

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP
CORNING TOWER- 37th Floor
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

NEW YORK STATE AGREEMENT

AGREEMENT NUMBER	TITLE: GROUP 79518 – Miscellaneous Software – Miscellaneous Software Catalog Contract Group 76304 – Microsoft Software Corporation - Reseller
RETURN BY: February 18, 2010	Purchase Request No. 021961 RFR ITS42 SPECIFICATION REFERENCE: As Incorporated Herein
CONTRACT PERIOD: July 1, 2010 through June 30, 2015	
DESIGNATED CONTACTS: Team # 12	
Stephanie Laffin, Purchasing Officers I, Telephone No. (518) 473-9440 E-mail address: Stephanie.laffin@ogs.state.ny.us	
James Jasiewicz, Senior Purchasing Agent, Telephone No. (518) 486-5238 E-mail address: James.jasiewicz@ogs.state.ny.us	
Kathy McAuley, Team Leader Telephone No. (518) 486-6812 E-mail address: Kathy.mcauley@ogs.state.ny.us	

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.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

Legal Business Name of Company Bidding:				Bidder's Federal Tax Identification #: (Do Not Use SS#)	
D/B/A - Doing Business As (if applicable):					
Street	City	State	Zip Code	County	
SIGNATURE:			PRINTED OR TYPED NAME:		
DATE:			TITLE:		
PHONE: ()		TOLL FREE PHONE: ()			
FAX: ()		TOLL FREE FAX: ()			
EMAIL ADDRESS:			COMPANY WEB SITE:		

Attachment #2 (APPENDIX A)

Appendix A, Standard Clauses For New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

Attachment #3 (APPENDIX B)

Appendix B, Office of General Services General Specifications, July 2006, incorporated by reference herein, is hereby expressly made a part of this Agreement as fully as if set forth at length herein and shall govern any situations not covered by this Agreement or Appendix A.

APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See "Governing Law" in Appendix A, Standard Clauses for New York State Contracts.

CONFLICT OF TERMS AND CONDITIONS

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

- a. Attachment #2 - Appendix A
- b. Attachment #4 - NYS Microsoft Agreement (Microsoft Product Only)
- c. Attachment #4.1 - CLA (Microsoft Products Only)
- d. This New York State Agreement
- e. Attachment #3 - Appendix B
- f. Bidder's Bid (Response to this Agreement)
- g. Master Contract (see "Background and Intent")

DISPUTE RESOLUTION POLICY

It is the policy of the Office of General Services Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Invitation for Bids or through the OGS website (www.ogs.state.ny.us).

CONTRACT PAYMENTS

Contract payments cannot be processed by New York State agencies and other authorized users until the contract products have been delivered and accepted. Invoices for such payment must contain sufficient data including, but not limited to, New York State's Contract Number, description of product, quantity, unit and price per unit as well as federal identification number. See "Contract Billings" in Appendix B, OGS General Specifications.

ELECTRONIC PAYMENTS

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-474-4032.

PAYMENTS OF INTEREST

See "Interest on Late Payments" in Appendix B, OGS General Specifications. The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the New York State Contract regardless of customer.

BID DEVIATIONS

If your bid differs from the specifications explain such deviation(s) or qualification(s); and if necessary, attach a separate sheet. See "Extraneous Terms" in Appendix B, OGS General Specifications.

LIABILITY FOR BID PREPARATION EXPENSE

The State is not liable for any costs incurred by a bidder in the preparation and production of a bid or for any work performed before the issuance of a contract or delivery order.

NOTIFICATION OF AWARD

The successful bidder will be notified by PSG by letter after approval by OSC. The contract will be submitted for mandatory review and required approval by:

1. The Attorney General of the State of New York
2. The Comptroller of the State of New York

Public announcements or news releases pertaining to this contract will not be made without prior permission of PSG.

NON-COLLUSIVE BIDDING CERTIFICATION

(Reference: State Finance Law Section 139-d and Appendix A, Clause 7)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

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

In the event that the bidder is unable to certify as stated above, the bidder shall provide a signed statement which sets forth in detail the reasons why the bidder is unable to furnish the certificate as required in accordance with State Finance law Section 139-d(1)(b).

PROCUREMENT LOBBYING TERMINATION

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (Appendix 1)

Bidder agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as Appendix 1 (hereinafter 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 making that determination. The Bidder agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract by providing ten (10) days written notification to the Contractor. 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.

TAX LAW 5-A AMENDED APRIL 26, 2006 (APPENDIX 2)

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

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

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>.

MERCURY-ADDED CONSUMER PRODUCTS

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information: <http://www.dec.state.ny.us/website/dshm/redrecy/c145home.html>.

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

a. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer 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 the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

- b. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses
Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at: http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

DEBRIEFING

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Disclosure of the content of competing bids other than statistical tabulations of bids received in response to an IFB, is prohibited prior to contract award. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, OGS shall, upon request, provide a debriefing to any bidder that responded to the IFB or RFP, regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of posting of the contract award on the OGS website.

APPENDIX A (STANDARD CLAUSES FOR NYS CONTRACTS)

The terms of Appendix A, "Standard Clauses for NYS Contracts", apply to submission of the bid response and are hereby incorporated and apply to any contract(s) awarded pursuant thereto. During the performance of the contract, the Contractor is required to adhere to the clauses in Appendix A, which include the recent additions of regulations regarding the use of tropical hardwoods, the Omnibus Procurement Act and the MacBride Fair Employment Principles. Bidder is also required to adhere to the terms, conditions, and requirements of all other appendices attached to this Bid Invitation.

APPENDIX B (GENERAL SPECIFICATIONS - TECHNOLOGY PRODUCTS & SERVICES)

The terms of Appendix B are incorporated into and govern the terms of this solicitation, including any contract resulting therefrom, except where superseded, modified or amended by the terms of this document.

NON-STATE AGENCIES USE OF CONTRACT

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

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Group's Customer Services at 518-474-6717.

By signing the bid, contractors are acknowledging that Political subdivisions and others authorized by law may participate in contracts resulting from this bid opening. Contractors further agree to sell to all those additional entities authorized to utilize commodity contracts under Section 163 (3) (iv) of the Procurement Act of 1995, which would comprise all entities authorized under prior laws. The foregoing shall not prohibit or inhibit the Commissioner's authority regarding State Finance Law, 163 (10) (e) (Piggybacking). See Appendix B clause 39.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates.

FINANCING

Many acquisitions of hardware and software may be financed through OGS' Statewide Lease-Purchase Financing Agreement, Certificates of Participation (COPS) or other personal property financing mechanisms authorized by law. In all cases, acquisitions must have a minimum aggregated purchase price of \$250,000 and must be approved in advance by the Division of the Budget

QUANTITIES

Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the contract term. No guarantee of any estimated quantity(s) is implied or given.

It should be noted that the extension of this contract to political subdivisions and others authorized by law, as indicated in the "Use of Contract by Others" clause, may cause the estimated quantities or dollar values to vary considerably. However, the contractor must furnish all quantities or dollar values actually ordered

BACKGROUND AND INTENT

The OGS Procurement Services Group, on behalf of the Commissioner, finds it necessary and desirable to enter into a contract based on this New York State Agreement (hereinafter "New York State Contract") with Contractor for the purchase of specified products under the terms and conditions established pursuant to RFR ITS42 for Commonwealth of Massachusetts (hereinafter "Master Contract") by State agencies and other authorized purchasers. By completing and signing this document, Vendor is willing and able to enter into a contract and authorizes OGS to process the contract and provide notification to all authorized purchasers.

CONTRACT SCOPE

Vendor agrees to enter into a contract with the State of New York under the terms and conditions set forth in the Master Contract for use by New York State agencies, political subdivisions and others authorized by law. All the terms, conditions, covenants and representations contained herein and in the Master Contract and any amendments thereto, except as modified by this document, are hereby incorporated by reference and deemed to be a part of this contract as if fully set forth at length herein. The term and conditions of this Agreement shall supersede any inconsistent terms and conditions set forth in the Master Contract.

PRICE AND DISCOUNTS

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering agency. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in the New York State Contract.

CONTRACT PERIOD AND RENEWALS

The New York State Contract period shall be for the term as indicated on the New York State Agreement. Extensions or renewals to the Master Contract or any modification including new products, terms, or price changes to the Master Contract shall be submitted by the Contractor to the Office of General Services, Procurement Services Group for approval and shall be effective to the New York State Contract upon the date of issuance of a written notification to New York State contract users

Upon expiration of the Master Contract, Contractor may submit any subsequent replacement contracts entered into for the same or similar products with the same Issuing Entity to the Office of General Services, Procurement Services Group in order to establish a new contract.

In the event Contractor's Master Contract expires and no new contract is let by the original Issuing Entity, OGS reserves the right, upon written agreement with Contractor, to renew the New York State Contract under the same terms and conditions for an additional period of one year.

SHORT TERM EXTENSION

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one 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 month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

PRICE CHANGE PROCEDURE (AFTER EXPIRATION OF MASTER CONTRACT)

Should the Master Contract expire and not be extended or renewed prior to the expiration of the New York State Contract (including any renewals processed by New York State), and providing the Master contract referenced uniform discount(s) from nationally distributed price list(s), the contract prices may be subject to increase or decrease during the remainder of the contract period in accordance with changes which may be made by the manufacturer in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount(s) in effect at the time of Master Contract expiration shall not be decreased.

In the event the Master Contract did not reference uniform discount(s) from nationally distributed price list(s), updated price lists may be submitted for acceptance providing the discount structure used as a basis for pricing which was in effect at the time of Master Contract expiration remains unaltered. This evidence must be supplied by the Contractor along with the updated price lists.

New products will be considered for inclusion provided they are pertinent to the contract and are offered to the State at the same discount, terms and conditions as the Master Contract.

The price revisions, new lists or supplements to an original list shall be submitted to the Office of General Services, Procurement Services Group, to the attention of the Purchasing Officer shown on the front of this document, in triplicate, for approval before ordering agencies will be bound to any such revisions. Approvals of price revisions shall become effective upon the date of issuance of a written notification to New York State contract users.

CANCELLATION FOR CONVENIENCE

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

CONTRACT MIGRATION

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

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

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (www.ogs.state.ny.us). Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS Procurement Services Group's Customer Services at 518-474-6717.

CATALOGS AND PRICE SHEETS

Upon request, Contractor shall furnish, without charge, copies of Master Contract including modifications thereto and related catalogs and price lists to New York State agencies and other authorized users. Upon request, contractor shall also assist authorized users in the use of such documents.

PURCHASE ORDERS

See "Purchase Orders" in Appendix B, OGS General Specifications.

If there is a discrepancy between the purchase order and what is listed on contract, it is the contractor's obligation as a condition of payment to clarify and resolve what is to be actually shipped by contacting ordering agency.

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 commodities or services, the Commissioner reserves the right to obtain such commodities 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 commodities or services procured from other sources pursuant to this paragraph.

NEW YORK STATE PROCUREMENT CARD

See "Procurement Card" in Appendix B, OGS General Specifications. All bidders shall indicate if they will accept the NYS Purchasing Card for orders not to exceed \$15,000 (see Questions at end of bid document).

WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS:

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

1. Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
- B) Certificate of Workers' Compensation Insurance:
 - 1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
 - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
- C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

2. Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

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

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The Office of General Services, Procurement Services Group, Team 12, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish quarterly reports containing total sales for both state agency and authorized non-state agency contract purchases no later than thirty (30) days after the close of each calendar quarter. Said report shall include a break out of participation by individual Authorized Users, including State and non-State governmental entities and others authorized by law. Quarterly Report periods will end on March 31st, June 30th, September

30th and December 31st . If the contract period begins or ends in a fractional portion of a reporting period only the actual contract sales for this fractional period should be reported in that quarterly report.

The State shall have the right to verify said report and to take any action(s) necessary to enforce its rights under this paragraph, including but not limited to the right to stop payments until such reports are received, audit Contractor's applicable Contract books, to substitute, in its sole judgment, a good faith estimate of Contract usage upon failure of Contractor to deliver said report as required where pricing is based upon aggregate volume, or to terminate the Contract for cause or seek other judicial relief.

The Contractor shall make available to OGS an electronic reporting system via Contractor's website. This electronic reporting system will allow OGS to either run reports directly or request Contractor to provide reports directly to OGS.

SIGNATURE/ACKNOWLEDGMENT PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract, bearing New York Comptroller's Contract Number _____ (to be filled in when contract number established). This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby agree that, where Vendor is asked to execute four original copies of this bid including this signature page, the NYS Comptroller will be provided one complete copy of the bid and three signature pages. The approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by Vendor and executed simultaneously therewith.

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.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

VENDOR

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

(Company Name)

Print Name: _____

(Authorized Representative)

Signature: _____

(Original Signature of Authorized Representative)

Title: _____

Federal Tax Identification #:

OGS Procurement Services Group _____

Name: _____

Signature: _____

Title: _____

Date Signed: _____

**APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General**

**APPROVED
THOMAS P. DINAPOLI
New York State Comptroller**



INDIVIDUAL, CORPORATE, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }
: SS.:
COUNTY OF _____ }

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

[Check One]

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

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

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

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

Notary Public
Registration No. _____

____ / ____ / ____ (Expiration Date)
State of: _____

Appendix 1

{Revised: March 2009}

New York State

Standard Vendor Responsibility Questionnaire

(Use the Uniform Contracting Questionnaire CCA-1, for all construction contracts)

Each Contracting Agency conducts a review of prospective contractors (“vendors”) to provide reasonable assurances that the vendor is responsible. This questionnaire is used for all non-construction contracts with a contract value of \$100,000.00 or more and is designed to provide information to assess a vendor’s authorization to do business in New York State, as well as your business integrity, financial and organizational capacity, and performance history. (Review of construction contractors will be based upon the Uniform Contracting Questionnaire developed by the Council of Contracting Agencies.)

Each vendor must answer every question contained in this questionnaire. Where a response requires additional information, the vendor must attach a written response that adequately details the requested information. Please number each response to match the question number. The completed questionnaire and attached responses will become part of the procurement record.

In order to expedite the required review, when providing additional information for a “YES” answer to Questions 14 a-s, or any other response which requires additional explanation, your information and responses should address the relationship of the issue to the proposed contract. Be brief, concise and to the point. Discuss as appropriate the following:

- Provide a description of the issue and identify the actions taken or currently being implemented to ensure that the issue will not occur again.
- State whether the staff and/or organizational component involved in the identified issue(s) will work on the proposed contract. If so, provide information to assure the agency that the issue will not be repeated.
- Identify the relationship (or lack thereof) between the product/services involved in the issue and the type of product/services proposed for this contract.
- State whether the issue will affect your financial or organizational ability to perform under the proposed contract.
- Provide copies of relevant documents or any other information that would assist the agency in its vendor responsibility evaluation.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing vendor’s business and operations, as an owner or officer of the vendor must attest to the questionnaire information. Please be advised that at the end of this questionnaire, you must certify, under oath, all responses given.

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ATTACHMENT #6

Appendix 2

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD) {Updated 01/08}
Contractor Certification to Covered Agency (ST-220-CA)

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
 Division for Small Business
 30 South Pearl St -- 7th Floor
 Albany, New York 12245
 Telephone: 518-292-5220
 Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
 Division of Minority and Women's Business Development
 30 South Pearl St -- 2nd Floor
 Albany, New York 12245
 Telephone: 518-292-5250
 Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

APPENDIX B
GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

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

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. **Appendix A** (Standard Clauses for NYS Contracts)
- b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. **Bid Documents** (Other than Appendix A).
 - i. Bid Specifications prepared by the Authorized User.
 - ii. Appendix B (General Specifications).
 - iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- e. **Contractor's Bid or Mini-Bid Proposal.**
- f. **Unincorporated Appendices** (if any).

5. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

AFFILIATE Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

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

ATTORNEY GENERAL Attorney General of the State of New York.

AUTHORIZED USER(S) Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

BIDDER/OFFERER Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to a Bid Solicitation. The term Bidder shall also include the term "offeror." In the case of negotiated Contracts, "Bidder" shall refer to the "Contractor."

BID DOCUMENTS Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS Contracts), Appendix B, (General Specifications). Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

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

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

COMPTROLLER Comptroller of the State of New York.

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

a. Agency Specific Contracts Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).

b. Centralized Contracts Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.

c. Back-Drop Contracts Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

d. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MINI-BID PROJECT DEFINITION A Bid Document containing project specific Bid Specifications developed by or for an Authorized User which solicits Bids from Contractors previously qualified under a Back-Drop Contract.

MULTIPLE AWARD A determination and award of a Contract in the discretion of the Commissioner to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

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

OGS The New York State Office of General Services.

PROCUREMENT RECORD Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.

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

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

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

REQUEST FOR PROPOSALS (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value," as defined by the State Finance Law.

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

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

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

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

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

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

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

STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

"BID ENCLOSED (bold print, all capitals)

- Group Number
- IFB or RFP Number
- Bid Submission date and time"

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

Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

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

9. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

10. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a Bid by facsimile transmission, including an executed signature page or as otherwise specified in the Bid Documents, shall be deemed a confirming act by Bidder which authenticates the signing of the Bid.

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

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

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

13. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms)

may render the Bid non-responsive and may result in rejection of the Bid.

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

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

15. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner.

