or contractual breach.
 - vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

c. Interested party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective Bidder or Offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

d. Interested party for the purpose of filing a dispute relating to a contract award, as used in this section, means an actual Bidder or Offeror for the subject contract.

e. Interested party for the purpose of filing a dispute relating to the administration of the contract, as used in this section, means the awarded Contractor for the subject contract.

f. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

2. Submission of Disputes

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

3. The Dispute Must Include

a. Name, address, e-mail address, fax and telephone numbers of the filer.

b. Solicitation or Contract number.

c. Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.

d. Copies of relevant documents.

e. Request for a ruling by the agency.

f. Statement as to the form of relief requested.

g. All information establishing that the filer is an interested party for the purpose of filing a dispute.

h. All information establishing the timeliness of the dispute.

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

New York State Office of General Services
Director, NYSPRO
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242

Disputes concerning a solicitation shall be filed by an Interested Party (see b(1)(c)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, formal disputes concerning the solicitation document shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

Disputes concerning a pending or awarded contract must be filed within ten (10) business days by an Interested Party (see b(1)(d)) after the disputing party knows or should have known of the facts which form the basis of the dispute; however, a dispute may not be filed later than 10 days after issuance of the award.

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by an Interested Party (see b(1)(e)) after the Authorized User and the Interested Party (see b(1)(e)) fails to reach resolution through the Informal Dispute Resolution Process as set forth in paragraphs 2 through 5 of subdivision (a) of this section.

4. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a formal dispute decision.

2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.

3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

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

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

5. Appeals

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

Chief Procurement Officer
New York State Office of General Services
NYSPRO
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242

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

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

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

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

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

4.3 BIDDER DEBRIEFING

Unsuccessful Bidders shall be notified upon Notification of Award to the winning Contractor(s). A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's proposal or bid. After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such Bidder was not selected for a Contract award. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The post-award debriefing should be requested in writing within 30 days of posting of the Contract award on the OGS website.

SECTION 5. FORMAT AND CONTENT OF BID SUBMITTAL

5.1 RESPONSIVENESS

To be considered responsive, a Bidder must submit a complete proposal that satisfies and addresses all requirements stated in this IFB. **A PROPOSAL THAT FAILS TO CONFORM TO ALL REQUIREMENTS MAY BE CONSIDERED NON-RESPONSIVE AND MAY BE REJECTED.**

5.2 INCORPORATION

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

5.3 GENERAL PROPOSAL CONTENT

A complete proposal consists of one (1) copy of each of the following:

1. A CD or memory stick containing:

- a. Completed Pages 1 and 2 of the IFB with original ink signatures – PDF (Signed, notarized and scanned).
- b. Completed Bidder Information Page (Page 3 of this IFB) - PDF (Scanned).
- c. Completed Attachment 01-Pricing Pages for all Items being bid (**Microsoft Excel Document Only** - preferred 2007 version or newer).

- d. Copy of Bidders Internal Pricelist and/or Manufacturers Pricelist for all items bid (Named and dated).
 - e. Completed Attachment 02-General Questions (**Microsoft Excel Document Only** - preferred 2007 version or newer).
 - f. Completed Attachment 03-Vendor Questions and NYS Certifications with original ink signatures – PDF (Signed and scanned).
 - g. Proof of compliance with General Commercial Liability, Workers' Compensation Coverage and Disability Coverage as contained in Attachment 04-Insurance Requirements (Scanned).
 - h. Completed Attachment 05-Form MWBE 100-G – Utilization Plan (Signed and scanned).
 - i. Completed Attachment 09-Bidder Distributor List Template (if applicable) (Scanned).
 - j. Proof of at least \$300,000 in sales to governmental entities during the past year for items related to the product categories for with you are submitting a bid (Excel format preferred).
 - k. Completed Appendix 2-ST-220-CA (Signed, notarized and scanned).
 - l. Completed Appendix C – Form EEO100 – Equal Employment Opportunity Staffing Plan (Signed and scanned).
 - m. Completed Vendor Responsibility Questionnaire, if not completed on-line; if Bidder has completed on-line, Bidder should provide a copy of its certification page showing certification of information within the last six (6) months (Scanned).
 - n. Reasonableness of price as per Section 3.2.4; Federal, State and/or Local contract/discount information.
 - o. If applicable, include a copy of the GSA or VA schedule.
2. **A loose leaf binder, tabbed and in the following order, containing original copies of each of the following:**
- a. TAB 1: Completed Pages 1 and 2 of the IFB with original ink signatures (Signed and notarized).
 - b. TAB 2: Completed Bidder Information Page – Page 3 of this IFB.
 - c. TAB 3: Completed Attachment 01 – Pricing Pages.
 - d. TAB 4: Copy of Bidders Internal Pricelist and/or Manufacturers Pricelist for all items bid (Named and dated).
 - e. TAB 5: Completed Attachment 02 – General Questions.
 - f. TAB 6: Completed Attachment 03 - Vendor Questions and NYS Certifications with original ink signatures (Signed)
 - g. TAB 7: Proof of compliance with General Commercial Liability as contained in Attachment 04-Insurance Requirements.
 - h. TAB 8: Proof of compliance with Workers' Compensation Coverage as contained in Attachment 04-Insurance Requirements.
 - i. TAB 9: Proof of compliance with Disability Coverage as contained in Attachment 04-Insurance Requirements.
 - j. TAB 10: Completed Attachment 05-Form MWBE 100-G – Utilization Plan with original ink signatures (Signed).
 - k. TAB 11: Completed Attachment 09-Bidder Distributor List Template (if applicable).
 - l. TAB 12: Proof of at least \$300,000 in sales to governmental entities during the past year for items related to the product categories for with you are submitting a bid (Excel format preferred).
 - m. TAB 13: Completed Appendix 2-ST-220-CA with original ink signatures (Signed and notarized).
 - n. TAB 14: Completed Appendix C – Form EEO100 – Equal Employment Opportunity Staffing Plan with original ink signatures (Signed).
 - o. TAB 15: Completed Vendor Responsibility Questionnaire. **If completed on-line Bidder should provide a copy of its certification page** showing certification of information within the last six (6) months.
 - p. TAB 16: Reasonableness of price as per Section 3.2.4; Federal, State and/or Local contract/discount information.
 - q. TAB 17: If applicable, include a copy of the GSA or VA schedule.

Please note that in cases of discrepancies between paper copy and electronic media submission, the electronic copy will take precedence over the paper copy.

