NEW YORK STATE OF OPPORTUNITY. | Office of General Services | Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | www.nyspro.ogs.ny.gov | customer.service@ogs.ny.gov | 518-474-6717

Invitation For Bids (Revised February 2, 2017)

IMPORTANT: SEE "BID SUBMITTAL" CLAUSES HEREIN

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

BID OPENING **DATE**: **March 7, 2017** **TIME**: 11:00 AM	**TITLE**: **Group 37700 – Pipe, Tubing, Accessories & Parts – Plastic Based (Statewide)** Classification Codes: 30 & 40
INVITATION FOR BIDS NUMBER: **23043**	**SPECIFICATION REFERENCE:** As Incorporated in the Invitation For Bids
CONTRACT PERIOD: **Contracts will be valid until March 31, 2020 with one year renewal option**	

DESIGNATED CONTACTS:

Maria MacGilfrey (Primary) Contract Management Specialist I maria.macgilfrey@ogs.ny.gov	**Jose DeAndres (Secondary)** Contract Management Specialist II jose.deandres@ogs.ny.gov	**Brandy Alden (Tertiary)** Contract Management Specialist I brandy.alden@ogs.ny.gov
	Jamie Nusbaum (Tertiary) Assistant Director edward.nusbaum@ogs.ny.gov	

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

Bidder's Federal Tax Identification Number: *(Do Not Use Social Security Number)*	**NYS Vendor Identification Number:** *(See "New York State Vendor File Registration" clause)*

If applicable, place an "x" in the appropriate box (check all that apply):	☐ NYS Small Business _____ # of Employees	☐ NYS Minority Owned Business	☐ NYS Women Owned Business
Legal Business Name of Company Bidding:			
D/B/A - Doing Business As (if applicable):			
Street	City	State	Zip	County
If applicable, place an "x" in the appropriate box (check all that apply):	☐ Manufactured Within New York State	☐ Manufactured Outside New York State	
If you are not bidding, place an "x" in the box and return this page only. ☐ WE ARE UNABLE TO BID AT THIS TIME BECAUSE .			

Bidder's Signature: Title:	Printed or Typed Name: Date:

FOR PROCUREMENT SERVICE'S USE ONLY

P.R. #23043	LIT ☐ MEMO ☐	☐LETTER ☐ CD/DVD	FLASH DRIVE ☐ SDHC CARD ☐	OTHER☐ _____	MISSING PAGES:

INDIVIDUAL, CORPORATION, PARTNERSHIP OR LLC ACKNOWLEDGMENT

STATE OF }
: **ss.:**
COUNTY OF }

On the _____ day of _____in the year 20____ , before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she maintains an office at _____, in the City/Town of_____, the County of _____, and the State (or Commonwealth) of _____, and further that he/she:

[Check One]

☐ (If an individual/sole proprietor): executed the foregoing instrument in his/her name and on his/her own behalf.

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

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

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

_____
Notary Public

Registration No. _____ **State Of:** _____

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SECTION 1 INTRODUCTION

1.1 OVERVIEW

1.1.1 – Overview: This Invitation for Bids (IFB) is issued by the New York State Office of General Services – Procurement Services. The commodity Contract awarded as a result of this IFB will be a centralized Contract for use Statewide by Authorized Users, including but not limited to New York State Agencies, political subdivisions, local governments, public authorities, State and Local Parks, Counties, Municipalities, Educational Organizations and Facilities and certain other nonpublic/nonprofit organizations (see Section 1.3, *Non-State Agencies Participation in Centralized Contracts*). "Authorized User" shall have the meaning set forth in the State Finance Law section 163(1)(k). See Appendix B, §2, *Definitions*.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. A Bidder should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, Bidder must follow the format and instructions in Section 3**.**

1.1.2 – Timeline: The awarded vendor will receive a Contract that shall expire on March 31, 2020. The Contract may be extended, under the same terms and conditions to March 31, 2021 in accordance with Section 7.6, *Contract Period and Renewals*.