16. FREEDOM OF INFORMATION LAW During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the Commissioner to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

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

a. “Public Works” and “Building Services” - Definitions

i. Public Works Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.

ii. Building Services Labor Law Article 9 applies to Contracts for building service work over \$1,500 with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.

b. Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or

exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

c. Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

d. Public Posting & Certified Payroll Records In compliance with Article 8, Section 220 of the New York State Labor Law:

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

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

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

iv. Records Retention Contractors and Subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

Day’s Labor Eight hours shall constitute a legal day’s work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property.

“Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

18. TAXES

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

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

c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

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

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

20. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

21. PRODUCT REFERENCES

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

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled,

with respect to such discrepancy, then the written description shall prevail.

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

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

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

24. PRICING

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

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

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

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

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

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

Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

(i) **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor's list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

g. Best and Final Prices As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

25. DRAWINGS

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

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

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

26. SITE INSPECTION Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-

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

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

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

28. SAMPLES

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

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

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

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

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

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

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

BID EVALUATION

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

30. CONDITIONAL BID Unless the Bid Specifications provides otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

31. CLARIFICATIONS / REVISIONS Prior to award, the Commissioner reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.

32. PROMPT PAYMENT DISCOUNTS While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the State Finance Law, which are applicable in any case, may render the Bid non-responsive and may be cause for its rejection.

33. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis

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

34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If the Commissioner determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity, experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

35. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsive.

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

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with

the successful Bidder(s), upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

39. PARTICIPATION IN CENTRALIZED CONTRACTS The following shall not limit or inhibit the OGS Commissioner's authority under State Finance Law, Section 163 (10) (e) (Piggybacking):

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

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

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

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

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

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

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

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

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

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

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

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

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information

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

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

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

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

47. SHIPPING/RECEIPT OF PRODUCT

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

property of the Authorized User unless otherwise specified in the Contract documents.

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

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

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

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

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

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

52. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar

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

53. REPAIRED OR REPLACED PARTS / COMPONENTS

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

54. ON-SITE STORAGE With the written approval of the Authorized User, materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk.

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

56. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor

shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

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

57. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

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

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

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

60. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience: By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not

affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

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

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

61. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

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

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may:

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the

marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

62. CONTRACT BILLINGS Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

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

63. DEFAULT – AUTHORIZED USER

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

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach. Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.

64. INTEREST ON LATE PAYMENTS

a. State Agencies The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

b. By Non-State Agencies The terms of Article 11-A apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.

b. Withhold Payment In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments

due or to become due the Contractor on the same or another transaction.

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

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

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

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

68. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

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

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

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

72. ADDITIONAL WARRANTIES Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or

pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

a. Product Performance Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Warranty Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

c. Contractor Compliance Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

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

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

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

extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

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

e. Replacement Parts Warranty If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

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

f. Virus Warranty The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

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

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

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

h. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the

completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

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

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

74. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.

75. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

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

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product without Contractor's approval.

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

76. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

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

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

77. INSURANCE Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

**THE FOLLOWING CLAUSES PERTAIN TO
TECHNOLOGY & NEGOTIATED CONTRACTS**

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

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up

to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

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

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

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

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

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

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

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

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

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder

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

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

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

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

back-up computer systems prior to disaster or breakdown which is not used for active production or development.

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

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

- (i) Copy the Product;
- (ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- (iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

79. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

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

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

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not

have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

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

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

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

(i) Existing Products:

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

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

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

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

under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

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

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

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

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

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

notice that the Product Manufacturer will continue to provide Product or withdraw support.

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

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

85. NO HARDSTOP/PASSIVE LICENSE MONITORING

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

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT

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

Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

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

FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37

APPENDIX C

**Contractor's Executive Law, Article 15-A
(M/WBE) Requirements**

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, OGS hereby establishes a goal of 5% for minority business enterprises (MBE) participation and 5% for women-owned business enterprises (WBE) participation.

In order to be awarded an OGS Contract, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

POLICY AND PROVISIONS

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBEs) in State Contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE Subcontractors or suppliers in the performance of this Contract.

For the purpose of determining a Contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the Contracting agency shall consider:

- (a) Whether the Contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,
 - (i.) whether or not certified minority or women-owned businesses which have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - (ii.) whether certified businesses which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the Contracting agency's bid date; and
- (b) Whether there has been written notification to appropriate certified businesses that appear in the Directory of Certified M/WBE prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and
- (c) Whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.
 - A. **GOALS** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.
 - B. **UTILIZATION** - The Contractor may count as M/WBE participation: subcontracting part of the Contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the Contract from certified firms.

Upon a showing by the Contractor of every good faith effort to achieve the goal for M/WBE participation in the work, the State will waive a Contractor's failure to achieve the goal M/WBE participation.

- C. **MINORITY AND WOMEN-OWNED BUSINESS OFFICER** - The Contractor shall designate an Affirmative Action officer and assign the officer the responsibility and authority to monitor the M/WBE program for this Contract. The OGS' Office of Minority and Women-owned Business Enterprises' staff is available to help in identifying certified M/WBEs.
- D. **REQUIRED REPORTS** - The Contractor is required to submit a Utilization Plan (BDC-328) to the NYS Office of General Services within five (5) days after the opening of bids for construction Contracts exceeding \$100,000 and 14 days after notification of award for commodity and service Contracts exceeding \$25,000. The Contractor must also submit the MBE/WBE Letter of Intent to Participate (BDC-49). The Letter MBE/WBE of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this Contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBEs, over the term of the Contract, must be reported on a revised Utilization Plan.
- E. **NONDISCRIMINATION** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this Contract.

POST AWARD

The Contractor must submit to the Office of Minority and Women-owned Business Enterprises after notification of award, the following forms, by the 10th day of each month:

1. (BDC-58) Cumulative Monthly Payment Statements
2. (BDC-25) Monthly Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to:

New York State Office of General Services
Office of Minority and Women-owned Business Enterprises
35th Floor, Room 3580
Corning Tower Building
Empire State Plaza
Albany, NY 12242

The telephone numbers and addresses for New York State Department of Economic Development are as follows:

New York State Department of Economic Development
633 Third Avenue
New York, NY 10017

Telephone: (212) 803-2414

New York State Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl Street
Albany, New York 12245
Telephone: (518) 292-5250

**COMMONWEALTH OF MASSACHUSETTES
REQUEST FOR RESPONSE (RFR)
ITS42
Terms and Conditions**

(continued)

OPERATIONAL SERVICES DIVISION

ONE ASHBURTON PLACE, 10TH FLOOR, ROOM 1017, BOSTON, MASSACHUSETTS 02108-1552



Request for Response (RFR)

Document Title: Software Reseller

Document Number: ITS42

December 18, 2009

Please Note: This is a single document associated with a complete Solicitation that can be found on Comm-PASS. All Bidders are responsible for reviewing and adhering to all information, forms and requirements found in all tabs and related forum records for the entire Solicitation. To locate the Solicitation associated with this document, go to www.comm-pass.com, select the "Search for solicitations" link, enter the above Document Number in the "Document Number" field, and select the "Search" button. Bidders who need help regarding Comm-PASS navigation may refer to the Comm-PASS Resource Center at www.mass.gov/osd for documents and guides. Bidders may also contact the Comm-PASS Helpdesk at comm-pass@state.ma.us or the Comm-PASS Helpline at 1-888-MA-STATE. The Helpline is staffed from 7:30 AM to 5:00 PM Monday through Friday Eastern Standard or Daylight time, as applicable, except on federal, state and Suffolk county holidays.

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RFR Introduction and General Description

Procurement Scope and Description

This RFR is to create the successor Contract to ITS14 Software Reseller. Throughout this RFR, unless otherwise stated, Commonwealth refers to the Commonwealth of Massachusetts and the States of Maine, New Jersey, New York, Rhode Island and Vermont. All of the above are presently using ITS14.

The Commonwealth of Massachusetts and the States of Maine, New York, Rhode Island and Vermont entered into a contract with ASAP, a Software Reseller, in 2003, as a result of a jointly conducted competitive procurement. The Commonwealth of Pennsylvania and the State of New Jersey joined ITS14 after the Contract was in place. ASAP was subsequently acquired by Dell Marketing LLP ("Dell") and the contract was transferred to Dell. The contract is now in its last year, with an expiration date of June 30, 2010. It is the intent of this procurement to establish a successor contract which will provide equal or better value to the Commonwealth.

The Commonwealth seeks a Software Reseller to provide software, training, pre-sales assistance, documentation, installation, configuration, customization (Massachusetts only), and volume license agreement administration. In addition, software packaged with hardware as an appliance may be provided, but only with the written approval of the State Contract Manager for each State on a case-by-case basis. The Software Reseller must be a Microsoft Government Large Account Reseller (LAR) and a Microsoft Academic Education Reseller (AER), and must be able to manage volume license agreements with several other Software Publishers. Additionally, the Software Reseller will provide software that is not available through volume license agreements.

New York State has direct contracts for a variety of software products and therefore the listing of vendors at the following website will not be included for purchases by New York State: www.ogs.state.ny.us/purchase/snt/awardnotes/79518prohibited.pdf, dated 6/22/09.

This listing is subject to change during the life of the contract.

Massachusetts List of EXCLUDED SOFTWARE *	
Oracle	Computer Associates

*Software is excluded if it is available at the same or better pricing from a current Statewide Contract with the software publisher.

The list above is subject to change during the life of the contract, see the "Forms & Terms" tab of the ITS42 contract after it has been awarded for updated information.

The state of Maine does not purchase Oracle software through the Reseller contract.

Number of Awards

The target number of Contractors to be selected is three. This is a target number; the Commonwealth may select more or fewer Contractors if it is in the best interests of the Commonwealth to do so.

Each State will determine whether it will award Contracts to one or more of the selected Bidders. Any State which does not initially award Contracts to all of the selected Bidders may add additional Contractors from those who were selected at any time during the life of ITS42.

Adding Contractors After Initial Statewide Contract Award

If, over the life of the Contract, the Commonwealth determines that additional Contractors over and above those initially selected should be added, these may first be drawn from companies that responded to this Solicitation but were not among those initially selected. If necessary to meet the requirements of the Commonwealth, the Solicitation may be reopened to obtain additional bids.

Acquisition Method(s)

Licenses will be acquired by outright purchase, subscription, lease purchase or term lease. Lease purchase and term lease are allowable only for eligible entities whose rules and regulations permit leasing of software. With a lease purchase, the eligible entity owns the licenses to the software once all lease payments have been made. With a term lease, the eligible entity does not retain ownership of the software license when the term expires. Term leases are permitted only in

conjunction with term leases of hardware, where the leased software runs on the leased hardware. The Eligible Entity will be responsible for obtaining financing via a third party leasing company in accordance with the procurement laws and regulations governing the Eligible Entity. The third party leasing company will pay the ITS42 vendor.

Services will be obtained on a time and materials or fixed price basis.

Contract Duration

The initial term of this Contract will begin on or about March 1, 2010 and will terminate on June 30, 2015.

No sales will take place under the Contract until July 1, 2010. It is expected that the time period between Contract award and July 1, 2010 will be used by the selected Bidders to establish agreements with Software Publishers and make arrangements to manage Volume License Agreements.

Performance and Payment Time Frames which Exceed Contract Duration

All agreements for products and services entered into during the duration of this Contract whose performance and payment time frames extend beyond the duration of this Contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No written agreement, other than a maintenance and support agreement or an agreement for services directly related to maintenance and support, may extend more than three years beyond the final termination date of this Statewide Contract. No new agreements for services may be executed after the Contract has expired. For the purposes of this section, renewals of contracts pertaining to maintenance and support, with or without updated terms, and issuance of purchase orders that constitute exercise of rights arising under maintenance and support agreements, will not be construed as new agreements.

Estimated Value of the Contract (Including All Options to Renew)

Please refer to the "Estimated Value (US\$)" field on the Summary tab for this Solicitation on Comm-PASS.

The Commonwealth makes no guarantee that any goods or services will be purchased from any Contract resulting from this Solicitation. Any estimates or past procurement volumes referenced in this Solicitation are included only for the convenience of Bidders, and are not to be relied upon as any indication of future purchase levels.

The estimated annual expenditure under the contract to be awarded as a result of this RFR is (in millions):

<u>State</u>	<u>Dollars (in millions)</u>
<u>Maine</u>	<u>\$0.89</u>
<u>Massachusetts</u>	<u>\$30.5</u>
<u>New Jersey</u>	<u>\$50</u>
<u>New York</u>	<u>\$135</u>
<u>Rhode Island</u>	<u>Not available</u>
<u>Vermont</u>	<u>\$2</u>
<u>Total</u>	

Usage Pattern – Current Contract (Massachusetts)

Order volume historically peaks in June. The graph below shows the number of orders by month for July 1, 2007 through June 30, 2008, which is similar to previous years. The number of orders per day averaged 31, with a low of 2 and a high of 168.



During this time period, 486 customers ordered software, with 854 “ship to” addresses. Orders were placed with 561 different Software Publishers.

Eligible Entities

Massachusetts

Massachusetts Eligible Entities are listed on the Issues tab for this Solicitation on Comm-PASS.

Maine

This statewide contract may be used by all agencies of the State of Maine.

Political subdivisions of the State of Maine may participate in this contract at the same prices, terms and conditions. Further, items furnished to political subdivisions will be billed directly to and paid for by the political subdivisions and neither the Commonwealth of Massachusetts or the State Maine of assumes any responsibility for those transactions.

New Jersey

This contract may be utilized by the all State Agencies and NJ’s Cooperative Purchasing Partners. These partners include quasi-state agencies, counties, municipalities, school districts, volunteer fire departments, first aid squads, independent institutions of higher learning, County colleges and State colleges.

New York

This statewide contract may be used by all authorized users of New York State (NYS) contracts including all NYS Agencies and other NYS Authorized Users, see following website for listing of Non-State Agency Authorized Users: <http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>. Vendor agrees to usage by all NYS Authorized Users by signing this agreement. By submitting a proposal, Bidders are acknowledging that all NYS Authorized users may participate in contracts resulting from this bid opening.

NYS AUTHORIZED USER(S) Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.

Rhode Island

This Statewide Contract (“State Master Price Agreement Contract”) may be used by all agencies, including higher education and quasi-public agencies.

Any municipality or regional school district of the State may participate in State Master Price Agreement Contracts for the purchase of materials, supplies and equipment entered into by the purchasing agent, provided, however, that the Contractor is willing, when requested by the municipality or school district, to extend the terms and conditions of the Contract and that the municipality or school district will be responsible for payment directly to the vendor under each Purchase Contract.

Vermont

This statewide contract may be used by all agencies of the State of Vermont.

Political subdivisions of the State of Vermont may participate in this contract at the same prices, terms and conditions. Further, items furnished to political subdivisions will be billed directly to and paid for by the political subdivision and neither the Commonwealth of Massachusetts, State of Vermont nor its Commissioner of Buildings and General Services personally or officially assumes any responsibility.

Institutions of Higher and Technical Education.

Institutions of Higher and Technical Education may participate in this contract at the same prices, terms and conditions. This includes, but is not limited to: Vermont State Colleges, Inc, a separate corporation and the University of Vermont. Further, items furnished to institutions of higher education and technical education will be billed directly to and paid for by the specific institution, and neither the Commonwealth of Massachusetts, State of Vermont or its Commissioner of Buildings and General Services personally or officially assumes any responsibility.

Estimated Procurement Calendar

EVENT	DATE
Solicitation: Announcement of Intent to Procure	12/4/2009
Solicitation: Release Date	12/18/2009
Forum: Start date for Bidders to submit written questions to the Comm-PASS forum	12/18/2009
Forum: Deadline for submission of written questions	1/5/2010, 3PM
Forum: Official answers published (Estimated)	1/19/2010
Training for Online Submission	Navigate from "OSD Events and Training" at http://www.mass.gov/osd to find SmartBid training schedule
Solicitation: Online submission begins. Solicitation documents will not be amended after this date (the "Amendment Deadline" on Comm-PASS).	2/2/2010, 2PM
Solicitation: Close Date / Submission Deadline	2/18/2010, 2PM
Oral presentation via webinar, if requested by the Commonwealth	February, 2010
Solicitation: Announcement of awarded Bidder(s) on Comm-PASS in the Solicitation Update tab (Estimated)	3/16/2010
Contract: Estimated Contract Start Date	4/1/2010 (Sales under Contract may start no earlier than 7/01/2010.)

Times are Eastern Standard/Daylight Savings (US), as applicable. If there is a conflict between the dates in this Procurement Calendar and dates on the Solicitation's Summary tab or Forum pages, the dates on the Solicitation's Summary tab or Forum pages on Comm-PASS shall prevail. Any changes in the Estimated Procurement Calendar which are made after the RFR has been published will not result in amendments to the Estimated Procurement Calendar. Such changes will appear only on the Solicitation's Summary tab and/or related Forum pages on Comm-PASS. Bidders are responsible for checking the Solicitation's Summary tab and related Forum pages on Comm-PASS for Procurement Calendar updates.

Written Questions via the Online Bidders' Forum

The Bidders' Forum or Online Forum is the opportunity for Bidders to ask written questions and receive written answers from the Procurement Management Team (PMT) regarding this Solicitation. All Bidders' questions must be submitted through the Bidders' Forum found on Comm-PASS (See "[Locating an Online Bidders' Forum](#)," below). Questions may be asked only between the "QA Start" and "QA End" dates, when the "Ask a Question" link (located in the right-hand corner above the Forum's "Question/Answer" tab) is available.