5.4 PACKAGING OF IFB RESPONSE

A complete proposal consists of a total of one (1) CD/electronic media, and one (1) binder. An envelope or package containing a Bid should be clearly marked "Bid Enclosed" and should state the Bid Number, Bid Opening Date

and Time. If using a commercial delivery company that requires that their shipping package or envelope is used, your proposal must be placed within the second sealed envelope labeled as detailed below. This will ensure that Bidder's proposal is not prematurely opened.

Bidder's proposal must be submitted in sealed packages and received on or before 11:00 AM EST on the Bid Opening date referenced in Section 2.2.

Electronic Media is required.

CDs or memory sticks submitted should be labeled with:

- Name of Bidder
- Group # 38232, IFB # 22872, Hazardous Incident Response Equipment (HIRE)

Loose-leaf binders are required.

- Bidder will submit proposal so that update pages can be easily incorporated in the originals.
- The official name of the Bidder's organization(s) as well as the name and number of the IFB should appear on the outside front cover of the Bidder's proposal.

BIDDERS SHOULD TAKE SPECIAL NOTE OF THE FOLLOWING:

- **E-Mail or Facsimile Bid Submissions Are NOT Acceptable.**
- The complete bid package must be received by this office by the date and time of the bid opening. **Late bids shall be rejected.**
- Any bid pricing not submitted in Excel format on electronic media shall be rejected.
- Any bid pricing or portion(s) thereof submitted on electronic media that is incomplete or that cannot be opened/accessed shall be rejected.
- NYSPro reserves the right to reject any bid submission or portion(s) thereof determined to have been altered or modified from the original format by the Bidder. Such alterations or modifications include but are not limited to: any change(s) to document header(s), footer(s) and/or cell(s); unprotecting worksheet(s)/workbook(s); hiding/unhiding cell(s)/column(s)/row(s)/worksheet(s); deleting cell(s)/column(s)/row(s)/worksheet(s), and/or locking/unlocking cell(s).
- Only those cells provided for entering bid pricing and vendor information are to be accessed by the Bidder.
- In case of discrepancies between paper copies and electronic media submissions, the electronic copy will take precedence over the paper copy.

5.5 BID DELIVERY INSTRUCTIONS

Bidders should allow extra time to comply with the Building Access procedures (see Section 5.7) in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. Bidders assume all risks for timely, properly submitted deliveries. **Bidders are strongly encouraged to arrange for delivery of Bids to OGS prior to the Bid Opening date.**

Deliver to:

NYS OFFICE OF GENERAL SERVICES
NYS PROCUREMENT
CORNING TOWER – 38TH FLOOR RECEPTION DESK
EMPIRE STATE PLAZA
ALBANY NY 12242-0064

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

BID ENCLOSED (preferably bold, large print, all capital letters)
Bid number (IFB 22872)
Bid Opening Date and Time (**December 4, 2014, 11:00 AM EST**)
The number of boxes or packages (i.e., 1 of 2; 2 of 2)

5.6 PROPOSAL LIABILITY

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a proposal or for any work performed prior to the formal execution of a Contract. Proposals must be received in the above office on or before 11:00 AM EST on the Bid Opening date referenced in Section 2.2. Bidder assumes all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. **LATE BIDS shall be rejected.**

E-mail or faxed bid submissions are not acceptable and shall not be considered. The received time of proposals will be determined by OGS by the clock at the above noted location.

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

5.7 IMPORTANT BUILDING ACCESS PROCEDURES

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

A Bidder who elects to hand deliver its proposal is encouraged to pre-register for building access by contacting the NYSPRO receptionist at 518-474-6262 at least 24 hours prior to the Bid Submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the NYSPRO Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct NYSPRO business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. Note: Bids not received by the Bid Opening/Bid Submission date shown on the front page of this IFB will be considered late.

SECTION 6. METHOD OF AWARD/EVALUATION PROCESS

6.1 METHOD OF AWARD

Awards shall be made Statewide by the NYS Office of General Services (NYS OGS). Because of the varied nature of products in each catalog and/or pricelist, award will be made to more than one vendor. Awards shall be made only to Bidders whose schedule of prices indicates that equipment will be delivered at a reasonable price as determined by the NYS OGS. "Reasonable prices" may be determined by reviewing discounts and net prices offered to GSA, Veteran's Administration, prices on any previously awarded NYS contract, pricing offered by other Bidders for this solicitation and contracts with other state or government entities, etc.

Bidder must be financially stable and able to demonstrate the financial stability of the company. In addition to sales history, current financial statements or other financial information deemed appropriate must be provided within five business days of request. New York State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this contract.

Bidders able to supply items in nine (9) of the eighteen (18) approved categories listed herein (see DHS AEL) will be awarded as **Level One Contractors**. Bidders must show \$300,000 in sales to governmental entities during the past year for items related to the product categories for which they are submitting a bid.

Bidders that do not qualify for Level One award but are able to show \$300,000 in sales to governmental entities for this kind of equipment will be considered as **Level Two Contractors** and may be awarded in a second group of awards. This is meant to take into account those smaller distributors or manufacturers that specialize in certain commodity lines.

Level One bid submissions may be reviewed and subsequent contracts awarded prior to review and award of Level Two vendors.

Level Two bid submissions may be reviewed and subsequent contracts awarded in a second group of awards.

Award will be made to established manufacturers or established distributors taking into consideration delivery offered, past performance, and all product information available. The basis for selection among multiple suppliers at the time of purchase shall be the most practical and economical alternative and shall be in the best interests of the State.

The State reserves the right to reject a bid or accept adjustments when prices are deemed to be excessive or unbalanced, or when it does not guarantee delivery of product in accordance with the "DELIVERY" clause. The State reserves the right to negotiate better pricing with all qualified Bidders being considered for award.

Bidders may offer contract pricing for New York State OGS contracts currently held by their suppliers as part of their product line submittal. Bidders who currently hold New York State OGS contracts must offer the same as, or better than pricing listed in such contracts.

Bidders that currently hold a contract other than a NYS OGS contract, whereas they are offering the same product under this IFB, must offer the same as, or better than pricing listed in such contracts.

The commissioner reserves the right to evaluate and/or reject any and all bids, in whole or in part and to waive technicalities, irregularities and omissions if in his or her considered judgment, the best interests of the State will be served. In the event satisfactory bids fully in accord with the bid documents are not received, the Commissioner reserves the right to consider late or non-conforming bids as stipulated in "Late Bid" clause of Appendix B.

