



Revised Contract Award Notification

Title	: Group 31503 – BITUMINOUS CONCRETE HOT MIX ASPHALT VPP (2014 DOT Specific Projects) (Federal & State Funds) Classification Code(s): 30
Award Number	: 22756
Contract Period	: April 10, 2014 through October 31, 2015
Bid Opening Date	: December 13, 2013
Date of Issue	: April 10, 2014 (Revised for Renewal May 8, 2015)
Specification Reference	: SPEC 931 dated November 1, 2013 (Supersedes SPEC 926 dated January 3, 2013) and as amended in the Invitation for Bids and Purchasing Memorandums dated December 2, 2013, December 10, 2013 and December 11, 2013
Contractor Information	: Appears on Page 5 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Jose DeAndres Title : Contract Management Specialist Phone : (518) 474-3024 Fax : (518) 474-8676 E-mail : jose.deandres@ogs.ny.gov	Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

**The NYS Procurement values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

Bituminous Concrete is a mixture of stone of various sizes and liquid material. The mixture is heated and proportioned in a bituminous concrete plant and compacted on a road in a heated state. Once the material cools, it becomes a hard durable material. Bituminous concrete is used for preventive maintenance activities which ensure that highways and bridges meet or exceed their optimum useful life.

PR # 22756

Table of Contents

APPENDICES AND ATTACHMENTS	4
Appendices	4
Appendix A - Standard Clauses for New York State Contracts (December 2012)	4
Appendix B - General Specifications (July 2006)	4
SECTION 1: CONTRACT INFORMATION	5
1.1 Contractor Information	5
1.2 Small, Minority and Women-Owned Businesses.....	6
1.3 Note to Authorized Users	6
1.4 Poor Performance	6
1.5 Debriefing.....	6
SECTION 2: PRICE PAGES.....	7
2.1 List of OGS Items and Awardees	7
SECTION 3: PRICING INFORMATION.....	10
3.1 General	10
3.2 Asphalt Price Adjustments	10
3.2.1 General	10
3.2.2 Asphalt Price Adjustment: Example	12
SECTION 4: PREVAILING WAGE RATES	13
4.1 Prevailing Wage Rates – State and Federally Funded Public Works Contracts	13
4.1.1 Worker Notification – A9052; S6240	14
4.1.2 OSHA 10-Hour Construction Safety and Health Course - S1537-A.....	14
SECTION 5: CONTRACT ADMINISTRATION.....	14
5.1 Contract Amendment Process	14
5.2 Contract Administrator.....	14
SECTION 6: TERMS AND CONDITIONS	15
6.1 Contract Term and Extension.....	15
6.1.1 Contract Term	15
6.1.2 Short Term Extension	15
6.2 Request for Change	15
6.3 Note to Contractor	15
6.4 Contract Payments.....	15
6.5 Estimated Quantities.....	15
6.6 Delivery	15
6.6.1 Delivery Ticket.....	15
6.7 Default (Failure to Furnish Material)	16

6.8	Quantity Received	16
6.9	Payment	16
6.10	Emergency Purchasing	16
6.11	Cancellation for Convenience	16
6.12	Contract Billings and Payments	17
6.13	New York State OGS Procurement Services' Dispute Resolution Policy.....	17
6.14	New York State Vendor Responsibility Questionnaire For-Profit Business Entity.....	17
6.15	Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women	18
6.15.1	New York State Law	18
6.15.2	Business Participation Opportunities for MWBEs	18
6.15.3	Equal Employment Opportunity Requirements	18
6.16	Diesel Emission Reduction Act of 2006	19
6.17	Environmental Attributes and NYS Executive Order 4	19
6.18	Extension of Use Commitment	19
6.19	Disposition of Settlements.....	19
6.20	Iran Divestment Act	19
SECTION 7: HOT MIX ASPHALT – (SPECIFIC CLAUSES)		20
7.1	Material Descriptions	20
7.2	Pre-Paving Conference.....	20
7.3	Supervision.....	20
7.4	Work Hours	21
7.4.1	Special Note - Overtime Dispensation Requests	21
7.5	Restoration of Disturbed Areas	21
7.6	Tack Coat	21
7.6.1	Tack Coat Plant Number Requirements.....	21
7.7	Construction Details	21
7.8	Attention: Special Note - Conditioning.....	21
7.9	Attention: Special Note - Shoulder Edge	22
7.10	Work Zone Traffic Control	22
7.10.1	Special Note - Temporary Pavement Markings.....	24
7.10.2	Hot Mix Asphalt Overlay Splice (Rebate).....	24
7.10.3	Special Note: Work Zone Intrusion Initiative.....	26
7.10.4	Temporary Rumble Strips	26
7.11	Contract Bonds	29
7.11.1	Labor and Material Bond	29

7.11.2 Labor and Material Bond Example29

SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS)32

8.1 Funding Source.....32

8.2 Special Note - Coordination with Cold Recycling Projects32

8.3 Special Note – Optional Use of Warm Mix Asphalt (WMA) Technologies32

SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS) (Cont’d)33

8.4 Special Note - Rail Road Involvement in Federal Funded Projects.....33

8.5 Special Note - Rail Road Involvement in 100% State-Funded Projects33

8.5.1 Coordination with Railroad(s)33

9.1 – 12.6 *No longer apply*.....33

SECTION 13: PROJECTS - SPECIAL NOTES (NYSDOT REGION 5)34

13.1 Pavement Markings – Region 5 Projects34

13.2 Abrading Existing Pre-Formed Pavement Markings – Region 5 Projects34

13.3 *No longer applies*34

13.4 Time Restrictions – Region 5 Projects34

13.4.3 Project 5V144634

SECTION 14: PROJECTS - SPECIAL NOTES (NYSDOT REGION 6)35

14.1 Coordination with other Projects – Region 6 Projects35

14.2 Schedule Restriction – Region 6 Projects35

14.3 HMA Overlay Splices (Rebates) – Region 6 Projects.....35

14.4 Temporary Pavement Markings – Region 6 Projects.....35

14.5 “Dig Safe” Ticket – Region 6 Projects.....35

14.6 *No longer applies*35

SECTION 15: PROJECTS - SPECIAL NOTES (NYSDOT REGION 7)36

15.1 Special Work Zone Traffic Control – Pilot Vehicle – Region 7 Projects36

15.2 Exposed Longitudinal Joints – Region 7 Projects.....36

15.3 Moisture Susceptibility Testing – Region 7 Projects36

SECTION 17: SUPERPAVE HOT MIX ASPHALT37

17.1 Superpave Hot Mix Asphalt Design Criteria37

17.2 Project Dimensions.....38

17.3 Rebates Table39

SECTION 18: CONTRACT PERFORMANCE REPORT40

APPENDICES AND ATTACHMENTS

Appendices

- Appendix A - Standard Clauses for New York State Contracts (December 2012)
- Appendix B - General Specifications (July 2006)

SECTION 1: CONTRACT INFORMATION

1.1 Contractor Information

CONTRACT #	CONTRACTOR & ADDRESS	TELEPHONE	FED ID# NYS VENDOR ID#
PC66418 SB	AMHERST PAVING INC. 330 Meyer Rd. Amherst, NY 14226	(716) 834-4961 Glen Willis Fax #:(716) 838-6016 E-mail: glen.amherstpaving@verizon.net	16-1143301 1000015435
PC66419	BARRETT PAVING MATERIALS INC. 26572 NYS Rte. 3 Watertown, NY 13601	(315) 788-2037 Patrick J. Dewey Fax #:(315) 786-0748 E-mail: pdewey@barrettpaving.com Web Site: www.barrettindustriescorp.com	13-3003901 1000038867
PC66422	DOLOMITE PRODUCTS COMPANY, INC. D/B/A A.L. BLADES 7610 County Route 65 Hornell, NY 14843	(607) 324-3636 Jonathan Cook Fax #: (607) 324-0998 E-mail: jcook@dolomitegroup.com Web Site: www.dolomitegroup.com	16-0410930 1000007433
PC66424 SB	NOEL J. BRUNELL & SON, INC. 4019 Route 22 Plattsburgh, NY 12901	(518) 561-1290 (518) 726-0693 Andrew K. Bradley Fax #: (518) 562-2859 E-mail: njb10000@aol.com	14-1456087 1000051434

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.

(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE OFFICE OF GENERAL SERVICES PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE OFFICE OF GENERAL SERVICES PROCUREMENT SERVICES.

1.2 Small, Minority and Women-Owned Businesses

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise

1.3 Note to Authorized Users

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

1.4 Poor Performance

Authorized Users should notify NYS Procurement's Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
NYS Procurement
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

Customer Services E-mail: customer.services@ogs.ny.gov

Telephone: (518) 474-6717 / Fax: (518) 474-2437

1.5 Debriefing

Contractors and bidders are accorded fair and equal treatment with respect to the opportunity for debriefing. OGS shall, upon request, provide a debriefing to any bidder or awarded contractor 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 or awarded contractor within thirty days of posting of the contract award on the OGS website.

SECTION 2: PRICE PAGES

2.1 List of OGS Items and Awardees

<u>OGS Item</u>	<u>Project No.</u>	<u>County/Location</u>	<u>Item</u>	<u>Estimated Amounts</u>	<u>Unit Price</u>	<u>NYSDOT Facility No.</u>	<u>Contractor</u>
30	5V1446	Erie County	402.06820118	2,399	\$82.380	H0102	Amherst Paving Inc.
		NY 5					
		Kane St - BIN 1074270 (incl. Ramps A, D, & C at Ridge Rd) RM 5 5302/2012-3003 City of Lackawanna & City of Buffalo 1.0 CL Miles	407.0103	2,356	\$3.450	L0503	
35	6V1413	Allegany County	402.06830118	3,696	\$80.550	H0295	Dolomite Products Company, Inc. D/B/A A.L. Blades
		Rte. 275					
		Wells Rd to Friendship (CR 20) RM 275 6101/1077-1109	402.018902	514	\$76.000	H0295	
		Towns of Wirt & Friendship 3.0 CL Miles	407.0103	3,247	\$2.950	L0601	
36	6V1415	Allegany County	402.06820118	4,175	\$80.530	H0327 / H0127	Dolomite Products Company, Inc. D/B/A A.L. Blades
		Rte. 19					
		CR 16 Transit Bridge to Village of Belfast RM 19 6101/1251-1283 Town of Belfast 3.3 CL Miles	407.0103	3,090	\$2.950	L0601	
37	6V1441	Steuben County	402.126302	2,170	\$68.200	H0132	Dolomite Products Company, Inc. D/B/A A.L. Blades
		Rte. 21					
		Village of Wayland RM 15 6401/1554-1566	402.018902	1,039	\$65.500	H0132	
		Village of Wayland 1.2 CL Miles	407.0102	3,485	\$2.550	L0601	
38	6V1448	Steuben County	402.06830118	7,917	\$69.890	H0132	Dolomite Products Company, Inc. D/B/A A.L. Blades
		Rte. 53					
		CR 13 to N Prattsburgh V. Limits RM 53-6401/1057-1124	402.018902	534	\$63.000	H0132	
		Towns of Wheeler & Prattsburgh 6.6 CL Miles	407.0103	6,440	\$2.950	L0601	