Please note that any questions submitted to the PMT using any other medium (including those that are sent by mail, fax, email or voicemail, etc.) will not be answered. To reduce the number of redundant or duplicate questions, Bidders are asked to review all questions previously submitted to determine whether the Bidder's question has already been posted.

Bidders are responsible for entering content suitable for public viewing, since all of the questions are immediately accessible to the public. Bidders must not include any information that could be considered personal, security sensitive, inflammatory, incorrect, collusive, or otherwise objectionable, including information about the Bidder's company or other companies. The PMT reserves the right to edit or delete any submitted questions that raise any of these issues or that are not in the best interest of the Commonwealth or this Solicitation.

Only written response(s) posted on a Bidders' Forum which has been "finalized" will be binding on the Commonwealth. The last entry in a Forum's Summary tab indicates whether answers are final.

Locating an Online Bidders' Forum

- Go to www.comm-pass.com.
- Select the "FORUMS" tab from the main navigation bar.
- Select the "Search for Bidders' forum" link.
- Enter the Document Number appearing on the front of this document in the "Referenced Solicitation Number" field.
- Select the "Search" Button.
- Select the search results link appearing at the top of the Search page.
- Select the view icon (eyeglasses) to access the Forum. There may be more than one Bidders' Forum for a Solicitation.

Debriefing

The PMT may conduct debriefings for non-selected Bidders, if requested within 14 calendar days of Contract awards being posted on Comm-PASS. The PMT will provide debriefing guidelines in advance of each debriefing.

Specifications

Additional required terms appear in the Appendices to this RFR.

Bidders must respond to all specifications requiring a response with respect to the Bidder's company, rather than referencing the experience and qualifications of the Bidder's partner(s), parent company, or subsidiary company(ies).

Bidder Qualifications

Years in the Industry of the Solicitation

The Bidder must have at least three years experience providing software products as a reseller to large organizations (software reseller). The "Bidder" is the company whose Tax Identification Number (TIN) appears on the Commonwealth documents submitted in response to this RFR. All responses must pertain to this entity, NOT to a parent entity, a subsidiary company with a different TIN, or an operating division within the entity, except as described below. For example:

- Company A has been in business as a software reseller for two years. Its parent company, company B, has been in business for more than three years but not as a software reseller. Neither company is eligible to respond to this RFR.
- Company C has been in business as a software reseller for more than three years. Its parent company, company D, has been in business for several years but not as a software reseller. Company C is eligible to respond to this RFR, but company D is not.

There are two qualifications to the above. First, changes to the TIN which did not involve another organization – for example, a change in tax identification number as a result of changing from a corporation to an LLC are not considered TIN changes for the purposes of this section. Second, in the case of entities that have new TINs or who have undergone mergers or acquisitions within the past 8 years, the PMT wishes to consider the relevant experience and qualifications of the companies which combined to create the new entity. In the response to this section, bidders must provide a sufficient description of each such merger or acquisition to enable the PMT to easily determine the years of software reseller experience of the combined entity.

Authorization Letters from Manufacturers or Dealers

The Bidder must be a large account reseller (or comparable term) and be able to manage volume license agreements for the following Software Publishers:

Adobe ("Open Options" and CLP)

Attachmate

BMC

Business Objects

Citrix

EMC

Hewlett Packard

IBM

Information Builders

Kronos Software

Microsoft (Government Large Account Reseller (LAR) and Academic Education Reseller (AER) at highest level)

Novell

Oracle Corporation

Quest

Red Hat

SAS

Symantec

VMWare

Websense

The Bidder must agree that, at the request of any State Contract Administrator, the Bidder will assume administration responsibilities for any Volume License Agreement for that State. For example, Microsoft contacts the "Authorized Administrator" for the Microsoft Volume License Agreement whenever anyone requests access to the Microsoft Volume Licensing Services (MVLS) website. The Bidder agrees to take any steps necessary to authorize such access.

Evidence, such as a letter from the Software Publisher, must be included for each of the above Software Publishers, and for any other Software Publishers with which the Bidder has volume license agreements. The Bidder must be a LAR in its own right. Merely being able to purchase from a LAR is not sufficient. It is desirable that the Bidder have volume license agreements with additional Software Publishers.

If one or more of the Software Publishers listed above have indicated that they will not do business with the Bidder, or should that become the case during the life of the contract, that will not be considered grounds for disqualifying the bid or canceling the contract, unless the Software Publisher is Microsoft (See RFR Section 1.1, [Procurement Scope and Description](#)). However, it is desirable that the bidder be a reseller for all of the above software publishers, and inability to do business with a substantial number of them will be grounds for disqualifying the bid.

Additional Software Publishers Who Will Not Allow The Bidder to Resell Their Products

Bidders must provide a list of software publishers (in addition to those listed in the response to the previous section) who have indicated that they will not allow the Bidder to resell their products or services. This list should flag any Software Publishers who do not do business with any general software resellers.

Excluded Software Publishers

The Bidder must agree that there are no software publishers with whom they will refuse to do business if the Software Publisher is willing to do business with them.

Additional Software Publishers

In addition to the Software Publishers listed above, the Bidder must supply a list of all Software Publishers with whom they have arrangements in place to resell software. During the evaluation, the PMT may request contact information for several of the software publishers listed in order to verify that the Bidder can resell their software.

Gross Annual Income

The Bidder's gross annual income from all sources for its most recently completed fiscal year must be \$200 million or more. The income requirement applies to the entity submitting the bid, it cannot be met by including income from a parent company, if any.

Open Ratings/Dun & Bradstreet (D&B)

The PMT has chosen to utilize independent parties, Open Ratings and Dun and Bradstreet Information Services (D&B), to assist in the evaluation process in two areas, reference checking and financial stability. The required reports are the "Supplier Evaluation Report" and the "Past Performance Evaluation (Supplier Performance Review)." Bidders are urged to request the Open Ratings / Dun and Bradstreet reports as soon as possible. Typically, reports can be prepared within 30 days, however, there can be delays in report preparation, so Bidders should NOT wait until 30 days before the Solicitation is due to request the reports. In particular, delays can be lengthy if Open Ratings is unable to contact a sufficient number of a Bidder's references to prepare a report, and must contact the Bidder for additional references. It is the Bidder's responsibility to submit references which can be contacted readily. Bidders must provide up to 20 references. References will be emailed a survey invitation. If Open Ratings is unable to receive 4 completed surveys or 50% completes by the 14th day of your order, the references will then be called between the hours of 9:00 A.M. and 5:00 P.M. E.S.T. Monday through Friday until they have obtained the minimum.

If Dun and Bradstreet does not have a current Supplier Evaluation Report on file for the Bidder's company and must update the report, this can require up to an additional 10 business

days. If a Bidder receives the reports but believes they contain errors, it is the Bidder's responsibility to contact: D&B's Customer Resource Center at 888-299-3118 to report any changes/updates if the issue concerns the "Supplier Evaluation Report," and the Open Ratings Coordinator (727-329-1184; orders@openratings.com) at Open Ratings if the problem is with the "Past Performance Evaluation (Supplier Performance Review)" in time to obtain a corrected version in time to include with the RFR Response.

Bidders must ensure that the company name given on the Open Ratings/Dun and Bradstreet reports matches the name on the Bidder's Response, unless the company's name has changed during the time period between requesting the Dun and Bradstreet report and submitting the RFR Response. In that case, an explanation of the change, including the date of the change, must be provided.

Important Note:

Failure to include these two reports with the response may result in rejection of the Response. Bidders are advised to contact the Open Ratings Coordinator (727-329-1184; orders@openratings.com) at Open Ratings if they have not received their reports by two weeks in advance of the Proposal due date.

Open Ratings and D&B will send the reports to the Bidder's contact person named on the Request form in the recipient section. Bidders must request that a copy of each report be sent to the PMT, to marge.macevitt@state.ma.us. The online request form may prompt for additional contact information for the report recipient. If so: Marge MacEvitt, Operational Services Division, 10th Floor, 1 Ashburton Place, Boston MA 02108, Tel 617-720-3121, Fax 617-727-4527.

It is required all Bidders submit the request for the reports directly to Open Ratings via <http://www.ppereports.com/>. When placing an order for the Past Performance Evaluation (Supplier Performance Review) and the Supplier Evaluation Report, select the "State and County" report option at the appropriate prompt during the ordering process. The Bidder must pay online with Open Ratings for both reports.

Important Note:

In the past, some Bidders with accounts at D&B have ignored the above instructions and simply contacted their D&B representative and requested that a report be run. The report that is generated may or may not be the correct Supplier Evaluation Report, and that process most certainly will NOT generate the Past Performance Evaluation (Supplier Performance Review), which is prepared by Open Ratings. Please follow the instructions above.

Bidders who have obtained the two required reports (Supplier Evaluation Report and Past Performance Evaluation (Supplier Performance Review)) on or after July 1, 2009 may submit those reports instead of providing new ones. However, they must arrange with Open Ratings / Dun and Bradstreet for a copy of both reports to be emailed to marge.macevitt@state.ma.us in addition to including the reports in their Response.

Bidders whose "Supplier Risk Score" on the Supplier Evaluation Report is above 7 must provide an explanation sufficient to assure the PMT that the company's financial position is viable. Bidders whose "Overall Performance Rating" on the Past Performance Evaluation (Supplier Performance Review) is below 80 or show negative feedback under "Distribution of Feedback" must explain why the PMT should consider awarding a Contract to a company whose customer ratings do not indicate a high level of customer satisfaction.

Comparable Customers

It is desirable that the Bidder have at least one client with an annual purchase volume of \$50 million or more.

References

Bidders must provide contact information for five current customers who will serve as references for the bidder. If the Bidder has current state government customers, contact information must be supplied for those customers. If the Bidder does not have current state government customers, contact information may be supplied for private industry, non-profit organizations, or other customers.

Organization and Staffing

Account Team

The Bidder must describe the composition of the Account Team that will provide services under this Contract for each State. Provide an organization chart depicting the Account Team and showing how the Account Team fits into the overall organization. For each State, indicate the different roles and the number of FTEs dedicated to this Contract who will occupy each role. The chart must also indicate the location (State or country, if not in the United States) of each member of the Account Team for each State. The names of the Account Team members must be shown on the organization chart, and their resumes must be included in the proposal.

It is desirable that responses to this section demonstrate that the Bidder is organized and staffed to be able to provide high quality service under the Contract.

Incident Escalation

The Bidder must provide an incident escalation path for each State, showing the name, contact information, and role of individuals to whom problems should be escalated if they are not resolved by primary assigned contacts or by escalation to the next level.

Service Specifications

All timeframes below are Eastern Standard or Daylight Time as applicable.

Presales Assistance

Eligible Entities will sometimes require advice in selecting appropriate software. This is particularly true in the case of Volume License Agreements with complicated rules; Eligible Entities will need assistance in determining the most cost-effective buying strategies and in ensuring that they are in compliance with licensing requirements. Another requirement is assistance in finding a package to meet a specific need, for example, a flow-charting package.

It is mandatory that the Bidder propose to provide these types of assistance. High quality presales assistance is desirable and will be considered in the evaluation. Bidders must explain how they will assist Eligible Entities in finding software to meet specific needs.

Restricted Software Publishers

Some states have indicated that ITS42 may not be used for certain Software Publishers (see RFR Section [Procurement Scope and Description](#)). Also, States that implement contracts with multiple Software Resellers may choose to designate a single Software Reseller as the exclusive supplier of products and services from one or more Software Publishers. Bidders must agree that they will not sell software within a State if they have been notified by the State Contract Manager that they are not authorized to sell products from that Software Publisher.

Time to Return Phone Calls or Respond to Emails

Bidders must commit to returning phone calls or responding to emails within a maximum of four business hours after a phone call is placed or an email is received.

Quotes and Catalog

On-line Software Catalog

For each State, Bidders must propose to maintain an on-line catalog of available software, with pricing specific to each. The catalog must be accessible via any commonly used browser, with no need to download additional software. Both Volume License Agreement software and other software must be included in the catalog. It must be available 24x7,

except for scheduled maintenance. It must also include a mechanism for on-line ordering. The website must be ADA compliant.

It is required that the catalog allow searches by Volume License Agreement, Software Publisher, product name, OEM product number, and type of software (i.e., GIS, database).

The web site hosting the catalog must also include information specific to each State, such as contact information for customer account representatives and links (if requested) to State web sites.

If any State has restricted the software or Software Publishers whose products can be obtained from the Software Reseller, it is desirable that the catalog show only those products which contract users are allowed to obtain from the Software Reseller.

The Bidder must propose a means of making any information needed to log in to the catalog available to any Eligible Entity who wishes to do so, whether by assigning different codes to each Eligible Entity or establishing a single set of login codes and distributing these codes to Eligible Entities. This method must not require any administrative tasks on the part of the Commonwealth's Contract Manager.

Finalists in the RFR process will be asked to provide logins to a test or production website that will demonstrate the functionality provided in the website, including report generation.

Obtaining Quotes

Bidders must accept requests for quotes by toll-free telephone, fax, eMail, or online, and must provide quotes by telephone, fax, eMail or online as requested by the Eligible Entity. It is desirable that quotes generated online be guaranteed in the same manner as quotes provided through other means (see RFR Section [Guaranteed 30 Day Quote](#)).

Quote Turnaround Time

Software Currently in Catalog, Including Volume License Agreements

Bidders must commit to providing quotes within a maximum of four business hours after receiving a request for a quote, for software which is currently in the Bidder's catalog.

Software from a Software Publisher Who Has No Prior Relationship with the Bidder

The PMT understands that some Software Publishers may not move quickly to provide quotes and reach agreements, and that in rare cases, the Bidder will not be able to obtain software from a particular Software Publisher.

Bidders must agree that they will work to establish relationships with Software Publishers who are new to them to obtain quotes and be able to deliver software in a timely fashion. If after three business days the Bidder has been unable to obtain a quote and assurances that the Bidder will be able to provide the software, the Bidder must contact the Eligible Entity with a status report. The Bidder and the Eligible Entity will mutually agree as to whether the Bidder will continue to pursue a quote and agreement with the Software Publisher, and what, if any, the expected timeframe will be, or whether the Bidder will provide the Eligible Entity with a written statement that the Bidder cannot supply the software. If the Bidder has been unable to obtain a quote and agreement with the Software Publisher within 10 days of the request for quote, the Bidder must provide a written statement that the Bidder cannot supply the software to the Eligible Entity if requested to do so.

Delivery Method

The quote must clearly indicate the method of delivery, whether via media, download, or some other means.

Consistent Quote Format

The Bidder must agree, if selected for contract award, that prior to contract execution the Bidder will meet with the State Contract Manager and mutually agree upon a standard format to be used for all quotes. It will be a requirement that to the extent that license terms and maintenance terms are included in the quote, that these terms must exactly match the terms

in the attached license. If a license or maintenance agreement attached to the quote identifies different types of licenses or maintenance, the quote must indicate which is being quoted.

Guaranteed 30 Day Quote

The Bidder is required to honor all quotes for 30 calendar days, regardless of price increases. If it is known that a price increase will occur during the 30 calendar days following the quote, the Bidder may provide two quotes, based upon the date that the order is received.

Quotes Requested on Behalf of Eligible Entities

As previously noted, the Purchasing Agent may designate other entities as "Eligible Entities." To allow "one-stop shopping," the Purchasing Agent may designate certain companies as "Eligible Entities" to enable them to purchase software from this contract on behalf of Eligible Government Entities. All quotes requested on behalf of Eligible Government Entities shall have the same requirements as quotes requested directly by Eligible Government Entities, with the additional requirement that both the ordering entity and the Eligible Government Entity must be named on the quote.

If the Software Publisher has established Volume License Agreement requirements that would preclude a company from procuring software from the Software Reseller and providing it to an Eligible Entity on a pass-through basis, the Software Reseller must promptly notify the company that this is the case.

Shipping and Delivery

Shipping Charges

All items covered under this Contract are exempt from shipping charges, FOB destination, unless the Eligible Entity has ordered expedited shipment and has submitted an order including related charges, which may not exceed the cost of delivery by the carrier. Otherwise, shipping charges may not be included on any invoice.

Delivery Timeframe

Bidders must propose delivery within a maximum of ten business days after receipt of a valid order, unless:

- Item has been discontinued by software publisher or is not yet available
- Item is out of stock or delayed by distributor or software publisher
- Extreme weather conditions or disasters or other causes factually beyond the Bidder's control and without their fault or negligence impede the Bidder's business operations.

A shorter guaranteed delivery time is Desirable.

Delivery Locations

The Bidder must agree to deliver or drop ship software to any location requested by the Eligible Entity, including OEMs or hardware resellers holding Statewide Contracts, so that the software can be configured and installed on hardware systems for delivery to an Eligible Entity.

Incorrect Product Deliveries / Defective Products

If the software is defective, or if the incorrect product was delivered, the Bidder must agree to accept returns. The Bidder is responsible for return shipping and packaging costs and for restocking charges if applicable.

The Bidder must agree that any defective or incorrectly delivered media will be replaced by overnight delivery at the Bidder's expense if requested by the Eligible Entity.

Software Delivered Via Download

If the Eligible Entity encounters difficulty in downloading or installing the software, the Bidder must agree to provide or arrange for provision of assistance to the Eligible Entity within 8 business hours of being informed of the problem.

The Bidder must agree that, if requested by the Eligible Entity during the order process, download information, including keys if applicable, will be provided to a party other than the

individual placing the order (the “end user”). The individual placing the order will supply contact information for the end user.

