



Invitation For Bids

**IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

BID OPENING DATE: July 16, 2015 TIME: 11:00 AM	TITLE: Group 01800 – ROAD SALT, TREATED SALT, AND EMERGENCY STANDBY ROAD SALT (STATEWIDE) Classification Code: 12 Revised July 2, 2015
INVITATION FOR BIDS NUMBER: 22955	SPECIFICATION REFERENCE: As Incorporated in the Invitation For Bids

CONTRACT PERIOD: September 1, 2015 to August 31, 2016

DESIGNATED CONTACTS:	
Primary Contact Carmen Story Contract Management Specialist Telephone No. (518) 486-9151 E-mail address: carmen.story@ogs.ny.gov	Secondary Contact Joseph Hodder Team Leader Telephone No. (518) 474-3668 E-mail address: joseph.hodder@ogs.ny.gov

The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

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

Bidder's Federal Tax Identification Number: (Do Not Use Social Security Number)	NYS Vendor Identification Number: (See "New York State Vendor File Registration" clause)
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If applicable, place an "x" in the appropriate box (**check all that apply**):

<input type="checkbox"/> NYS Small Business	<input type="checkbox"/> Minority Owned Business	<input type="checkbox"/> Women Owned Business
_____ #Employees		

Legal Business Name of Company Bidding:

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

Street	City	State	Zip	County
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If applicable, place an "x" in the appropriate box (**check all that apply**):

<input type="checkbox"/> Manufactured Within New York State	<input type="checkbox"/> Manufactured Outside New York State
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If you are not bidding, place an "x" in the box and return this page only.
 WE ARE UNABLE TO BID AT THIS TIME
 BECAUSE _____.

Bidder's Signature:	Printed or Typed Name:
Title:	Date:
Phone : () - ext ()	Toll Free Phone : () - ext ()
Fax : () - ext ()	Toll Free Fax : () - ext ()
E-mail Address:	Company Web Site:

FOR PROCUREMENT SERVICES USE ONLY

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

- Appendix A - Standard Clauses for New York State Contracts (January 2014)
- Appendix B - General Specifications (May 2015)

ATTACHMENTS

- Attachment 1 - Price Pages
- Attachment 2 - General Questions
- Attachment 3 - New York State Required Certifications
- Attachment 4 - Insurance Requirements
- Attachment 5 - Report of Contract Purchases
- Attachment 6 - Inquiries Template
- Attachment 7 - Vendor Certified Product Data Sheet
- Attachment 8 - Manufacturer's Certificate
- Attachment 9 - Delivery Schedule
- Attachment 10 - Form EEO 100 Equal Employment Opportunity Staffing Plan
- Attachment 11 - Form MWBE 100 MWBE Utilization Plan
- Attachment 12 - Form ST-220 CA Contractor Certification
- Attachment 13 Encouraging NYS Business
- Attachment 14 – Encouraging Use of Service-Disabled Veteran-Owned Business Enterprises

SECTION 1: INTRODUCTION

1.1 Overview and Scope

This Invitation for Bids (IFB) is issued by the New York State (NYS) Office of General Services (OGS), Procurement Services to provide a procurement mechanism for State and eligible Non-State entities to purchase bulk Road Salt (rock & solar), Treated Salt (Types 1 & 2), and Emergency Standby Road Salt (Rock & Solar) for delivery to various locations in New York State. This IFB includes four (4) lots, as follows:

Lot	Salt Type	Number of Awardees
1	Road Salt (rock & solar)	One per County
2	Treated Salt – Type I	One per County
3	Treated Salt – Type II	One per County
4	Emergency Standby Road Salt (Rock & Solar)	Multiple per County

State and eligible non-state agencies may participate on a filed requirement basis (estimated quantities).

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. A Bidder should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, a Bidder must follow the format and instructions in Section 3.8 Format and Content of Bid Submittal. Bidders are strongly encouraged to read the language of this IFB thoroughly and to precisely follow the instructions included in the IFB and all Attachments.

1.2 Key Events/Dates

Event	Date	Time
IFB Release	June 24, 2015	n/a
Closing Date for Inquiries	June 30, 2015	11:00 AM ET
OGS Procurement's Responses to Inquiries	July 7, 2015	n/a
Submission of Bid and Bid Opening	July 16, 2015	11:00 AM ET

1.3 Estimated Quantities

The quantities listed for Road Salt and Treated Salt are based on the requirements filed for each using entity. Emergency Standby Road Salt has no filed requirements and there is no guarantee of usage against resultant contracts.

1.4 Minimum/Maximum Obligations

Authorized Users are obligated to take 70% minimum (50% minimum for solar salt) of their filed requirements during the contract period and contractors are obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt. However, Authorized Users with multiple delivery sites (e.g., NYSDOT, County Highways and NYS Thruway) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a Contractor.

When the Authorized User is not able to take the minimum required amount, the salt contractor will store salt for the Authorized User until December 31 of that calendar year (i.e., user did not take minimum by 8/31/15 – contractor will store through 12/31/15). If storage is necessary for an Authorized User beyond 12/31/15, the salt contractor may offer storage at a per month rate. Delivery of stored salt between 9/1/15 and 5/31/16 shall meet the delivery requirements in Section 6.11.

1.5 Definitions

“**Authorized User(s)**” as defined in Appendix B.

“**Bidder**” as defined in Appendix B.

“**Business Day**” shall refer to Monday through Friday, excluding State holidays.

“**Business Hours**” shall refer to 8:00 AM to 5:00 PM ET on Business Days.

“**Contract**” as defined in Appendix B.

“**Contractor**” as defined in Appendix B. See also “Bidder”, “Primary Contractor”, and “Secondary Contractor.”

“**Delivery**” as defined in clause 32 of Appendix B.

“**Executive Agency**” shall refer to all State departments, offices or institutions but, for the purposes of this IFB, excludes the State University of New York and excludes City University of New York. Furthermore, such term shall not include the legislature and judiciary. The term “Executive Agency” does not include any public benefit corporation, public authority, or local government entity.

“**Independent Laboratory**” is defined as a laboratory that is certified to perform the required analyses by the USEPA and/or NYS Department of Health Environmental Laboratory Approval Program (ELAP).

“**Invitation for Bids (IFB)**” this document.

“**Item**” shall mean any county or combination of counties within each lot (salt type) as listed in Attachment 1 – *Pricing Pages*

“**May**” denotes the permissive in a Contract clause or specification. “May” does not mean “required.” See also “Shall” and “Must.”

“**Must**” denotes the imperative in a Contract clause or specification. “Must” is synonymous with “required.” See also “Shall” and “May.”

“**MWBE**” shall refer to a business NYS certified Minority and/or Women-owned Business Enterprise by Empire State Development (ESD).

“**NB (No-Bid)**” shall refer to a case in which 1) a Bidder does not submit the required information for an item; 2) a Bidder submits invalid information into a pricing field for an item, and/or 3) an item does not meet the stated minimum specifications listed.

“**NYS Vendor File**” A centralized repository to maintain timely and reliable information on all Contractors registered to do business with the State.

“**NYS Vendor ID**” shall refer to the ten-digit identifier issued by New York State when a Contractor is registered in the NYS Vendor File.

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

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

“**Shall**” denotes the imperative in a Contract clause or specification. “Shall” is synonymous with “required.” See also “Must” and “May.”

“**State Agency or Agencies**” The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

1.6 Order of Precedence

Conflict of Terms

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

1. Appendix A (Standard Clauses for NYS Contracts);
2. This Invitation for Bids (IFB), including all attachments;
3. Appendix B (General Specifications);
4. The Bidder’s Bid.

1.7 New York State Contract Reporter

You must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications about this solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. Answers to all questions of a substantive nature will be provided to all registered Bidders in the form of a question and answer document which will be posted and released through the New York State Contract Reporter site.

1.8 Inquiries

1.8.1 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this IFB includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a).

Designated staff, as of the date hereof, is identified on the first page of this IFB (For inquiries related specifically to Minority Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contact is identified in the MWBE designated contact section). OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four (4) year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website at:

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

1.8.2 IFB Inquiries

Bidders are encouraged to submit inquiries about the IFB at any point up to the closing date for inquiries as listed in Section 1.2 *Key Events/Dates*.

A Bidder should raise any potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements of this IFB during the inquiry period of the procurement. OGS will not entertain any exceptions to Appendix A. Nor will OGS entertain exceptions to this IFB and Appendix B that are of a material and substantive nature.

All clarifications and exceptions including those relating to the terms and conditions of the Contract are to be resolved prior to the submission of a bid. Bids that contain material changes to the terms and conditions, specifications, and requirements set forth throughout this IFB may be disqualified as non-responsive.

All inquiries concern

ing this IFB must be submitted to the e-mail address listed as the designated contact on the front page of this IFB using the template found in Attachment 6 - *Inquiries Template* by the date and time listed in Section 1.2 *Key Events/Dates*. When e-mailing Attachment 6 to the designated contacts, a Bidder should annotate the subject of its submissions as follows: “Inquiry for Road Salt, Treated Salt, and Emergency Standby Road Salt”.

No inquiries submitted via phone, fax, or mail will be accepted.

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 to the OGS website. Notification of this posting will be advertised in the NYS Contract Reporter.

SECTION 2: QUALIFICATIONS AND REQUIREMENTS

2.1 Qualification of Bidder

Upon request a Bidder shall submit satisfactory evidence that it possesses sufficient previous experience, financial resources and organization to perform the type, magnitude, and quality of work specified herein.