The Office of General Services New York State Procurement (NYSPRO) reserves the right to hold Periodic Recruitment during the contract period if it is deemed to be within the best interest of the State. Vendors shall be required to submit this original bid document which may include an addendum containing additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bids shall be evaluated under similar terms and conditions. Once awarded a contract, a vendor may not resubmit a bid for future consideration until the new Invitation for Bids is issued. Notice of such Periodic Recruitment will be posted in the NYS Contract Reporter for a minimum of 15 business days prior to the submission due date.

Administrative Bid Screening

After the bid opening each bid will be screened for completeness and conformance with the stated requirements for bid submission as set forth in Section 5 of this IFB. Any bid not meeting these requirements may be deemed nonresponsive and denied further consideration for award.

Bids will be reviewed to ensure that the Bidder has responded to all questions in Attachment 2 – General Questions.

6.2 NOTIFICATION OF AWARD

The successful Bidder(s) shall be advised by OGS in accordance with Appendix B, Section 26. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal Contract.

6.3 VENDOR RESPONSIBILITY FOR ACCURACY

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 their bids prior to bid submittal, as requests for bid withdrawals of any type may not be granted. All exceptions and deviations must be noted in bids (see Section 3.6), otherwise the bid will be considered in full compliance with requirements and no adjustments may be made after award is issued. Bidders, in the preparation of their bids, should maintain complete and accurate calculation worksheets, which clearly support their submissions.

If an incorrect reference, parameter, model, code number, component, product, etc. is stated by OGS or by the Bidders, the correct reference shall prevail, and the proper alternative or corrected reference may be considered. Bidders are advised to raise any issues or questions regarding any such incorrect references during the Bidder Inquiry period so that it may be addressed by OGS prior to the deadline for submission of bids.

6.4 MINOR DEVIATIONS/MINOR TECHNICALITY

The State reserves the right to 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 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.

6.5 NO AWARD FOR ANY ITEM

The State reserves the right to make "NO AWARD" for any Item and/or category. This may be because:

- Bid pricing is deemed to be unbalanced, unrealistic, or excessive (the determination of an unbalanced bid shall be at the sole discretion of the State) OR,
- An Authorized User no longer has a need for a stated product and/or requirement OR,
- A requirement changed OR,
- An error in the solicitation becomes evident (i.e., use of incorrect reference, description, product designation, etc.) OR,
- For any other reason as determined in the sole discretion of OGS.

In any such case, evaluation of bids may be made on the remaining Items and/or categories.

6.6 ELECTRONIC BID OPENING RESULTS

OGS posts bid prices on the OGS website. The website makes available bid tabulations (i.e., photocopies of price pages or spreadsheets) received by OGS for scheduled bid openings. For this solicitation, only a listing of Bidder's will be available online after the bid opening; pricelists will not be posted. Due to the large volume of submissions anticipated in response to this solicitation, there will be no public observation of the Submission opening process.

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

SECTION 7. TERMS AND CONDITIONS

7.1 APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Bid Document as if set forth at length herein. Please retain this document for future reference and do not return to OGS as part of the Bid submission.

7.2 APPENDIX B

Appendix B, Office of General Services General Specifications, dated June 2014, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this IFB or Appendix A.

7.3 APPENDIX C

Equal Employment Opportunity Staffing Plan (EEO 100), attached hereto, is hereby expressly made a part of this Bid Document.

7.4 APPENDIX D

Pricelist Update Procedure, attached hereto, is hereby expressly made a part of this Bid Document.

CONFLICT OF TERMS AND CONDITIONS

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Contract document signed by the State and Contractor;

3. Appendix B, General Specifications;
4. Other Appendices and attachments as deemed necessary by OGS.

7.5 CONTRACTOR MWBE REQUIREMENTS

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

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 report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establishes goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this Contract; or (ii) employment outside New York State.

Bidder further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit to 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.

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 the following five (5) Categories of this IFB:

1. Personal Protective Equipment (PPE) = 20%
2. Explosive Device Mitigation and Remediation Equipment = 0%
3. CBRNE Operational and Search and Rescue Equipment = 20%
4. Information Technology (Equipment Only; Example: Simulators such as Portable Meteorological Devices) = 0%
5. ~~Cyber Security Enhancement Equipment~~ (Category excluded from this IFB)
6. Interoperable Communications Equipment (Limited to Satellite Phones, Satellite Communication & Accessories) = 0%
7. Detection Equipment = 0%
8. Decontamination Equipment = 20%
9. Medical Equipment (Equipment Only; No pharmaceuticals) = 20%
10. Power Equipment = 0%
11. CBRNE Reference Materials = 0%
12. CBRNE Incident Response Vehicles (Limited to All-Terrain Vehicles, Water Storage, Water Trailers, Foam Trailers, Storage Trailers, Pumpers & Accessories) = 0%
13. ~~Terrorism Incident Prevention Equipment~~ (Category excluded from this IFB)
14. Physical Security Enhancement Equipment (Limited to Blast Resistant Receptacles/Jersey barriers, etc.) = 0%
15. Inspection and Screening Systems = 0%
16. Animal and Plants (Equipment Only) = 0%
17. CBRNE Prevention and Response Watercraft (Limited to Fiberglass and Rigid-Hulled Inflatable Boats) = 0%
18. ~~CBRNE Aviation Equipment~~ (Category excluded from this IFB)
19. CBRNE Logistical Support Equipment = 0%
20. Intervention Equipment = 0%
21. Other Authorized Equipment (Limited to MRE's, Water; Maintenance, Calibration, & Training for Equipment only) = 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.newycontracts.com/frontend/diversityusers.asp>

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

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

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

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

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

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

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

C. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

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

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

E. Monthly MWBE Contractor Compliance Report

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

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>.

7.6 CONTRACT PERIOD AND RENEWALS

It is the intention of the State to enter into Contracts for the term stated on the cover page of this IFB, except that the commencement and termination dates stated may be adjusted forward unilaterally by the State for any resulting Contract for up to two calendar months, by indicating such change on the Contract Award Notification.

The Contract dates may be adjusted forward beyond two months only with the approval of the successful Bidder. If, however, the Bidder is not willing to accept an adjustment of the Contract dates beyond the two month period, the State reserves the right to proceed with no award to any vendor not willing to accept an adjustment of the contract dates.

The Contract(s) will commence on the date of Contract Award Notification sent to the Contractor(s) by OGS. The Contract(s) will be in effect for the term stated herein.