Return of Unused Software Delivered on media

The Bidder must agree that unopened software can be returned with no restocking fee up to 30 days from the date of receipt, if allowed by the software publisher. If the software publisher has a shorter timeframe for returns or requires a restocking fee, this must be stated on the quote. Shipping and delivery costs for media will be paid by the Eligible Entity.

Delivered via download

The Bidder must agree that downloaded software can be returned with no additional fees up to 30 days from the date of download, if allowed by the software publisher, provided that the Eligible Entity provides any certifications required by the software publisher concerning the Eligible Entity’s use of the software. If the software publisher has a shorter timeframe for returns or requires additional fees, this must be stated on the quote.

Services Provided by the Software Publisher

The Bidder must arrange for implementation, customization (Massachusetts only), training, support, maintenance and other software related services to be provided by the Software Publisher, if the Eligible Entity requests the services and the Software Publisher is willing to provide them. Services will be provided on a cost-plus basis identified in the Cost Table. The cost-plus percentage will be fixed for the life of the contract.

“Three way” Agreements

The Bidder must agree to be a party to written agreements in excess of \$50,000 for software and/or software related services in addition to the Eligible Entity and the Software Publisher. The Bidder must agree to inclusion of language in the agreement as follows:

This Services Agreement, dated as of, [month, day, year], (“Effective Date”) is made and entered by and between [Software Reseller], (“[Software Reseller Abbreviation]”) a software reseller with principal offices at [street address, state, zip], [Software Publisher], (“[Software Publisher Abbreviation]”), with principal offices at [street address, state, zip], and the [Eligible Entity Name], (“Customer”) with principal offices at [street address, state, zip]. The [Commonwealth or State of [State or Commonwealth Name]] has contracted with [Software Reseller Abbreviation]”, under Contract ITS42 to provide software, maintenance and associated services to various entities within the [Commonwealth or State], and the [Commonwealth or State] does not have a direct contractual relationship with [Software Publisher Abbreviation]. [Software Reseller Abbreviation] is not a manufacturer of these items, but is a “reseller.” With respect to this agreement Customer wishes to purchase software and associated services manufactured and provided by [Software Publisher Abbreviation], and [Software Publisher Abbreviation] is responsible for and assumes liability for the below referenced responsibilities and for their performance under this Agreement. [Software Reseller Abbreviation] has subcontracted with [Software Publisher Abbreviation] for the provision of services under this Agreement. The entire agreement between [Software Reseller Abbreviation] and the [Commonwealth or State] in the following order of precedence consists of (1) the Commonwealth’s standard terms and conditions and standard form contract; (2) the Commonwealth’s RFR ITS42; (3) [Software Reseller Abbreviation]’s response thereto and (4) the following Agreement as agreed to by [Software Reseller Abbreviation], [Software Publisher Abbreviation] and Customer:

Invoicing

If services are being provided to the Eligible Entity by a third party company, and payment to the third party is contingent on written acceptance of the services by the Eligible Entity, the Bidder must agree to invoice the Eligible Entity within two business days of receiving notice from the Eligible Entity of such acceptance.

On-site Meetings

Contractors must plan to meet on-site on an annual basis to review contractual performance with each State Contract Manager. In addition, contractors must attend on-site meetings on an

ad hoc basis if requested by the State Contract Manager to address contract performance issues.

Notification of Upcoming Maintenance Expiration

The Bidder must agree to notify Eligible Entities three months prior to the expiration date of any software maintenance services, and monthly thereafter until an order is placed, the Eligible Entity confirms that they do not wish to renew the maintenance services, or the expiration date has passed. If the email notification to the Eligible Entity is returned as undeliverable, the Bidder must agree to notify other contacts at the Eligible Entity, if any, and if unable to communicate the upcoming maintenance expiration to any representative of the Eligible Entity, to notify the State Contract Manager.

Upgrades and/or "Patches"

In cases where the Software Reseller is the only entity to receive version upgrades or patches from the OEM, the Software Reseller must propose a means of distributing these to license holders. Acceptable methods include distribution of media, provision of access to a secure web site to download the upgrades or patches, or information provided to license holders which will enable them to access the appropriate area of the OEM web site.

Implementation

Discuss the process to be followed to implement the new contract, including tasks and timeline. It is expected that the contract will be awarded on or about April 1, 2010. Bidders should review the list of Software Publishers in Appendix 4 and describe how they will establish agreements with them or otherwise arrange for the Eligible Entities to continue to obtain software. Any tasks which the Commonwealth is expected to undertake should be detailed. It is Desirable that the Commonwealth's involvement be limited to designating a different reseller (if necessary) for Volume License Agreements.

Bidders must also describe how Volume License Agreements will be transitioned.

Emergency Response Plans/Preparedness

In a declared state of emergency where the safety and well being of Commonwealth citizens are at risk, contractors may be asked to supply the Commonwealth with the commodities and/or services under the Statewide Contract on a priority basis. The Bidder's Response should indicate whether there is a written Continuity of Operations Plan (COOP) that describes how the company will continue to do business in case of an emergency. In addition, the Bidder should supply a list of emergency contact information including name, position/title, phone, email and cell phone.

This information will not be considered in the evaluation of the Response.

Requirements at Statewide Contract Termination

At the request of the State Contract Manager, the Software Reseller will provide any information and cooperation needed to facilitate the transfer of all Volume License Agreements to other vendors.

Service Levels

Eligible Entities can file service level reports with the State Contract Manager if the commitments made in the Bidder's Response are not met. The State Contract Manager will follow up with the Contractor's Contract Manager and may require that a corrective action plan be submitted. Continued failure to meet service level commitments may result in contract suspension or termination.

Service level commitments include:

- Returning phone calls or responding to emails within a maximum of four business hours after a phone call is placed or an email is received (RFR Section 3.2.3).
- Providing quotes within a maximum of four business hours after receiving a request for a quote, for software which is currently in the Bidder's catalog (RFR Section 3.2.4.3.1).

- Meeting the guaranteed delivery time, unless the lateness was due to matters beyond the Bidder's reasonable control as described in [Delivery timeframe](#). In that case the Bidder must advise the Eligible Entity of expected delivery delays, their reasons, and the expected delivery date (RFR Section 3.2.5.2).
- Replacing any defective or incorrectly delivered media by overnight delivery at the Bidder's expense if requested by the Eligible Entity (RFR Section 3.2.5.4).
- Providing assistance to Eligible Entities who are unable to download or install software within four hours of problem notification (RFR Section 3.2.5.5).
- Invoicing the Eligible Entity within two business days of receiving notice from the Eligible Entity of acceptance of services provided by a third party company (RFR Section 3.2.6.2).
- Notifying Eligible Entities three months prior to the expiration date of any software maintenance services, and monthly thereafter until an order is placed, the Eligible Entity confirms that they do not wish to renew the maintenance services, or the expiration date has passed (RFR Section 3.2.8).

Compensation Structure/Pricing

Favorable pricing is highly Desirable.

Fixed Cost-Plus or Cost-Minus Percentages

The cost-plus percentage is applied to what the Bidder pays for the software at the time of purchase, that is, the invoice amount. For example, a piece of software has a list price for government agencies of \$1,000. The Bidder is able to negotiate a 5% discount with the software publisher and pays \$950. This price becomes the basis for the markup and using the 2% markup as an example, the cost to the Commonwealth is \$950 + 2% or \$969. The cost is calculated by multiplying $(1 + \% \text{ markup}) * \text{cost to Bidder}$ – in the above example, 102% of \$950. The cost-plus percentages bid will NOT increase over the life of the Contract.

Similarly, the cost-minus percentage is applied to what the Bidder pays for the software at the time of purchase, that is, the invoice amount. For example, a piece of software has a list price for government agencies of \$1,000. If the Bidder has a cost-minus percentage of 5%, the cost is calculated by multiplying $(1 - \text{cost minus } \%) * \text{cost to Bidder}$ – in this example, 95% of \$1,000 or \$950. The cost-minus percentages bid will NOT decrease over the life of the Contract.

The markup or markdown bid for software will also apply to maintenance provided for the software.

The Fixed Cost-Plus or Cost-Minus Percentages shall not include the Massachusetts only Procurement fee.

Named Software Publishers

RFR Section [Authorization Letters from Manufacturers and Dealers](#) includes a list of Software Publishers. Bidders must quote cost-plus percentages for each Software Publisher listed from whom they are able to acquire software.

All Other Software Publishers

A single cost-plus percentage must be bid for software from all other Software Publishers, which will also apply to software maintenance.

If the Bidder is unable to obtain a discount from the Software Publisher, the Bidder may apply a maximum 2% markup over list price for government agencies. Using the previous markup example, the cost to the Commonwealth would be a maximum \$1,020 if the Bidder was unable to obtain a discount from the Software Publisher. The purpose of this requirement is to ensure that use of this contract will provide, if not a better value than dealing directly with the Software Publisher, at least one that is not substantially less favorable. It is desirable that Bidders propose to provide software with a 0% markup if they are unable to obtain a discount off the price (if any) quoted to the Eligible Entity by the Software Publisher or a markup not to exceed the administrative fee percentage for States with an administrative fee. Whenever a product is quoted at a price which is higher than the price the Commonwealth would pay if the product were obtained directly from the Software Publisher, the Software Reseller must

indicate this in the quote so that the Eligible Entity can seek to obtain the product directly from the Software Publisher.

Services

Bidders must provide a cost-plus percentage for services provided by third parties, such as software configuration, installation, or other services. It is also required that the Bidder establish a cap on the total amount which will be charged on any single invoice for reselling implementation, customization, training and support services other than standard maintenance.

Use of Credit Cards / Cash Discount

If there is a fee, either a percentage or flat fee per transaction, associated with the use of credit cards, Bidders must include this in their Price Sheet. Similarly if there is a discount associated with NOT using a credit card, this must be stated. For the state of Maine, which may use credit cards for purchases of \$5,000 or under, the same price must be charged regardless of payment method.

Statewide Contract Administration Fee (Massachusetts Only)

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02 and the Transaction Fee section in this solicitation and/or incorporated by reference into Statewide Contracts with the Operational Services Division (OSD). Contractors shall not reflect this fee as a separate line item on customer invoices. For additional information on the Statewide Contract Administration Fee, please see the "[Statewide Contract Administration Fee and Report](#)" section in the "[Requirements for Doing Business After a Contract Has Been Awarded](#)" section below.

Travel Expenses and All Other Expenses

Commuting Expenses

Commuting expenses will not be reimbursed.

Standard Business Expenses

Standard Business Expenses may be allowed with prior authorization from an Eligible Entity. For Massachusetts, the amount will not be more than that allowed for Commonwealth of Massachusetts employees. (www.mass.gov/hrd)

Reimbursable Expenses

All or some of the following expenses may be allowed with prior authorization from the Eligible Entity. For Massachusetts, the amount will not be more than that allowed for Commonwealth of Massachusetts employees. (www.mass.gov/hrd - search for the term "Red Book"):

- Travel
- Meals
- Lodging
- Incidental
- Other expenses

Affirmative Market Program (AMP) Plan (Massachusetts Only)

Massachusetts Executive Order 390 established a policy to promote the award of State Contracts in a manner that develops and strengthens Minority and/or Women Business Enterprises (M/WBEs). As a result, M/WBEs are strongly encouraged to submit bid Responses to this RFR, either as prime vendors, joint venture partners or subcontractors. All Bidders, regardless of their certification status, are required to submit a completed AMP Plan Form as part of their Response for evaluation. It is required that Affirmative Market Program participation accounts for no less than 10% of the total points in the evaluation.

The PMT requires Bidders to make a significant commitment to partner with certified Minority- and Women-Owned Businesses in order to be awarded a Contract. A SOMWBA-certified Bidder may not list itself as being an Affirmative Market Program Partner to its own company. In addition, a narrative statement can be included to supplement the AMP Plan Form providing further details of the AMP commitments. The submission of this narrative statement does not replace the

requirement of the AMP Plan Form. Bidders must submit one form for each M/WBE AMP Relationship. Please note that no Bidder will be awarded a Contract unless and until they agree to commit to at least one (1) of following three (3) AMP Components selected by the PMT:

Important Note:

The AMP form is a standard form and includes Section 4 (Past Performance) and Section 5 (Other Creative Initiatives). Bidders must not complete these sections. Only the three types of initiatives listed above will count toward meeting the AMP requirement.

Subcontracting:

If Bidder commits to Subcontracting in their AMP plan, then they must commit to subcontract a specific dollar amount, or a minimum percentage of dollars earned through an awarded Contract, with a SOMWBA-certified company or a company that has applied for certification. Although this is only one of several options to meet the requirements for participation in the Affirmative Market Program, Bidder's submission of subcontracting commitments may be weighted most heavily. The PMT will set timelines for progress reviews (either quarterly or semi-annually) for the purpose of compliance and tracking of submitted commitments. Please note that all subcontracting partnerships require inclusion of that contract between the Bidder and the M/WBE subcontractor in the Bidder's bid package.

Growth and Development:

If a Bidder commits to Growth and Development in their AMP plan, then they must submit a plan for education, training, mentoring, resource sharing, joint activities, and assistance that would increase industry capacity and the pool of qualified SOMWBA certified companies.

Important Note:

Bidders who commit to Growth and Development must include a specific dollar commitment as well as the plan described above. The Bidder must explain how the dollar commitment relates to the plan, for example, if the plan calls for the Bidder to provide mentoring, it must specify the number of hours and the hourly rates and expenses of staff who will provide the mentoring.

Ancillary Uses of Certified M/WBE Firm(s):

If a Bidder commits to Ancillary Uses of certified M/WBE Firm(s) (or companies that have applied for certification) in their AMP plan, then they must include dollar or percentage expenditure commitments for use of these firm(s) with or without the use of written commitments between the Bidder and the M/WBE Firm(s). A description of the ancillary uses of certified M/WBEs, if any, must be included on the AMP Plan Form.

Once an AMP Plan is submitted, negotiated and approved, the PMT will then monitor the Contractor's performance.

Resources available to assist Prime Bidders in finding potential M/WBE partners can be found at: [http://www.mass.gov/Aosd/docs/mwbe/AMP Resources and Guidance.doc](http://www.mass.gov/Aosd/docs/mwbe/AMP_Resources_and_Guidance.doc).

Participation in the Annual OSD STAR Vendor Fair (Massachusetts Only)

OSD hosts an annual marketing and training events to educate public purchasers on the commodities and services available on Statewide Contracts and to provide marketing and networking opportunities to the business community. The Statewide Training And Resource (STAR) Exposition takes place in the Spring (April or May) of each year.

STAR is well attended by public purchasers representing all Commonwealth agencies, cities and towns across the Commonwealth, independent authorities, higher education and eligible not for profit human and social service organizations. STAR provides exceptional opportunities for Statewide Contractors to market directly to thousands of attendees. OSD believes that this event has significant marketing value and are extremely cost effective.

The one-day STAR event is held in Boston and only Statewide Contractors may be exhibitors. The cost to exhibit is approximately \$1,000. OSD believes that the STAR event is important because it provides public purchasers with an opportunity to meet over 300 Statewide Contractors

at one event and receive important information on new products, services and technologies. Also, it provides Statewide Contractors with the opportunity to make and renew business relationships with existing customers and to market their business to approximately 2,000 attendees, many of whom represent potential new customers.

Please note that participation in STAR is not required and no points will be awarded to those Bidders who commit to participate in this event. However, Bidders who indicate their willingness to participate in the STAR event in their RFR Response will be required to exhibit at STAR each year for the duration of their Contract, if awarded a Contract.

Requirements for Doing Business After a Contract Has Been Awarded

The requirements below are specific to the Statewide Contract, if any, awarded as a result of this Solicitation. Awarded Bidders (“Contractors” or “Software Resellers”) must also comply with the requirements stated in [Terms and Requirements Pertaining to Awarded Statewide Contracts](#).

Statewide Contract Administration Fee and Report (Massachusetts Only)

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02 and the Transaction Fee section in this solicitation and/or incorporated by reference into Statewide Contracts with the Operational Services Division (OSD). The price stated in any Bidder’s bid price and any Contractor’s Statewide Contract shall be inclusive of this fee and Contractors shall not reflect this fee as a separate line item on customer invoices.

This fee will be based on 1% of the total dollar amounts, adjusted for credits or refunds, paid by Eligible Entities to the Statewide Contractor based on your statewide contract. Eligible entities include, but are not limited to: a) Cities, towns, districts, counties and other political subdivisions; b) Executive, Legislative and Judicial Branches, including all departments and elected offices therein; c) Independent public authorities, commissions, and quasi-public agencies; d) Local public libraries, public school districts, and charter schools; e) Public hospitals owned by the Commonwealth; f) Public institutions of higher education; g) Public purchasing cooperatives; h) Non-profit, UFR-certified organizations that are doing business with the Commonwealth; i) Other states and territories with no prior approval by the State Purchasing Agent required; and j) Other entities when designated in writing by the State Purchasing Agent. For a list of other entities that are eligible to use your specific Statewide Contract, please check the Issuers Tab for each Solicitation or Contract on Comm-PASS at www.comm-pass.com.

Note that if the 1% Administration Fee is deductible as a business expense for federal income tax purposes, it is also deductible as an expense for Massachusetts tax purposes.