<u>OGS</u>	<u>Project</u>	<u>County/Location</u>	<u>Item</u>	<u>Estimated</u>	<u>Unit</u>	<u>NYSDOT</u>	<u>Contractor</u>
------------	----------------	------------------------	-------------	------------------	-------------	---------------	-------------------

<u>Item</u>	<u>No.</u>			<u>Amounts</u>	<u>Price</u>	<u>Facility No.</u>	
39	6V1449	Steuben County	402.126302	9,814	\$67.260	H0327 /	Dolomite
		Rte. 36				H0127	Products
		5 M N of PA Line to Jasper	407.0102	8,153	\$2.550	L0601	Company, Inc.
		RM 36-6401/ 1353 to					D/B/A A.L.
		RM 17-6404/ 1146					Blades
		Towns of Troupsburgh & Jasper					
		5.4 CL Miles					
44	7V1414	Clinton County	402.06830118	5,124	\$87.700	H0140	Noel J. Brunell
		Rte. 374					& Son, Inc.
		Dannemora to Cadyville	402.018902	455	\$82.000	H0141	
		RM 374 7102/					
		1210 to 1255	407.0103	7,200	\$2.800	L0105	
		Tns:Dannemora,Cadyville					
		4.5 CL Miles					
45	7V1415	Clinton County	402.06820118	1,822	\$96.000	H0140	Noel J. Brunell
		Rte. 314					& Son, Inc.
		I87 to Rte. 9	402.018902	82	\$98.000	H0141	
		RM 314 7101/					
		1000 to 1008	407.0103	2,350	\$3.680	L0105	
		Town of Plattsburgh					
		0.8 CL Miles					
46	7V1417	Clinton County	402.06830118	808	\$104.80	H0140/	Noel J. Brunell
		Rte. 276			0	H0141	& Son, Inc.
		Pratt St: Corp Ln to Rte11	407.0103	915	\$3.950	L0105	
		RM 276 7101/					
		1040 to 1048					
		Town of Rouses Point					
		0.8 CL Miles					
48	7V1422	Franklin County	402.126302	7,250	\$70.100	H0137/	Barrett Paving
		Rte. 86				H0261	Materials Inc.
		Paul Smiths to Gabreils	407.0102	6,570	\$2.200	L0403	
		RM 86 7201/					
		1000 to 1035					
		Town of Brighton					
		3.5 CL Miles					

<u>OGS Item</u>	<u>Project No.</u>	<u>County/Location</u>	<u>Item</u>	<u>Estimated Amounts</u>	<u>Unit Price</u>	<u>NYSDOT Facility No.</u>	<u>Contractor</u>
50	7V1424	Franklin County Rte. 37 Westville to California Rd. RM 37 7203/ 1164 to 1218 Town of Westville 5.4 CL Miles	402.126302	9,878	\$65.750	H0137/ H0261/ H0139	Barrett Paving Materials Inc.
			407.0102	8,950	\$2.200	L0403	
54	7V1433	Jefferson County Rte. 26 Rte. 3-B.R.Br, Gasoline Ally- Rte. 11 RM26 7307/ 1072-1074, 1087-1126.5 Town of Leray 4.2 CL Miles	402.096202	8,950	\$63.050	H0365/ H0277	Barrett Paving Materials Inc.
			407.0102	8,110	\$2.200	L0403	
64	7V1455	St. Lawrence County Rte. 37 Raquette River- Rte. 131- FCL RM 37 7502/ 1677 to 1734 Town & Village of Massena 5.7 CL Miles	402.06820118	13,065	\$71.950	H0137/ H0261	Barrett Paving Materials Inc.
			402.018902	4,740	\$65.500	H0137/ H0261	
			407.0102	10,775	\$2.250	L0403	
			407.0103	7,400	\$2.750	L0403	

SECTION 3: PRICING INFORMATION

3.1 General

Clause 24B of the General Specifications has been modified to read:

Price will be net per ton, furnished, delivered, dumped into approved spreading machines, placed, and compacted totally by the Contractor. The existing bituminous concrete surface (and any surfaces included in this contract that will be overlaid by this contract) shall be treated with tack coat. **Tack coat shall be paid under its own item.** The price for the tack coat will include furnishing, delivering, and applying the tack coat as indicated. Price adjustments, if any, will be calculated on the basis of the material actually furnished.

The Contractor is to furnish all necessary labor and equipment to complete the indicated projects except that the State will supervise and control the operation. Permanent pavement striping will be the responsibility of the State upon completion of the paving after the Contractor has vacated the project site. The equipment supplied to place the hot mix asphalt shall meet the requirements of Section 402 of the New York State Department of Transportation Standard Specifications. The equipment supplied to place the tack coat shall meet the requirements of Section 407 of the New York State Department of Transportation Standard Specifications.

Hot mix asphalt pavers shall meet the requirements of Sub-Section 402-3.02, Hot Mix Pavers, of the New York Department of Transportation Standard Specifications. Compaction equipment shall meet the requirements of Sub-Section 402-3.04, Rollers of the Specification. All necessary operators shall be supplied along with the hot mix asphalt paver, rollers and distributor.

The approved hot mix asphalt pavers shall be capable of simultaneously paving the travel lanes and the shoulders as indicated in the Project Dimensions Table. All personnel supplied for the paving shall be qualified and experienced in hot mix asphalt paving.

3.2 Asphalt Price Adjustments

3.2.1 General

- a. Asphalt price adjustments allowed will be based on the **October 1, 2013** average of the F.O.B. terminal price **per ton** of unmodified PG 64-22 binder without anti-stripping agent (base average F.O.B. terminal price) **for the hot mix asphalt and tack coat.**

The October 1, 2013 average is \$593.000 per ton.

The new monthly average terminal price will be determined by the New York State Department of Transportation based on prices of pre-approved primary sources of performance graded binder in accordance with the New York State Department of Transportation Standard Specification.

NOTE: The same grade of asphalt cement used in establishing the base average F.O.B. terminal price shall be used in establishing the new average F.O.B. terminal price.

In the event that one or more of the New York State Department of Transportation pre-approved sources discontinue posting a price for asphalt cement, the base average F.O.B. terminal **price shall not be recalculated**

- b. The new average F.O.B. terminal price will be determined based on the above F.O.B. terminal prices posted on the 20th of each month, hereafter known as the "Adjustment Date", during the contract period. However, asphalt price adjustments, in accordance with the formula below, will be effective for deliveries made on and after the first of the month following the adjustment date.
- c. The unit prices per ton of hot mix asphalt (HMA) and per gallon of tack coat purchased from any award based on this specification will be subject to adjustment based on the following formula: (see next page)

Hot Mix

$$\text{Price Adjustment (per ton)} = \left(\frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right) \times \text{Total \% Asphalt Plus Fuel Allowance}$$

Tack Coat

$$\text{Price Adjustment (per gallon)} = \left(\frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right) \times \text{Total \% Asphalt Plus Fuel Allowance}$$

Positive Price Adjustment number shall be added to original per ton/gallon Price.
Negative Price Adjustment number shall be subtracted from original per ton/gallon Price.

New Monthly Average F.O.B. Terminal Price

The average F.O.B. terminal price for unmodified PG 64-22 binder without anti-stripping agent is as determined by the New York State Department of Transportation per New York State Department of Transportation Standard Specification.

Base Average F.O.B. Terminal Price

The average F.O.B. terminal price of unmodified PG 64-22 binder without anti-stripping agent is as determined by the New York State Department of Transportation as of October 1, 2013.

Total % Asphalt Plus Fuel

The percentage of total allowable asphalt and fuel for each item is as follows:

Material Designation	Asphalt %	+Fuel Allowance %	Total % Asphalt Plus Fuel
402.017902	****	1	****
402.018902	****	1	****
402.058902	8.25	1	9.25%
402.068X0118	6.70	1	7.70%
402.09XX02	6.20	1	7.20%
402.12XX02	5.50	1	6.50%
402.19XX02	4.90	1	5.90%
407.0102 Diluted Tack Coat	40.00	0.2	40.20%
407.0103 Straight Tack Coat	55.00	0.2	55.20%

****The conversion factor for Truing & Leveling will be computed separately using the conversion factors for the individual mixtures used

+Fuel Allowance represents allowance for energy (fuel, electricity, natural gas) used in the production of asphalt. It is a cost associated with the product and not intended to represent any trucking or hauling of product

- d. Work performed after the expiration of the contract, where no extension has been granted, resultant from purchase orders placed prior to expiration of the contract will receive the asphalt price adjustments applicable in effect during the last month of the contract.

Asphalt Price Adjustments for any contracts that are extended will be based on the new average for the month in which the work is done applying the same base established for that contract.

- e. Asphalt price adjustments allowed by this contract shall be calculated and applied to the original prices. There will not be asphalt price adjustments unless the change amounts to more than \$0.10 per ton from the original price for the hot mix and \$0.0150 per gallon for the tack coat. In these instances, prices will revert back to the original prices.

- f. All asphalt price adjustments will be computed to three decimal places.
- g. Should these provisions result in a price structure which becomes unworkable, detrimental or injurious to the State or in prices which are not truly reflective of market conditions or which are deemed by the Commissioner to be unreasonable or excessive, and no adjustment in price is mutually agreeable, the Commissioner reserves the sole right upon ten days written notice mailed to the Contractor to terminate any contract resulting from this bid opening.
- h. All asphalt price adjustments shall be published by the State and issued to all contract holders whose responsibility will be to attach the appropriate State notification (based on when the work was performed) to the payment invoice submitted to agency.

3.2.2 Asphalt Price Adjustment: Example

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

<p>EXAMPLE: Item 402.09XX02 Base Avg. Price = \$593.000 New Avg. Price = \$693.000 Total % Asphalt Plus Fuel = 7.20%</p>	$(\$693.000 - \$593.000) \times 0.072 = +\7.200 per ton
--	---

<p>EXAMPLE: Item 407.0102 Diluted Tack Base Avg. Price = \$593.000 New Avg. Price = \$603.000 Total % Asphalt Plus Fuel = 40.20%</p>	$\frac{\$603.000 - \$593.000}{235} \times 0.402 = +\0.017 per gallon
--	--

Positive Price Adjustment number shall be added to original per ton/gallon Bid Price.