A Bidder must certify its commitment to obtain all necessary proof of insurance with its proposal via Attachment 2 - *General Questions*. See Attachment 4 - *Insurance Requirements* for detailed insurance requirements.

OGS reserves the right to request any additional information regarding a Bidder's abilities, qualifications and procedures as it deems necessary to ensure safe and satisfactory performance under a Contract.

OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B § 41 *Employees/Subcontractors/Agents*.

Note: Failure by a Bidder to provide any of the above information as requested by OGS or to meet any of the above qualifications in whole or in part may result in a rejection of that Bidder's bid.

2.2 Financial Stability

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

SECTION 3: BID SUBMITTAL

3.1 Receipt of Bids

Receipt of these bid documents does not indicate that OGS has pre-determined a company's qualifications to receive a Contract award. Such determination shall be made after the bid opening and shall be based on the evaluation of a bid submission compared to the specific requirements and qualifications contained in these bid documents.

3.2 Notice to Bidders

The Commissioner of OGS shall receive bids pursuant to the provisions of Article XI of the State Finance Law. All bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

Bidders are responsible for the accuracy of their bids. All Bidders are directed to take extreme care in developing their bids. Bidders are cautioned to carefully review their bids prior to bid submittal.

3.3 Bid Deviations

In accordance with the requirements set forth in Appendix B, Extraneous Terms, if your bid differs from the terms set forth in the Bid Documents, the Bidder shall explain such deviation(s) or qualification(s); and if necessary, provide details as part of their bid submission. Bidders are encouraged to raise any extraneous terms during the inquiry period. Bidder is advised that OGS will not entertain any exceptions to Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions to the Bid Documents and Appendix B (General Specifications) that are of a material and substantive nature.

3.4 Responsiveness

To be considered responsive, a Bidder must submit a complete proposal that satisfies and addresses all requirements stated in the IFB. A proposal that fails to conform to all requirements may be considered non-responsive and may be rejected.

3.5 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 Contractor and OGS. Therefore, the proposal must be signed by a partner, corporate officer, or other person authorized to commit the Bidder to all provisions of the IFB and the proposal as submitted.

3.6 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a proposal or for any work performed prior to the formal execution of a Contract. Proposals must be received at the specified location on or before the date and time listed in *Key Events/Dates*. 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/time of the bid opening. Late bids shall be rejected except as provided in Appendix B, § 5 *Late Bids Rejected*. E-mail or faxed bids are not acceptable and shall not be considered. The received time of proposals will be determined by OGS by the clock at the final receiving location.

3.7 Bid Validity

Bids must remain open and valid for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the proposal in writing by Bidder. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal Contract.

3.8 Format and Content of Bid Submittal

This Invitation for Bids contains the following files:

Name	Format
Invitation for Bids # 22955	PDF
Attachment 1 – Price Pages	Microsoft Excel
Attachment 2 – General Questions	Microsoft Excel
Attachment 3 – New York State Required Certifications	Microsoft Word
Attachment 4 – Insurance Requirements	PDF
Attachment 5 – Delivery Report	Microsoft Excel
Attachment 6 – Inquiries Template	Microsoft Excel
Attachment 7 – Vendor Certified Product Data Sheet	PDF
Attachment 8 – Manufacturer’s Certificate	PDF
Attachment 9 – Delivery Schedule – Road Salt (Lot 1), Treated Salt (Lot 2 and Lot 3)	PDF
Attachment 10 – Form EEO 100 Equal Employment Opportunity Staffing Plan	PDF
Attachment 11 – Form MWBE 100 MWBE Utilization Plan	PDF
Attachment 12 – Form ST-220-CA Contractor Certification	PDF
Attachment 13 – Encouraging NYS Business	PDF
Attachment 14 – Encouraging Use of Service-Disabled Veteran-Owned Business Enterprises	

It is recommended that the bidder open, review and save/download all electronic files to its hard drive and/or to a secure back-up. Only completed files in the specified format should be saved to the portable electronic media to be submitted. Do not return copies of Appendix A and B with your bid.

Submitting a bid by fax or e-mail is not acceptable.

Bidder shall submit the entire offering on portable electronic media as outlined below in **PART 1** (CD, DVD, memory stick, etc.). Only those items listed below in **PART 2** are required in paper copy.

All items listed in **PART 1 & PART 2** should be submitted to be considered a complete bid submission.

PART 1 – One (1) Portable electronic media containing:

Pages 1 and 2 of the IFB (signed and scanned) (PDF);

Completed Attachment 1 – Price Pages for all Items which are being bid (Microsoft Excel);

Completed Attachment 2 – General Questions (all tabs) (Microsoft Excel);

Completed Attachment 3 – New York State Required Certifications (signed and scanned) (PDF);

Proof of insurance (Attachment 4 – *Insurance Requirements* for the detailed insurance requirements) (PDF);

Completed Attachment 7 – Vendor Certified Product Data Sheet (signed and scanned) (PDF);

Completed Attachment 8 – Manufacturer’s Certificate (signed and scanned) (PDF);

Completed Attachment 10 – Form EEO 100, Equal Employment Opportunity Staffing Plan (signed and scanned) (PDF);

Completed Attachment 11 - Form MWBE 100, MWBE Utilization Plan – applicable only to those counties specifically identified in **Section 6.10.3** (signed and scanned) (PDF);

Completed Attachment 12 - Completed, notarized and signed Contractor Certification, ST-220-CA (signed and scanned) (PDF)

PART 2 - One (1) Original version of each of the following (to be placed in a loose leaf binder and tabbed):

Pages 1 and 2 of the IFB with original ink signatures;

Completed Attachment 3 – New York State Required Certifications with original ink signatures;

Proof of insurance (see Attachment 4 – *Insurance Requirements* for detailed requirements);

Completed Attachment 7 – Vendor Certified Product Data Sheet(s) with original ink signatures;

Completed Attachment 8 – Manufacturer’s Certificate(s) with original ink signatures;

Completed Attachment 10 – Form EEO 100, Equal Employment Opportunity Staffing Plan with original ink signatures;

Completed Attachment 11 – Form MWBE 100, MWBE Utilization Plan with original ink signatures (applicable only to those counties specifically identified in **Section 6.10.3**)

Completed Attachment 12 – Form ST-220-CA, Contractor Certification notarized with original ink signatures.

Completed Attachment 13 – Encouraging NYS Business with original ink signatures.

Completed Attachment 13 - Encouraging Use of Service-Disabled Veteran-Owned Business Enterprises

Bidder should note that Attachment 1 – Price Pages is only required in electronic media format. Hard copies of Attachment 1 are not necessary.

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

A Bidder should note that any indicators or messages that have been built into Attachment 2 - *General Questions* are informational only and provided solely for the purpose of assisting Bidders in completing the Attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the Attachments with respect to the IFB requirements. Bidders remain responsible for reviewing the Attachments to ensure compliance with the IFB requirements.

3.9 Bid Delivery

Bidder assumes all risk 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 except as provided in Appendix B, § 5 *Late Bids Rejected*. E-mail or fax bid submissions are NOT acceptable and shall not be considered.

3.9.1 Bid Envelopes and Packages

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

BID ENCLOSED (preferably bold, large print, all capital letters)
Group Number (Group 01800)
Bid number (IFB #22955)
Bid Opening Date and Time (July 16, 2015 11:00 AM)
The number of boxes or packages (i.e., 1 of 2; 2 of 2)

Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality. See Appendix B – Bid Submission.

Bids shall be delivered to:

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

3.9.2 Hand Deliveries

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

3.10 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. A Bidder attending bid openings is encouraged to pre-register for building access by contacting the OGS Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the bid opening. Visitors who are registered can check in directly with the information desk. Visitors who are not pre-registered will be directed to a designated phone to call the OGS Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Vendors who intend to deliver bids or conduct OGS Procurement Services 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 OGS Procurement Services by the time and date specified will be considered late.

3.11 Bid Opening Results

OGS Procurement Services posts bid information on the OGS- web page. The web page makes available information about the list of Bidders that responded to this IFB. Such information is anticipated to be available online within two business days after the bid opening. The Bid Opening Results Page is available at: <http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>.

3.12 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. The debriefing prior

to Contract award should be requested in writing within 14 calendar days of notification that the bid or proposal was disqualified from further consideration or that the bidder was a non-awardee.

After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the IFB, 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.

3.13 New York State Reserved Rights

New York State reserves the right to:

- A. Reject any or all proposals received in response to the IFB;
- B. Withdraw the IFB at any time at the sole discretion of the Agency;
- C. Make an award under the IFB in whole or in part;
- D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- E. Seek clarifications and revisions of the IFB;
- F. Amend the IFB specifications prior to the bid opening to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Direct Bidders, prior to the bid opening, to submit proposal modifications addressing subsequent IFB amendments;
- H. Change any of the schedule dates with notification through the Bidder Notification System;
- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the bids received;
- L. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration;
- M. Negotiate with the Bidder responding to this IFB within the IFB requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' proposals;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the IFB;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the IFB requirements;
- P. If an incorrect reference/parameter/component/product/etc. is stated by the State or by the Bidder, the evident parameter/component/product shall prevail; the proper alternative or corrected parameter/model/code number(s) shall be considered;
- Q. 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 IFB. 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;
- R. Reject an obviously unbalanced bid as determined by the State; and
- S. Make "NO AWARD" for any item, Sub-Lot, or Lot for reasons including, but not limited to unbalanced or excessive Bidder pricing, a change in Authorized User requirements and/or product(s), or an error in the bid solicitation (i.e., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of bids may be made on the remaining items, Sub-Lots, or Lots unless as result of a NO AWARD Bidder fails to provide the minimum number of items required for the Sub-Lot or Lot.