Quarterly Fee Payment:

For each Payment Period, Contractor shall pay to OSD a Fee equal to one percent (1%) of the total payments (adjusted for credits or refunds) received from all Eligible Entities that have purchased from the Contractor pursuant to this Agreement. All payments will be based on full calendar quarters (Payment Periods) and must be received by OSD on or before 45 days after the last day of the Payment Period (as specified below) or a contractor will be considered in breach of contract:

Quarter	Payment Period	Quarterly Payment Due Date
First Quarter	January 1st – March 31st	May 15th
Second Quarter	April 1st – June 30th	August 15th
Third Quarter	July 1st – September 30th	November 15th
Fourth Quarter	October 1 – December 31st	February 15th

Quarterly payment will include any periods less than a full calendar quarter if a contract does not start at the first day of a quarter or end on the last day of the quarter.

Payments are to be made by check made payable to the "Operational Services Division, Comm. of Mass." and mailed to: Operational Services Division, Attn: Contract Admin. Fee, One Ashburton Place, Room 1017, Boston, MA, 02108. Please include the following information in the memo field of each check: 1) "Contract Administration Fee", 2) the Statewide Contract Number and 3) your Commonwealth of Massachusetts Vendor Code (VC) number. Please do not list social security numbers on the check. If the total Administration Fees due for the Payment and Reporting Period (see section III below) are less than \$50, a Statewide Contractor may carryover that balance to the next Payment and Reporting Period until the cumulative amount owed is \$50 or greater.

Quarterly Reporting:

Contractor shall submit one Statewide Contractor Administration Fee Report for each Statewide Contract for each Payment Period, even if no payment is due for the Payment Period. The Statewide Contractor Administration Fee Report for the applicable payment period must be completely filled out and signed by the Statewide Contractor under pains and penalties of perjury.

Audit:

During the term of this Agreement and for a period of six years thereafter, the Operational Services Division, its auditors, the Office of the Inspector General or other authorized representatives shall be afforded access at reasonable times to Contractor's accounting records, including sales information on any system, reports or files, in order to audit all records relating to goods sold or services performed pursuant to this Agreement. If such an audit indicates that Contractor has materially underpaid OSD, then the Contractor shall remit the underpayment and be responsible for payment of any costs associated with the audit.

Other Terms:

Contractors are responsible for compliance with all other contract reporting requirements including, but not limited to, contract detailed spend, Affirmative Market Program (AMP) and other contract reports, as required by this contract.

All amounts payable by the Contractor to OSD under this Agreement that are late and not received by the due date specified shall bear simple interest from the date due until paid. The Late Payment Interest Rate is set by the Office of the State Comptroller on an annual basis and can be found by clicking on the fiscal year in question on the [Comptroller's Fiscal Year Updates](#) webpage.

In the event of the Contractor's breach of this policy including, but not limited to, non-reporting, non-payment, late reporting/payment, under-reporting/payment, the Commonwealth reserves the right to pursue any and all recourse and penalties available including, but not limited to, imposing of penalties of up to 10% of the amount in question or \$500, whichever is greater, contract suspension, payment intercept and contract termination. The Commonwealth is allowed to suspend, terminate or debar pursuant to [Massachusetts General Laws Chapter 29, Section 29F](#), as amended, and pursuant to Section 4 of the [Commonwealth Terms and Conditions](#). In addition, in the event the Contractor fails to make any payment when due, the Contractor shall be liable to the Commonwealth for all expenses, court costs, and attorneys' fees (including inside counsel) incurred in enforcing the terms and conditions of this Agreement.

Security and Confidentiality

The Contractor shall comply fully with all security procedures of the Commonwealth and Commonwealth Agencies in performance of the Statewide Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the Commonwealth Agency.

Contract Management

State Contract Manager

The contact on the Issuer tab for this Contract on Comm-PASS is the State Contract Manager for Massachusetts. All Statewide Contract questions must be directed to the State Contract Manager for the State in which the question arose. The State Contract Manager for each State shall have the final authority in all operational matters pursuant to the Contract with that State.

The State Contract Manager can add, delete, and/or make any changes to items on this Contract at any time during the contract term. Changes may include but are not limited to the following:

- Adding, deleting, or modifying items available for purchase;
- Providing written warnings and/or enforcing financial penalties for Contract violation(s);
- Modifying the terms and conditions of the Contract due to a change in circumstances.

Contractor Account Team

Single Point of Contact (Contractor's Contract Manager) (Massachusetts only)

The individual named on the Standard Contract Form as "Contract Manager" will be responsible for the proper operation and administration of the Contract. Replacement of Contractor Staff

If the Contractor's Contract Manager leaves the employment of the Contractor, or ceases to perform that role relative to the Contract, the Contractor must offer a replacement to the State Contract Manager within ten (10) business days.

It is the Contractor's responsibility to ensure continuity of Contract Management role. If the Contractor's Contract Manager leaves, eMail and phone calls should be forwarded to someone knowledgeable about the Contract until a replacement is appointed. The Contractor is also responsible for maintaining a copy of the Contract, for submitting reports as required, and otherwise remaining in compliance with the Contract.

The State Contract Manager may require the Contractor to replace the Contractor's Contract Manager if in their opinion it appears that the Contractor's Contract Manager is not facilitating the effective functioning of the Contract in a satisfactory manner.

Timely Response to Requests

The Contractor's Contract Manager shall respond within five (5) business days in writing unless instructed otherwise, to all information requests from the State Contract Manager.

Meetings

The Contractor's Contract Manager will attend meetings at the State Contract Manager's office or other location designated by the State Contract Manager. The Contractor's Contract Manager will be responsible for arranging the attendance of representatives of subcontractors if requested to do so.

Change Notification

Changes to the Contractor's contact information, company name, legal address, payment address, tax identification number, authorized signatories, SOMWBA-certification status, or EFT information must be promptly reported via email to the State Contract Manager. In some cases additional paperwork will be required to effect the change.

If the Contractor is acquired by another company, the PMT will determine whether or not to offer the acquiring company a place on the Statewide Contract.

Report Requirements

The Bidder must agree that if awarded a Contract resulting from this RFR, the Contractor will submit reports to the State Contract Manager.

Standard Reports Created by the Contractor

Back Order Report

The Bidder must email a back order report in Excel or comma delimited format on a weekly basis to the State Contract Manager. The report must list all Contract orders which have

not been fulfilled in accordance with the delivery time requirement, including the following information: Customer Name, Customer Number, Customer PO #, Order #, Reseller Item #, Manufacturer Item #, Product Description, Manufacturer, Quantity Ordered, Unit Price, Date Ordered, Estimated Shipping Date, and Reason for Delay.

Time to Quote Report

The Bidder must email a “time to quote” report in Excel or comma delimited format on a weekly basis to the State Contract Manager. This report must list all requests for quotes including the date and time of request, the customer name and contact information, a description of the item requested, the product source (catalog item, non-catalog item from a software publisher with previous experience working with the Contractor, non-catalog item from a software publisher new to the Contractor), and the date and time that the quote was provided. Quote requests received but not yet quoted must continue to appear on the report until they have been quoted.

Affirmative Market Program Report (Massachusetts Only)

For each subcontract and ancillary service AMP partner, Bidders must provide the name of the SOMWBA-certified company and the amount expended on subcontracting or ancillary services with that company during the reporting period. Any Growth and Development initiatives must be briefly described, and the dollar value of the initiative must be reported, along with a description of how the dollar value was derived.

An interim report on AMP activities occurring 7/1 through 12/31 is due 2/15 of the following calendar year. A full annual report on activities occurring 7/1 through 6/30 is due 8/15 of the same calendar year. Reports must be emailed to the State Contract Manager.

Statewide Contract Administration Fee Quarterly Report (Massachusetts Only)

See [Quarterly Reporting](#).

Semi-Annual Executive Department Report (Massachusetts Only)

This report will be produced twice per year, on February 1 for the previous July – December period, and on August 1, for the previous July – June period. It will include only those Eligible Entity “types” (see field names in the table in the Section immediately following this section) specified by the State Contract Manager immediately prior to the date the report is due. It will be sorted by “Agency Name” within “Secretariat,” with subtotals for each Agency and Secretariat, and page breaks between Secretariats. There will be one line per product within order, showing order date, unit cost, extended cost, and product type (license, maintenance, license and maintenance). Services other than maintenance/support will not be included.

User Generated Reports

Reports Generated by State Contract Manager

The State Contract Managers must have the ability to generate reports using a report template or other easy to use query tool such as Access. Information must be maintained and accessible for the life of the Contract. Reports must be downloadable in comma delimited format or in Excel. Available fields must at a minimum include: Customer Name, Customer Number, Customer PO #, Order #, Reseller Item #, Manufacturer Item #, Product Description, Manufacturer, Quantity Ordered, Unit Price, Extended Price, Date Ordered, Date of Invoice, Ship Date, Quantity Shipped, Product Type, Ship To: Name, Address Line 1, Address Line 2, City, State, Zip, Ship To: Name, Address Line 1, Address Line 2, City, State, Zip, Maintenance Expiration Date (if applicable).

All orders must be coded as follows (or as otherwise agreed during contract negotiation):

License yes/no

Maintenance/Support yes/no

Media yes/no

Other services yes/no (this would include training, customization, installation, and consulting)

If requested by the State Contract Manager, each record must be coded with an identifying customer code, which will be associated with additional data to be supplied by the State Contract Manager. For Massachusetts, codes will be supplied for all eligible entities. In some cases, the customer may provide the name of their organizational subunit rather than the formal agency name. The person taking the order must try to capture the formal agency or town name, by prompting the customer to identify the agency or town of which they are a subunit. If the customer does not identify an eligible entity on the list of codes, the Contractor must contact the State Contract Manager so that the list of codes can be expanded to include the eligible entity. For example, the original list will be structured as follows:

<u>Agency Name</u>	<u>Code</u>	<u>Secretariat</u>	<u>Type</u>
<u>Convention Center Authority</u>	<u>CCA</u>	<u>NA</u>	<u>Auth</u>
<u>Department of Mental Health</u>	<u>DMH</u>	<u>Executive Office of Health and Human Services</u>	<u>Exec</u>
<u>Department of Public Health</u>	<u>DPH</u>	<u>Executive Office of Health and Human Services</u>	<u>Exec</u>
<u>Feeding Hills Library</u>	<u>Agawam</u>	<u>NA</u>	<u>Muni</u>
<u>Fernald School</u>	<u>DMH</u>	<u>Executive Office of Health and Human Services</u>	<u>Exec</u>
<u>Lemuel Shattuck Hospital</u>	<u>DPH</u>	<u>Executive Office of Health and Human Services</u>	<u>Exec</u>
<u>Mass Turnpike Authority</u>	<u>Turnpike</u>	<u>Transportation and Public Works</u>	<u>Quasi</u>
<u>A Kangaroo's Pouch</u>	<u>NA</u>	<u>NA</u>	<u>NonProf</u>

If a customer identifies themselves as the “Healthy Beginnings” program and cannot identify an agency name on the list of which “Healthy Beginnings” is a part, the Contractor will contact the State Contract Manager who will either expand the list of agency codes or will identify the “Healthy Beginnings” program as code DPH. In either case the agency name list will be augmented with the “Healthy Beginnings” program so that future orders from the entity which identifies itself only as “Healthy Beginnings” can be accurately coded.

The customer code must be associated with the eligible entity obtaining the software. In some cases an order will be placed by a third party for an eligible entity, in which case the Contractor must ascertain which eligible entity will receive the product. In other cases an eligible entity will place an order but ask for it to be shipped to a third party for installation. That is, neither the “Bill To” or “Ship To” information will identify the eligible entity obtaining the software 100% of the time.

Ad hoc Reports for Eligible Entities

Eligible Entities must either have the ability to generate reports as specified in [User Generated Reports](#) or must be able to request ad hoc reports from the Software Reseller based on any combination and sort order of these data elements. These reports must be made available free of charge, within no more than 48 hours of the request. Eligible Entities must be limited to accessing their own information, not that of other Eligible Entities.

Periodic Cost-Plus Cost-Minus Verification

The Software Reseller will be required to present, at least on an annual basis, verification reports that certify compliance with the bid pricing. The Software Reseller is required to obtain the services of a certified independent third party (e.g., CPA firm) to complete verification reports.

The Software Reseller may not propose companies with which they have done business in the past two years, with the exception of a company which has done previous audits under this Contract.

The Software Reseller is required to recommend three (3) independent third parties from which the Software PMT will select one (1) independent third party.

A minimum of 100 products or orders will be selected by the State Contract Manager.

The Software Reseller is required to compensate the independent third party for their work.

The Software Reseller is required to suggest a report format, subject to the approval of the State Contract Manager. The report will include, at a minimum, the product description, the manufacturer name, the manufacturer item number, the discount required by the contract, the invoice price from the manufacturer, the price charged to the Eligible Entity, and the actual percentage markup. If more than 5% of the items have a higher markup than required by the contract, a more comprehensive audit, the scope of which will be determined by the State Contract Manager, will be conducted at the Software Reseller's expense. The Software Reseller must reimburse any Eligible Entities who were overcharged, either via credits or by providing a check, as requested by the Eligible Entity.

Notification of Bankruptcy Proceedings or Acquisition by Third Party

The Contractor Contract Manager shall promptly notify the State Contract Manager if:

Bankruptcy proceedings are instigated and/or the company is acquired by a third party company.

Evaluation criteria

Bidder scores will be used to rank Bidders and will determine which Bidders will receive a Contract award.

Mandatory Requirements

All specifications are mandatory unless otherwise stated. Mandatory specifications must be met in order for a Bid to be evaluated and failure to meet all mandatory requirements could result in a Bid disqualification. In addition, certain mandatory specifications have desirable components that may be evaluated by the PMT. Points will not be awarded for meeting the minimum mandatory requirements. The PMT may determine if non-compliance with a mandatory requirement is insignificant or can be corrected.

Evaluation Components

The following components have points assigned in the evaluation criteria:

Weight	Factor
66%	Cost
14%	Desirable characteristics
10%	Experience and qualifications, including references and Dun and Bradstreet/Open Ratings Reports
10%	Affirmative Market Program

HOW TO SUBMIT A BID RESPONSE

All Bidders may begin creating and compiling response materials as soon as the Solicitation containing files on the Forms & Terms tab and the Specifications tab is in an OPEN Document Status. When submitting response materials prior to the Solicitation Close Date, the ability to upload documents is only available to active SmartBid account holders after the Solicitation Amendment Deadline has passed. Once the Solicitation Close Date and Time has passed, interested Bidders will be unable to submit a Response online.

Bid Response Method

Online Bid Submission via SmartBid is required to eliminate direct and indirect costs associated with the production, delivery/receipt, storage and management of traditional paper bids incurred by Bidders, the Operational Services Division, and the Commonwealth of Massachusetts. Bids submitted via the SmartBid tools also promote environmental conservation and preservation by eliminating printed materials as well as fossil-fuel consumption associated with delivery. All Bidders must submit Responses online using tools available to Comm-PASS SmartBid Subscribers only.

Comm-PASS SmartBid requires an annual subscription. To subscribe, go to www.comm-pass.com. Complete the SmartBid subscription process by selecting the JOIN tab from the main navigation bar to review subscription benefits, submit payment by credit card, and create a custom account.

Bidders who wish to claim financial hardship in relation to the \$275 annual subscription fee must email the Procurement Team Leader identified on the Solicitation's Issuer tab at least four business days prior to the Solicitation Close Date. This email must include the Bidder's gross annual income during the Bidder's most recently completed fiscal year and the reasons why the \$275 subscription fee would represent a hardship. Financial hardship claims will not be considered for Bidders whose gross annual income is \$100,000 or more. If the email is not acknowledged within one business day, it is the Bidder's responsibility to contact the Comm-PASS Helpline (1-888-627-8283). The PMT may request additional information to make a determination regarding financial hardship. Bidders who have not claimed financial hardship at least four business days prior to the Solicitation Close Date, or whose claim has been denied, must pay to subscribe in order to submit a Response. It is the Bidder's responsibility to manage and maintain their subscription account. All Bidders who are awarded a contract resulting from this RFR, if any, will be required to maintain a paid, active subscription account during the duration of the Contract.

SmartBid Training

Training sessions targeting the online submission tool, if offered, are noted in the [Procurement Calendar](#). Bidders must also check the Bidders' Forum, where any updates to the training schedule will be posted.

SmartBid Support

Technical assistance is available during the procurement process. Every effort is made to respond to inquiries within one business day.

Website: go to www.mass.gov/osd and select the Comm-PASS Resource Center link offered within the Conduct a Procurement menu

Email: Send inquiries to the Comm-PASS Helpdesk at comm-pass@state.ma.us

Telephone: Call the Comm-PASS Helpline at 1-888-MA-STATE (1-888-627-8283). The Helpline is staffed from 7:30 AM to 5:00 PM Monday through Friday Eastern Standard or Daylight time, as applicable, except on federal, state and Suffolk county holidays.

Bidders are advised that Comm-PASS will be unavailable during regularly scheduled maintenance hours as displayed under the "Comm-PASS System Availability" link offered at the bottom of any Comm-PASS page.

Bid Response Deadline

All Bids must be received by the Operational Services Division before the specified date, month, year and time displayed on the Solicitation's Summary page within the Close Date field. Times are Eastern Standard/Daylight Savings (US), as applicable. All Bidders are advised to allow adequate time for submission by considering potential online submission impediments like Internet traffic, Internet connection speed, file size, and file volume. OSD is not responsible for delays encountered by Bidders or their agents, or for a Bidder's local hardware failures, such as computers or related networks, associated with bid compilation or submission. Bids submitted via SmartBid are time stamped by the Comm-PASS system clock which is considered the official time of record.