Negative Price Adjustment number shall be subtracted from original per ton/gallon Bid Price.

SECTION 4: PREVAILING WAGE RATES

4.1 Prevailing Wage Rates – State and Federally Funded Public Works Contracts

Work being performed is subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility.

Any provisions of NYS Labor Law that are in conflict with mandatory Federal-Aid construction contract compliance requirements are superseded. Any provisions of NYS Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements or the Davis-Bacon Act but are more restrictive shall apply.

The applicable Prevailing Wage Rate Schedule for this project is **PRC # 2013009834**

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:

<http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showIt&id=723460>

For Prevailing Wage Updates, use the following DOL link:

<http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>

Links to schedule updates appear in the table at the bottom of the web page.

The Federal Wage Rate Charts are located on the web at <http://www.wdol.gov/dba.aspx>.

Referring to the following tables, enter the applicable WD# in the "Select DBA by number" field on the web page and click "Search".

COUNTY	WD #
Allegany	HWY-NY47
Clinton	HWY-NY6
Erie	HWY-NY8

COUNTY	WD #
Franklin	HWY-NY35
Jefferson	HWY-NY9
St Lawrence	HWY-NY9

COUNTY	WD #
Steuben	HWY-NY18

IMPORTANT NOTE: The above PRC number MUST be noted on all purchase orders issued for purchases from this contract.

4.1.1 Worker Notification – A9052; S6240

This provision is an addition to the existing prevailing wage rate law, Labor Law §220, paragraph a of subdivision 3-a. It requires Contractors and subcontractors to provide written notice to all laborers, workers or mechanics of the *prevailing wage rate* for their particular job classification *on each pay stub**. It also requires Contractors and subcontractors to *post a notice* at the beginning of the performance of every public work contract *on each job site* that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule, may be downloaded from www.labor.state.ny.us or made available upon request by contacting the Bureau of Public Work at 518-457-5589.

* In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.

4.1.2 OSHA 10-Hour Construction Safety and Health Course - S1537-A

This provision is an addition to the existing prevailing wage rate law, Labor Law §220, section 220-h. It requires that on all public work contracts of at least \$250,000, all laborers, workers, and mechanics working on site be certified as having successfully completed the OSHA 10-hour construction safety and health course. It further requires that the advertised bids and contracts for every public work contract of at least \$250,000 contain a provision of the requirement AND only applies to workers on a public work project that are required under Article 8 to receive the prevailing wage.

Further information may be found at: www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm .

SECTION 5: CONTRACT ADMINISTRATION

5.1 Contract Amendment Process

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

5.2 Contract Administrator

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Contractor may submit a Contract Administrator change by submission of a revised Contractor and Authorized Reseller Information form to the OGS Contract Administrator.

Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail through the submission of a revised Contractor and Authorized Reseller Information form to the OGS Contract Administrator.

SECTION 6: TERMS AND CONDITIONS

6.1 Contract Term and Extension

6.1.1 Contract Term

It is the intention of the State to enter into a contract for the term as stated herein.

If mutually agreed between the NYS Procurement and the contractor, the contract may be renewed under the same terms and conditions for additional period(s) not to exceed a total contract term of five (5) years

6.1.2 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

6.2 Request for Change

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services prior to effectuation.

6.3 Note to Contractor

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

6.4 Contract Payments

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications

6.5 Estimated Quantities

The quantities or dollar values listed are estimated only. See "Estimated/Specific Quantity Contracts" in Appendix B, OGS General Specifications

6.6 Delivery

Delivery shall be made in accordance with instructions on Purchase Order from agency. If there is a discrepancy between the purchase order and what is listed on the contract, it is the contractor's obligation to seek clarification from the ordering agency and, if applicable, from the Office of General Services, Procurement Services.

6.6.1 Delivery Ticket

A delivery ticket shall be provided with each load of bituminous material and filler for joints stating the following:

- a. Storage facility identification
- b. Ticket Number
- c. Date/time
- d. Item Number and Type
- e. Quantity ticket printed by machine
- f. Quantity in 60° F gallons for emulsions and PG binder

6.7 Default (Failure to Furnish Material)

Clause 45 of the General Specifications is modified as follows: Failure to furnish material within ten days after receiving order or as agreed upon with authorized representative or violation of shipping instructions, shall be cause for and entitle the State (1) to damages which in its judgment have resulted, or (2) to purchase in the open market at the expense of the Contractor. At the discretion of the State, one or both of these courses of action may be followed

6.8 Quantity Received

It is the responsibility of the agency to ascertain quantities shipped are accurate to the delivery ticket. Each vehicle should be checked for product upon arrival and prior to departure.

6.9 Payment

Payment shall be made at contract prices per net ton for the actual quantity of material placed by the Contractor. Payment shall be made at the contract price per gallon for the actual quantity of tack coat placed by the Contractor.

Payment adjustments will be applied in Quality Units for all applicable mixes as described in Sub-Section 401-4 and 402-4.

The following Index Prices shall be used for all projects contained in this contract:

QUALITY UNIT INDEX PRICES	
<u>Region</u>	<u>Index Price (\$/Quality Unit)</u>
1	\$70
2	\$75
3	\$80
4	\$70
5	\$75
6	\$75
7	\$75
8	\$90
9	\$70
10	\$110
11	\$105

6.10 Emergency Purchasing

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

6.11 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

6.12 Contract Billings and Payments

- a) **Billings.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.
Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in 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.
- b) **Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment.** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.
- c) **Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment.** The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

6.13 New York State OGS Procurement Services' Dispute Resolution Policy

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

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

Contractor is encouraged to maintain up-to-date Questionnaire during the life of the contract and is also required to ensure this Questionnaire reflects any substantive issues that may have occurred from the time the Contract was initially awarded.

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

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

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

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

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

6.15.1 New York State Law

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

6.15.2 Business Participation Opportunities for MWBEs

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that **the contract does not offer any opportunities for participation by MWBEs** as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: <http://www.esd.ny.gov/MWBE/directorySearch.html>. Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

6.15.3 Equal Employment Opportunity Requirements

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

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

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

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

6.16 Diesel Emission Reduction Act of 2006

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

The Law may be applicable to vehicles used by Contract vendors “on behalf of” State agencies and public authorities and require certain reports from Contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2014. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this Contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

6.17 Environmental Attributes and NYS Executive Order 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program) (EO4), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://www.ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

6.18 Extension of Use Commitment

The Contractor agrees to honor all orders from the authorized user by law which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

Any unilateral limitations/restrictions imposed by the Contractor and/or manufacturer on the eligible Authorized User will be grounds for rejection of the bid or cancellation of the Contract. If a Contract, or any portion thereof, is canceled for this reason, any additional costs incurred by the eligible purchaser will be borne by the Contractor.

6.19 Disposition of Settlements

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

6.20 Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

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

SECTION 7: HOT MIX ASPHALT – (SPECIFIC CLAUSES)

7.1 Material Descriptions

The following are the material descriptions of Superpave HMA items that may be included in this contract:

Materials Designation	Description
402.017902	Truing & Leveling F9, 70 Series Compaction
402.018902	Truing & Leveling F9, 80 Series Compaction
402.058902	Shim Course F9
402.096102	9.5 F1, 60 Series Compaction
402.096202	9.5 F2, 60 Series Compaction
402.096302	9.5 F3, 60 Series Compaction
402.097102	9.5 F1, 70 Series Compaction
402.097202	9.5 F2, 70 Series Compaction
402.097302	9.5 F3, 70 Series Compaction
402.098302	9.5 F3, 80 Series Compaction
402.098902	9.5 F9, Shoulder Course, 80 Series Compaction
402.126102	12.5 F1, 60 Series Compaction
402.126202	12.5 F2, 60 Series Compaction
402.126302	12.5 F3, 60 Series Compaction
402.127102	12.5 F1, 70 Series Compaction
402.127202	12.5 F2, 70 Series Compaction
402.127302	12.5 F3, 70 Series Compaction
402.128902	12.5 F9, Shoulder Course, 80 Series Compaction
402.196902	19 F9, 60 Series Compaction
402.197902	19 F9, 70 Series Compaction
402.256902	25 F9, 60 Series Compaction
402.257902	25 F9, 70 Series Compaction
402.06810118	6.3 F1, Superthin HMA, 80 Series Compaction
402.06820118	6.3 F2, Superthin HMA, 80 Series Compaction
402.06830118	6.3 F3, Superthin HMA, 80 Series Compaction

7.2 Pre-Paving Conference

The Contractor shall schedule a Pre-Paving Conference with the affected Resident Engineer within one month after the award of the Contract and at least two weeks prior to the start of paving. At this conference the Contractor shall present Certificates of Insurance evidencing compliance with the additional insurance requirements, their proposed paving schedule, equipment, proposed tack coat application procedure and paving procedure, and Work Zone Traffic Control Plan to the State for approval. At least one week prior to the start of paving, the Contractor shall coordinate the details of the paving with the Resident Engineer.

7.3 Supervision

The Department of Transportation shall provide supervision for the paving operation. The Resident Engineer shall designate a Paving Supervisor and that person shall be in responsible charge of the operation. The following portions of Section 105 - CONTROL OF WORK of the Standard Specifications shall apply to these projects: 105-01 STOPPING WORK, 105-08 COOPERATION BY THE CONTRACTOR, 105-15 CONTRACTOR'S RESPONSIBILITY FOR WORK.

7.4 Work Hours

Work shall not be permitted on Sundays and NYS Legal Holidays. If the contractors desire to work overtime on other days, dispensation from NYS Labor Department must be obtained using Department of Labor Form PW-30 (5/93). Night work is prohibited unless agreed to by the Contractor and NYS Department of Transportation.

7.4.1 Special Note - Overtime Dispensation Requests

All Overtime Dispensations will be sent to

Hasib H. Khan

Pavement Program Engineer
Office of Transportation Maintenance, POD 54
NYS Department of Transportation
50 Wolf Road, Albany, NY 12232

Email: Hasibul.Khan@dot.ny.gov
Phone: 518-457-1572
Fax: 518-457-4203

The dispensations will be submitted for the entire contract period for 5-10hr days (with rain day Saturday) to cover all the project numbers awarded to the contractor within the resulting contract. Should a contractor needs additional dispensation beyond the one described above, they shall submit it to the Regional Director of Operations or the Regional designee as determined at the preconstruction meeting, for the Region they wish to submit special additional dispensation for.