For the purposes of paragraphs R and S, an unbalanced bid is one based on bid prices that are significantly understated for some items and/or significantly overstated for other items such that there is a reasonable doubt that the bid will result in the lowest overall cost to the State.

3.14 Performance and Bid Bonds

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

SECTION 4: CONTRACT ADMINISTRATION

4.1 Contract Amendment Process

During the term of the Contract, the Contract may be amended by the mutual agreement of the parties.

4.2 Contract Administrator

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

Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

SECTION 5: METHOD OF AWARD

5.1 Method of Award for Lots 1, 2 & 3

Award shall be made to the lowest responsive and responsible bidder per Item on F.O.B. Destination Basis including specified delivery requirements.

The State reserves the right to limit the total quantity awarded to a contractor if, in the opinion of the Commissioner of General Services, the contractor may be unable to fulfill its contractual obligations due to the magnitude of its commitment to the State and others.

In the event that no complying bids are received for one or more Items, non-complying bids may be considered.

5.2 Method of Award for Lot 4

Award shall be made on the following basis:

1. An "average price" per item shall be calculated.
2. Any bid per item which exceeds the "average price" by more than 50% will receive **Award Pending** and a "revised average price" shall be recalculated after removal of those over 50%. Any remaining bids which exceed the **"revised average price" increased by 20%** will also receive an **Award Pending**.
3. Any contractor given an "Award Pending" classification may become eligible for award by reducing its price(s) within the parameters of paragraph #2 above. Revised pricing shall be considered up to 14 days after the issue date that appears on the original Contract Award notification and again 14 days thereafter. At the end of each 14-day period, if necessary, a supplemental award shall be published to incorporate contractors whose pricing is determined to be acceptable.

4. All pricing recommended for award is subject to the Office of General Services determination of reasonableness of price which will be arrived at by several factors including, but not limited to, other State's awarded prices and current market trends.
5. Bidder awarded a contract for Lot 1 for a specific county **will not** be awarded a contract for the same county in this Lot, and awards for Lot 1 will be determined before awards for this Lot (Lot 4) are made.

OGS reserves the right to reject an obviously unbalanced bid or to make "NO AWARD" on individual listings or sub-items if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced bid shall be at the sole discretion of OGS. Options contained in this paragraph shall also be at the sole discretion of OGS.

5.3 Notification of Award

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

In the case where a Bidder is awarded more than one Item, a single Contract will be issued which includes terms for all awarded Items.

SECTION 6: TERMS AND CONDITIONS

6.1 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 fully as if set forth at length herein. Please retain this document for future reference and do not return to OGS as part of the Bid submission.

6.2 Appendix B

Appendix B, Office of General Services General Specifications, dated May 2015, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. Please retain this document for future reference and do not return to OGS as part of the Bid submission.

6.3 Contract Term and Extension

6.3.1 Contract Term

The Contract(s) resulting from this IFB shall commence after all necessary approvals and shall become effective upon mailing or electronic communication to the address on the Bid/Contract of a fully executed contract (see Appendix B, § 24 *Contract Creation/Execution*). It is intended that the Contract(s) be in effect from September 1, 2015 through August 31, 2016

6.3.2 Contract Extension

If mutually agreed upon between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to three (3) additional one (1) year periods.

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

6.4 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

6.4.1 Policy Statement

The New York State Office of General Services (“OGS”), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

6.4.2 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 labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this Contract; or (ii) employment outside New York State.

Bidder further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

6.4.3 Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (MWBEs)

- **MWBE Contract Goals**

For purposes of this procurement, OGS hereby establishes a goal of **5%** for Minority-owned Business Enterprises (MBE) participation and **5%** for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total Contract MWBE goal of **10%** in the following counties: **Albany, Allegany, Bronx, Chautauqua, Columbia, Dutchess, Erie, Genesee, Greene, Herkimer, Kings (Brooklyn), Monroe, Nassau, Niagara, Onondaga, Orange, Orleans, Queens, Rensselaer, Rockland, Saratoga, Schenectady, Seneca, Suffolk, Sullivan, Ulster, Warren, Wayne and Wyoming**. The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

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

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

- **By submitting a bid or proposal, Bidder/Contractor agrees to the following:**

- **Breach of Contract and Liquidated Damages**

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

- **Utilization Plan**

- In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed 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 Contract, a description of the Contract scope of work the Contractor intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- 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.

- 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.
- **OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:**
 - If a Bidder fails to submit a MWBE Utilization Plan;
 - If a Bidder fails to submit a written remedy to a notice of deficiency;
 - If a Bidder fails to submit a request for waiver; or
 - If OGS determines that the Bidder has failed to document good faith efforts.
- **Request for Waiver**
 - In accordance with 5 NYCRR § 142.7, a Bidder who is able to document good faith efforts to meet the goal requirements, as set forth in clause D below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses B(2)(c) & (d) and C(3) will apply.
 - 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.
 - **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office for Minority- and Women-Owned Businesses and Community Relations identified on the front page of the solicitation for guidance.**
- **Required Good Faith Efforts**
 - In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:
 - A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
 - A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
 - Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
 - A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
 - Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
 - Other information deemed relevant to the request.

- **Monthly MWBE Contractor Compliance Report**

In accordance with 5 NYCRR § 142.10, Contractors are required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State. If a Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS. More information about the NYSCS will be provided if Bidder is awarded a Contract.

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

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

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

Anuola Surgick
New York State Office of General Services
Office for Minority and Women Owned Business Enterprises
Empire State Plaza, Corning Tower - 40th Floor
Albany, NY 12242
Voice: 1-518-486-9284
Fax: 1-518-486-2679
Email: Anuola.surgick@ogs.ny.gov

6.5 Authority of Operator

A bidder offering road salt from a mine not owned and operated by itself must furnish the written authority of the **operator** of the mine to sell road salt from such mine (see Attachment 8 - Manufacturer's Certificate).

6.6 Inventory Maintenance

The contractor is obligated to maintain inventories adequate to provide deliveries as requested in the time frames and quantities requested. Any failure by the contractor to deliver under contract terms may result in a "Buy Against" to that contractor.

If, at any time during the contract period, extenuating circumstances arise and it is determined by the Office of General Services that the contractor does not have adequate inventory, award may be made at the discretion of the Office of General Services to another bidder.

The above shall also apply to any contract extension.

6.7 Fill Plan and Summary Reports

Within one week after notice of a tentative award the low bidder shall provide a fill plan for each Item in which it is low, indicating inventories, stockpiles, commitments and a design and schedule to maintain the stockpiles. A review will also be made of the contractor's capability to provide salt from the source of the salt to the customers. For example the contractor may be required to provide a certified statement attesting to the number of trucks dedicated to OGS Procurement Services customers, the number of trucking contracts, name and address of trucking companies, etc. This information is subject to verification during the contract period and the contract, or any part thereof, is subject to cancellation if the fill plan cannot be verified. Award may then be made to the next low responsible bidder or may be re-bid.

Contractor shall furnish monthly summary reports no later than ten (10) days after the close of each calendar month for the months of September through March for General Services customer inventory fill activities. The monthly summary shall include, but is not limited to, quantity of salt in each stockpile at the beginning of the month, method of transportation of product to stockpiles and delivery locations, quantity of monthly additions to each stockpile, quantity of salt in each stockpile at the end of each month, and activation of satellite stockpiles, if applicable.

The contractor is obligated to maintain inventories adequate to provide deliveries of ordered quantities within the required time frames. Any failure by the contractor to deliver under contract terms may result in a "Buy Against" to that contractor.

If at any time during the contract period, extenuating circumstances arise and it is determined by the Office of General Services that the contractor does not have adequate inventory, award may be made at the discretion of the Office of General Services to another bidder.

The above shall also apply to any contract extension

6.8 Optional Delayed Billing Program

Contractor, at its option, may participate in a delayed billing program for the benefit of political subdivisions for orders delivered during September, October, and November 2015. Payment would not be required until January 2016. This program would be available to encourage fall season filling of stockpiles and storage sheds and accommodate the budget process of the political subdivisions. This program would be coordinated directly by the end user with the particular contractor. Contractor may also delay crediting/debiting fuel price adjustments until the end of the contract with the concurrence of the end users. Contractor must advise end users how they intend to process invoices upon receipt of first purchase order for salt. No changes to agreed-upon processing methodology may be made during the contract period.

6.9 Procurement Card

All bidders shall indicate (via Attachment 2 - *General Questions*) if they will accept the NYS Purchasing Card for orders not to exceed \$15,000.

6.10 Price

Price shall include all customs and duties and be net per ton, FOB destination designated on purchase order, including unloading of the bulk salt. Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- PRICE ESCALATION BASED ON EXCEEDING 120% & 130% OF FILED REQUIREMENT
- PRICE ESCALATION BASED ON EXCEEDING 150% OF FILED REQUIREMENTS
- FUEL PRICE ADJUSTMENT
- PRICE ADJUSTMENT FOR RENEWALS

Furthermore, the stated prices may be adjusted periodically based on various provisions.

6.10.1 Price Escalation Based on Exceeding 120% & 130% of Filed Requirement

A price escalation will be permitted when delivery quantities exceed 120% of filed requirement per delivery location. Customers with multiple delivery sites (e.g. NYS DOT, NYS Thruway and County Highways) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a supplier.