7.7 SHORT TERM EXTENSION

In the event a replacement contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to three months upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to six months in lieu of three months. However, this extension terminates should the replacement contract be issued in the interim.

7.8 EXTENSION OF USE

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

7.9 CENTRALIZED CONTRACT MODIFICATIONS

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

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor, shall be made in writing to the contract administrator, on the appropriate required form(s), and approval of such proposals are at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §28. OGS reserves the right to stop accepting modification requests beginning six (6) months prior to the end of the term of the Contract.

7.10 PERFORMANCE AND BID BONDS

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

7.11 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

7.12 NEW YORK STATE VENDOR FILE REGISTRATION

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

If the Bidder is already registered in the Vendor File, the vendor must enter its ten-digit Vendor ID on the first page of the Contract.

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

7.13 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE, FOR-PROFIT BUSINESS ENTITY

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

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Bidder 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.

The Bidder agrees that if it is awarded a Contract the following shall apply:

II. 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.

7.14 NEW ACCOUNTS

Contractor may ask State agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State contracts, agency code, name, address, and contact person. Authorized Users shall not be required to provide credit references.

7.15 WEBSITES AND ONLINE ORDERING

The State recommends that the successful Bidder have a designated contract website for direct access by an Authorized User. This website will be listed under the Contractor information on the OGS website. The Contractor's website will be the responsibility of the Contractor to maintain and keep updated. Changes in product line or pricing must be approved by NYS Procurement in accordance with any terms included in this bid prior to addition to the website.

New York State Statewide Financial System

The New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs, to integrate Contractor-hosted punch-out catalogs, and/or to submit and process invoices electronically. OGS reserves the right to integrate any or all of these future catalog functions with a Contractor during the Contract period, and by submittal of a bid a Bidder agrees to coordinate with SFS, OGS and/or a third-party host, for integration, if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the

data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS, OGS and/or a third-party host during integration. For more information on SFS, its use, and its capabilities please visit the SFS website here: <http://www.sfs.ny.gov/>.

Accessibility of Web-Based Information and Applications

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

7.16 MINIMUM ORDER SIZE

Minimum order shall be \$100.00.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the contractor's option, shipping costs from the contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the agency.

7.17 UNANTICIPATED EXCESSIVE PURCHASE

The State reserves the right to negotiate lower pricing, or to advertise for bids any unanticipated purchase exceeding \$50,000.

The State reserves the right to delete products from a contract offering at any time it is considered to be in the best interests of the State.

7.18 SHIPPING CHARGES

Prices bid for all items shall include all customs duties and charges for delivery, and be net F.O.B. destination for delivery to any location designated by the Authorized User within the United States (participating states). In addition, upon mutual agreement, delivery locations may be expanded per the Section 7.8 – Extension of Use.

7.19 DELIVERY

After receipt of a purchase order from an Authorized User, delivery shall be expressed by Contractor in number of calendar days required to make delivery. Product is required as soon as possible. Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS, NYS Procurement. Upon mutual agreement, delivery locations may be expanded per Section 7.8 – Extension of Use.

7.20 PRICE

Prices quoted shall be net F.O.B. destination any point within the participating states, potentially nationwide, as designated by the ordering agency, including tailgate delivery, unless otherwise noted in the contract award. Price includes all applicable customs, duties, taxes, license fees and surcharges, as stated in Appendix B under section 11 and as designated by the ordering Authorized User. For those items shipped outside the 48 contiguous United States, on which there are extraordinary freight charges that cannot reasonably be covered by the contract price, vendors may negotiate with those non-contiguous States regarding delivery terms and charges.

Shipping is to be FOB Destination 48 states, Washington DC and point of exportation for Alaska, Hawaii, Puerto Rico, etc. for shipments outside the 48 contiguous states.

It will be the responsibility of the vendors and the Member State that is outside the contiguous 48 States, to negotiate fair shipping terms and charges. Shipping must be FOB destination to a shipping point within the contiguous 48 States. The

location must be agreed to by the vendor and the negotiating State. From that point, shipping terms, charges and conditions should be negotiated with the end-user. The State must be notified in advance of the possible shipping charges and agree to the final contract price and arrangements.

NOTE: The State of New York and its political subdivisions are exempt from New York State and local sales taxes and federal excise taxes.

7.21 PRICE REVISIONS

Pricing must be held for a period of one (1) year from date of submission. Price list updates may be submitted on a yearly basis thereafter to include price increases and decreases, product additions and deletions and/or product number or description changes. Pricelist updates will not be allowed more than once every 12 months unless it is deemed to be within the best interest of the state. Update requests to be submitted pursuant to Section 7.9, Centralized Contract Modification Procedures and approvals are at the sole discretion of NYSPRO.

New products will be considered for inclusion provided they are within the contract scope, are within the same product category, and offered to the State at the same terms and conditions as in the original bid and at pricing or discounts deemed to be reasonable and in the best interests of New York State. Approval for items that fall within a category not originally awarded to a Bidder shall be at the sole discretion of the State.

Approved pricelists must be reviewed by the awarded Bidder at least every 12 months and either a request for a pricelist update made, or notice to NYSPRO given by the awarded Bidder that the pricelist is current and no revisions are necessary. It is NYSPRO's intention that all pricelists under this contract be maintained and updated regularly to keep product offerings, pricing, item numbers and product descriptions current. Awarded Bidders are required to honor their posted contract pricing. It is the awarded Bidder's responsibility to ensure their pricelist is reviewed and notice is provided to NYSPRO regarding their intent to provide updates. Revised pricing is effective upon the date in which OGS approves the request to update pricing. Revised pricelists shall be posted by NYSPRO on the contract website within five (5) business days, or as soon as possible thereafter.

Contact the contract administrator for the most current pricelist update procedures and forms required.

Contract prices may be subject to increase or decrease during the contract period in accordance with changes made by the manufacturer or distributor in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount originally accepted for award should not be decreased during the contract period. Discount reduction will not be generally allowed unless specific documentation from the manufacturer is provided showing that a distributor cannot support the discount on that equipment without undue hardship. Reduction in discount from that originally accepted may result in deletion of item from award. Decision will be made on a case-by-case basis. Price decreases or discount increases are permitted and encouraged at any time. Note that once a discount is increased, that discount cannot be decreased at a later date.

7.22 OVERLAPPING CONTRACT ITEMS

Products/services available in the resulting contract may also be available from other New York State contracts. Authorized Users will be advised **to make purchases from contracts offering the best discounted price on products that meet the agency program requirements** and to maintain a procurement record documenting the basis for this selection.