Bid Package

Bidders submitting via SmartBid must name their Response by entering BidderName_RFR Number in the Response Nick Name field in Step 3 of the submission wizard.

Bid Response Contents

Bidders must comply with the requirements below.

RFR Submission Checklist and Response Form

Procurement Management Teams seek to reduce the number of Bidder disqualifications based on incomplete submissions. Therefore, Bidders must complete and submit the RFR Submission Checklist and all documents referenced in the Checklist. By submitting the RFR Submission Checklist with a response, Bidders agree to all specifications on Comm-PASS for this Solicitation, including the RFR and all the documents within all the tabs, including the Forms & Terms tab and the Specifications tab, and the Solicitation's related Forum, if any.

The Checklist is found in the "Bidder Response Form." All Bidders must complete this form.

Additional Attachments

Response to RFR Section 3.1.5, [Additional Software Publishers](#)

The list must be numbered, and should be a multi-columned MS Word or Excel document.

Response to RFR Section 3.1.10, [Organization and Staffing](#)

Document addressing RFR Sections 3.1.10.1, [Account Team](#), and 3.1.10.2, [Incident Escalation](#). Organization charts, resumes, narratives, and any additional information must be scanned into a single pdf file.

Bid Response Materials

Electronic Signatures

Bids submitted via SmartBid must be signed electronically by the Bidder or the Bidder's Agent by selecting the Agree to All link in Step 2 of the Online Submission wizard. By selecting "Next Step" on the "Forms & Terms" tab after acknowledging all of the forms on that tab, the submitter attests that s/he is an agent of the Bidder with authority to sign on the Bidder's behalf, and that s/he has read and assented to each document's terms.

Ink Signatures

Original ink signatures are required only after contracts have been awarded. The Commonwealth of Massachusetts requires Contractors to submit original ink-signature versions of the following forms:

- Standard Contract Form
- Commonwealth Terms and Conditions
- Contractor Authorized Signatory Listing
- Request for Taxpayer Identification and Verification (Mass. Substitute W9 Form).

Successful Bidders who signed these forms electronically via SmartBid online submission tools (Request for Taxpayer Identification and Verification (Mass. Substitute W9 Form) or who completed, signed and included scanned copies in their Response (the other three forms) must still submit the above forms with ink signatures within ten (10) business days of award notification or their Contract may not be executed by the Commonwealth. Bidders who have

previous contract(s) with the Commonwealth and have up-to-date, ink-signature versions of the Commonwealth Terms and Conditions and Request for Taxpayer Identification and Verification (Mass. Substitute W9 Form) on file with the Office of the State Comptroller may submit copies of the signed forms. However, a new Standard Contract Form and Contractor Authorized Signatory Listing with original ink signatures must be submitted for each new contract with the Commonwealth.

In addition to the Massachusetts forms listed above, all Maine, New York, Rhode Island and Vermont forms appearing on the Specifications tab of this Solicitation must be completed in accordance with any instructions provided pertaining to that State's forms in RFR Section 6 or in other state-specific documents, scanned, and included in the Response. Hardcopy originals of the forms must be provided upon notification of selection for Contract award. Submittal instructions will be provided at that time.

Limits and Restrictions

Document Pages

Space limitations (pages or number of characters) are specified in the Response Form. Some entries on the Response Form have built-in limitations on the number of characters which may be entered. Bidders must not override these limitations.

File Naming Conventions

Files submitted via SmartBid must use the file names specified in the Checklist. The same name should be used for both the File Name and the Description. The upload tool will reject any file name that includes spaces or symbols, like the brackets [] some systems apply when files are downloaded from the Internet.

File Size Limits

The SmartBid file upload system is set to limit the size of any single file to 10MB or less. If a single file attachment approaches or exceeds 10MB, the Bidder must save the contents as multiple files and label each accordingly. Bidders should note that transmission over the Internet can change the apparent file size of the document. If a large file smaller than 10MB is rejected, Bidders must break up the file and append _Part1, _Part2 to the end of the Description and File Name.

Duplicate File Names Not Accepted

Once a file has been submitted, Comm-PASS will not accept another file with the same name. This is the case even with files that are modified or have been withdrawn. If it is necessary to resubmit a file, add an underscore and numeric suffix to the company name, for example, CompanyName_2_FootCat.

File Format Restrictions

All scanned documents must be in .pdf or .gif format, and must be scanned in such a way that they can be read on a computer monitor and printed on 8 1/2" x 11" paper, unless otherwise specified. Forms provided for the Bidder to complete, with the exception of the standard [Forms located on the Solicitation's Forms & Terms tab](#), must be completed and submitted in their original formats, NOT scanned and submitted as PDF or other file types.

Withdrawing a Response

Prior to Close Date

Bids may be withdrawn using the Withdraw icon offered on the subscriber's Response Desktop.

After Close Date

No Bid can be withdrawn after the Close Date. If the Bidder wants to remove a Response from consideration, contact the Procurement Team Leader for guidance.

Appendix 1 – Required Terms for all Statewide RFRs

The terms of 801 CMR 21.00: Procurement of Commodities and Services are incorporated by reference into this RFR. Words used in this RFR shall have the meanings defined in 801 CMR 21.00. Additional definitions may also be identified in this RFR. Unless otherwise specified in this RFR, all communications, Responses, and documentation must be in English and all cost proposals or figures in U.S. currency. All Responses must be submitted in accordance with the specific terms of this RFR.

General Procurement Information

Alterations

Bidders may not alter (manually or electronically) the Solicitation language or any Solicitation component files, except as directed in the RFR. Modifications to the body of the Solicitation, specifications, terms and conditions, or which change the intent of this Solicitation are prohibited and may disqualify a Response.

Bidder's Contact Information

It is the Bidder's responsibility to monitor the email address provided in the Solicitation for the Bidder's contact person. The Commonwealth may need to contact the Bidder's contact person with clarification requests or for other reasons. The Commonwealth assumes no responsibility if a Bidder's designated email address is not current, or if technical problems, including those with the Bidder's computer, network or internet service provider (ISP), cause e-mail communications between the Bidder and the Commonwealth to be lost or rejected by any means including email or spam filtering.

Comm-PASS SmartBid Subscription

As specified in the RFR Section entitled [Bid Response Method](#), Bidders must have or activate a SmartBid account in order to submit a Response. A SmartBid subscription also provides value-added features, including automated email notification associated with postings and modifications to Comm-PASS records. When properly configured and managed, subscribers who login to SmartBid access:

- A secure desktop with Items I'm Tracking tools for efficient record management
- A customizable profile reflecting the subscriber's product/service areas of interest
- Full-cycle, automated email alert whenever any record of interest is posted or updated
- A custom listing in the public Business Directory, an online "yellow-pages" advertisement

Every public purchasing entity within the borders of Massachusetts may post records on Comm-PASS at no charge. Comm-PASS has the potential to become the sole site for all public entities in Massachusetts. SmartBid fees are only based on and expended for costs to operate, maintain and develop the Comm-PASS system.

Costs

Costs which are not specifically identified in the Bidder's Response, and accepted by the PMT as part of a Statewide Contract, will not be compensated under any Statewide Contract or engagement awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by Bidders responding to this RFR.

Electronic Payments

Massachusetts – Electronic Funds Transfer

All Bidders must agree to participate in the Commonwealth Electronic Funds Transfer (EFT) program for receiving payments, unless the Bidder can provide compelling proof that it would be unduly burdensome. A link to the EFT application can be found on the [OSD Forms](#) page (www.mass.gov/osd). Additional information about EFT is available on the Comptroller's [VendorWeb](#) site located at: <https://massfinance.state.ma.us/VendorWeb/vendor.asp>. The requirement to use EFT may be waived by the PMT on a case-by-case basis if participation in the program would be unduly burdensome on the Bidder. If a Bidder is claiming that this requirement is a hardship or unduly burdensome, the specific reason must be documented in its Response. The PMT will consider such requests on a case-by-case basis and communicate the findings with the Bidder.

Upon notification of award, Contractors are required to enroll in EFT by completing and submitting the "Authorization for Electronic Funds Payment Form" to the State Contract Manager, for review, approval and forwarding to the Office of the Comptroller, unless already enrolled in EFT. This form, and all information contained on this form, shall not be considered a public record and shall not be subject to public disclosure through a public records request.

New York – Electronic Payment Option

The New York State Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. Contact OSC to obtain an information packet at 518-474-4032 or e-mail to epunit@osc.state.ny.us or visit their website at www.osc.state.ny.us.

Minimum Bid Duration

Bidders Responses to this RFR must remain in effect for at least 90 days from the date of Response submission.

Ownership of Submitted Responses

The Commonwealth shall be under no obligation to return any Responses or materials submitted by a Bidder in response to this RFR. All materials submitted by Bidders become the property of the Commonwealth and will not be returned to the Bidder. The Commonwealth reserves the right to use any ideas, concepts, or configurations that are presented in a Bidder's Response, whether or not the Response is selected for Contract award.

Responses stored on Comm-PASS in the encrypted lock-box are the file of record. Bidders retain access to a read-only copy of this submission via their Comm-PASS SmartBid Online Response Desktop, as long as their account is active. Bidders may also retain a traditional paper copy or electronic copy on a separate computer or network drive or separate media, such as CD or DVD, as a back up.

Prohibitions

Bidders are prohibited from communicating directly with any employee of the procuring Department or any member of the PMT regarding this RFR except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may contact the contact person using the contact information provided in the "Issuers" tab for this Solicitation in the event that this RFR is incomplete or information is missing. Bidders experiencing technical problems accessing information or attachments stored on Comm-PASS should contact the [Comm-PASS Helpdesk](#).

In addition to the certifications found in the Commonwealth of Massachusetts Standard Contract Form, by submitting a Bid Response, the Bidder certifies that the Response has been arrived at independently and has been submitted without any communication, collaboration, or without any agreement, understanding or planned common course or action with, any other Bidder of the commodities and/or services described in the RFR.

Public Records Law

All Responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, M.G.L., Chapter 66, Section 10, and to Chapter 4, Section 7, Subsection 26. Any statements in submitted Responses that are inconsistent with these statutes shall be disregarded.

Reasonable Accommodation

Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case by case basis. A Bidder requesting accommodation must submit a written statement which describes the Bidder's disability and the requested accommodation to the contact person for the RFR. The PMT reserves the right to reject unreasonable requests.

System of Record

Comm-PASS is the official system of record for all procurement information which is publicly accessible at no charge at www.comm-pass.com. Information contained in this document and in each tab of the Solicitation, including file attachments, and information contained in the related Bidders' Forum(s), are all components of the Solicitation.

Bidders are solely responsible for obtaining all information distributed for this Solicitation via Comm-PASS, by using the free Browse and Search tools offered on each record-related tab on the main navigation bar (Solicitations and Forums). Forums support Bidder submission of written questions associated with a Solicitation and publication of official answers. All records on Comm-PASS are comprised of multiple tabs, or pages. For example, Solicitation records contain Summary, Rules, Issuer(s), Intent or Forms & Terms and Specifications, and Other Information tabs. Each tab contains data and/or file attachments provided by the Procurement Management Team. All are incorporated into the Solicitation.

It is each Bidder's responsibility to check Comm-PASS for:

- Any addenda or modifications to this Solicitation, by monitoring the "Last Change" field on the Solicitation's Summary tab, and
- Any Bidders' Forum records related to this Solicitation (see [Locating an Online Bidders' Forum](#) for information on locating these records).

The Commonwealth accepts no responsibility and will provide no accommodation to Bidders who submit a Response based on an out-of-date Solicitation or on information received from a source other than Comm-PASS.

Evaluation – Best Value Selection and Negotiation

The PMT may select the Response(s) which demonstrates the best value overall, including proposed alternatives, that will achieve the goals of the procurement. The PMT and a selected Bidder may negotiate a change in any element of Contract performance or cost identified in the original RFR or the selected Bidder's Response which results in lower costs or a more cost effective or better value than was presented in the selected Bidder's original Response.

Terms and Requirements Pertaining to Awarded Statewide Contracts

Massachusetts

Comm-PASS SmartBid Subscription

Contractors must maintain a Comm-PASS SmartBid subscriber account, which is payable by credit card and managed by the Subscriber online at www.Comm-PASS.com. The annual Comm-PASS SmartBid subscription fee is currently \$275 per email address. The fee was established with the approval of the Executive Office for Administration and Finance and is subject to change, if necessary. The Comm-PASS Subscription fee is utilized solely for the operation, maintenance and development of Comm-PASS.

Commonwealth Tax Exemption

Payment vouchers or invoices submitted to Massachusetts government entities must not include sales tax.

Contractor's Contact Information

It is the Contractor's responsibility to keep the Contractor's Contract Manager information current. If this information changes, the Contractor must notify the State Contract Manager by email immediately, using the address located on the Contract's "Issuer(s)" tab in the "Contact Information" section.

The Commonwealth assumes no responsibility if a Contractor's designated email address is not current, or if technical problems, including those with the Contractor's computer, network or internet service provider (ISP), cause e-mail communications between the Bidder and the State Contract Manager to be lost or rejected by any means including email or spam filtering.

Contractual Status of Orders and Service Contracts

Each order or service contract placed under the Statewide Contract established as a result of this RFR shall be considered a separate Contract between the Contracting Department and

the Contractor, and shall be deemed to incorporate all of the terms and conditions of the Statewide Contract. Nothing contained in any order or service contract shall amend or vary the terms of the Statewide Contract. Additional terms which do not conflict with the Commonwealth's Terms and Conditions, the Massachusetts Standard Contract Form, this RFR and any amendments, or the Bidder Response, may be included in an order or service contract.

Electronic Procurement Systems (eProcurement)

All Bidders responding to this RFR agree that, in the event the Commonwealth implements a Web-based system to support catalog purchasing and upon at least 120 days notice, they will participate as directed by the PMT to successfully activate and maintain a contract- and technically-compliant catalog in the Commonwealth of Massachusetts open-architecture eMarketplace.

By establishing an eMarketplace, Commonwealth executive departments and all eligible public entities will access one system to shop directly with Statewide Contract Vendors.

The eMarketplace will support an open model which means a supplier's single Web-catalog can be re-used for many customers. Bidders who already maintain or are developing a Website for product ordering are advised that links to their sites will only be enabled within Comm-PASS or the eMarketplace if the system is limited to or can distinguish between Statewide Contract customers and retail or commercial customers. Bidders who already maintain or are developing a Website for product information are advised that links to their site will only be enabled within Comm-PASS if content is restricted to terms authorized under Statewide Contract.

Emergency Standby Commodities and/or Services

Contractors may be called upon during a declared state of emergency to supply and/or deliver to the Commonwealth on a priority basis commodities and/or services which are currently under Statewide Contract.

To accommodate such requests, Contractors may be asked, and must make every effort to service, these requests from regular sources of supply at the rates set forth in any Statewide Contract resulting from this RFR.

HIPAA: Business Associate Contractual Obligations

Bidders are notified that any Department meeting the definition of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) will include in the RFR or RFQ and resulting contract sufficient language establishing the successful Bidder's contractual obligations, if any, that the Department will require in order for the Department to comply with HIPAA and the privacy and security regulations promulgated thereunder (45 CFR Parts 160, 162, and 164) (the Privacy and Security Rules). For example, if the Department determines that the successful Bidder is a business associate performing functions or activities involving protected health information, as such terms are used in the Privacy and Security Rules, then the Department will include in the RFR and resulting contract a sufficient description of business associate's contractual obligations regarding the privacy and security of the protected health information, as listed in 45 CFR 164.314 and 164.504 (e), including, but not limited to, the Bidder's obligation to: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information (in whatever form it is maintained or used, including verbal communications); provide individuals access to their records; and strictly limit use and disclosure of the protected health information for only those purposes approved by the department. Further, the Department reserves the right to add any requirement during the course of the contract that it determines it must include in the contract in order for the department to comply with the Privacy and Security Rules.

The above information pertains to contracts with Departments which are entered into under the Statewide Contract. This Solicitation itself does not fall under HIPAA.

Pricing: Federal Government Services Administration (GSA) or Veteran’s Administration Supply

The Commonwealth reserves the right to request that the Contractor provide initial pricing schedules and periodic updates available under their GSA or other federal pricing contracts. In the absence of proprietary information being part of such contracts, compliance for submission of requested pricing information is expected within 30 days of any request. If the Contractor receives a GSA or Veteran’s Administration Supply contract at any time during the term of the Statewide Contract, the Contractor must notify the State Contract Manager.

Pricing

The Bidder must agree that no other state or public entity customer within the United States of similar size and with similar terms and conditions shall receive a lower price for the same commodity and service during the Statewide Contract period, unless this same lower price is immediately effective for the Commonwealth. If the Commonwealth believes that it is not receiving this lower price as required by this language, the Bidder must agree to provide current or historical pricing offered or negotiated with other state or public entities at any time during the Statewide Contract period in the absence of proprietary information being part of such contracts.

Compliance with this clause shall not be interpreted to require that a Contractor, prior to or over the course of providing goods or services, must conduct company-wide inquiry to ensure that no other customer of similar size and similar terms and conditions is receiving a lower price for the same commodity and service.