7.5 Restoration of Disturbed Areas

During the course of the work the Contractor shall take reasonable care not to disturb areas outside the existing pavement. Any areas disturbed by the Contractor shall be returned to their original condition at no expense to the State. Any and all debris generated as part of the work shall be removed by the Contractor upon completion of the project.

7.6 Tack Coat

The Contractor shall provide and apply bituminous tack coat to all existing hot mix asphalt pavement surfaces to be overlaid in this contract (and to all hot mix asphalt pavement surfaces included in this contract that will be overlaid by this contract). Tack coat shall meet the material requirements in Section 407-2 of the Standard Specifications. The application of tack coat shall comply with Section 407-3 of the Standard Specifications. **Tack coat shall be paid under its own item in gallons.**

7.6.1 Tack Coat Plant Number Requirements

Approved Plant Numbers for Tack Coat, Items 407.0102 and 407.0103, must be listed in the appropriate locations on the bid pages for each project bid. Failure to do so may result in non-award of the affected projects.

7.7 Construction Details

The construction details shall comply with the requirements specified in Subsections 401-3.01, 402-3 and 407-3 of the Standard Specifications. The Paving Supervisor shall have sole responsibility for determining compliance with the specifications. All orders given to the Contractor regarding construction details shall be considered final. **The tack coat application rate shall be 0.03 to 0.1 gallons per square yard as approved by the Paving Supervisor.** The pavement thicknesses and lane and shoulder widths shall be as specified elsewhere in this Contract Award Notification.

7.8 Attention: Special Note - Conditioning

The Contractor will not be responsible for the initial conditioning of the existing pavement and shoulder surfaces as described in Section 402-3.05 of the NYSDOT Standard Specifications. Patching, joint repair, crack filling and the initial surface cleaning will be done by NYSDOT forces prior to the VPP project. However, once the VPP overlay placement begins, the Contractor is responsible for keeping the pavement and shoulders clean until the overlay operations are completed, as per Section 633-3.01 of the NYSDOT Standard Specifications.

7.9 Attention: Special Note - Shoulder Edge

The outside edge of shoulder on any course of hot mix asphalt for all projects in this Contract Award Notification shall consist of a one on three tapered section from finished grade to the original surface constructed using a device attached to the screed. Hand work should be minimized. The top of the tapered section shall begin at the dimension indicated in the Project Dimensions table listed elsewhere in this Contract Award Notification. That is, the tapered section will be an additional width of material outside of the paved shoulder width specified in the Project Dimensions table.

7.10 Work Zone Traffic Control

The Contractor shall be responsible for Work Zone Traffic Control. Traffic shall be controlled in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and Sections 619-1 through 619-3 of the Standard Specifications as described herein including modifications to the Standard Specifications. The Contractor shall submit a Work Zone Traffic Control Plan for approval to the Resident Engineer at the Pre-Paving Conference. For two-way roadways, Figures TAST-C1R, TAST-C2R, TAST-C3R, TAST-C4R, TAST-C5R, TAST-C7R, TAST-C1UL, TAST-C2UL, TAST-C3UL, TAST-C4U, TAST-C7UL, TAST-C1UH, TAST-C2UH, TAST-C3UH, and TAST-C7UH included in this document may be used as a basis for development of a Work Zone Traffic Control Plan. For one-way roadways, Figures TAST-C5UL, TAST-C6UL, TAST-C8UL, TAST-C5UH, TAST-C6UH, and TAST-C8UH may be used as a basis for development of a Work Zone Traffic Control Plan. For one-way Freeways or Expressways, Figures TAST-E1, TAST-E2, TAST-E3, TAST-E4, TAST-E5, TAST-E6, and TAST-E7 may be used as a basis for development of a Work Zone Traffic Control Plan.

All necessary flaggers for Work Zone Traffic Control shall be provided by the Contractor. For two-way roadways, a minimum of three flaggers shall be provided while the paving operation is underway. One shall be stationed at each end of the operation and one shall be stationed with the paver. For one-way roadways, a minimum of two flaggers shall be provided while the paving operation is underway. One shall be stationed at the beginning of the operation and one shall be stationed with the paver. The Contractor shall station flaggers such that communication is maintained between the flaggers. Hand signals, radios, pilot vehicles or some other means of communication may be used subject to the approval of the Resident Engineer.

All costs for Work Zone Traffic Control including flagging, temporary pavement marking and/or delineation, and construction signs are included in the price per ton. No separate payment shall be made.

Major intersecting roads are defined as through State, County, Town, Village, or City roads. The Contractor may provide Portable signs as shown in Figure 6F-2 of the MUTCD and meeting the requirements of Section 619 of the Standard Specifications for lane closures during work hours. Signs left active at night shall be rigid and reflectorized in accordance with the Standard Specifications.

With prior permission of the State's Resident Engineer, the contractor may provide portable signs as shown in Figure 6F-2 of the MUTCD for the above referenced DO NOT PASS and NO CENTER LINE signs. Signs left active at night shall be rigid and reflectorized in accordance with the Standard Specifications. The contractor shall be responsible for assuring that these signs will be in their upright, visible positions twenty-four hours a day, seven days a week while 2' x 4" temporary yellow markings are used instead of full barrier pavement markings.

The Contractor shall provide construction signs as specified in Section 619-1 through 619-3 of the Standard Specifications and in the MUTCD. At a minimum the Contractor shall install the following permanent construction signs

SIGN	MINIMUM SIZE	LOCATION
ROAD WORK NEXT _____ MILES	<u>G20-1</u> Conventional 36" x 18" Freeways 48" x 24"	On main line upstream of project in each direction
END ROAD WORK	<u>G20-2</u> Conventional 36" x 18" Freeways 48" x 24"	On main line after end of project in each direction
ROAD WORK AHEAD	<u>W20-1</u> Conventional 36" x 36" Freeways 48" x 48"	On main line in advance of the affected highway segment in each direction and on major intersecting roads 300 -500 feet in advance of main line. Sign should be covered if it conflicts with temporary signing in the vicinity. (Place between the G20-1 and the first warning sign that states condition- i.e. W8-12, W8-9 or W8-15)
DO NOT PASS	<u>R4-1</u> Conventional 24" x 30"	If 2' x 4" temporary yellow markings are used instead of full barrier centerline pavement markings, place the first sign at or within 100 feet of the beginning of the unmarked area, second within 1,000 feet and subsequent signs, spaced every ½ mile along project in each direction
NO CENTER LINE	<u>W8-12</u> Conventional 36" x 36"	If 2' x 4" temporary yellow markings are used instead of full barrier centerline pavement markings, place the first sign in advance of the condition and the first "DO NOT PASS" sign: 300' urban is preferred (100' minimum), 500' rural is preferred (200' minimum). Place additional signs spaced every 2 miles on mainline in each direction and after every major intersecting road.
LOW SHOULDER	<u>W8-9</u> Conventional 36" x 36" Freeways 48" x 48"	Place on mainline spaced every 2 miles along project in each direction and after every major intersecting road until shoulder back-up is installed (if conditions warrant use, place between the W8-12 and R4-1, maintaining a minimum of 200' between signs for rural roads and 100' on urban. The W8-12 can be moved upstream to accommodate the required spacing.)
GROOVED PAVEMENT	<u>W8-15</u> Conventional 36" x 36" Freeways 48" x 48"	On any roadway 500 feet in advance of rebates milled under this contract, but not paved. Remove or cover after paving rebate.

**All signs should maintain an absolute minimum spacing of 200' rural or 100' urban. 500' is preferred on rural and 300' is preferred on urban. Double stacking of any of the above signs, or combination thereof, will NOT be permitted.

7.10.1 Special Note - Temporary Pavement Markings

The contractor shall install and maintain temporary pavement markings on any paved surface without permanent pavement markings before opening it to traffic, before nightfall or before the end of the work day, whichever comes soonest except for areas that are open during the work shift with channelizing devices or flaggers. Temporary pavement markings shall meet the requirements of Section 619 of the Standard Specifications except that two-lane, two-way highways may be left without full barrier centerlines in no passing zones for a maximum of 7 calendar days provided that NO CENTER LINE (W8-12, black on orange), NO PASSING ZONE (W14-3, black on orange pennant shaped sign), and DO NOT PASS (R4-1) signs are used consistent with the MUTCD and in conjunction with yellow 2 foot by 4 inch temporary markings consisting of retro-reflective removable pavement marking tape, paint or yellow temporary overlay markers installed on a 40 ft. cycle to delineate the centerline location.

The State is responsible for the final pavement markings unless otherwise indicated in the contract. If the Contractor chooses to install NO CENTER LINE and DO NOT PASS signs and temporary yellow 2 foot by 4 inch pavement markings in lieu of full barrier centerline markings, the signs shall be left in place until the state has completed installing the final pavement markings. The state will normally complete final pavement markings within 7 days of the project completion. However, if unavoidable situations delay the pavement marking installation the signs shall remain in place for 14 calendar days after the project has been completed or until the state has completed installing the final pavement markings, whichever comes first. If permanent pavement marking cannot be installed within 14 days of the project completion, state must install interim pavement marking including center lines, edge lines, stop bars, and simple crosswalks with no hatching before the end of 14 days after project completion.

All costs for Work Zone Traffic Control including flagging, temporary pavement markings, delineation, and construction signs are to be included in the prices bid per ton for the bituminous concrete.