An automatic unit price increase of 10% will be allowed once quantities delivered are over 120% of a user's filed requirement. Once deliveries exceed 130% of a user's filed requirement the automatic price increase will change to 15%. Contractors will continue to deliver to all customers including up to 150%. Failure to deliver may result in a "Buy Against" or a delivery deduction to the contractor.

Once the contractor has requested and received a price increase, agencies are allowed to solicit prices from other contractors who are a part of the award. If a lower price is secured, the contractor for the specific location must be given an opportunity to match or better the offered price. If the contractor will not or cannot match or better the offered price, agencies may obtain their needs from the lower priced State contract holder.

6.10.2 Price Escalation Based on Exceeding 150% of Filed Requirement

Contract purchases over 150% of filed requirements can be made upon mutual agreement of the authorized user and the contractor with a price escalation not to exceed 35% of the contract price. Purchases over 150% of the filed requirements at pricing exceeding the 35% escalation will be considered non-contract purchases. No buy-against nor liquidated damages will be imposed for failure to comply with the delivery terms and conditions of this contract for quantities over 150% of the filed requirements.

6.10.3 Fuel Price Adjustment

A fuel price adjustment may be made to contract pricing in accordance with the following procedure:

- Fuel Price adjustments will be made for deliveries of road salt during the contract period. Deliveries made after August 31 to meet minimum filed requirement obligations will use the fuel price adjustment in effect for August 31.
- On a monthly basis an amount may be added or deducted from contract pricing based on prices posted in the "EIA Retail On-Highway Diesel Prices". The New England PADD 1A shall be the designated posting for the adjustments. (If this source becomes unavailable, unworkable, unsuitable, then another source may be selected by OGS Procurement Services.)
- The base rate used for calculating adjustments shall be the rate shown in the referenced EIA on the date of the bid opening and adjustments will be permitted monthly. The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA Retail On-Highway Diesel Prices and determining an average for that month. The previous month's prices shall be used to determine the monthly average (i.e. – August's prices will be used to determine September's adjustment). All prices will be rounded to two decimal places.
- The fuel price adjustment shall be applied for the date of delivery.

Ex.: If a purchase order for salt is received on January 30, and the salt is delivered on February 2, the fuel price adjustment used will be that for the month of February.

EXAMPLE FUEL PRICE ADJUSTMENT INCREASE:

Published rate on date of bid opening	\$4.07
Monthly Average Price	\$4.17

$\$4.17 - \$4.07 = \$0.10 =$ Additional amount allowed to be added to price per ton.

EXAMPLE FUEL PRICE ADJUSTMENT DECREASE:

Published rate on date of bid opening	\$4.07
Monthly Average Price	\$3.97

$\$4.07 - \$3.97 = \$0.10 =$ Amount allowed to be deducted from price per ton.

6.10.4 Fuel Price Adjustment for quantities exceeding 120% & 130%

The calculation for the fuel price adjustment for quantities ordered over the 120% and 130% thresholds with 10% or greater surcharges shall be as follows:

(Base price per ton * surcharge) + (fuel price adjustment) = adjusted price per ton

EXAMPLE OF FUEL PRICE ADJUSTMENT INCREASE FOR ORDER OVER 120% OF FILED REQUIREMENT:

Base price per ton in contract	\$60 (example only)
Published fuel rate on date of bid opening	\$4.07
Monthly Average Price of fuel	\$4.17
Fuel price adjustment (\$4.17 - \$4.07 = \$0.10)	\$0.10
Surcharge of 10%	1.1

(\$60 * 1.1) + (\$0.10) = \$66.10 per ton

6.10.5 Additional Notes on Fuel Price Adjustment

Should postings differ from current description and/or format, a posting determined by the Commissioner of General Services in his/her sole discretion to be most reflective of market conditions will be used. Corrections to posted prices will be considered only when caused by a typographical or clerical error on the part of said posting.

The following shall apply to all additional price amounts under any contract awarded:

- Price adjustments are limited to changes in pre-selected posting as noted above. Increases in contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the contractor, will not be allowed during the contract period, except as indicated under the fuel price adjustment and price escalation clause herein.
- Should the price structure utilized by the parties become unworkable for the State, detrimental or injurious to the State, or result in prices which are not truly reflective of current market conditions and the price is deemed unreasonable or excessive by the Commissioner of General Services, and no adjustment in price is mutually agreeable, the Commissioner of General Services reserves the sole right upon 10 days written notice mailed to the contractor to terminate any contract resulting from this bid opening. If the contractor is unable or unwilling to meet contractual requirements in whole or in part, it shall immediately notify the State of that fact in order that the State may take appropriate action. Such notification shall be in writing and shall be directed to the OGS Procurement Services. Such notification shall not relieve the contractor of its responsibilities under the contract.

In the event of an extension, the base rate for calculating adjustments will be the rate shown in the referenced EIA on the date of the next bid year's bid opening and for subsequent years additional extensions would follow this format. If there is no bid opening date for the next year, the base rate for calculating adjustments will be the rate shown in the referenced EIA one year after the last bid opening date. If the date is not a business date when the posting occurs, the next business day will be the date used for the adjustment.

6.10.6 Price Adjustment for Renewals

Price Adjustments for extensions or renewals shall be negotiated and mutually agreed upon by OGS and each Contractor. OGS's review may include appropriate indices as determined by OGS, market conditions reflecting supply and demand, and other economic factors deemed appropriate by OGS. Each contractor's review will be independent.

6.10.7 Price Reductions

Contractors shall be permitted to reduce their pricing any time during the contract term.

6.11 Delivery Terms

Road salt and treated salt shall be shipped bulk delivery as outlined below.

6.11.1 Delivery Schedule

The Delivery Schedule for this Invitation for Bids is included as Attachment 9. It is provided as a guide to indicate proposed delivery points and estimated annual requirements. Contractors shall be obligated to add to the delivery schedule any State agency that submits filed requirement(s) on or before December 31. Any State agency that submits filed requirement(s) after December 31 shall be eligible to be added to the delivery schedule and receive deliveries at the contractor's option only.

Any political subdivision or other non-state entity which has not filed a requirement with OGS Procurement Services as of the date of the bid opening shall be eligible to be added to the delivery schedule and receive deliveries at the contractor's option only, and upon placement of valid purchase order to the contractor's address as indicated in the award.

Contractors will be advised regarding political subdivisions or other non-State entities which have filed on a timely basis but do not appear on the delivery schedule.

6.11.2 Compliance with Delivery Schedule & Purchase Orders

Delivery shall be made in accordance with instructions on the Purchase Order from each agency and delivery instructions/conditions as shown in the referenced Delivery Schedule. Contractors should carefully review the delivery schedule and make note of these requirements. If there is a discrepancy between the purchase order and what is listed in the contract and/or within the delivery schedule, it is the contractor's obligation to seek clarification from the ordering agency and, if applicable, from OGS Procurement Services.

6.11.3 Minimum Order

Minimum order shall be 22 tons.

6.11.4 Ordering timeliness

Orders must be placed before 2 p.m. Any orders placed after 2 p.m shall be deemed as being placed the next business day.

6.11.5 Holidays/Weekends

If the scheduled delivery is to occur on a holiday or weekend, the next weekday will be the delivery date, unless the contractor and the ordering agency mutually agree differently.

6.11.6 Prevention of Contamination

Delivery trucks shall be inspected (and cleaned if necessary) prior to loading to prevent contamination of salt loads by residual materials found in the truck bodies. Any loads found to be contaminated may be subject to rejection with all related cleanup and/or replacement costs to be borne by the supplier.

All shipments of salt shall be totally covered with a waterproof, non-porous tarpaulin or similar sheeting material. Torn, ripped or mesh coverings may be cause for rejection of shipment. Also, evidence of free flowing water/brine in particular shipments may be cause for rejection.

Upon inspection of delivered salt, the material shall be uniform in appearance, free flowing and free from visual evidence of foreign matter including but not limited to dirt, stone, chips, trash or any other material that could reasonably be expected to interfere with the use, handling or storage of the salt. Salt shall be received in a free-flowing and usable condition.

6.11.7 Acceptance

The salt may be rejected if it fails to conform to any of the requirements of § 6, § 7, § 8, and/or § 9.

6.11.8 Weight Tickets

All shipments of bulk salt shall be accompanied by a weight ticket of a licensed weigh master indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source. The certification must bear the weigh master’s signature; weights shall be recorded from a scale equipped with a weight printing device. Handwritten weights are not acceptable.

6.11.9 Delivery Timetable

Completed delivery, at the latest, is required as follows:

<u>Orders Placed</u>	<u>600 Tons or Less</u>	<u>601 - 800 Tons</u>	<u>801 -1000 Tons</u>	<u>Over 1000 Tons</u>
Monday	Thursday	Friday	Monday	200 Tons/Day/Location
Tuesday	Friday	Monday	Tuesday	200 Tons/Day/Location
Wednesday	Monday	Tuesday	Wednesday	200 Tons/Day/Location
Thursday	Tuesday	Wednesday	Thursday	200 Tons/Day/Location
Friday	Wednesday	Thursday	Friday	200 Tons/Day/Location

Contractor will be required to deliver a minimum of 200 tons per day after the initial 600 ton delivery. Contract users will be advised not to place orders that exceed their maximum storage capacity. Multiple orders placed for the same delivery site will be viewed as a single order still subject to the overall 200 tons per day minimum delivery.