Compliance can be achieved in one of two ways:

1. If a single Contractor Contract Manager is aware based on his/her own knowledge (without conducting any surveys) of an instance in which another customer within the United States of similar size and terms is receiving the same commodity and/or service, it is the Contractor Contract Manager’s responsibility to ensure that the other customer is not receiving a lower price, and to offer the same price to the Commonwealth if this is the case. If the Contractor Contract Manager is not certain as to whether the other customer is sufficiently "similar" or the commodity/service is sufficiently "the same" so as to trigger the Pricing clause, the Contractor Contract Manager must contact the State Contract Manager for guidance.
2. If OSD learns of an instance in which another customer of apparently similar size and terms is receiving apparently the same commodity/service at a lower price, the State Contract Manager will so advise the Contractor Contract Manager. The Contractor Contract Manager must then either demonstrate to the satisfaction of the State Contract Manager that the other customer is NOT similar, and/or that the commodity/service is NOT the same, or the Contractor Contract Manager must lower the price to the Commonwealth.

In addition, Statewide Contractors may be asked to offer (and are encouraged to make available) special discounted pricing opportunities to Eligible Entities within the terms of their Statewide Contract. Such price discounts may come in the form of periodic aggregate purchases by Eligible Entities, whereby such entities will request further discounted prices from the Contractor(s) for guaranteed quantities to be purchased. The Statewide Contractor must report to the State Contract Manager prior to any such price reductions or discounts, or other more favorable terms, being offered to any Eligible Entity beyond those in their Statewide Contract. The State Contract Manager reserves the right to approve all price adjustments.

Publicity

Any Statewide Contractor awarded under this RFR is prohibited from selling or distributing any information collected or derived from the Statewide Contract, including lists of participating Entities, Commonwealth employee names, telephone numbers or addresses, or any other information except as specifically authorized by the State Contract Manager.

Save Smart Program (Save \$mart)

The OSD Save\$mart Program is a partnership between OSD and Statewide Contract Vendors. The purpose of the program is to create additional cost savings and opportunities for all Eligible Entities utilizing Statewide Contracts. These opportunities could be in the form of reduction in cost for a limited time, free training opportunities, and other offerings.

Contractors should notify the State Contract Manager of any price reductions they are willing to provide, including those which are time- or quantity-limited, as a promotional or competitive strategy, an inventory reduction initiative, or for any other reason. If suitable, the cost savings will be showcased in the Save \$mart section of OSD's website.

Statewide Contractor Marketing Requirements

Statewide Contractors awarded under this RFR must adhere to the following sales/marketing requirements and limitations regarding their Contract: Contractors may only sell those goods and/or services for which they are awarded a Statewide Contract pursuant to this RFR; marketing information must be factual in nature in order to promote those goods and/or services for which the Contractor has a Statewide Contract and must not be critical of other Statewide Contractors; and Contractors must not display the Commonwealth of Massachusetts Seal for commercial purposes because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law. During the life of the Contract, the PMT reserves the right to require Contractors to seek and receive prior written approval before distributing marketing information to eligible entities.

Subcontracting Policies

Prior approval of the department is required for any subcontracted service of the Contract. Contractors are responsible for the satisfactory performance and adequate oversight of their subcontractors.

Transaction Fee

In the event the Operational Services Division determines that it is necessary to adopt an alternative funding mechanism for its procurements in the future, including, but not limited to, a transaction fee, the Operational Services Division hereby reserves the right to renegotiate the inclusion and implementation of such a fee and/or other alternative funding mechanisms with the awarded contractors.

Additional Maine Requirements

Appeals

Awards made for services to the State of Maine are subject to Chapter 120, Rules for the Appeal of Contracts and Grant Awards <http://www.state.me.us/purchase/chap120.htm>. Any appeal and subsequent decision will only be binding on those services provided to the State of Maine.

Credit Card

Please be advised that the State of Maine requires vendors to accept credit cards as a form of payment for procurements of \$5,000 or less. The pricing offered to the State of Maine shall be the final cost to the State regardless of payment method. No surcharge or other compensation will be allowed.

Agreement to Purchase Services

Bidders must sign the first page of the State of Maine Agreement to Purchase Services to signify agreement with the terms and conditions therein. No other sections of the agreement need to be completed at this time.

Additional New York Requirements

Section 1.1 Procurement Scope and Description includes a link to the NYS Prohibited Software list; these product lines shall not be acquired by NYS Authorized Users under this agreement. In addition, for NYS Authorized Users the following products and services will be excluded from this agreement: hardware (including appliances), Software as a Service, and consulting services.

The contracts awarded as a result of this RFR for NYS contain a 20% rule. Authorized Users may acquire services, including installation and training, under this Contract. Installation and training services may be acquired from Contractor on a limited basis. Installation and training services may not exceed twenty (20%) percent of the total order price for software licenses and software maintenance.

NYS retains all rights of audit as detailed in Attachment 1, clause 10. In addition, Contractor may periodically be requested to provide documentation verifying that Authorized User pricing is consistent with contract pricing. This documentation would include verification of Contractor cost.

Bidders must complete Attachment 1, the "New York State Agreement." Bidders must also review Attachment 2 – "Appendix A (Standard Clauses for New York State Contracts)," Attachment 3 – "Appendix B (General Specifications)", "Attachment 4 – New York State Microsoft Agreement" and Attachment 4.1 "CLA". By submitting the New York State Agreement, Bidders agree to the terms of Attachment 1 and Attachment 2. In addition, Bidder must submit Attachment 5 (Standard Vendor Responsibility Questionnaire); Attachment 6 (New York State Department of Taxation and Finance – Contractor Certification (ST-220-TD), Contractor Certification to Covered Agency (ST-220-CA), and Attachment 7 "Vendor Questions" all are to be completed, signed and notarized where applicable. Attachment 8 provides NYS MWBE requirements. In addition, Bidder must submit three (3) original signature pages notarized for the New York State Agreement and the New York State Microsoft Agreements within the timeframe established by this RFR ITS42.

Additional Rhode Island Requirements

Bidders must register at the State of RI website at www.purchasing.state.ri.us. All provisions of state purchasing law, general terms and conditions and regulations are incorporated into all State of RI contracts by RI General Law 37-2, which may be found on the above-referenced website.

A Bidder Certification Cover Form for the State of RI must accompany the RFR response. In addition, Bidders must complete the State of Rhode Island Payer's Request for Taxpayer Identification Number and Certification.

Bidders must also agree to the Supplemental Terms And Conditions For Contracts And Subawards Funded In Whole Or In Part By The American Recovery And Reinvestment Act Of 2009, Pub. L. No. 111-5. Bidders will agree to these terms as described in RFR Section 5.7.1, [Electronic Signatures](#).

Bidders with questions concerning use of the State of RI website may contact the HelpDesk at (401) 222-2142 x 134. If you have difficulty accessing the website, send an eMail to helpdesk@purchasing.state.ri.us.

A State of RI Master Price Agreement will be issued upon award.

Additional Vermont Requirements

The State of Vermont's Certificate of Compliance, Offshore Outsourcing Questionnaire, and Town and School Questionnaire must be completed, signed, scanned, and included with the RFR Response. Bidders must also agree to the terms of the State of Vermont Standard State Provisions for Contracts and Commodity Purchase Terms and Conditions, as described in RFR Section 5.7.1, [Electronic Signatures](#).

The State of Vermont's Standard State Contract Provisions and the Purchasing and Contract Administration Terms and Conditions shall be incorporated by reference into any Vermont contract for commodities and services executed pursuant to this RFR. The laws of the State of Vermont for all sales of Vermont software licenses, applications and services will govern the Bidder during the respective terms of any contract.

Additional New Jersey Requirements

Bidders must agree to the State of New Jersey Standard Terms and Conditions. Bidders will agree to these terms as described in RFR Section 5.7.1, [Electronic Signatures](#).

Appendix 2 – Required Terms for all INFORMATION TECHNOLOGY Statewide RFRs (MASSACHUSETTS ONLY)

Enterprise Policy and Standards

All IT systems and applications developed by, or for Executive department agencies or operating within the Massachusetts Access to Government Network (MAGNet), must conform with the Enterprise Information Technology Policies, Standards and Guidance promulgated by the Commonwealth's CIO as they existed at the time the Request for Quote or other Solicitation was posted, unless otherwise specified in the Request for Quote or other Solicitation, or the resulting contract (That is, the policies will be those in effect when specifications for particular engagements are posted, NOT those in effect at the time this RFR was posted.). Non-conforming IT systems cannot be deployed unless the purchasing agency and their Contractor have jointly applied for and received in writing from the Commonwealth's CIO or his designee, notice that a specified deviation will be permitted. The Enterprise Information Technology [Policies, Standards & Guidance](#), with the exception of the Enterprise Public Access Policy For e-Government Applications and the Enterprise Public Access For e-Government Applications Standards, are available at mass.gov/itd. The Enterprise Public Access Policy For e-Government Applications and the Enterprise Public Access For e-Government Applications Standards are available in hard copy from the purchasing agency. Purchasing agencies may also obtain a current copy of these documents, on behalf of their Contractor, by contacting the Information Technology Division's CommonHelp group at commhelp@state.ma.us or 1 (866) 888-2808.

Contractors should only request the Public Access Architecture documentation when they are bidding on specific projects or services, and should request it of the Contracting Department which has posted the Request for Quotes or other Solicitation. Bidders must not request a copy of the Commonwealth's Public Access Architecture in connection with responding to this RFR.

Please Note: Given the pace of information technology innovation, purchasing agencies and their contractors are encouraged to contact the Information Technology Division's CommonHelp group at commhelp@state.ma.us or 1 (866) 888-2808 to signal a system or application design and development initiative. Such advance notice helps to ensure conformance with the relevant Enterprise Technology Policies, Standards and Procedures.

Contractor delivery of IT systems and applications that fail to conform to the Commonwealth's Enterprise Information Technology Policies, Standards and Procedures, absent the Commonwealth CIO's grant of written permission for a deviation, shall constitute breach of any Contract entered as a result of this Request for Response and any subsequent Request for Quotes. The Commonwealth may choose to require the Contractor, at his own cost, to re-engineer the non-conforming system for the purpose of bringing it into compliance with Commonwealth Enterprise Information Technology Policies, Standards and Procedures.

Clarification of Language in Section 11, Indemnification of the Commonwealth Terms and Conditions

Pursuant to Section 11, Indemnification, of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the Contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the Contractor be liable for, damages for the Commonwealth's use of Contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the contract scope of work) that is the subject of the claim. Section 11 sets forth the

Contractor's entire liability under a contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions.

APPENDIX 3 - Instructions for Execution and Submission of Commonwealth Standard Forms (MASSACHUSETTS ONLY)

The purpose of this appendix is to provide guidance to Bidders on the Commonwealth Standard forms to be submitted (in addition to the other forms and documents required) and how they must be executed and submitted. Please note that these instructions are meant to supplement the Instructions found on each of these forms. It is advisable to print this document first so that it may be referenced when filling out these forms.

Some of the forms listed below can be electronically signed by the Bidder, see [Electronic Signatures](#). However, online Bidders must, if notified of Contract award, submit the following four (4) forms on paper with original ink signatures unless otherwise specified below, within the timeframe referenced in the RFR section entitled [Ink Signatures](#): the Commonwealth Standard Contract Form, the Commonwealth Terms and Conditions, the Request for Taxpayer Identification Number and Certification (Mass. Substitute W9 Form) and the Contractor Authorized Signatory Listing.

Forms located on the Solicitation's Forms & Terms tab

Request for Taxpayer Identification Number and Certification (Mass. Substitute W9 Form)

Sign electronically as described above; if notified of Contract award, complete as directed below and submit on paper with original ink signature and date, or submit a copy of a previously executed, up-to-date copy of the form as directed below.

If a Bidder has already submitted a Request for Taxpayer Identification and Certification (Mass. Substitute W9 Form) and has received a valid Massachusetts Vendor Code, an original W-9 form is not required. A copy of the form as filed may be included in place of an original. If the Bidder's name, address or Tax ID Number have changed since the Mass. Substitute W9 Form was executed, a new Mass. Substitute W9 Form is required. The information on this form will be used to record the Bidder's legal address and where payments under a State Contract will be sent. The company's correct legal name and legal address must appear on this form, and must be identical to the legal name and legal address on the Commonwealth Terms and Conditions. Please do not use the U.S Treasury's version of the W9 Form.

Executive Order 504 Contractor Certification Form

Sign electronically as described above.

Forms located on the Solicitation's Specifications Tab

Commonwealth Standard Contract Form

Complete as directed below and submit a scanned copy of the Contract, not including the Instructions, with the Bid Response. If notified of Contract award submit on paper with original ink signature and date.

By executing this document or signing it electronically, the Bidder certifies, under the pains and penalties of perjury, that it has submitted a Response to this RFR that is the Bidder's Offer as evidenced by the execution of its authorized signatory, and that the Bidder's Response may be subject to negotiation by the PMT. Also, the terms of the RFR, the Bidder's Response and any negotiated terms shall be deemed accepted by the Operational Services Division and included as part of the Statewide Contract upon execution of this document by the State Purchasing Agent or her designee.

Only those sections of the Contract form preceded by "→" should be completed by the Bidder. If the Bidder does not have a Vendor Code beginning with "VC," or does not know what their Vendor Code is, the Bidder should leave the Vendor Code field blank. The Bidder should NOT enter a Vendor Code assigned prior to May 2004, as new Vendor Codes have been assigned to all companies since that time.

Signature and date MUST be handwritten in ink, and the signature must be that of one of the people authorized to execute contracts on behalf of the Contractor on the Contractor Authorized Signatory Listing (See below).

Commonwealth Terms and Conditions

Complete as directed below and submit a scanned copy of the Contract, not including the Instructions, with the Bid Response. If notified of Contract award submit on paper with original ink signature and date. Alternatively, Bidders may submit a scanned copy of a previously executed, up-to-date copy of the form as directed below.

If the Bidder has already executed and filed the Commonwealth Terms and Conditions form pursuant to another RFR or Contract, a copy of this form may be included in place of an original. If the Bidder's name, address or Tax ID Number have changed since the Commonwealth Terms and Conditions form was executed, a new Commonwealth Terms and Conditions form is required. The Commonwealth Terms and Conditions are hereby incorporated into any Contract executed pursuant to this RFR.

This form must be unconditionally signed by one of the authorized signatories (see Contractor Authorized Signatory Listing, below), and submitted without alteration. If the provisions in this document are not accepted in their entirety without modification, the entire Proposal offered in response to this Solicitation may be deemed non-responsive.

The company's correct legal name and legal address must appear on this form, and must be identical to the legal name and legal address on the Verification of Taxation Reporting Information (W9).

Contractor Authorized Signatory Listing

Complete as directed below and submit a scanned copy of the Contract, not including the Instructions, with the Bid Response. If notified of Contract award submit on paper with original ink signature and date.

In the table entitled "Authorized Signatory Name" and "Title," type the names and titles of those individuals authorized to execute contracts and other legally binding documents on behalf of the Bidder. Bidders are advised to keep this list as small as possible, as Contractors will be required to notify the Procurement Manager of any changes. If the person signing in the signature block on the bottom of the first page of this form will also serve as an "Authorized Signatory," that person's name must be included in the typed table.

With regard to the next paragraph, which begins "I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor..." if your organization does not have these titles, cross them out and handwrite the appropriate title above the paragraph.

The signature and date should be handwritten in ink. Title, telephone, fax and eMail should be typed or handwritten legibly.

The second page of the form (entitled "Proof of Authentication of Signature") states that the page is optional. However, the "optional" aspect of the form is that Commonwealth Departments are not required to use it. In the case of Statewide Contracts, this page is REQUIRED, not optional. The person signing this page must be the same person signing the Standard Contract Form, the Commonwealth Terms and Conditions, and the RFR Checklist.

Please note that in two places where the form says "in the presence of a notary," this should be interpreted to mean "in the presence of a notary or corporate clerk/secretary." Either a notary or corporate clerk/secretary can authenticate the form; only one is required.

Organizations whose corporate clerks/secretaries authenticate this form are not required to obtain a Corporate Seal to complete this document.

Affirmative Market Program Plan Form

Download this form and complete as directed below; include with online submission. Ink signature is not required. SOMWBA certifications or evidence of application must also be included in online submission.

The specific Affirmative Market Program (AMP) requirements for this procurement can be found earlier in this document. Bidder's Affirmative Market Program Plan must include a copy of the SOMWBA certification of each Minority and Women Business Enterprise (M/WBE) company listed or proof of their application submitted for consideration. A certified Bidder may not list itself as being an Affirmative Market Program Partner to its own company. This form is NOT the same as the SOMWBA certification of the Bidder's company.

glossary

In addition to the definitions found in [801 CMR 21.00](#), which apply to all procurements for goods and services, the definitions found below apply to this Solicitation. Those definitions below designated with an asterisk (“*”) are quoted directly from 801 CMR 21.00 and are included below for quick reference purposes.

Bid or Response – generally refers to the offer submitted in response to a Solicitation or Request for Response (RFR).

Bidder * – An individual or organization proposing to enter into a Contract to provide a Commodity or Service, or both, to or for a Department or the State.

Commonwealth – The Commonwealth of Massachusetts and (unless otherwise stated) the States of Maine, New Jersey, New York, Rhode Island and Vermont. For those sections of the RFR that apply exclusively to the Commonwealth of Massachusetts, “Commonwealth” means the Commonwealth of Massachusetts.