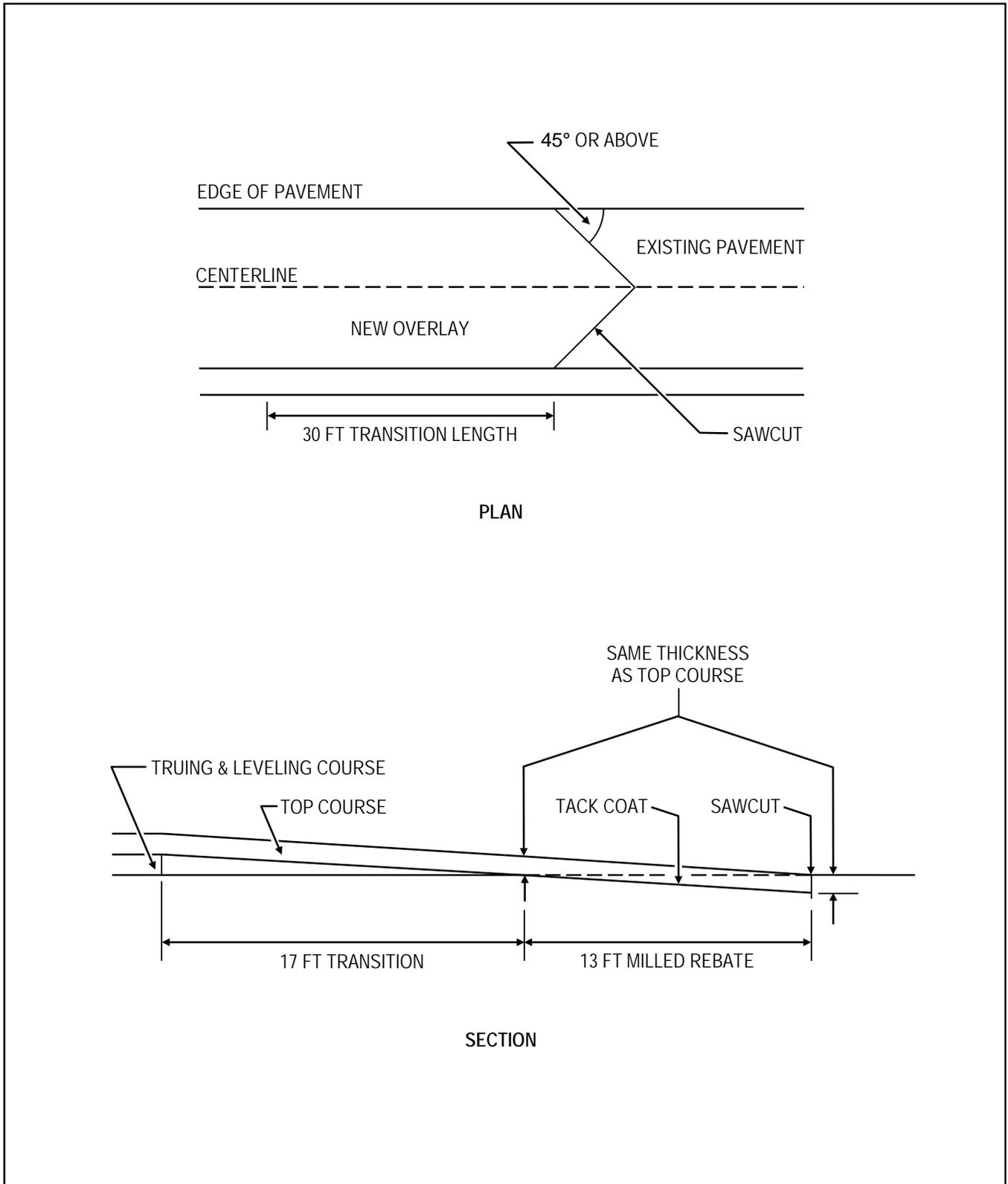
7.10.2 Hot Mix Asphalt Overlay Splice (Rebate)

The Contractor shall install hot mix asphalt overlay splices (pavement terminations) as per the Detail of Hot Mix Asphalt Overlay Splice. Hot mix asphalt overlay splices shall be installed at the areas indicated in the Location Table for Hot Mix Asphalt Overlay Splices. The cost for sawcutting, milling rebates and cleaning pavement in the splice area shall be included in the price bid per ton of bituminous concrete. Tack coat shall be paid under its own item as specified elsewhere. No separate payments shall be made for hot mix asphalt overlay splices.

Immediately after the hot mix asphalt overlay splices are milled, a temporary asphalt ramp shall be constructed. A cone or drum shall be installed at the ramp. If the rebate is left in place at night a drum equipped with a Type A flashing warning light shall be used and the ramp sloped in accordance with Table 619-1. No separate payment shall be made for the ramps. The cost shall be included in the price bid per ton of bituminous concrete.

Where rebates are milled and ramps are constructed and traffic is to ride on the milled pavement for more than the one work day in which the rebate is milled, GROOVED PAVEMENT signs (W8-15) shall be installed on the right side of the roadway, 500 feet upstream of the rebate location. No separate payment shall be made for the GROOVED PAVEMENT sign. The cost shall be included in the price bid per ton of bituminous concrete.

DETAIL OF HOT MIX ASPHALT OVERLAY SPLICE



7.10.3 Special Note: Work Zone Intrusion Initiative

As part of the Department of Transportation’s Work Zone Intrusion Initiative, the following countermeasures shall apply to this Contract Award Notification.

Channelizing Device Spacing Reduction

A maximum channelizing device spacing of 40 feet shall be provided at stationary work sites where workers are exposed to traffic. This spacing shall be maintained a reasonable distance upstream of workers, and shall be used throughout the work zone.

Where tapers are located less than 500 feet from the work site, the 40 foot spacing shall be used in the taper as well.

Drums or vertical panels are preferred for long-term stationary and intermediate-term stationary work zones, and at any locations where the risk of intrusion is high. Traffic cones are normally adequate for work zones set up and removed on a daily basis.

In long lane or shoulder closures, at least two channelizing devices shall be placed transversely at maximum 800 foot intervals to discourage traffic from driving through the closed lane. Transversely placed devices are not required where pilot vehicles are in used.

Frequent checks shall be made to reset channelizing devices dislodged by traffic.

Flagger Station Enhanced Setups

Additional cones and a flag tree meeting section 6F.62 of the MUTCD shall be used upstream of flagger stations to provide added warning to drivers. These devices shall be used for flagger stations except those that are constantly moving or are in use at one location for no more than a few minutes. If the W20-7a Flagger sign is required, the additional cones and flag tree shall also be used.

For additional details on Flagger Station Enhanced Setups, see Work Zone Traffic Control drawings in this Contract Award Notification.

7.10.4 Temporary Rumble Strips

Description

This work shall consist of the installation, maintenance and subsequent removal of temporary rumble strips in paving work zones where indicated in the Contract Award Notification or as directed by the Engineer.

Materials

Rumble strips shall be either constructed in place from a raised strip of asphalt concrete or constructed in place with removable pavement marking tape.

Raised removable tape rumble strips shall be formed by applying four layers of removable black non-reflectORIZED removable pavement marking tape. The tape shall be applied to a clean, dry pavement surface in accordance with the manufacturer’s recommendations. The pavement surface shall be cleaned with compressed air just prior to application of the tape.

Raised asphalt rumble strips shall be formed from hot mix asphalt meeting the requirements of Items 402.058902 or 402.098902. Tack coat meeting the requirements of Materials Designation 702-XXXXT Diluted Tack Coat shall be used to adhere the rumble strip to the existing pavement. Temporary rumble strips shall be formed using a specially constructed rumble strip paver (drag box) pulled transversely across the pavement, or by hand placement between forms fixed to the pavement. If forms are used, they shall be removed prior to compaction of the asphalt mixture. Compaction shall be accomplished using a plate tamper or a static roller. The roadway surface on which the rumble strips are to be attached shall be dry, free of surface contaminants such as dust or oil, and shall be 45 F or greater unless otherwise authorized by the Engineer. The pavement surface shall be cleaned with compressed air just prior to tack coating and subsequent installation of rumble strips.

Temporary rumble strips shall be placed in a succession of three 6 Strip Patterns according to the attached “Suggested Layout Details - Temporary Rumble Strips”. Each strip shall be placed on 10 foot centers and traversing the full width of each travel lane. On curbed roadways, rumble strips shall end a minimum of 3 feet from the curb so as to not interfere with drainage. Rumble strips shall be between 6 inches and 9 inches in width and have a final compacted thickness of 0.4 inches ± 0.1 inches.

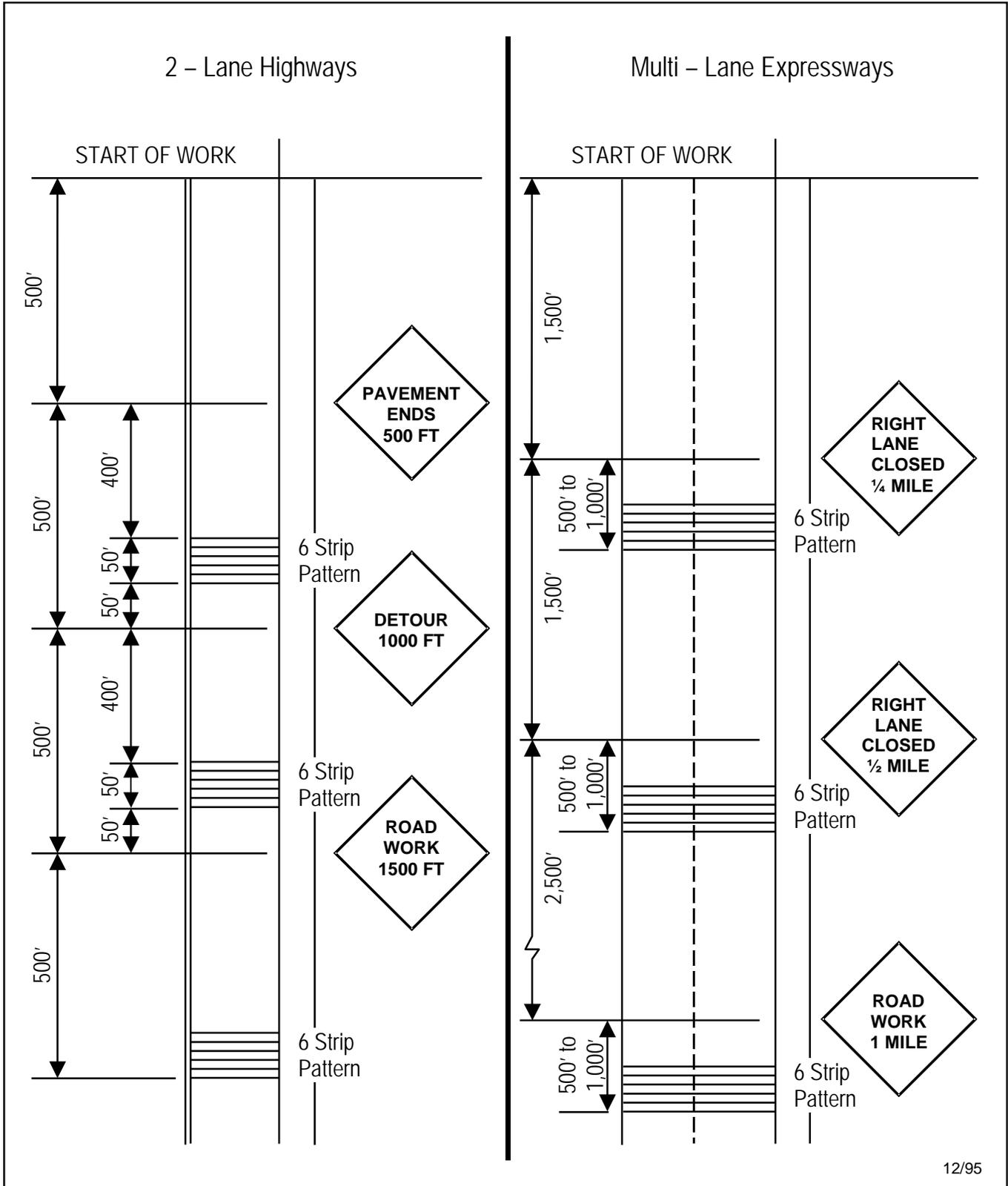
Any raised rumble strips that fail to adhere to the pavement, or become damaged or flattened such that, in the opinion of the Engineer, they are no longer performing their intended function, shall be replaced or repaired by the Contractor to the satisfaction of the Engineer. Any associated damage to the pavement shall also be repaired by the Contractor to the satisfaction of the Engineer. These replacements or repairs shall be made at no additional expense to the Purchasing Agency.