1.1.3 – Contract Award: Portions of the successful Bidder's bid and of this IFB shall be incorporated into a final Contract, executed by the Contractor and OGS. See Section 4.3 for additional information.

Once a Contract is awarded, the OGS web site will include a Contract Award Notification, Contractor contact information, Contract modifications (including Contract updates), and other information for Authorized Users including a link and login information (if needed) for the Contractor web site where Contract pricing or ordering may be hosted. See section 8.14 for additional information regarding possible hosted internet web sites.

1.2 M/WBE INTEREST IN PARTNERSHIP

If a New York State certified M/WBE vendor would like to indicate its interest in working with the participating Bidders, please send an email entitled "M/WBE INTEREST_M/WBE *[INSERT NAME]*" to maria.macgilfrey@ogs.ny.gov and copy jose.deandres@ogs.ny.gov on or before December 13, 2016. The email should include the following:

- Company Name
- Contact Name and Contact Information
- Company Web Site
- Brief description of company type (for example "Company ABC manufactures_____, sells_____, supplies_____, services_____, etc,")
- Products/Material available for sale
- Services available
- NYS Certification Type (Minority and/or Women-Owned Business Enterprise)

A list of all NYS certified M/WBE vendors who have expressed interest in this Solicitation through the timely submission of such email will be included in a Purchasing Memorandum posted on the OGS Procurement Services Bid Calendar at http://ogs.ny.gov/Purchase/BidCalendarLV.asp , with notification of the posting through the NYS Contract Reporter at https://www.nyscr.ny.gov at the time the responses are posted to any received Bidders' inquiries.

1.3 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law (Authorized Users) may participate in the Contract resulting from this IFB. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §25, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of Section 2, *Cost Proposal Requirement*s shall be modified to include delivery to locations adjacent to New York State.

(Continued)

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

1.4 "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the products included in the IFB and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3)(a)(v). This means that State agencies can purchase products from sources other than the Contractors provided that such products are substantially similar in form, function or utility to the products herein and are: lower in price ***and /or*** available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.). State agencies are reminded that they must provide the Contractor with an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit.

1.5 PREFERRED SOURCE PRODUCTS

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

Contractors shall prominently display the following language on all price lists and Contract modifications and updates to agencies relative to the award:

Agencies Note: Some Products in this Contract may be available from one or more preferred sources. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products/services available from preferred sources which meet your form, function and utility."

1.6 ESTIMATED QUANTITIES

The Contract(s) resulting from this IFB will be Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. All quantities or dollar values listed within this IFB are estimates. Estimates will be used for evaluation purposes only.

Estimated annual quantities of Core List products are listed in Attachment 1 – Price Pages (Revised February 2, 2017), Worksheet C, Lot 1 - HDPE Pipe - up to 48." The "Estimated Historic Annual Volumes" set forth in column E for Lot 1 represents an estimate of annual Core List Item volume using historical purchasing data. For this Lot, estimated percentages of volume attributable to the Core List Items versus the Non-Core List Items are set forth in column B, lines 7 and 8.

Numerous factors could cause the actual volume of Product purchased under the Contract(s) resulting from this IFB to vary substantially from the estimates in the IFB. Such factors include, but are not limited to, the following:

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

In OGS Procurement Services' experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated pricing, actual quantities purchased could be substantially lower than the estimates. By submitting its bid, Bidder

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acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this IFB.

1.7 DESIGNATED CONTACTS

In compliance with the Procurement Lobbying Law, Maria MacGilfrey, Contract Management Specialist 1, NYS Office of General Services, Procurement Services, has been designated as the PRIMARY Designated Contact for this procurement Solicitation and may be reached by email for all inquiries regarding this Solicitation.