7.23 CONTRACT DUPLICATION

Contractors holding contracts for items offered under this solicitation must offer the same or better pricing on those items if they are offered for inclusion in any award resulting from this solicitation. If awarded, the items may be purchased under the already existing contract number or under this award.

7.24 “OGS OR LESS” GUIDELINES APPLY TO THIS CONTRACT

Purchases of the products included in the Invitation For Bids and the 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.

7.25 METHOD OF PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B section 49, Contract Invoicing.

7.26 NEW YORK STATE PROCUREMENT CARD

See "Procurement Card" in Appendix B, OGS General Specifications. A Bidder shall indicate in Attachment 2 - General Questions if it will accept the NYS Purchasing Card for orders not to exceed \$15,000.

7.27 BILLING/ORDERING SYSTEMS

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.

7.28 SAMPLES

At any time prior to or after award of a Contract, a Bidder or a Contractor may be required to submit samples. See "Samples" in Appendix B, OGS General Specifications.

7.29 DISCREPANCIES

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

7.30 EMERGENCY PURCHASING

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

7.31 ADMINISTRATIVE AND REPORTING REQUIREMENTS

Contractor shall furnish a report of purchases made from the awarded contract on the fifteenth day of the month following the end of each six month period. For example, sales for January 1 thru June 30 would due by July 15th (a contract start date of June 1st would require sales reports for June 1st thru December 31st to be submitted no later than January 15th).

The report must be in the provided Excel format only; see Attachment 06-Report of Contract Sales Template.

Reports of New York State sales and total contract sales including other state purchases are to be submitted to OGS NYS Procurement (NYSPRO), to the attention of the Contract Administrator, as shown on the front page of the Contract Award Notification document. Attachment 06-Report of Contract Sales Template must be used, and the report must be completed in its entirety. NYSPRO reserves the right to request additional information if needed.

Participating State reports should be submitted to the participating state as required by the State.

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

COMPANY AND CONTACT INFORMATION

Changes regarding the awarded Bidder's company and/or contact information should be submitted no later than five (5) business days of the change to the contract administrator. Due to the nature of this contract, it is imperative that all contact information be accurate.

PERFORMANCE SURVEYS

Contractor shall be required, upon request, to provide performance surveys to Authorized Users. Contract performance measures may include, but not be limited to, the following: delivery time, fill rate, response time to inquiries, resolution of problems, employee courtesy, staff knowledge and overall performance.

7.32 ADMINISTRATIVE FEE

Bidders must include in their pricing schedule an Administrative Fee of one-half percent (0.5%) of sales.

Once awarded a contract, Contractors are required to submit a completed copy of Attachment 06 - Report of Contract Sales along with the proper fee to the New York State Office of General Services Procurement (NYSPPro) on a semi-annual basis.

- The Administrative Fee must be submitted and paid to NYSPPro within 15 days after the end of each six month period for all sales.
- Checks for 0.5% of sales for each preceding 6 months shall be sent, along with a completed copy of Attachment 06 - Report of Contract Purchases, to NYSPPro.
- Check stub should contain the Contractor Contract Number (PCxxxxx), and the Contract Dates the payment is issued for.
- The sales reports shall be sent to the Contract Management Specialist noted on the cover page of the Contract Award Notice
- The administrative fee payments shall be sent to:

OGS Financial Administration
Empire State Plaza
PO Box 2282
Albany, NY 12220-0282
Check should be made out to:
Office of General Services

7.33 TAX LAW SECTION 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 the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and sub-contractors 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.

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

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

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

7.34 PREFERRED SOURCE PRODUCTS

NYS State Finance Law §162 requires that governmental entities afford first priority to the products/services of preferred source suppliers such as Correctional Industries (Corcraft), New York State Preferred Source Program for People who are Blind, and NYS Industries for the Disabled, when such products/services meet the form, function and utility of the Authorized User. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law §162(3) or (4)(b), respectively, before engaging the Contractor.

7.35 USE OF RECYCLED OR REMANUFACTURED MATERIALS

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

7.36 MERCURY-ADDED CONSUMER PRODUCTS

Bidders are advised that in accordance with Article 27, Title 21 of the Environmental Conservation Law, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Bidders are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Bidders may also visit the Department's web site for additional information: <http://www.dec.ny.gov/chemical/8512.html>.

7.37 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 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) (EO4), 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://www.ogs.ny.gov/EO/4/Default.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.

7.38 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. A contractor 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.

7.39 SURPLUS/TAKE-BACK/RECYCLING

I. A New York 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.

II. 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 III below for specific requirements governing electronic equipment recycling.

III. 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>.

IV. 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.

7.40 NEW YORK STATE FOOD PRODUCTS

Bidders and Contractors may be required to designate New York State Food Products in their Price Guide(s). State Agencies are expected, and New York state public authorities are strongly encouraged, to purchase New York State Food Products, unless the item does not meet their institutional or programmatic needs.

8.0 STANDARDS

The following standards adopted by the US Department of Homeland Security's Science and Technology Directorate apply to Personal Protective Equipment and Radiation and Nuclear Detection Equipment. NYS DHSES grant guidance requires that any equipment purchased with Federal Homeland Security grant funds must meet any applicable standard listed on the DHS/FEMA AEL.

Items purchased by end users that have been represented as meeting Federal ODP guidelines for CBRNE, NFPA, NIOSH, or ANSI standards that do not meet those standards may be returned at Contractor's expense for replacement or refund. For radiation detection equipment that has been tested by the manufacturer but has not completed third party testing for ANSI N 42.33, 42.34, 42.35- Evaluation and performance of Radiation Detection Portal Monitors for Use in homeland Security, and at a later date does not pass the third party tests vendors/manufacturers must refund, retrofit or replace equipment that has failed to meet requirements of the ODP standards at no additional cost to the end user.

The following are provided for your information.

Standards for Personal Protective Gear for First Responders

ISEA: <https://www.safetyequipment.org/c/hiviz-faq.cfm>

The standard details the performance specifications for materials used in the construction of high-visibility garments. Specific test procedures are included for background materials, and retroreflective and combined-performance materials. The standard also provides criteria for apparel design and addresses labeling and use instruction requirements.