When directed by the Engineer, (e.g., prior to the start of the winter plowing season), or prior to the placement of successive pavement courses, the Contractor shall completely remove the rumble strips from the pavement. Rumble strips shall be removed upon completion of work and concurrently with the removal of other temporary traffic control signs and devices. Any pavement that is damaged in the process of removing the rumble strips shall be repaired by the Contractor to the satisfaction of the Engineer at no additional expense to the Purchasing Agency.

Basis of Payment

All costs for the installation, maintenance and removal of temporary rumble strips are included in the price per ton. No separate payment shall be made.

Suggested Layout Details -- Temporary Rumble Strips



7.11 Contract Bonds

The Contractor shall provide the State with a Labor and Materials Bond from a Surety Company listed on the U.S. Department of the Treasury listing of Approved Sureties (Treasury Department Circular 570) and licensed to do business in New York State, and with a minimum rating by A.M. Best of (A-) in the “best’s Key Rating Guide”. Treasury Department Circular 570 can be found on the U.S. Department of the Treasury website at www.fms.treas.gov/c570/index.html .
The Contractor shall procure and deliver the bond to the State at the Pre-Paving meeting and shall maintain it at its own expense and without expense to the State during the Contract and until three months after the OGS contract ending date. If the contract is extended, the Labor and Materials Bond shall be extended until three months after the new contract ending date. The Surety Company shall append a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by the officers of the Company to the bond.

7.11.1 Labor and Material Bond

The Contractor shall provide a bond in the form prescribed by the Commissioner of the New York State Department of Transportation (NYSDOT), shown in the NYSDOT Standard Specification for Design and Construction, Sub-Section 103-08 Sample Form of Labor and Material Bond, with sufficient sureties, approved by said Commissioner, guaranteeing prompt payment of monies due all persons supplying the Contractor with labor and materials employed and used in carrying out the contract, which bond shall inure to the benefit of the persons supplying such labor and materials. The amount of the Labor and Material Bond shall be 100% of the amount of the total contract bid price.

7.11.2 Labor and Material Bond Example

(See the following two pages)

SAMPLE (page 1 of 2)

103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS, that _____
(Name of Contractor)

(Address)
(hereinafter called the "Principal") and the

_____ a corporation created and existing under the laws of the State of _____ having its principal office in the City of _____ (hereinafter called the "Surety"), are held and firmly bound unto the People of the State of New York (hereinafter called the "State") by and through its Department of Transportation (hereinafter called the "Department"), in the full and just sum of [Total Contract Bid Price or the "A Portion" of Total Contract Bid Price Dollars (\$.....)] good and lawful money of the United States of America, for payment of which said sum of money, well and truly to be made and done, the said Principal binds itself, its heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

WHEREAS, said Principal has entered into a certain written contract, on the ____ day of _____, 20____ with the Department of Transportation, 50 Wolf Road, Albany, New York 12232.

(Project Description)

In the county/counties of which constitutes Contract No. NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall promptly pay all monies due to all persons furnishing labor or materials to it or its SubContractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect; Provided, however, that the Comptroller of the State of New York having required the said Principal to furnish this bond in order to comply with the provisions of Section 137 of the State Finance Law, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Section to the same extent as if they were copied at length herein; and Further, provided, that the place of trial of any action on this bond shall be in the county in which the said contract was to be performed, or if said contract was to be performed in more than one county then in any such county, and not elsewhere.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and the said Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered ____ day of _____ 20____ in the presence of

(Company)
By _____) Principal
(Signature)

(Title)

(Company)
By _____) Surety
(Signature)

(Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).

S A M P L E (page 2 of 2)

103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND

(Acknowledgment of principal, unless it be a corporation)

STATE OF NEW YORK ss. :

COUNTY OF _____

On this _____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary Public

(Acknowledgment of principal, if a corporation)

STATE OF NEW YORK ss. :

COUNTY _____

On this _____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of the _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

(Acknowledgment of Surety Company)

STATE OF NEW YORK ss. :

COUNTY OF _____

On this _____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of the _____ the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

State Of New York Office of the Attorney General

I hereby approve the foregoing contract and bond as to form and manner of execution.

SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS)

8.1 Funding Source

The following projects will be funded by **Federal Aid**:

5V1446, 6V1413, 6V1415, 6V1441, 6V1448, 6V1449, 7V1414, 7V1415, 7V1422, 7V1424, 7V1433, and 7V1455.

Project 7V1417 will be 100% **State-funded**.

8.2 Special Note - Coordination with Cold Recycling Projects

Prior to HMA overlay, Projects 6V1413, 6V1415, 6V1448, and 6V1449 involve cold recycling through separate contractor(s). These VPP overlay projects require that the paving contractor coordinates their work with corresponding cold recycling contractor to allow required curing period before placing the HMA overlay as well as to minimize disruption to the traveling public and the time traffic is running over a recycled surface

8.3 Special Note – Optional Use of Warm Mix Asphalt (WMA) Technologies

The contractor has the option of using an Approved WMA Technology in the production of all 402, *Hot Mix Asphalt (HMA)* items, except *SUPERPAVE HMA with Ice Retardant items, Waterproofing Bridge Deck HMA items, and Paver-Placed Surface Treatment* items, at no additional cost to the State.

If the contractor chooses to use a WMA technology, the provisions of §401 and §402 shall apply including the following:

1. Use an approved technology appearing on the Approved List for *Technologies for Warm Mix Asphalt*. Design a mixture using a WMA Technology in accordance with MM 5.16, *Superpave Hot Mix Asphalt Mixture Design and Mixture Verification Procedure*. At a minimum, a one point verification of the mixture's volumetric properties is acceptable for the following situations:
 - When the WMA mix design is based on an existing Production Status HMA mix design.
 - When the WMA mix design is based on, and utilizes a different WMA technology than, an existing Production Status WMA mix design.
2. Comply with the latest manufacturer's "Production, Testing, and Compaction Details" from the Approved List for incorporating the WMA technology. Test specimens may be made from plant produced or laboratory prepared WMA. Test specimens must be made from plant produced WMA if adding the WMA technology in the lab does not simulate the production process. The Regional Materials Engineer (RME) may require a State representative be present during the fabrication and testing. Submit the WMA design to the RME for review and verification at least 14 calendar days before production, including:
 - Name of WMA technology and the target dosage rate.
 - If using an additive other than water,
 - Submit a MSDS for the additive.
 - Submit either enough of the additive for the laboratory mix design verification, or the additive pre-blended in the PG Binder at the correct dosage. If the additive is not pre-blended into the PG Binder, include directions for properly incorporating the additive into the laboratory made mixture.
 - Prior to the submission of any mix design, contact the RME to determine if there is an increased concern regarding the mixture's moisture susceptibility based on the WMA technology and/or the type of aggregate being used, or the performance of similar mixes. The RME may require AASHTO T 283 moisture susceptibility test results, meeting a minimum Tensile Strength Ration (TSR) of 80%, as part of the mix design submission.
3. Submit Production Quality Control Plan revisions incorporating the WMA technology if not previously submitted.

SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS) (Cont'd)

4. For 80 Series Compaction Method, complete all breakdown roller passes before the mat temperature falls below 230° F, unless approved by the Director, Materials Bureau.
5. When the asphalt mixture is being placed over a Sheet-Applied Waterproofing Membrane, maintain a minimum delivery temperature in accordance with the Material Detail Sheets prepared by the membrane manufacturer.

8.4 Special Note - Rail Road Involvement in Federal Funded Projects

Bidders are advised that there may be active at-grade railroad crossings within the limits of projects in this Contract Award Notification. At any active at-grade railroad crossings encountered on the projects in this Contract Award Notification, the contractor shall conduct its work and handle the equipment such that no part of any material or equipment shall foul a track, catenary, electrical facility or signal facility. A track is fouled when any object is brought within 7.62 M (25') of the centerline of the track or the nearest point of a railroad's catenary, electrical facility or signal facility.

8.5 Special Note - Rail Road Involvement in 100% State-Funded Projects

Bidders are advised that there may be active at-grade railroad crossings within the limits of projects in this Contract Award Notification. The following at-grade railroad crossing has been identified, but there may be others within the limits of these projects that have not been identified:

Project Number	County	Route	Rail Road Name	Location
7V1417	Clinton	276	CPR Delaware & Hudson: Canadian Main	RM 276-7101-1044 Village of Rouses Point

At the identified at-grade crossing, and any other active at-grade railroad crossings encountered on the projects in this Contract Award Notification, the contractor shall coordinate with the corresponding Railroad as per follows:

8.5.1 Coordination with Railroad(s)

The Contractor shall note that this project may require close coordination with a railroad and railroad protective flagging services.

Description

The Contractor shall conduct its work and handle its equipment such that no part of any material or equipment shall foul a track, catenary, electrical facility or signal facility without written permission from the chief engineer of the railroad company(s) affected. A track is fouled when any object is brought within 7.62 M (25') of the centerline of the track or the nearest point of a railroad's catenary, electrical facility or signal facility.

Construction Details

In the event the Contractor's work does foul a railroad facility the Contractor shall obtain a permit in order to enter railroad property and to cover the costs of the railroad's force account services. The Contractor will not be allowed to enter onto the railroad's property to perform contract work, nor will the railroad provide services occasioned by the Contractor's operations unless the Contractor notifies the Railroad(s) and receives the railroads' prior approval. A railroad will not provide any services necessitated by the Contractor's operations until the permit is obtained. These railroad's costs will include, but may not be limited to costs incurred by the railroad to provide flaggers, spotters, engineering services, administrative services, construction inspection, or other labor, material or equipment necessary to provide a safe environment for both the Contractor's and Railroad's forces.

The Contractor is advised that a railroad may not be able to provide flag persons on a daily basis due to the railroad's operational necessities. The Contractor shall coordinate and schedule his construction activities with the railroad's engineer no later than two weeks prior to the start of the work, in consultation with the State's Engineer-in-Charge, so that a workable schedule can be formulated and agreed upon. In addition to the above, the Contractor shall also comply with the current Standard Specifications §105-09 WORK AFFECTING RAILROADS.