PRIMARY	***SECONDARY***	***TERTIARY***
Maria MacGilfrey	José DeAndres	Brandy Alden
Contract Management Specialist 1	Contract Management Specialist 2	Contract Management Specialist 1
NYS Office of General Services	NYS Office of General Services	NYS Office of General Services
Procurement Services	Procurement Services	Procurement Services
Corning Tower - 38th Floor	Corning Tower - 38th Floor	Corning Tower - 38th Floor
Empire State Plaza	Empire State Plaza	Empire State Plaza
Albany, New York 12242	Albany, New York 12242	Albany, New York 12242
E-Mail: maria.macgilfrey@ogs.ny.gov	E-Mail: jose.deandres@ogs.ny.gov	E-Mail: brandy.alden@ogs.ny.gov

TERTIARY
Jamie Nusbaum
Assistant Director
NYS Office of General Services
Procurement Services
Corning Tower - 38th Floor
Empire State Plaza
Albany, New York 12242
Email: edward.nusbaum@ogs.ny.gov

For matters solely related to Section 6.9, *M/WBE Participation and Goals* of the procurement, additional secondary designated contacts are:

M/WBE PARTICIPATION AND GOALS		
Anuola Surgick	Tryphina Ramsey	William Hill
NYS Office of General Services	NYS Office of General Services	NYS Office of General Services
Office for Minority & Women Owned Business Enterprises	Office for Minority & Women Owned Business Enterprises	Office for Minority & Women Owned Business Enterprises
Corning Tower - 29th Floor	Corning Tower - 29th Floor	Corning Tower - 29th Floor
Empire State Plaza	Empire State Plaza	Empire State Plaza
Albany, New York 12242	Albany, New York 12242	Albany, New York 12242
E-Mail: Anuola.Surgick@ogs.ny.gov	E-Mail: Tryphina.Ramsey@ogs.ny.gov	E-Mail: William.Hill@ogs.ny.gov

Ashley Pallone	Lori Brodhead	Mariam Mehanna
NYS Office of General Services	NYS Office of General Services	NYS Office of General Services
Office for Minority & Women Owned Business Enterprises	Office for Minority & Women Owned Business Enterprises	Office for Minority & Women Owned Business Enterprises
Corning Tower - 29th Floor	Corning Tower - 29th Floor	Corning Tower - 29th Floor
Empire State Plaza	Empire State Plaza	Empire State Plaza
Albany, New York 12242	Albany, New York 12242	Albany, New York 12242
E-Mail: Ashley.Pallone@ogs.ny.gov	E-Mail: Lori.Brodhead@ogs.ny.gov	E-Mail: Mariam.Mehanna.ogs.ny.gov

The primary contact should be copied on all correspondence and communications with any secondary contacts.

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1.8 BIDDER INQUIRIES

A Bidder should raise any questions, potential assumptions, exceptions, caveats etc. to the terms and conditions, specifications, and requirements of this IFB, during the inquiry period for the procurement. OGS will not entertain any exceptions to Appendix A. OGS will also not consider exceptions to this IFB and Appendix B that are of a material and substantive nature. A Bidder should note that all clarifications and exceptions including those relating to the terms and conditions of the Contract are to be resolved prior to the submission of a Bid. Bids that contain material changes to the terms, conditions, specifications, and requirements set forth throughout this IFB may be disqualified as non-responsive. No inquiries submitted via phone, fax, or mail will be accepted.

Due to the breadth of changes being made to the IFB documents resulting from the initial inquiry period, OGS will be allowing a second inquiry period. All inquiries concerning this IFB should be addressed to the OGS Procurement Services Primary Designated Contacts listed on the front page of this IFB in writing using Attachment 6 – Bidder Inquiries Form (Revised February 2, 2017), citing the particular IFB document name and document section. The form must be emailed to the OGS Primary Designated Contact by the date listed in Section 1.9, *Key Events/Dates*; however, Bidders are strongly encouraged to submit questions at their earliest convenience.

Responses to all inquiries of a substantive nature will be provided electronically to all Prospective Bidders in the form of an inquiry and response document, which will be posted on the OGS web site at: http://www.ogs.ny.gov/purchase/biddocument/23043BID.ASP, with notification of the posting released through the NYS Contract Reporter (NYSCR), and will become part of the ensuing Contract. It is recommended that prospective Bidders register to receive notifications regarding this IFB with the NYSCR at https://www.nyscr.ny.gov. Please refer to Section 1.15, *NYS Contract Reporter,* for additional information regarding registering with the NYSCR in order to receive notifications about this IFB.