Contractor Contract Manager – The individual designated by the Contractor to interface with the Commonwealth.

Eligible Entity – For the purposes of this Solicitation, the terms “Agency,” “Eligible Entity,” “Department,” “Commonwealth Agency,” “Purchasing Entity,” and “Contracting Department” include all Eligible Entities listed in the Issuer tab on Comm-PASS for this Solicitation and in the [Eligible Entities](#) section of this RFR.

Operational Services Division (OSD) – A Commonwealth of Massachusetts agency, within the Executive Office for Administration and Finance, established pursuant to St. 1989, Chapter 731, which is responsible for the management and oversight of procurement activities in the Commonwealth of Massachusetts. OSD or its designees represent the Commonwealth of Massachusetts in conducting RFRs for Statewide Contracts and managing Statewide Contracts.

PMT – See Procurement Management Team

Procurement Management Team (PMT) – Representatives from various eligible entities and interested stakeholders that design procurements, develop specifications, conduct Solicitations evaluate Bids and award Statewide Contracts. The PMT also monitors Contractor performance through performance measures and the level of customer satisfaction throughout the life of the Statewide Contract.

Request for Response (RFR) * – The mechanism used to communicate Procurement specifications and to request Responses from potential Bidders. An RFR may also be referred to as a "Solicitation."

Response – The Bidder’s complete submission in response to a Solicitation, in other words, a “Bid” or “Proposal.”

Software Reseller – A company awarded a Contract to provide software and related services under ITS42.

State Contract Manager – The individual from each Commonwealth or State responsible for contract management and administration after contract award, or in RFR sections which are specified as applicable only to one or more States, the Contract Managers for those States.

Statewide Contract – A contract between the Operational Services Division and the winner(s) of a statewide RFR. This contract enables Eligible Entities to enter into agreements with Contractors to perform the services proposed in their RFR Responses under the terms of the RFR and RFR Response. Each Commonwealth and State will have a separately executed contract under ITS42.

APPENDIX 4 – Software publishers used by the commonwealth of massachusetts

1-2-3 FILE CONVERT
4D
4N6XPRT SYSTEMS
AASHTO
ABACRE
ABBYY USA SOFTWARE HOUSE INC
ABSOLUTE SOFTWARE
ACCESS DATA
ACCURO HEALTHCARE SOLUTIONS
ACL SERVICES LTD
ACRONIS
ACTIVEPDF
ACTUATE
ADAPTIVA PROTOCOLS INC
ADOBE SYSTEMS
ADULTPDF
ADVANCED SYSTEMS CONCEPTS
ADVIZEX TECHNOLOGIES
AI SQUARED
AKCELIK & ASSOCIATES PTY
AKIBIA NETWORK & SECURITY SOLUTIONS
ALCHEMY SOLUTIONS
ALLEN SYSTEMS GROUP
ALLEN SYSTEMS GROUP INC
ALLROUND AUTOMATIONS
ALTERNATIVE TECHNOLOGY
ALTERPOINT
ALTIMA TECHNOLOGIES
ALTIRIS INC.
ALTOVA
ALTISOFT
AMERICAN DIGITAL CARTOGRAPHY
AMERICAN PRINTWARE
ANVSOFT
AOS TECHNOLOGIES
APERTA LTD
APERTURE TECHNOLOGIES
APPLE COMPUTER
APPLICURE TECHNOLOGIES
APPLIED MATHS
APPSENSE
ARGENT SOFTWARE
ARGSOFT GROUP LLC
ARTICULATE GLOBAL INC
ASAP ASP SERVICES
ASAP SOFTWARE
ASPOSE
ASSURIA NORTH AMERICA
RFR ITS42 Software Reseller RFR

AT&T CORP
ATLASSIAN SOFTWARE SYSTEMS
ATTACHMATE
ATTICUS CONSULTING
AUTODESK
AUTOMON LLC
AUTONOMY
AVANQUEST
AVID TECHNOLOGY
AVOCENT CORPORATION
AVS
AZTEC SOFTWARE ASSOCIATES
BAR CONTROL
BARRACUDA
BARRACUDA NETWORKS
BEA SYSTEMS
BINARY RESEARCH INTL
BIOTEK
BISCOM
BLACK MOSHANNON SYSTEMS
BLACKBOARD CONNECT
BLENHEIM SOFTWARE INT LTD
BLUE COAT SYSTEMS
BLUE ELM COMPANY
BLUESPRING SOFTWARE
BMC
BORLAND
BOSCH DIAGNOSTICS
BOSON SOFTWARE
BOTTOMLINE TECHNOLOGIES
BRADMARK TECHNOLOGIES
BRAINSHARK
BRAINTREE TECHNOLOGY
BRIGHTWORK
BRITE COMPUTERS
BRODERBUND
BTB SOFTWARE
BUREAU OF DANGEROUS GOODS LIMITED
BUSINESS OBJECTS
CA
CALIPER
CAMBRIDGE COMPUTER
CAMBRIDGE COMPUTER SERVICES
CAPITAL IQ WIN DATABASE LICENSE
CAPTARIS
CARDIFF SOFTWARE
CARTEGRAPH SYSTEMS
CASTLE ROCK COMPUTING
CBT NUGGETS

CELESTIAL SOFTWARE
CENZIC
CERIENGE
CHAIN STORE GUIDE
CHECK POINT
CHEVIN FLEET SOLUTIONS
CHILKAT SOFTWARE
CIRCLE SYSTEMS
CISCO SYSTEMS
CITRIX
CLEARSWIFT
CLICKTRACKS
COGIX
COGNIVIEW SYSTEMS LTD
COLLABNET
COMMUNICADO
COMMVault SYSTEMS
COMPELSON LABORATORIES
CONFIGURESOFt INC
CORE SECURITY TECHNOLOGIES
COREL CORPORATION
CREATIVE BREAKTHROUGHS
CYBERANGEL SECURITY SOLUTIONS
CYBERGENETICS
CYMA SYSTEMS
CYSCAPE
DAMEWARE
DATA 21
DATADIRECT
DATAPLOW
DATAVIZ
DATAWIZ
DAVID G RHOADS ASSOCIATES
DBNETLINK LIMITED
DEAN EVANS AND ASSOCIATES
DECISION SUPPORT INC
DEFINIENS INC
DEIGHTON ASSOCIATES LIMITED
DELORME
DIMENSIONAL INSIGHT
DISKEEPER
DLT SOLUTIONS
DO NOT USE
DOCUMENT MANAGEMENT SOLUTIONS
DOUBLE-TAKE SOFTWARE
DOVESTONES SOFTWARE
DRAWBASE SOFTWARE
DT SEARCH
DUXBURY SYSTEMS
DYNAMIC INFORMATION SYSTEMS
DYNATEST
EASEUS
ECOPY
EGAIN COMMUNICATIONS

EIS
EKTRON
EMBARCADERO TECHNOLOGIES
EMC
EMERGENCY COMMUNICATIONS
NETWORK
ENCORE SOFTWARE
ENVISN
ESET
ESI ACQUISITION INC
EVERMAP COMPANY LLC
EVIWARE
EXECUTIVE INFORMATION SYSTEMS
EXPERTS EXCHANGE
FAIN AND COMPANY
FAMATECH
FARONICS
FCODER GROUP
FILEMAKER
FILEMARK
FIREHOUSE SOFTWARE
FITZGERALD AND LONG
FMS
FOG CREEK SOFTWARE
FOLIO ASSOC
FORTINET
FOUR WINDS GROUP
FRANSON TECHNOLOGY AB.
FREEDOM SCIENTIFIC
FRONT RANGE SOLUTIONS
F-SECURE
FTG TECHNOLOGIES
FUGRO ROADWARE
FULL CIRCLE TECHNOLOGIES
GARMIN
GENERAL CODE
GENUITEC
GEORGIA TECH RESEARCH
GFI
GLOBAL KNOWLEDGE TRAINING LLC
GLOBAL MARKETING PARTNERS
GLOBALSCAPE
GOLDEN SOFTWARE
GOOGLE
GOVERN SOFTWARE
GRACE-HUNT
GRAPHIC REGION
GRAVOC ASSOCIATES
GREENPAGES
GTBM
GUIDANCE SOFTWARE
GWAVA TECHNOLOGIES
GWI SOFTWARE
HAND HELD PRODUCTS

HELICON TECH
HELIXOFT
HELP DESK TECHNOLOGY
HEROIX CORPORATION
HI SOFTWARE
HILLARY SOFTWARE
HISOFTWARE
HUMAN CONCEPTS
HUMMINGBIRD COMMUNICATIONS
HYDROCAD
I2 SOFTWARE
IBM
ID AUTOMATION
IDERA
IDM COMPUTER SOLUTIONS
ILIENT
IMAGING BUSINESS MACHINES LLC.
IMC NETWORKS
IMPATICA
IMPRIVATA
IMS PROAV
IMSI DESIGN
INBIT
INDIGOSTAR SOFTWARE
INDIVIDUAL SOFTWARE
INFO USA
INFORMATICA
INFORMATION BUILDERS
INFORMATION MANAGEMENT CORP
INFRAGISTICS
INFUSION DEVELOPMENT
INGENIX PUBLISHING
INPUT TECHNOLOGIES INC.
INSTALLFREE
INTEGRATED FINANCIAL SYSTEMS
INTELLIGENT DESIGNS GROUP
INTELLIGOV SOFTWARE INC
INTELLITRACK
INTERACTIVE NORTHWEST
INTERNET GOVERNMENT SOLUTIONS
INTERWOVEN
INTOCAREERS/UNIV OF OREGON
INTUIT
IOLO TECHNOLOGIES
IONX
IP BLUE
IPSWITCH
IRISE
JACADIS
JAM SOFTWARE
JUNIPER
KAPLAN IT
KASPERSKY LAB
KEYSTONE LEARNING SYSTEMS LLC

KIDASA SOFTWARE
KIWI ENTERPRISES
KLOGIX
KMSYS WORLDWIDE
KNOWLEDGE COMPUTING CORP
KRONOS SOFTWARE
KURZWEIL APPLIED INTELLIGENCE
LABTRONICS INC
LANAPSOFT INC
LANDESK SOFTWARE
LAPLINK SOFTWARE
LEICA GEOSYSTEMS & GIS MAPPING
LENOVO
LEXIS-NEXIS
LIBERA
LINCOLN LEARNING SOLUTIONS
LINOTYPE GMBH
LOGIXML
LOGMEIN
LUMENSION SECURITY
LUNCHBYTE SYSTEMS
LUSH TECHNOLOGIES
LYNDA.COM
LYRIS
MACROSOFT ASSOCIATES
MACSPEECH
MAZDA COMPUTER CORP
MCAFFEE
MCGRAW HILL
MCTRANS CENTER
MDX SOFTWARE
MELILLO CONSULTING
MERRIAM-WEBSTER
MESA SYSTEMS
MICROBURST TECH
MICRODESK
MICROSOFT CORPORATION
MICROSOFT EASY
MIDWESTERN SOFTWARE SOLUTIONS
MINDJET
MINISOFT
MINITAB
MINNESOTA IMPLAN
MOTOROLA
MW6 TECHNOLOGIES
MYSQL
NCH SWIFT SOUND
NEEDLES
NEIGHBORHOOD AMERICA
NERO
NESSOFT
NET SIGHT
NETIQ
NETLIB

NETPRO
NETSARANG
NETSCAN TOOLS
NETSCOUT
NETWORK AUTOMATION
NEWGATOR TECHNOLOGIES
NEXTUP TECHNOLOGIES
NITROPDF
NO MAGIC
NO NONSENSE SOFTWARE
NOTEPAGE INC
NOTIFY TECHNOLOGY
NOVA DEVELOPMENT
NOVELL
NTI GROUP
NTIRETY
NTIS
NUANCE
NUMARA SOFTWARE
O2 SOLUTIONS
OCI SOFTWARE
OCULUS
OPEN TEXT
OPT TECH DATA PROCESSING
ORACLE CORPORATION
ORION HEALTH
ORPALIS
OUTSIDE SOFTWARE INC
OXYGENIOUS CORPORATION
PAETEC
PALMER AND WEBB SYSTEMS LIMITED
PARABEN CORP.
PARAGON SOFTWARE
PARALLELS
PARAMETRIC TECHNOLOGY CORP
PASTPERFECT SOFTWARE
PATRICK TOWNSEND & ASSOCIATES
PDF TOOLS
PEN-LINK
PERKINELMER LAS
PERVASIVE SOFTWARE
PGP Corporation
PHONETREE
PINNACLE SOFTWARE SOLUTIONS
PINNACLE SYSTEMS
PITNEY BOWES
PIVOTAL GUIDANCE
PIXELMETRICS
PLATESPIN Ltd
PLIXER INTERNATIONAL
POLICY TECHNOLOGIES
PORT80 SOFTWARE INC.
POWERISO COMPUTING
PRIMAVERA SYSTEMS

PRIME FACTORS
PRINCIPAL DECISION SYSTEMS
PRINTER PROPERTIES PRO
PROGENY SOFTWARE
PROGRESSIVE SECURITY
PTV AMERICA INC
QAS LTD
QSR INTERNATIONAL
QUALYS INC
QUANTITATIVE MICROSOFTWARE
QUARK
QUEST
QUEUES ENFORTH DEVELOPMENT
QUOVA INC
R.L. POLK & COMPANY
R.M. WILSON CONSULTING
RAPID7
RAXCO SOFTWARE INC
RED GATE SOFTWARE LTD
RED HAT SOFTWARE
REDIX
REPLICON
RESEARCH IN MOTION
RESOFT INTERNATIONAL
RIGHTSTAR
RIVERDEEP
ROCKWARE
RSA SECURITY
RSH SOFTWARE
RUNTIME SOFTWARE
RUTTER NETWORKING TECHNOLOGIES
SAFARI BOOKS ONLINE
SAGE SOFTWARE
SAMS PUBLISHING
SAS INSTITUTE INC
SCALABLE SOFTWARE
SCALEOUT SOFTWARE
SCALIX
SCERIS
SCIENTIFIC SOFTWARE GROUP
SCOOTER SOFTWARE
SCRIPT LOGIC
SEAL ANALYTICAL
SEAPINE SOFTWARE
SECURE COMPUTING
SELEZNYOV.COM
SEP SOFTWARE
SERENA SOFTWARE
SHAVLIK TECHNOLOGIES
SIEMENS BUILDING TECHNOLOGIES
SIGHTLINE SYSTEMS CORP
SIGNCAD SYSTEMS
SILANIS TECHNOLOGY INC
SIMTECH SYSTEMS

SIRIUS COMPUTER SOLUTIONS
SITECORE USA
SMART TECHNOLOGIES
SMARTDRAW.COM
SMARTSOFT
SNMP RESEARCH INTERNATIONAL
SNMPSOFT COMPANY
SOFTRIGHT SUMARIA
SOFTWARE AG USA INC
SOFTWARE FX
SOLARWINDS
SOLID DOCUMENTS
SOLUTIONS DESIGN
SONIC SOLUTIONS
SONICWALL
SOPHOS INC
SOURCECODE TECHNOLOGY
SPECRTRUM INTEGRATED TECH
SPSS
SSH COMMUNICATIONS SECURITY
ST BERNARD SOFTWARE
STATSOFT INC
STELLAR INFORMATION SYSTEMS
STERLING COMMERCE
STORIX
SUNBELT SOFTWARE
SUNONE
SURVEY MONKEY
SWIFTVIEW
SYBASE
SYBEX BOOKS
SYMANTEC CORPORATION
SYNAMETRICS
SYNERGEX
SYSTEMTOOLS SOFTWARE
SYWARE
TABLEAU SOFTWARE
TEACHUCOMP
TEAMVIEWER GMBH
TECHSMITH
TELE ATLAS NORTH AMERICA INC
TELERIK
TENABLE NETWORK SECURITY
TENACITY
TERRAGO TECHNOLOGIES
TESTOUT!
TETHYS SOLUTIONS LLC.
THE OMEGA GROUP
THE SANS INSTITUTE
THE WARREN GROUP
THOMSON REUTERS
THOMSON SCIENTIFIC
TOTAL TRAINING
TRANSOFT SOLUTIONS

TREND MICRO
TRIDION
RIVANTIS
ULTIMUS
ULTRABAC SOFTWARE
UNIFUND
UNIVERSAL MINDS
US POSTAL SERVICE AIS PRODUCTS
VADAR SYSTEMS
VANDYKE SOFTWARE
VELARO
VELSOFT
VERDIEM
VERISIGN
VERISIUM
VERITAS
VERSIONONE INC.
VIGNETTE CORPORATION
VIRTUAL TOWN HALL LLC
VISION SOLUTIONS
VISUAL LEARNING SYSTEMS
VIZIONCORE
VKERNEL
VMWARE
VOVICI CORPORATION
VS VISUAL STATEMENT
WASHINGTON & RICE
WASP
WASP BARCODE TECHNOLOGIES
WATCHGUARD TECHNOLOGIES
WATERFORD TECHNOLOGIES
WEBEX COMMUNICATIONS
WEBROOT SOFTWARE
WEBSense INC
WEBSUPERGOO
WEBTRENDS
WHITESMOKE INC.
WINAGENTS
WINZIP
WORKSHARE TECHNOLOGY
XEROX CAPITAL SERVICES LLC
XEROX CORPORATION
XSTREAM SOFTWARE
YNOTLEARN
ZIP CODE DOWNLOAD
ZOHOCORPORATION
ZOOMERANG

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