Basis of Payment

All costs incurred by the contractor to comply with the requirements in this Special Note shall be included in the price bid per ton for the hot mix asphalt. No extra payment shall be made.

9.1 – 12.6 No longer apply

SECTION 13: PROJECTS - SPECIAL NOTES (NYSDOT REGION 5)

13.1 Pavement Markings – Region 5 Projects

It shall be the contractor's responsibility to inventory and document the existing pavement marking patterns prior to milling and/or resurfacing and submit to the Engineer a copy of the inventory prior to beginning work. The contractor shall be responsible for completing all layout work necessary for the installation of all final pavement markings. If the original markings are obliterated, the contractor shall contact the resident engineer for guidance on their location.

13.2 Abrading Existing Pre-Formed Pavement Markings – Region 5 Projects

The Contractor shall remove any pre-formed pavement markings. Care shall be taken to avoid damage to passing traffic. All damage to passing traffic caused by the Contractor's operations shall be the Contractor's responsibility. Waste material generated by the abrading operation shall be cleaned up and disposed of by the contractor. When the contractor abrades the existing pre-formed pavement markings, the contractor shall place temporary pavement markings as specified elsewhere in this Contract Award Notification under Work Zone Traffic Control, unless the HMA will be placed the same day as the pre-formed pavement markings are abraded. The contractor shall make every effort to expeditiously place the HMA in areas where the pre-formed pavement markings have been abraded. Under no circumstances will temporary pavement markings be allowed for more than five calendar days in areas where pre-formed pavement markings are abraded. In this event, the contractor shall be required to place full pavement markings at no cost to the State. During the pre-form pavement markings abrading operation, traffic shall be controlled by the contractor in accordance with Work Zone Traffic Control requirements included herein. The contractor shall submit a proposed Work Zone Traffic Control Plan to the Resident Engineer for approval. The plan may be based on the Work Zone Traffic Control drawings included in this Contract Award Notification. Payment for pre form pavement marking abrading shall be included in the price bid per ton for the HMA. No separate payment shall be made.

13.3 *No longer applies*

13.4 Time Restrictions – Region 5 Projects

All Region 5 Projects shall follow the time restrictions outlined in the "Work Zone Traffic Control - for Design/Construction on State Highways in Region 5 available on the NYSDOT web site or the Regional Transportation Systems Operations group excepting the following projects:

13.4.3 Project 5V1446

- a. No work shall be allowed on NY 5 in the eastbound direction during 6:00 AM-9:00 AM or in the westbound direction from 3:00 PM-6:00 PM. These time restrictions include the set-up and take-down of work zones. Time restrictions are for single lane closures and shoulder closures for any workday, Sunday through Saturday inclusive.
- b. This project also includes the paving of three ramps (full-width) at the NY 5 and Ridge Rd interchange:
 - Ramp 'A' [NY 5 EB off-ramp terminating at Ridge Rd]
 - Ramp 'D' [Ridge Rd on-ramp to NY 5 EB]
 - Ramp 'C' [NY 5 WB off-ramp terminating at Ridge Rd]

The contractor shall maintain traffic or provide a detour including all appropriate signs. If the contractor elects to detour traffic, they will be responsible for obtaining approval from the appropriate entity for routes used. Permission must also be obtained from the Regional Traffic Engineer or designee. Cost to be included in the price bid for asphalt items.

SECTION 14: PROJECTS - SPECIAL NOTES (NYSDOT REGION 6)

14.1 Coordination with other Projects – Region 6 Projects

A proposed waterline project is scheduled for 2015 in the Village of Prattsburgh within PIN 6V1448. The majority of the project is outside of the pavement limits; however, there is a perpendicular crossing on the North end of the Village near the school. Coordination with the Village of Prattsburgh Water Department's Contractor to minimize disruption to the traveling public will be required.

A proposed waterline project is scheduled for 2015 in the Village of Wayland. The project has a crossing between Millen St and Mill St within the project limits of Project 6V1441. Coordination with the Village of Wayland Water Department's Contractor to minimize disruption to the traveling public will be required. Additional coordination with NYSDOT Residency 6-2 will be required so they may schedule their Milling Contractor prior to the HMA paving work. Project 6V1441 is restricted to HMA paving dates between September 15, 2015 and October 31, 2015.

14.2 Schedule Restriction – Region 6 Projects

All Region 6 Hot Mix Asphalt projects shall be completed no later than October 31, 2015. A schedule reflecting this shall be submitted before start of work to the Region's ARDO, Stacey Forenz, for approval.

14.3 HMA Overlay Splices (Rebates) – Region 6 Projects

All Region 6 Hot Mix Asphalt overlay splices (pavement terminations) shall be installed as per NYSDOT Standard Sheet 402-01 issued under EB 08-036.

14.4 Temporary Pavement Markings – Region 6 Projects

Paint is the only option permitted in Region 6 for temporary pavement markings, unless approved on a case by case basis by the Resident Engineer. Paint must meet the material requirements of Standard Specifications 727. Offset the centerline temporary pavement markings so that the permanent markings will cover up the temporary markings, as follows: 8" centerline offset for 2-lane roads, 6" centerline offset for multi-lane roadways.

14.5 "Dig Safe" Ticket – Region 6 Projects

A reminder that per Code Rule 753, a "Dig Safe" ticket shall be submitted for each project notifying of "...the movement or removal...of pavement..." Some of these utilities may request "no vibratory rolling" for a distance up to 100' over interstate/intercontinental gas/petroleum transverse crossings. Contractors can visit the following website to view whether there is likelihood for these utilities in the project limits: <https://www.npms.phmsa.dot.gov/> and then click the npms public map viewer link and follow the instructions.

14.6 *No longer applies*

SECTION 15: PROJECTS - SPECIAL NOTES (NYSDOT REGION 7)

The following Special Notes for Region 7 Projects shall supersede any other sections of this Contract Award Notification or the Standard Specifications referenced herein.

15.1 Special Work Zone Traffic Control – Pilot Vehicle – Region 7 Projects

Unless otherwise specified, the highway shall be kept open to traffic at all times. Traffic shall be discontinued on the lanes where work is being performed on these projects; and as soon as paving is done and rolled, controlled traffic may be permitted thereon. For Region 7 projects in this Contract Award Notification, the Contractors shall provide sufficient two-way radio equipped pilot vehicles to guide traffic around paving work at a speed not to exceed 15 mph. The pilot vehicles shall be equipped with construction signs meeting the requirements of Section 6F.58 of the Manual of Uniform Traffic Control Devices and a rotating amber beacon.

SIGN	MINIMUM SIZE	LOCATION
PILOT VEHICLE FOLLOW ME	G20-4 CONVENTIONAL 36"x18"	ON BACK OF PILOT VEHICLES

The pilot vehicle shall have the name of the Contractor prominently displayed.

All cost for Work Zone Traffic Control including flagging, temporary pavement markings, channelizing devices, construction signs, and pilot vehicles shall be included in the prices bid per ton for bituminous concrete. No separate payment shall be made.

15.2 Exposed Longitudinal Joints – Region 7 Projects

Exposed Longitudinal Joints on any asphalt material placed by the Contractor under this award will not be permitted overnight. All centerline joints and/or abutting travel lane joints shall be required to be closed by the end of each work day.

15.3 Moisture Susceptibility Testing – Region 7 Projects

Any HMA mix design where the primary aggregate component by weight is granite or crushed gravel will be subject to moisture susceptibility testing by the producer during design, unless this requirement is waived by the RME. TSR testing may be required by the RME when there is a change to the asphalt binder source.

Moisture susceptibility will be determined by calculating the tensile strength ratio (TSR) of each specimen according to AASHTO T 283, Resistance of Compacted Asphalt Mixtures to Moisture-Induced Damage, except as modified in Section VI.D. of NYSDOT Materials Method 5.16.

If the TSR of the HMA gyratory specimens is less than 80%, as required in AASHTO M 323, corrective action is required. Corrective action to improve the moisture susceptibility of the HMA mixture can include the use of anti-strip additives or blending of other aggregate materials to reduce the proportion of granite or gravel aggregates in the mix. When corrective action is necessary, any changes made to the design must be noted on the JMF, and all other volumetric and mechanical properties must be evaluated for compliance with NYSDOT Materials Method 5.16 using a one-point design. The results must be reported to the RME prior to production.

15.4 *No longer applies*

15.5 *No longer applies*

16.1 *No longer applies*

16.2 *No longer applies*

SECTION 17: SUPERPAVE HOT MIX ASPHALT

17.1 Superpave Hot Mix Asphalt Design Criteria

The following are design criteria for SUPERPAVE Hot Mix Asphalt Items for projects contained in this Contract Award Notification:

Project Number	Item	80kN EAL's	Aggregate Size	PG Binder
5V1446	402.06820118	<30.0 Mil	6.3	PG 64-22 ER
6V1413	402.06830118	<30.0 Mil	6.3	PG 64-22 ER
	402.018902	<30.0 Mil	9.5	PG 64-22
6V1415	402.06820118	<30.0 Mil	6.3	PG 64-22 ER
6V1441	402.126302	<30.0 Mil	12.5	PG 64-22
	402.018902	<30.0 Mil	9.5	PG 64-22
6V1448	402.06830118	<30.0 Mil	6.3	PG 64-22 ER
	402.018902	<30.0 Mil	9.5	PG 64-22
6V1449	402.126302	<30.0 Mil	12.5	PG 64-22
7V1414	402.06830118	<30.0 Mil	6.3	PG 64-22 ER
	402.018902	<30.0 Mil	9.5	PG 64-22
7V1415	402.06820118	<30.0 Mil	6.3	PG 64-22 ER
	402.018902	<30.0 Mil	9.5	PG 64-22
7V1417	402.06830118	<30.0 Mil	6.3	PG 64-22 ER
7V1422	402.126302	<30.0 Mil	12.5	PG 64-22
7V1424	402.126302	<30.0 Mil	12.5	PG 64-22
7V1433	402.096202	<30.0 Mil	9.5	PG 64-22
7V1455	402.06820118	<30.0 Mil	6.3	PG 64-22 ER
	402.018902	<30.0 Mil	9.5	PG 64-22