For example, an order of 1,400 tons placed on Monday will be delivered as follows (or sooner):

<u>Order Placed</u>	<u>Thursday Delivery</u>	<u>Friday Delivery</u>	<u>Monday Delivery</u>	<u>Tuesday Delivery</u>	<u>Wednesday Delivery</u>
Monday	600 tons	200 tons	200 tons	200 tons	200 tons

*It is advised that customers order deliveries on an “as needed” basis. As the customer uses product to respond to weather events, that same quantity should be ordered accordingly. It is not advised to “run down” the supply until it is dangerously low. This method can cause undue stress to the delivery network during high levels of demand.

6.11.10 Delivery Rate Guarantees/Exceptions

The guaranteed delivery in number of calendar day(s) required to make delivery after receipt of a written or verbal purchase order shall be applicable and the contractor is obligated to honor same through May 31 of each year. However, from June 1 through August 31 of each year, delivery shall be at the option and discretion of the contractor.

Although contractors are expected to make every effort to meet these delivery rates, some allowances may be made for extreme road and/or weather conditions (i.e., road closures which severely restrict truck traffic). Allowances must be approved by the Office of General Services, Procurement Services whose decision will be final. Delivery will be allowed during the weekend and on state holidays only if the contractor and the ordering agency mutually agree. No additional remuneration will be made for a Saturday, Sunday or holiday delivery.

6.11.12 Liquidated Damages

During the period November 1 through April 1 deliveries that do not meet the daily delivery tonnage requirements and/or the established order completions period specified, shall be considered cause for interruption of the proper implementation of the State’s winter roadway safety. If it is determined that the interruption is caused by irresponsibility or gross negligence on the part of the awarded contractor, OGS Procurement Services and the awarded contractor presume that in the event of any such delay, the amount of damage that is sustained from a delay in daily delivery tonnage requirements and/or the established order completions period specified, is \$100.00 per business day per purchase order, and they agree that in the event of any such delay caused by irresponsibility or gross negligence, the awarded contractor shall pay such amount as liquidated damages.

The following options may be used for deducting amounts due to the contract user as liquidated damages:

1. May deduct such from any money payable to the awarded contractor or
2. May bill the awarded contractor as a separate item.

Liquidated Damages may be placed on the contractor by the end user only after consultation with the contractor and OGS Procurement Services. Claims for liquidated damages must be requested within thirty (30) days of event. Damages must be memorialized by supporting documentation that will be reviewed by OGS Procurement Services prior to authorizing deductions or billing.

Costs incurred include, but are not limited to the following:

- Increased personnel costs due to demurrage
- Increased costs incurred for treatment of salt on hand to extend usage
- Costs for clean-up after required application of alternative snow and ice control materials (i.e. salt mixed with sand)

AGENCIES WILL SUBMIT TO OGS SUPPORTING DOCUMENTATION FOR INCURRED COSTS. OGS PROCUREMENT SERVICES WILL REVIEW AND WILL GIVE FINAL APPROVAL OF DELIVERY DEDUCTION APPLIED.

Other price deductions may be applied in conjunction with liquidated damages.

6.11.13 Buy Against

Contractors must supply road salt in accordance with the contract, instructions on purchase orders and within the required delivery time stated herein. In the event of the contractor's failure to so deliver, purchase of the undelivered quantity from the Emergency Standby Contract (Lot 4) or the open market at the contractor's expense may be authorized. Such authorized purchases will result in chargeback of the cost above the awarded contract price to the awarded contractor in this Invitation for Bids who fails to comply with delivery terms. **The customer must make OGS Procurement Services aware of the non-delivery and allow OGS Procurement Services to ascertain if immediate delivery can be made by the contractor prior to obtaining authorization** from Procurement Services to make an emergency standby purchase or a purchase in the open market.

In the event that open market treated salt is not readily available as noted in the previous paragraph, the end user may purchase road salt, in lieu of treated salt, for the undelivered quantity from the Emergency Standby Road Salt Contract (Lot 4), and if not available through the Emergency Standby Contract, from the open market. Any price difference above the contract price of treated salt (Lot 2 and/or Lot 3) will be deducted from future payments, or billed to the treated salt contractor. The supplier of the road salt in this case may not be the non-performing supplier of the treated salt (Lot 2 and/or Lot 3). The customer must obtain authorization to use this option from OGS Procurement Services, as well.

6.12 Receipts and Invoicing

6.12.1 Procurement Card Receipts

For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each Delivery.

6.12.2 Invoices

Contractor invoices must include detailed line item information to allow Authorized Users to verify that delivered pricing matches the correct price on the date of order.

6.13 Report of Contract Purchases

Contractor shall furnish monthly reports containing total sales for both State agency and authorized non-state agency contract purchases no later than ten (10) days after the close of each calendar month. If the Contract period begins or ends in a fractional portion of a reporting month, only the actual Contract sales for this fractional period should be reported in the monthly report.

In addition to Contractor direct sales, Contractor shall submit sales information for all Authorized Resellers where such Contract sales are provided by other than the Contractor. Contractors shall specify if any Authorized Resellers are NYS Certified Minority and/or Women Owned Businesses Enterprises (MWBES). Contractor shall verify such status through the Empire State Development directory of Minority and Women Owned Businesses at: <http://www.esd.ny.gov/MWBE/directorySearch.html>

The report is to be submitted electronically via e-mail in Microsoft Excel to the Office of General Services Procurement Services to the attention of the individual listed on the front page of the Contract Award Notification. The report shall also be submitted to the Snow & Ice Program Manager at NYSDOT and the OGS OMWBE Minority Business Specialist. The report shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 5 – *Delivery Report* contains the **minimum** information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis shall be considered poor performance in accordance with Section 6.14 *Poor Performance* and may result in Contract cancellation and designation of Contractor as non-responsible.

6.14 Poor Performance

Authorized Users should notify OGS Procurement Customer Services promptly if the Contractor fails to meet the requirements of this Contract or if Contractor's performance is otherwise unsatisfactory to the Authorized User. Notification should be made to:

Office of General Services
Procurement Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717 / Fax: (518) 474-2437

6.15 Disposition of Damages, etc.

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

6.16 Extension of Use

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

6.17 Note to All Non-State Agencies and Bidders

All such participating non-State agencies and Bidders understand, acknowledge and agree that the primary responsibility in regard to performance of the contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating non-State agencies and contractors and not by the State. In the event of a failure or breach in performance of any such contract by a non-State agency or contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating non-State agencies and contractors guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State centralized contract.

6.18 Non-State Agencies Participation in Centralized Contracts

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

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

6.19 Emergency Purchasing

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

6.20 New York State Vendor File Registration

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

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

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor Id number from OGS. Complete the OSC Substitute W-9 Form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf and submit the form to OGS in advance of bid submittal. Please send this document to the Designated Contact in the IFB. In addition, if an Authorized Reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf should be completed by each designated Authorized

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

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

6.21 NYS Vendor Responsibility

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:

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 Contractor’s responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

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

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

6.22 New York State Statewide Financial System (SFS)

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

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

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

6.23 New York State Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 3 - *New York State Required Certifications*) with its bid. Failure to submit these documents may result in bid being considered non-responsive and may result in a bid being REJECTED.

6.24 New York State Tax Law §5-a

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

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.

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

6.25 Use of Recycled or Remanufactured Materials

New York State 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 IFB. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, § 13 *Remanufactured, Recycled, Recyclable or Recovered Materials*.

6.26 Mercury Added Consumer Products

Contractor agrees that it will not sell or distribute any products containing elemental mercury for any purpose under this contract.

6.27 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://ogs.ny.gov/EO/4/Default.asp>. 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.

6.28 "OGS or Less" Guidelines

"OGS or Less" Guidelines do not apply to this contract.

SECTION 7: ROAD SALT (Lot 1)

7.1 Detailed Specifications – Road Salt, (Crushed & Solar) Type A

It is the intent of this specification to describe sodium chloride (ASTM D632 Type 1, Grade 1 or the latest revision thereof) crushed rock salt and/or solar salt, to be used for snow and ice control. Bids for both rock salt and solar salt will be allowed in the following Counties ONLY: Bronx, Kings, New York, Queens, Richmond, Nassau, Rockland, Suffolk, and Westchester. For all remaining counties, rock salt only will be allowed.

7.1.1 Chemical Composition

Shall be not less than 95% sodium chloride. Percent of sodium chloride shall be determined in accordance with ASTM D632 or the latest revision thereof.

7.1.2 Size Grading – Rock Salt

The salt, when tested in accordance with ASTM D632 (*1) or the latest revision thereof, shall conform to the following requirements for particle size distribution:

<u>Sieve Size</u>	<u>Percent Passing (*2)</u>
1/2" - (12.5 MM).....	100
3/8" - (9.5 MM).....	95 - 100
No. 4 - (4.75 MM).....	20 - 90
No. 8 - (2.36 MM).....	10 - 60
No. 30 - (600 MICRONS).....	0 - 15

(*1) A drying temperature of 110°C ± 5°C may be used.

(*2) Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

7.1.3 Size Grading – Solar Salt

The solar salt, when tested in accordance with ASTM D632 (*1) or the latest revision thereof shall conform to the following size for particle size distribution:

<u>Sieve Size</u>	<u>Percent Passing (*2)</u>
3/4" - (19.05 MM).....	100
1/2" - (12.5 MM).....	99-100
3/8" - (9.5 MM).....	95-100
1/4" - (6.35 MM).....	65-90
No. 4 - (4.75 MM).....	20-80
No. 8 - (2.36 MM).....	10-30
No. 30 - (600 MICRONS).....	0-15

(*1) A drying temperature of 110°C ± 5°C may be used.