NIOSH: [Chemical, Biological, Radiological and Nuclear \(CBRN\) Standard for Open-Circuit Self-Contained Breathing Apparatus](#)

This standard establishes performance and design requirements to certify Self-Contained Breathing Apparatus (SCBA) for use in chemical, biological, radiological, and nuclear (CBRN) exposures for use by emergency responders

NIOSH: [Standard for Chemical, Biological, Radiological, and Nuclear \(CBRN\) Full Facepiece Air Purifying Respirator \(APR\)](#)

The purpose of this standard is to specify minimum requirements to determine the effectiveness of full facepiece air purifying respirators (APR), commonly referred to as gas masks, used during entry into chemical, biological, radiological, and nuclear (CBRN) atmospheres not immediately dangerous to life or health (IDLH)

NIOSH: [Standard for Chemical, Biological, Radiological, and Nuclear \(CBRN\) Air-Purifying Escape Respirator and CBRN Self-Contained Escape Respirator](#)

The purpose of this standard is to specify minimum requirements to determine the effectiveness of escape respirators that address CBRN materials identified as inhalation hazards from possible terrorist events for use by the general working population.

NFPA 1951: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=1951>

Criteria apply to the design, manufacturing, testing, and certification of three different types of technical rescue operations protective ensembles and ensemble elements: utility, rescue and recovery; and chemical, biological, radiological, and nuclear (CBRN). Specific provisions provided for ensemble elements include garments, helmets, gloves, footwear, interface, eye and face protection devices for utility and rescue and recovery ensembles, and respiratory protection for CBRN ensembles.

NFPA 1981: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=1981>

Requirements cover certification, labeling, design requirements, performance requirements, and test methods and apply to all open-circuit SCBA and combination SCBA/SARs used during fire fighting, rescue, hazardous materials, terrorist incidents, and similar operations where responders may encounter confined spaces, atmospheres that are unknown, atmospheres that are or could become Immediate Dangerous to Life and Health (IDLH), or atmospheres that are or could become oxygen deficient.

NFPA 1991: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=1991>

Provisions cover design, performance, labeling, testing, documentation, and certification requirements for new vapor-protective ensembles and ensemble elements. Additional optional criteria for escape protection only from chemical flash fires encountered during hazardous materials incidents are also provided.

NFPA 1994: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=1994>

Provisions cover the design, performance, testing, documentation, and certification of new CBRN protective ensembles. Three levels of CBRN protective ensembles are specified – Class 2, Class 3, and Class 4 – to meet different risk analysis scenarios.

NFPA 1999: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=1999>

Provisions apply to the design, performance, testing, documentation, and certification of new emergency medical protective ensembles and ensemble elements, including garments, gloves, helmets, facemasks, and footwear, and also to ensembles for additional CBRN protection from specified biological and radiological terrorism agents in liquid-splash and particulate environments.

NFPA 2001: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=2001>

This standard contains requirements for total flooding and local application clean agent fire extinguishing systems. It is intended for use by those who purchase, design, install, test, inspect, approve, operate, and maintain engineered or pre-engineered gaseous agent fire suppression systems so they will function as intended when needed.

NFPA 2010: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=2010>

This standard contains minimum requirements for fixed aerosol fire extinguishing systems. It is intended for use by those who purchase, design, install, test, inspect, approve, list, operate, and maintain fixed aerosol fire-extinguishing systems so that such equipment will function as intended throughout its life.

National Institute of Justice - NIJ 0116.00

This standard specifies the minimum requirements for form and fit, performance, testing, documentation and labeling of CBRN protective ensembles intended to protect law enforcement personnel from CBRN hazards. CBRN hazards include chemical warfare agents (CWAs), toxic industrial chemicals (TICs), biological agents and radiological and nuclear particulate hazards that may inflict bodily harm, incapacitation or death.

NFPA 2112

Criteria cover design, construction, evaluation and certification of flame-resistant garments for use by industrial personnel, with the intent of not contributing to the burn injury of the wearer, providing a degree of protection to the wearer, and reducing the severity of burn injuries resulting from short-duration thermal exposures resulting from accidental exposure to flash fires.

NFPA 1975

Provisions apply to design, performance, testing and certification of non-primary protective work apparel and the individual garments comprising work apparel. In addition, this document specifies criteria for thermally stable textiles that will not rapidly deteriorate, melt, shrink, or adhere to the wearer's skin, and also provides optional requirements and tests to verify flame resistance, odor resistance, water resistance, and insect repellency.

NFPA 1982

Provisions cover design, performance, testing, and certification of PASS that monitor an emergency responder's motion and automatically emit an audible signal to summon aid in the event the user becomes incapacitated or needs assistance. In addition to addressing corrosion, heat, flame, impact, and vibration resistance specific topics include criteria for mode selection and motion sensing, radio system tests, and signal frequency tests.

NFPA 1952

Criteria cover the design, performance, testing, and certification requirements for protective clothing and equipment items designed to provide limited protection from physical, environmental, thermal, and certain chemical and biological hazards for emergency services personnel during operations in surface water, swift water, tidal water, surf, and ice. Specific provisions apply to full body suits, helmets, gloves, footwear, and personal flotation devices.

NFPA 1992

Provisions specify design, performance, certification, and documentation requirements; test methods for new liquid splash-protective ensembles and liquid splash-protective clothing. Additional optional criteria for escape protection only from chemical flash fires encountered during hazardous materials incidents are also provided.

NFPA 1971

Requirements apply to the design, performance, testing, and certification requirements for structural fire fighting protective ensembles and ensemble elements. The Standard also includes provisions for ensembles that will provide limited protection from specified chemicals, biological agents, and radiological particulates (CBRN) terrorism agents.

NFPA 2112

Criteria cover design, construction, evaluation and certification of flame-resistant garments for use by industrial personnel, with the intent of not contributing to the burn injury of the wearer, providing a degree of protection to the wearer, and reducing the severity of burn injuries resulting from short-duration thermal exposures resulting from accidental exposure to flash fires.

NFPA 1983

Criteria cover the design, performance, testing, and certification of new life safety rope, escape rope, water rescue throwlines, life safety harnesses, belts, manufacturer-supplied eye terminations, moderate elongation laid life safety rope, belay devices, and auxiliary equipment for emergency services personnel.

ANSI/ISEA Z89.1

Standards related to protective helmets

ANSI/ISEA 105

American National Standard for Hand Protection Selection Criteria

ANSI/ISEA 107

This standard provides a uniform, authoritative guide for the design, performance specifications, and use of high-visibility and reflective apparel including vests, jackets, bib/jumpsuit coveralls, trousers and harnesses. Garments that meet this standard can be worn 24 hours a day to provide users with a high level of conspicuity through the use of combined fluorescent and retroreflective materials.