17.2 Project Dimensions

Project Number	Items	Resurfacing Depth (in)	Travel Lanes Width (ft.) (total)	Lane Width (ft.) (one lane)	Shoulder Width (ft.) (one shldr)	Number Lanes
5V1446	402.06820118	1	48-64	12 (Mainline) 12-15 (Ramps)	0 (Mainline) 3.5-6.5 (Ramps)	4-5 (Mainline) 1-2 (Ramps)
6V1413	402.06830118	1	24	12	6.1	2
	402.018902	0.75	24	12	6.1	2
6V1415	402.06820118	1	24	12	5.7	2
6V1441	402.126302	1.5	24	12	4.7	2
	402.018902	0.75	24	12	4.7	2
6V1448	402.06830118	1	23	11.5	5.8	2
	402.018902	0.75	23	11.5	5.8	2
6V1449	402.126302	1.5	24	12	4.9	2
7V1414	402.06830118	0.75	22-24	11-12	3-12	2
	402.018902	0.5	22-24	11-12	3-12	2
7V1415	402.06820118	0.75	60	15	14	4
	402.018902	0.5	60	15	14	4
7V1417	402.06830118	0.75	22-24	11-12	5-12	2
7V1422	402.126302	1.5	24-40	12-20	0-9	2
7V1424	402.126302	1.5	24	12	4-8	2
7V1433	402.096202	1.5	24-44	12-22	0-8	2
7V1455	402.06820118	1	24-48	12-24	2-8	2, 4
	402.018902	0.5	24-48	12-24	2-8	2, 4

17.3 Rebates Table

Project Number	Rebate Location	Rebate Width (ft.)
5V1446	Project begin RM 5-5302-2012	57
	Begin approach BIN 1074260 (Ridge Rd) (RM 5-5302-2016)	48
	End approach BIN 1074260 (Ridge Rd) (RM 5-5302-2016)	48
	Begin approach BIN 1001520 (Union Ship Canal) (RM 5-5302-3001)	48
	End approach BIN 1001520 (Union Ship Canal) (RM 5-5302-3001)	48
	Project end at begin approach to BIN 1074270 (RM 5-5302-3003)	66
	Ramp A (NY 5 EB off-ramp terminating at Ridge Rd)	86
	Ramp D (Ridge Rd on-ramp to NY 5 EB)	77
	Ramp C (NY 5 WB off-ramp terminating at Ridge Rd)	70
6V1413	RM 275-6101-1077 project begin	34
	BIN 1044170 RM 275-6101-1097	34
	BIN 1044170 RM 275-6101-1099	34
	RM 275-6101-1103 project end	96
6V1415	RM 19-6101-1251 project begin	33
	BIN 1015010 RM 19-6101-1280	2 at 38
	RM 19-6101-1283 project end	36
6V1441	RM 15-6401-1554 project begin	41
	RM 15-6401-1566 project end	41
6V1448	RM 53-6401-1057 project begin	33
	BIN 1026900 RM 53-6401-1069	34
	BIN 1026900 RM 53-6401-1071	34
	RM 53-6401-1124 project end	32
6V1449	RM 36-6401-1353 project begin	34
	RM 17-6404-1146 project end	32
7V1414	RM 1210, Beginning of Project	65.1
	RM 1255, End of Project	65.1
7V1415 (split highway)	RM 1000, Beginning of Project	82 & 82
	RM 1008, End of Project	82 & 82
7V1417	RM 1040, Beginning of Project	55.2
	RM 1048, End of Project	55.2
7V1422	RM 1000, Beginning of Project	56.6
	RM 1035, End of Project	56.6
7V1424	RM 1164, Beginning of Project	45.3
	RM 1182, Beginning of Bridge	56.6
	RM 1182+, End of Bridge	56.6
	RM 1218, End of Project	51
7V1433	2 @ RM 1072, (ML and Slip Ramp)	62.2 & 28.3
	RM 1074, Beginning of BR Bridge	62.2
	RM 1087, Begin of second Section	62.2
	2 @RM 1126.5, (ML and Slip Ramp)	56.6 & 28.3
7V1455	No rebates, project milling	

SECTION 18: CONTRACT PERFORMANCE REPORT

State of New York
 Office of General Services
 NYS PROCUREMENT
 Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product’s end user.**

Contract No.: _____ Contractor: _____

Describe Product* Provided (Include Item No., if available): _____

*Note: “Product” is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term “Product” includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

 _____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:

OGS NYS PROCUREMENT
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242
 * * * * *

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

December, 2012

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

APPENDIX B
GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

TABLE OF CONTENTS

<u>GENERAL</u>	<u>PAGE</u>	<u>TERMS & CONDITIONS</u>	<u>PAGE</u>
1. Applicability	1	43. Emergency Contracts	9
2. Governing Law	1	44. Purchase Orders	9
3. Ethics Compliance	1	45. Product Delivery	10
4. Conflict of Terms	1	46. Weekend and Holiday Deliveries	10
5. Definitions	1-3	47. Shipping/Receipt of Product	10
		48. Title and Risk of Loss	10
		49. Re-Weighing Product	10
		50. Product Substitution	10
		51. Rejected Product	10
		52. Installation	10
		53. Repaired or Replaced Product/ Components	11
		54. On-Site Storage	11
		55. Employees/Subcontractors/Agents	11
		56. Assignment	11
		57. Subcontractors and Suppliers	11
		58. Performance/Bid Bond	11
		59. Suspension of Work	11
		60. Termination	11
		61. Savings/Force Majeure	12
		62. Contract Billings	12
		63. Default - Authorized User	12
		64. Interest on Late Payments	12
		65. Remedies for Breach	13
		66. Assignment of Claim	13
		67. Toxic Substances	13
		68. Independent Contractor	13
		69. Security	13
		70. Cooperation with Third Parties	13
		71. Contract Term - Renewal	13
		72. Additional Warranties	13
		73. Legal Compliance	15
		74. Indemnification	15
		75. Indemnification Relating to Third Party Rights	15
		76. Limitation of Liability	15
		77. Insurance	15
		<u>THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS</u>	
		78. Software License Grant	15
		79. Product Acceptance	17
		80. Audit of Licensed Product Usage	17
		81. Ownership/Title to Project Deliverables	17
		82. Proof of License	18
		83. Product Version	18
		84. Changes to Product or Service Offerings	18
		85. No Hardstop/Passive License Monitoring	19
		86. Source Code Escrow for Licensed Product	19
<u>BID SUBMISSION</u>			
6. International Bidding	3		
7. Bid Opening	3		
8. Bid Submission	3		
9. Facsimile Submissions	3		
10. Authentication of Facsimile Bids	4		
11. Late Bids	4		
12. Bid Contents	4		
13. Extraneous Terms	4		
14. Confidential/Trade Secret Materials	4		
15. Release of Bid Evaluation Materials	4		
16. Freedom of Information Law	5		
17. Prevailing Wage Rates - Public Works and Building Services Contracts	5		
18. Taxes	6		
19. Expenses Prior to Contract Execution	6		
20. Advertising Results	6		
21. Product References	6		
22. Remanufactured, Recycled, Recyclable Or Recovered Materials	6		
23. Products Manufactured in Public Institutions	6		
24. Pricing	6		
25. Drawings	7		
26. Site Inspection	7		
27. Procurement Card	7		
28. Samples	7		
<u>BID EVALUATION</u>			
29. Bid Evaluation	8		
30. Conditional Bid	8		
31. Clarification/Revisions	8		
32. Prompt Payment Discounts	8		
33. Equivalent or Identical Bids	8		
34. Performance and Responsibility Qualifications	8		
35. Disqualification for Past Performance	8		
36. Quantity Changes Prior To Award	8		
37. Timeframe for Offers	8		
<u>TERMS & CONDITIONS</u>			
38. Contract Creation/Execution	8		
39. Participation in Centralized Contracts	8		
40. Modification of Contract Terms	9		
41. Scope Changes	9		
42. Estimated/Specific Quantity Contracts	9		

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

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

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

a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and

b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and

c. The Bidder shall enumerate the proposed addition, 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

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

INDEX

	<u>Paragraph</u>		<u>Paragraph</u>
	<u>No.</u>		<u>No.</u>
<u>A</u>		<u>M</u>	
Additional Warranties	72	Modification of Contract Terms	4
Advertising Results	20		
Applicability	1	<u>N</u>	
Assignment	56	No Hardstop/Passive License Monitoring	8
Assignment of Claim	66		
Audit of Licensed Product Usage	80	<u>O</u>	
Authentication of Facsimile Bids	10	On-Site Storage	5
		Ownership/Title to Project Deliverables	8
<u>B</u>			
Bid Contents	12	<u>P</u>	
Bid Evaluation	29	Participation in Centralized Contracts	3
Bid Opening	7	Performance and Responsibility Qualifications	3
Bid Submission	8	Performance/Bid Bond	5
		Prevailing Wage Rates Public Works & Building Services Contracts	1
<u>C</u>		Pricing	2
Changes to Product or Service Offerings	84	Procurement Card	2
Clarification/Revisions	31	Product Acceptance	7
Confidential/Trade Secret Materials	14	Product Delivery	4
Conflict of Terms	4	Product References	2
Conditional Bid	30	Product Substitution	5
Contract Billings	62	Product Version	8
Contract Creation/Execution	38	Products Manufactured in Public Institutions	2
Contract Term - Renewal	71	Prompt Payment Discounts	3
Cooperation with Third Parties	70	Proof of License	8
		Purchase Orders	4
<u>D</u>		<u>Q</u>	
Default - Authorized User	63	Quantity Changes Prior to Award	3
Definitions	5		
Disqualification for Past Performance	35	<u>R</u>	
Drawings	25	Rejected Product	5
<u>E</u>		Release of Bid Evaluation Materials	1
Emergency Contracts	43	Re-Weighing Product	4
Employees/Subcontractors/Agents	55	Remanufactured, Recycled, Recyclable or Recovered Materials	2
Equivalent or Identical Bids	33	Remedies for Breach	6
Estimated/Specific Quantity Contracts	42	Repaired or Replaced Product/Components	5
Ethics Compliance	3		
Expenses Prior to Contract Execution	19	<u>S</u>	
Extraneous Terms	13	Samples	2
<u>F</u>		Savings/Force Majeure	6
Facsimile Submissions	9	Scope Changes	4
Freedom of Information Law	16	Security	6
<u>G</u>		Site Inspection	2
Governing Law	2	Shipping/Receipt of Product	4
<u>I</u>		Software License Grant	7
Indemnification	74	Source Code Escrow for Licensed Product	8
Indemnification Relating to Third Party Rights	75	Subcontractors and Suppliers	5
Independent Contractor	68	Suspension of Work	5
Installation	52		
Insurance	77	<u>T</u>	
Interest on Late Payments	64	Taxes	18
International Bidding	6	Termination	60
<u>L</u>		Timeframe for Offers	37
Late Bids	11	Title and Risk of Loss	48
Legal Compliance	73	Toxic Substances	67
Limitation of Liability	76	<u>W</u>	
		Weekend and Holiday Deliveries	4