(*2) Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

7.1.4 Moisture Content (Crushed Rock Salt)

Moisture content upon delivery **shall not exceed 1-1/2%*** when determined as follows:

$$\% \text{ Moisture} = \frac{(W^1 - W^2)}{(W^1)} \times 100$$

W^1 = initial weight of sample

W^2 = weight of sample after drying to a constant weight at $110^{\circ}\pm 5^{\circ}\text{C}$.

Procedure shall be in accordance with American Water Works Association B200-88, Sec. 4.3. A tolerance of 0.5% will be allowed before a deduction is assessed.

7.1.5 Moisture Content (Solar Salt)

Moisture content upon delivery **shall not exceed 2.5%*** when determined as follows:

$$\% \text{ Moisture} = \frac{(W^1 - W^2)}{(W^1)} \times 100$$

W^1 = initial weight of sample

W^2 = weight of sample after drying to a constant weight at $110^{\circ}\pm 5^{\circ}\text{C}$.

Procedure shall be in accordance with American Water Works Association B200-88, Sec. 4.3. A tolerance of 0.5% will be allowed before a deduction is assessed.

7.1.6 Inhibitor Treatment

Salt shall be treated with an anticaking conditioner. The quantity of inhibitor used shall be in the range of 0.1 to 0.2 lbs/ton. **Potential contractors shall supply with their bid a description of the inhibitor treatment used, quantity of inhibitor used per ton of salt, method of determining the presence of the treatment and information relative to the solubility and photodecomposition of the treating agent.** Potential harm to the ecology caused by inhibitor treatment may be cause for rejection of a bid.

Salt delivered in a lumpy condition which requires reprocessing in order to make it usable shall be cause for rejection of the entire delivery, with a replacement delivery to be made at no additional charge to the agency or political subdivision.

If, because of emergency conditions, it is necessary to accept and reprocess the Salt for use, all costs will be charged to the contractor.

7.1.7 Sampling

Sampling shall be done in accordance with current ASTM D632 or the latest revision thereof. OGS, or any of its authorized representatives, reserves the right to take samples from the contractor's stockpile or transfer point or from shipments at the point of destination.

The right is also reserved to consider truckloads of salt delivered by the contractor to any one agency on a single day to be a single delivery. Price deductions imposed because of deviation from specifications may be imposed on the total day's delivery.

7.1.8 Price Deductions

No price deduction is to be assessed unless the proper analysis and test procedures are followed.

If the contractor consistently delivers salt found to be above 2% moisture content for rock salt or 2.5% moisture content for solar salt or consistently not conforming to the gradation requirements, the contract shall be subject to cancellation.

Moisture – Rock Salt

If, after delivery the moisture content is found to be above 2.0%, a price deduction for moisture content will be made from the delivered bid price based on the following formula:

Reduced price per ton = delivered contract price per ton x (1.02 - 2X)

where X = moisture content of the sample (expressed as the decimal equivalent of the percentage of the original sample weight to the nearest 1%).

Moisture – Solar Salt

If, after delivery the moisture content is found to be above 2.5%, a price deduction for moisture content will be made from the delivered bid price base based on the following formula:

Reduced price per ton = delivered contract price per ton x (1.03 - 2X)

where X = moisture content of the sample (expressed as the decimal equivalent of the percentage of the original sample weight to the nearest 1%).

Solar salt with a moisture content higher than 3% may be rejected.

Gradation (Particle Size Distribution)

If, after delivery, the gradation of the Salt is found to be out of tolerance a deduction from the price shall be made based on the following formula:

Reduced price per ton = delivered contract price x (1.00 - X)

where X = the decimal equivalent of the total % out of gradation less the tolerance. The % out of tolerance for each sieve shall be to the nearest 1%. The total of the individual sieve tolerance deviations shall be used as X.

Contamination

If the end user accepts contaminated salt as defined in Section 7.1.6 for operational reasons, a 10% price deduction may be placed on the contractor by the end user after consultation with the contractor and OGS Procurement Services.

AGENCIES WILL SUBMIT TO OGS SUPPORTING DOCUMENTATION FOR DELIVERY PRICE DEDUCTION. OGS PROCUREMENT SERVICES WILL REVIEW AND WILL HAVE FINAL APPROVAL AS TO DELIVERY DEDUCTION APPLIED.

Calculations

Calculations performed relative to this specification shall be made using the rounding off method of "ASTM Recommended Practice E-29 for Designating Significant Places in Specified Limiting Values".

SECTION 8: TREATED SALT (Lot 2 – Type 1 and Lot 3 – Type 2)

8.1 Certification

An independent certified analysis conducted within the PAST YEAR showing compliance with all the mentioned requirements must be submitted with the bid.

Deviation from any of the specifications may result in the rejection of the entire delivery load or loads (if from the same source) at the discretion of agency personnel. All costs associated with rejected deliveries shall be borne by the contractor.

The supplier of any product delivered and/or applied that is found to be contaminated with non-specified products and/or is cause for environmental concerns which may necessitate yard, storage facility, or roadside cleanup measures shall be responsible for all clean up expenses without limitation.

8.2 Product Suitability and Liability

Deviation from specifications may result in rejection of any delivery. All costs associated with rejected deliveries will be the responsibility of the contractor.

Should a product be found to be contaminated (after application) with non-specified elements and become cause for environmental concerns that necessitate clean-up of yards, storage facilities, or roadsides, etc., the contractor shall be responsible for any and all expenses incurred.

8.3 Dye/Color

Product may be dyed a characteristic color that will allow ready visual identification of the product or any material treated with the product. Any dye used shall remain in solution without precipitation or leaching during all normal use and storage conditions. Dye utilized shall be non-toxic, non-staining, and environmentally benign.

Contractors will advise OGS Procurement Services as to the color the final product will be when applied to end user's treated salt.

8.4 Vendor Certified Product Data Sheet

The bidder shall provide vendor certified product data sheet(s) (Attachment 7) at the time of bid opening. Failure to do so may result in disqualification of bidder.

8.5 Toxic Substances – Material Safety Data Sheets

Each contractor furnishing a toxic substance (as defined by Section 875 of the State Labor Law) to an ordering agency shall provide such agency with not less than two copies of a material safety data sheet. This sheet shall include for each such substance the information outlined in Section 876 of the State Labor Law.

Bidders are required to furnish a Material Safety Data Sheet with their bid. Failure to do so may be sufficient cause for rejection of bid.

Example MgCl Chart

**FREEZING POINT OF
MAGNESIUM CHLORIDE BRINE
EXAMPLE OF A 25% PRODUCT SUBMITTED**

% By Weight	Specific Gravity	Freezing Point Celsius	Freezing Point Fahrenheit
5	1.013	-2.11	26.4
6	1.051	-3.09	25.0
7	1.060	-4.72	23.5
8	1.069	-5.67	21.8
9	1.070	-6.67	20.0
10	1.086	-7.83	17.9
11	1.096	-9.05	15.7
12	1.105	-10.5	13.1
13	1.114	-12.1	10.3
14	1.123	-13.7	7.3
15	1.132	-15.9	4.0
16	1.142	-17.6	0.4
17	1.151	-19.7	-3.5
18	1.161	-22.1	-7.7
19	1.170	-25.6	-12.2
20	1.180	-27.4	-17.2
21	1.190	-30.5	-23.0
22	1.200	-32.8	-27.0
23	1.210	-28.9	-20.0
24	1.220	-25.6	-14.0
**25	**1.230	** -23.3	** -10.0
26	1.241	-21.1	-6.0
27	1.251	-19.4	-3.0
28	1.262	-18.3	-1.0
29	1.273	-17.2	1.0
30	1.283	-16.7	3.0

****25% EXAMPLE. YOUR INFORMATION MUST MATCH YOUR PRODUCT****

8.6 Detailed Specifications - Treated Salt

(Granular Sodium Chloride Treated with Corrosion Inhibited Liquid Magnesium Chloride, Type 1 and Type 2)

It is the intent of this specification to describe a mixture of Sodium Chloride Type “A” crushed rock salt treated with corrosion inhibited liquid magnesium chloride product. The treatment is intended to enhance the performance of the product over untreated salt by reducing corrosiveness, improving low temperature performance, reducing bounce and scatter, preventing clumping, salt pile freezing and enhancing flowability. The treated salt is intended to be used to facilitate snow and ice prevention and removal on New York State roads and bridges. The end product treated salt will be categorized as either Type 1 (containing corrosion inhibited liquid magnesium chloride), or Type 2 (containing corrosion inhibited liquid magnesium chloride and an organic based performance enhancer [OBPE]). The defining characteristics of Type 1 and Type 2 treatment can be found summarized in the table found on page 39.

The finished product shall be composed of two primary constituents:

- Crushed rock salt as described and specified in **Section A** below
- A corrosion inhibited liquid magnesium chloride product described and specified in **Section B** below.

The two components shall be mixed to produce a finished product as described in **Section C**.

The final product shall meet all the requirements described in **Section D**, also below.

A separate Vendor Certified Product Data Sheet **MUST** be submitted for **EACH** of the two components being utilized by the vendor to produce the final product.

8.6.1 SECTION A: Sodium Chloride Type “A” Crushed Rock Salt Specifications

The crushed rock salt used in the preparation of the final product shall meet the following requirements.