ANSI/ISEA 207

The standard includes basic requirements such as vest dimensions, color and materials performance, but also incorporates criteria for special features for users in fire, emergency medical and law enforcement services. The vest design criteria reflect the specific needs of public safety workers such as the need to access belt mounted equipment (gun, CPR barrier) and the ability for vests to tear away from the body.

NFPA Official Site: <http://www.nfpa.org/>

To find a specific code or standard: <http://www.nfpa.org/codes-and-standards/document-information-pages>

Standards for Radiation and Nuclear Detection Equipment

Copies of the complete standards are available from IEEE (search by Standard Number): <http://www.ieee.org/index.html>

ANSI N42.32: Performance Criteria for Alarming Personal Radiation Detectors for Homeland Security

This standard describes design and performance criteria along with testing methods for evaluating the performance of instruments for homeland security that are pocket sized and carried on the body for the purpose of detecting the presence and magnitude of radiation. This standard specifies the performance criteria for radiation detection and measurement instruments that may be used in a variety of environmental conditions. The performance criteria contained in this standard are meant to provide a means for verifying the capability of these instruments to reliably detect significant changes above background levels of radiation and alert the user to these changes.

ANSI N42.33: Radiation Detection Instrumentation for Homeland Security

This standard establishes design and performance criteria, test and calibration requirements, and operating instruction requirements for portable radiation detection instruments. These instruments are used for detection and measurement of photon emitting radioactive substances for the purposes of detection and interdiction and hazard assessment. The informative annexes of this standard provide reference information.

ANSI N42.34: Performance Criteria for Hand-Held Instruments for the Detection and Identification of Radionuclides

This standard addresses instruments that can be used for homeland security applications to detect and identify radio nuclides, for gamma dose rate measurement, and for indication of neutron radiation. This standard specifies general requirements and test procedures, radiation response requirements, and electrical, mechanical, and environmental requirements. Successful completion of the tests described in this standard should not be construed as an ability to successfully identify all isotopes in all environments.

ANSI N42.35: Evaluation and Performance of Radiation Detection Portal Monitors for Use in Homeland Security

This standard provides the testing and evaluation criteria for Radiation Detection Portal Monitors to detect radioactive materials that could be used for nuclear weapons or radiological dispersal devices (RDDs). Portal monitors may be used in permanent installations, in temporary installations for short-duration detection needs, or as a transportable system. These systems are used to provide monitoring of people, packages and vehicles to detect illicit radioactive material transportation, or for emergency response to an event that releases radioactive material.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise

provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under Bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as 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: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive 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.

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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. **AGENCY OR AGENCIES** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.
- b. **AUTHORIZED USER(S)** Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.
- c. **COMMISSIONER** Commissioner of OGS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.
- d. **CONTRACT** The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:
 - 1. **Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).
 - 2. **Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.
 - 3. **Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid

among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

- 4. **Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.
- 5. **Contract Letter** A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

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

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

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

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

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

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

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

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

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

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

o. **LICENSEE(S)** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for

purposes of compliance with an individual license, the term "Licensee(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

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

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

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

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

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

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

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

w. REQUEST FOR PROPOSALS (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

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

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

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

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

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

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

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

ee. STATE State of New York.

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

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

hh. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

BID SUBMISSION

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

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

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

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

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

"**BID ENCLOSED** (bold print, all capitals)

- Group Number

- IFB or RFP Number
- Bid Submission date and time”

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

Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

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

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

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

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

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

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license

agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

9. CONFIDENTIAL/TRADE SECRET MATERIALS

a. CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. 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 as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

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

a. PREVAILING WAGE RATE APPLICABLE TO BID SUBMISSIONS A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. 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 as required by law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

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

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

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

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

d. ARTICLE 9 BUILDING SERVICES CONTRACTS

In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.

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

11. TAXES

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

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

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

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

13. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor

shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

14. PRODUCT REFERENCES

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

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

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

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

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

17. PRICING

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

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

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

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

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

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

g. Specific price decreases:

(i) **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

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

18. DRAWINGS

a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings

and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

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

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

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

20. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased Products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for Products returned as defective or faulty.

21. SAMPLES

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

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

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

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

d. Conformance with Samples Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

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

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

BIDEVALUATION

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

23. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more 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.

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

25. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

TERMS & CONDITIONS

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

27. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

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

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a

breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

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

28. MODIFICATION OF CONTRACT TERMS The terms and

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

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

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

Estimated quantity contracts, also referred to as indefinite delivery / indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

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

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

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

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time,

the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

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

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

35. SHIPPING/RECEIPT OF PRODUCT

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

b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

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

36. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by

Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

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

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

40. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

41. REPAIRED OR REPLACED PARTS / COMPONENTS

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components

meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

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

43. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

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

45. PERFORMANCE / BID BOND The Commissioner reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable

irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

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

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

47. TERMINATION

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

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

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

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

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

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

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

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

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

48. SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

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

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

a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or

b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

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

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

a. **Invoicing.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at HelpDesk@sfs.ny.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment** The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

50. DEFAULT – AUTHORIZED USER

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

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

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

d. **Insufficient basis.** If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

51. PROMPT PAYMENTS

a. **State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The

required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.

The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

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

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

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement

Product shall be deducted from the Contract quantity without penalty or liability to the State.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

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

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

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

55. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

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

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

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

59. WARRANTIES

a. Product Performance Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

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

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

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

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

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

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

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

warranty period(s).

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

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

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

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

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

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

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

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

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

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

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

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

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

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments,

liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

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

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

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

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount

not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

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

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

64. DISPUTES

a. Informal Dispute Resolution Process

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

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

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

4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section

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shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

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

b. Formal Disputes

1. Definitions

- a.** Filed means the complete receipt of any document by OGS before its close of business.
- b.** Dispute means a written objection by Contractor to any of the following:
 - i.** A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
 - ii.** The cancellation of the solicitation or other request by OGS.
 - iii.** An award or proposed award of the Contract by OGS.
 - iv.** A termination or cancellation of an award of the Contract by OGS.
 - v.** Changes in the Scope of the Centralized Contract by the Commissioner.
 - vi.** Determination of "materiality" in an instance of nonperformance or contractual breach.
 - vii.** An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Disputes

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

3. The dispute must include:

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

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

**New York State Office of General Services Director,
NYSPRO**

38th Floor, Coming Tower
Empire State Plaza Albany, NY 12242
Facsimile: (518) 474-2347

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

4. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed

procurement/Contract action prior to issuance of a formal dispute decision.