- **Contamination**

Upon inspection, the material shall be uniform in appearance, free flowing and free from visual evidence of foreign matter including but not limited to dirt, stone, chips, trash or any other material that could reasonably be expected to interfere with the use, handling or storage of the salt.

- **Chemical Composition**

Shall be not less than 95% Sodium Chloride. Percent of Sodium Chloride shall be determined in accordance with current ASTM-D-632 or the latest revision thereof.

- **Size Grading**

The salt, when tested using sieves as described in ASTM-C-136 (*) or the latest revision thereof, shall conform to the following requirements for particle size distribution:

<u>Sieve Size</u>	<u>Percent Passing (**)</u>
1/2" - (12.5 MM)	100
3/8" - (9.5 MM)	95 - 100
No. 4 - (4.75 MM)	20 - 90
No. 8 - (2.36 MM)	10 - 60
No. 30 - (600 Microns)	0 - 15

* - A drying temperature of 110°C ± 5°C should be used.

** - Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

- **Moisture Content**

Moisture content upon delivery shall not exceed 1-1/2%* when determined as follows:

$$\% \text{ Moisture} = \frac{\text{Loss of Weight} \times 100}{\text{Weight of Sample}}$$

Weight of sample after drying to a constant weight at 110°±5°C

* Procedure shall be in accordance with ANSI/AWWA B200-03, Moisture Determination or the latest revision thereof. A tolerance of 0.5% will be allowed before a deduction is assessed.

- **Sampling**

Sampling shall be done in accordance with ASTM-D632 or the latest revision thereof. The Office of General Services, or any of its authorized representatives, reserves the right to take samples from the contractor's stockpile or transfer point or from shipments at the point of destination.

The right is also reserved to consider truckloads of treated salt delivered by the contractor to any one agency on a single day to be a single delivery. Penalties imposed because of deviation from specifications may be imposed on the total day's delivery.

8.6.2 SECTION B: Corrosion Inhibited Liquid Magnesium Chloride Product (with or without Organic Based Performance Enhancer, OBPE)

Material used for this component of the finished product shall be a blend of Liquid Magnesium Chloride and an Organic Based Performance Enhancer (OBPE) component intended, amongst other things, to inhibit the corrosiveness of the product. The offered product shall meet all of the requirements for EITHER Type I or Type II listed on page 43. Bidder shall identify on the Vendor Supplied Data Sheet which type product is being offered. Product of either type must comply with the General Chemical Requirements section also shown below.

GENERAL CHEMICAL REQUIREMENTS:

Note Well: This section applies only to products offered that **do not** have a Beneficial Use Determination (BUD) from New York State Department of Environmental Conservation. **HOWEVER, ALL PRODUCTS OFFERED MUST CONTAIN 250 PPM OR LESS PHOSPHORUS, CALCULATED ON AN UNDILUTED BASIS, WITH OR WITHOUT BENEFICIAL USE DETERMINATION.**

Bids may not be accepted on any product that contains constituents in excess of the following established total concentration limits. Results are stated as Parts Per Million (ppm). If product exceeds any of the following constituents then the bidder shall identify the exception(s) and explain any mitigating circumstances. The State reserves the right to evaluate these exceptions and make a determination of product eligibility based on the best interests of the State.

Arsenic.....	5.00 ppm	Lead.....	1.00 ppm
Barium.....	75.00 ppm	Mercury.....	0.05 ppm
Cadmium.....	0.20 ppm	Phosphorus.....	250.00 ppm
Chromium.....	0.50 ppm	Selenium.....	5.00 ppm
Copper.....	0.50 ppm	Zinc.....	10.00 ppm
Cyanide.....	0.20 ppm		

OTHER REQUIREMENTS:

PARAMETER	REQUIREMENT	
	LOT 2 - TYPE 1	LOT 3 - TYPE 2
Magnesium Chloride Concentration (w/v)	25% Min.	13 < 25%
pH	6.0 - 9.0	3.2 - 7.5
Eutectic (Freezing) Point	-20 Deg. F or Lower	-20 Deg. F or Lower
Total Solids (w/w After 1 Hr. @ 105°C)	No Requirement	35% Min.
Organic Based Performance Enhancer (OBPE)	No Requirement	12% Min.
Corrosivity	A 3% solution of the product shall have a corrosion value at least 70% less than that of a 3% solution of Sodium Chloride when tested by NACE Standard TM-01-69 as modified by the PNS (Pacific Northwest Snowfighters)	
Settleable Solids	Shall contain not greater than 1.0% (v/v) total settleable solids after being stored at 0 deg. F for 168 hours. If any solids are observed, 99% of those solids must pass through a #10 sieve.	Shall contain not greater than 4.0% (v/v) total settleable solids after being stored at 0 deg. F for 168 hours. If any solids are observed, 99% of those solids must pass through a #10 sieve.
Freezing Point Table	Bidder shall supply a table showing the Freezing Point vs Specific Gravity for varying dilutions of product in water, starting at 5% and continuing up to and including the percentage needed to reach the eutectic (freezing) point.	
Chemical Analysis	Bidder shall supply a certified analysis conducted within the last year from an independent laboratory* showing compliance with all the above listed requirements INCLUDING those listed in the GENERAL CHEMICAL REQUIREMENT section above. Exceptions to the requirements must be stated and the State reserves the right to reject the product.	
BOD5 (Biological Oxygen Demand)	No Requirement	Bidder shall provide BOD5 expressed in mg/l

Sampling to be done in accordance with ASTM D345 or the latest revision thereof. Product shall be tested using generally accepted industry standard analytical procedures as appropriate.

*Independent laboratory is defined as a laboratory that is certified to perform the required analyses by the USEPA and/or NYS Department of Health Environmental Laboratory Approval Program (ELAP).

8.6.3 SECTION C: Mixing the Sodium Chloride and Corrosion Inhibited Liquid Magnesium Chloride

The materials described in Section A and Section B above shall be mixed as described in this section to produce the finished product. Mixing procedures shall comply with all requirements described in this section.

- The Office of General Services, or any of its authorized representatives, reserves the right to take samples from the contractor's stockpile or transfer point before the salt is mixed with the Corrosion Inhibited Liquid Magnesium Chloride. Both salt and liquid samples may be taken.
- The contractor will thoroughly mix a minimum of 8 gallons of Corrosion Inhibited Liquid Magnesium Chloride per ton of salt.
- The contractor will ensure a consistent thorough mix (e.g. spray system, pugmill, conveyor) so that there is maximum coverage of the liquid on the salt crystals (loader mixing and stockpile injection methods are not acceptable) and will specify the mix method in the bid.
- Trucks must be weighed on certified scale with printout after loading the final product (salt and liquid mixture) and prior to delivery destination. The weight ticket shall include the net weight of the final product and the stockpile source. The certification must bear the Weighmaster's signature. Handwritten weights are not acceptable.
- All shipments of finished product shall be accompanied by a ticket indicating the amount of Corrosion Inhibited Liquid Magnesium Chloride mixed in the finished product. This amount will be indicated on the ticket by Gallons. The amount of gallons shall be recorded by a printing device or handwritten.
- The finished product shall be shipped via bulk delivery. Trucks delivering the mixture shall have the entire cargo area completely covered by a waterproof tarpaulin or similar sheeting material. Torn or ripped covers may be cause for rejection of the shipment.
- The State reserves the right to, at any time inspect the operation to take salt and liquid samples, to ensure that the proper amount of liquid is being applied and that the mix method is appropriate.

8.6.4 SECTION D: Final Product: Rock Salt treated with Corrosion Inhibited Liquid Magnesium Chloride

The Treated Salt shall meet the following requirements

- **Contamination**
Upon inspection of delivered salt, the material shall be uniform in appearance, free flowing and free from visual evidence of foreign matter including but not limited to dirt, stone, chips, trash or any other material that could reasonably be expected to interfere with the use, handling or storage of the salt.
- **Flowability**
Properly stored product (covered or inside storage) shall be uniform and free flowing in a manner consistent with its intended use and shall show no objectionable clumping or caking.
- **Leaching**
Properly stored product (covered or inside storage) shall show no indication of objectionable leaching or separation of components to the extent that such condition produces adverse effects in the handling or usage of the product or routine maintenance of the storage facility.
- **Chemical Composition**
Shall be not less than 91.2% Sodium Chloride. Percent of Sodium Chloride shall be determined as follows: Apparent total % Sodium Chloride content shall be determined in accordance with current ASTM D632 or the latest revision thereof. Magnesium and Calcium content shall be determined in accordance with ASTM E-534 or the latest revision thereof and computed as % Magnesium Chloride and % Calcium Chloride respectively. The % Sodium Chloride shall then be computed as follows:

$$\% \text{ Sodium Chloride} = \% \text{ Apparent Sodium Chloride} - (\% \text{ Magnesium Chloride} + \% \text{ Calcium Chloride})$$

- **Size Grading**

The salt, when tested using sieves as described in ASTM C136 (*) shall conform to the following requirements for particle size distribution:

<u>Sieve Size</u>	<u>Percent Passing (**)</u>
1/2" - (12.5 MM)	100
3/8" - (9.5 MM)	95 - 100
No. 4 - (4.75 MM)	20 - 90
No. 8 - (2.36 MM)	10 - 60
No. 30 - (600 Microns)	0 - 15

* - A drying temperature of 110°C ± 5°C should be used.

** - Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

- **Moisture Content**

Moisture content shall not exceed 4.8% when determined as follows:

$$\% \text{ Moisture} = \frac{\text{Loss of Weight} \times 100}{\text{Weight of Sample}}$$

where: W_1 = Initial weight of sample

W_2 = Weight of sample after drying to a constant weight at 110°C ± 5°C.

NOTE: Procedure shall be in accordance with ANSI/AWWA B200-03, Moisture Determination, or the latest revision thereof. A tolerance of 0.5% will be allowed before a deduction is assessed.

- **Sampling**

Sampling shall be done in accordance with ASTM D632 or the latest revision thereof. The Office of General Services, or any of its authorized representatives, reserves the right to take samples from the contractor's stockpile or transfer point or from shipments at the point of destination.

The right is also reserved to consider truckloads of treated salt delivered by the contractor to any one agency on a single day to be a single delivery. Penalties imposed because of deviation from specifications may be imposed on the total day's delivery.

- **Acceptance**

The treated salt may be rejected if it fails to conform to any of the requirements of this specification.

- **Non-complying Product – Price Deductions**

A non-complying product - price deduction is not to be assessed unless the proper analysis and test procedures are followed. If the contractor consistently delivers treated salt found to be above 5.3% moisture content or consistently not conforming to the gradation requirements, the contract shall be subject to cancellation either in whole or in parts.

- **Non-complying Product – Price Deduction – Moisture**

If the moisture content of the treated salt is found to be above 5.3%, a deduction for moisture content will be made from the delivered bid price based on the following formula:

$$\text{Reduced Price/Ton} = \text{Delivered Contract Price/Ton} \times (1.053 - 2x)$$

where: X = Moisture content of the sample (expressed as the decimal equivalent of the percentage of the original sample weight to the nearest 1%)

- **Non-complying Product – Price Deduction – Gradation (Particle Size Distribution)**

If, after delivery, the gradation of the treated salt is found to be out of tolerance, a deduction from the price shall be made based on the following formula:

$$\text{Reduced Price/Ton} = \text{Delivered Contract Price} \times (1.00 - Y)$$

where: Y = the decimal equivalent of the total % out of gradation. The % out of tolerance for each sieve shall be to the nearest 1%. The total of the individual sieve tolerance deviations shall be used as Y.

- **Non-complying Product – Price Deduction – Contamination**

If the end user accepts contaminated salt as defined in Section D for operational reasons, a 10% non-complying price deduction may be placed on the contractor by the end user after consultation with the contractor and OGS.

- **Calculations**

Calculations performed relative to this specification shall be made using the rounding off method of “ASTM Recommended Practice E-29 for Designating Significant Places in Specified Limiting Values”.

SECTION 9: EMERGENCY STANDBY ROAD SALT (ROCK & SOLAR) – Lot 4

9.1 Scope (Bid Synopsis)

It is the intention of the Emergency Standby Road Salt (Lot 4) to provide a limited use Contract Award to be utilized when emergency purchases of road salt are necessary (i.e. to be used for an impending storm when reserves are insufficient and the primary contractor is unable to make a delivery when needed by the user). This contract award will be a multiple award contract where one or more contractors have an award for a county.

There are two ways orders may be placed:

1. The end user should contact the contractor with the lowest price for the county and place an order. If the lowest price contractor cannot fulfill the order, the end user should contact the next low bidder and so on.

OR

2. The end user may send a Quick Quote to all contractors in the county and use the results to place a purchase order. The Quick Quote should address delivery time which may be a factor in the choice of contractors.

State agencies and municipalities who filed requirements for the current road salt contract - Group 01800 Lot 1 may make purchases from this contract if their current awarded contractor on Group 01800 Lot 1 is unable to supply and may “chargeback” the difference in price to their original contractor on Group 01800 Award. **These purchases may be made only after**

1. **the Contractor has failed to perform, and**
2. **authorization for the purchase has been granted by OGS Procurement Services.**

Special note regarding use of Lot 4 contract awards: OGS Procurement Services may, on a case by case basis, approve emergency purchases to be made by state agencies and municipalities who filed requirements under Lots 2 and 3 (Treated Salt – Type I and Type II) (see Section 8). In these cases, road salt would be provided in lieu of treated salt. State agencies and municipalities may chargeback the difference in salt price to their original treated salt contract on Group 01800 Award. The vendor providing emergency road salt in lieu of treated salt shall not be the non-performing supplier of the treated salt (Lot 2 and Lot 3).

The difference between the current awarded price for Lot 1 (Road Salt) and the amount paid under Lot 4 (Emergency Standby Road Salt) award invoices may be deducted or “charged back” by either:

1. Deduct the increased amount from the amount due to the contractor on current Lot 1 Award, or
2. If an invoice is not due the contractor from current Lot 1 Award, the contractor may be invoiced the amount due.

In either case, OGS Procurement Services should have already given authorization and should receive a copy of the transaction. Contract users should document in detail the following:

1. The date purchase orders were placed with their current contractor,
2. The quantity(ies) ordered,
3. The date(s) and quantity(ies) received,
4. Current Inventory, and
5. All correspondence with current contractor relative to late delivery(ies)

This information should be emailed to Carmen Story at: carmen.story@ogs.ny.gov

Upon receipt, the information will be reviewed and the contract user will be contacted by OGS. If permission is granted for a purchase, contractor and end-user will be contacted via e-mail. The end-user must attach the e-mail granting permission and all documentation previously submitted to OGS (as referenced in the above 5 bullets) to their purchase order when processing for payment.

9.2 Solar Salt

Bids for both rock salt and solar salt will be allowed for Lot 4 in the following counties **ONLY**:

- Bronx, Kings, New York, Queens, and Richmond
- Dutchess
- Nassau
- Orange
- Putnam
- Rockland
- Suffolk
- Westchester

For all remaining counties, rock salt only will be allowed.

9.3 Detailed Specifications - Road Salt, (Crushed & Solar) Type A

See the Detailed Specifications contained in Section 7.1.

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: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

GENERAL SPECIFICATIONS

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GENERAL

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

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

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

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

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

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

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

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

- 1. Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.

- 2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

- 3. Back-Drop Contracts** Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

- 4. Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

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

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

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

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

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

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

l. ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to

conform to the applicable warranties, performance standards and/or obligations of the Contractor.

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

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

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

q. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gg. STATE State of New York.

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

ii. SUBCONTRACTOR Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract,

express or implied, for the performance of a portion of a Contract with a Contractor.

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

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

BID SUBMISSION

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

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

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

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

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

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms,

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

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

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

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

7. CONFIDENTIAL/TRADE SECRET MATERIALS

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

b. COMMISSIONER OR AUTHORIZED USER Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty

shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

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

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

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

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

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Day's Labor No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing

or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

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

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

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

9. TAXES

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

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

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

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

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

advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Solicitation or Contract for press or other media releases.

12. PRODUCT REFERENCES

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

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

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

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

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

15. PRICING

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

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

c. "No Charge" Bid When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid "no charge" on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and

be rejected, in whole or in part, at the discretion of the Commissioner.

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

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

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

g. Specific price decreases:

(i) GSA Changes: Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

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

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

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

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

h. Cost Proposal Revisions A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law §

163(9)(c). A cost proposal revision must be a lower price than the initial price.

16. DRAWINGS

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

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

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

17. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

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

19. SAMPLES

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

Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

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

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

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

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

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

BID EVALUATION

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

21. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

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

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

TERMS & CONDITIONS

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

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

26. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law.

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

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

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

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

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

28. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon

notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

29. ESTIMATED/SPECIFIC QUANTITY CONTRACTS

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

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

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

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

All Purchase Orders issued pursuant to a Contract let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any

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

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

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

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

34. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container

shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

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

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

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

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

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

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

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

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

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

42. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided,

however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

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

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

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

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

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

46. TERMINATION

a. For Cause For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively, at the Contractor's expense. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

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

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

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

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

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

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

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

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

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

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

- a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

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

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair

the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

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

48. CONTRACT INVOICING

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

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

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

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

49. DEFAULT – AUTHORIZED USER

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

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

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

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

50. PROMPT PAYMENTS

a. State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency Authorized Users. Neither OGS nor the State Comptroller is responsible for

payments on any purchases made by a non-State agency Authorized User.

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

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

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

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

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

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

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

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

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

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

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

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

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

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

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

58. WARRANTIES

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

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages

and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

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

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

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

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

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

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

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable or Recovered Materials clause, Product offered

shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

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

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

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

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

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

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

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

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

j. No Limitation of Rights The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

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

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

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

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

the Attorney General shall have the final determination on such matters.

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

The Authorized User shall give Contractor the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

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

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

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

exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

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

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Authorized User's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

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

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

63. DISPUTE RESOLUTION PROCEDURES

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise

licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

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

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

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

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

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

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

Maintenance shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, fixes, upgrades and New Licensed Software Releases to Licensee, and (ii) help desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line help desk accessibility. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the technical support/maintenance term.

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

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an

alternative or consolidated Site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

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

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

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies that require Licensee to restore backups or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. The phrase "cold site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a

documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

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

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

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

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an

additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

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

67. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom

programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

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

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

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Solicitation or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

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

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

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized

copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent

It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)

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

e. Contractor's Obligation with Regard to ISV (Third Party) Product

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

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

developer. Such certificates must be in a form acceptable to the Licensee.

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

70. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

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

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

71. NO HARDSTOP/PASSIVE LICENSE MONITORING

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product

and all upgrades do not and will not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

72. SOURCE CODE ESCROW FOR LICENSED PRODUCT

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such Source Code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

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

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