2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.

3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

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

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

5. Appeals

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

Chief Procurement Officer

New York State Office of General Services NYSPro

38th Floor, Corning Tower

Empire State Plaza Albany, NY 12242

Facsimile: (518) 474-2347

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

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

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

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

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

65. **SOFTWARE LICENSE GRANT** Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or

interest in any trademark, trade name, or service mark is granted hereunder.

b. **License Term** The License Term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

c. **Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

d. **Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

e. **Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional

license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as

authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the terms of license, Licensee shall not:

(i) Copy the Product;

(ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;

(iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

66. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the

Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

67. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this clause, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the JUNE 2014

Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) **Existing Products:**

1. Hardware - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

2. Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase(s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required

by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

69. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

70. PRODUCT VERSION Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

71. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under

the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

72. NO HARDSTOP/PASSIVE LICENSE MONITORING Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

73. SOURCE CODE ESCROW FOR LICENSED PRODUCT If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such

updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

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APPENDIX C

EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

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

Solicitation No.: 22872 Hazardous Incident Response Equipment (HIRE)	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Report includes Contractor's <input type="checkbox"/> Contractor's work force to be utilized on this contract <input type="checkbox"/> Contractor's total work force <input type="checkbox"/> Subcontractor's work force to be utilized on this contract <input type="checkbox"/> Subcontractor's total work force
Contractor/Subcontractor's Name: 		
Contractor/Subcontractor's Address: 		
FEIN: 		

Enter the total number of employees for each classification.

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

Craft Workers																	
Operatives																	
Laborers and Helpers																	
Service Workers																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.:	DATE:
	EMAIL ADDRESS:	
NAME AND TITLE OF PREPARER (Print or Type):		

EEO 100 (5/12)

General instructions: Contact the Designated Contact(s) for the solicitation if you have any questions. **All Offerors** must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force. Subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor must complete this form upon request of OGS.

Instructions for completing:

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

RACE/ETHNIC IDENTIFICATION

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

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

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

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

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

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

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APPENDIX D

PRICELIST UPDATE PROCEDURE Hazardous Incident Response Equipment (HIRE) 22872

The following guidelines are subject to change at the discretion of NYS OGS:

PRICELIST UPDATES: In order to expedite processing of a pricelist update, please follow these instructions:

- Request a copy of the HIRE Pricelist Update Template via email from the OGS Contract Management Specialist administering the contract at: Melissa.gretten@ogs.ny.gov.
- Complete the appropriate tabs for current pricelist, product additions, deletions, pricing increases, and decreases, and new complete updated pricelist.
- Complete the Pricelist Update Form (below).
- Provide a cover letter outlining the revisions you are requesting to make to your HIRE pricelist, and why the revisions are necessary.
- Provide all necessary supporting pricing justification for the revisions you are requesting.
- Review and verify your information for completeness and accuracy.
- Send your completed Pricelist Update Template, Pricelist Update Form, Cover Letter and supporting documentation electronically to: melissa.gretten@ogs.ny.gov.

(1) TYPES OF HIRE Pricelist Updates:

“Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Pricelist revisions, such as adding new products or services within the established, previously approved pricing structure and contract scope; lowering pricing of products or services already on Contract, deleting products or services already on Contract; product number and/or description revisions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price, a cover letter outlining the revisions requested, and a completed HIRE Pricelist Update Template. OGS will 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/Pricelist Update Requests
- Remove Products from Contract modification requests
- Request additional discounts for new or existing Products

(3) PRICE LEVEL JUSTIFICATION – FORMAT: Contractor is required to submit the product and price level information for the update in the provided Excel HIRE Pricelist Update Template only, electronically via e-mail, to the OGS Contract Administrator. The pricelist must be dated. The product and price level information shall include and identify the following:

- Current Pricelist
- Price Increases
- Price Decreases
- New Items
- Deleted Items
- New Complete Pricelist

- (4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the products included in the update. Reductions in pricing discounts will generally not be allowed. Each update request must include the current U.S. commercial price list relevant to the products included in the update. If the NYS contract prices are based on a GSA Schedule, the current GSA Schedule must also be included with the update request. Requested price increases not based on an approved GSA schedule must be accompanied by another form of pricing justification, such as other state contract pricing for the same items. All pricing will be reviewed for reasonableness. The State reserves the right to request the lowest pricing offered to any other entity for the same items.
- (5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification/Pricelist Update Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to revise the pricelist by adding/deleting product and/or increase/decrease pricing and why, and/or for product description and/or Item Number revisions. The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.



STATE OF NEW YORK
 EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
 Corning Tower – 38th Floor
 Empire State Plaza
 Albany, New York 12242

HIRE PRICELIST UPDATE FORM	
DATE OF THIS SUBMISSION:	DATE DOCUMENTATION EMAILED:
CONTRACTOR NAME: OGS GROUP #: 38232 OGS AWARD #: 22872 OGS CONTRACT #: PCxxxxx	CONTRACTOR CONTACT: Name: Phone #: Email:
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 HIRE Pricelist Updates. The form is to be completed in full, signed, notarized and submitted to OGS for final approval. Any submission that is not complete will be rejected.
2. Contractor is required to submit the product and price level information for the update electronically via e-mail in the provided Excel Workbook (HIRE Pricelist Update Template) to the OGS Contract Administrator for this Contract, along with a cover letter outlining the requested updates.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. The Pricelist Update request must be accompanied by the relevant current contract pricing discount information.

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

1. This request is for: <input type="checkbox"/> Pricing Update <input type="checkbox"/> Other (i.e. Revised Item #s/Descriptions, etc.)	2. The intent of this submittal is to request: <input type="checkbox"/> Addition of new products or services <input type="checkbox"/> Deletion of products or services <input type="checkbox"/> Pricing Increases <input type="checkbox"/> Pricing Decreases <input type="checkbox"/> Other Update (i.e. Revised Item #s/Descriptions, etc.)
3. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation (lowest pricing offered to any similarly situated entity) <input type="checkbox"/> Other (i.e. discount % off list only, etc.)	4. Attached documentation includes: <input type="checkbox"/> Current approved GSA or Other Supporting Pricing (labeled "For information only") <input type="checkbox"/> Current relevant Internal Price List (labeled "For information only") <input type="checkbox"/> Revised NYS HIRE Price List Update Template

END of DOCUMENT