1.9 KEY EVENTS/DATES

IFB Release	December 7, 2016
M/WBE Interest Deadline	December 16, 2016
Closing Date for Initial Bidder Inquiries	December 30, 2016
Initial Bidder Inquiry Responses Issued	February 2, 2017
Closing Date for Second Bidder Inquiry Period	February 10, 2017
Second Bidder Inquiry Period Responses Issued (tentative)	February 17, 2017
Bid Opening Date	March 7, 2017

1.10 WEB SITE ACCESS ERRORS

Web addresses may be included within this document for your assistance. Should you attempt to use these resources to access additional information, either through web links or by copying and pasting the information into your web browser, and are not routed to the proper location or if you receive an error message, please notify the Primary Contact listed above at maria.macgilfrey@ogs.ny.gov, for assistance in obtaining the web information. Do not contact representatives of the web site host.

1.11 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

1. Reject any or all proposals received in response to the IFB;
2. Withdraw the IFB at any time, at the State's sole discretion;
3. Make an award under the IFB in whole or in part;
4. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
5. Seek clarifications and revisions of bids;
6. Clarify Product substitutions or equivalents;
7. Prior to the bid opening date/time, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening date/time, direct Bidders to submit proposal modifications addressing subsequent IFB amendments;
9. Change any of the schedule dates with notification through the New York State Contract Reporter and Bidder Notification System;

(Continued)

10. Eliminate any mandatory, non-material specifications that cannot be complied with by all Bidders;
11. Waive any requirements that are not material;
12. Utilize any and all ideas submitted in the bids received;
13. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration.
14. Negotiate with the Bidder responding to this IFB within the IFB requirements to serve the best interests of the State;
15. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the Solicitation;
16. Offer a Bidder the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to explain or justify the balance, realism and/or reasonableness of its pricing;
17. Should the State of New York be unsuccessful in executing a Contract with a selected Bidder within 30 calendar days of notification of tentative Contract award, the State may begin contract negotiations with the next lowest price Bidder in order to serve the best interests of the State of New York.
18. Select and award a Contract to other than a selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the IFB requirements.
19. To consider bids with non-material deviations or non-material omissions and to waive non-material deviations or non-material omissions consistent with the intent and scope of the IFB;
20. To reject an unbalanced lot group bid, or a lot group bid containing incomplete, unreasonable or unrealistic pricing, as determined by the State;
21. To make "NO AWARD" for any item or Lot for reasons including, but not limited to incomplete, unbalanced, unreasonable, or unrealistic Bidder pricing as determined by the State, a change in Authorized User requirements and/or product(s), or an error in the bid Solicitation (i.e., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of bids may be made on the remaining items or Lots unless as result of a NO AWARD Bidder fails to provide the minimum number of items required for the Lot.
22. To award all Contracts for all lots to the lowest Bidder(s).

1.12 IFB DOCUMENTS

This IFB is composed of the following documents:

This IFB Document along with the following three appendices:
Appendix A – Standard Clauses for New York State Contracts (January 2014)
Appendix B – OGS General Specifications (April 2016)
Appendix C – Contract Modification Procedure (June 2014)
Attachment 1 – Price Pages (Revised February 2, 2017) (MS Excel)
Attachment 2 – NYS Required Certifications (PDF)
Attachment 3 – Encouraging Use of NYS Businesses (Revised February 2, 2017) (MS Word)
Attachment 4 – Insurance Requirements (PDF)
Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017) (MS Excel)
Attachment 6 – Bidder Inquiries Form (Revised February 2, 2017) (MS Excel)
Attachment 7 – Report of Contract Purchases (Revised February 2, 2017) (MS Excel)

1.13 ORDER OF PRECEDENCE

During the open procurement, any conflict among the documents listed herein shall be resolved in the following order of precedence:

1. Appendix A – Standard Clauses for New York State Contracts (January, 2014)
2. This IFB and its Appendices and Attachments
3. Appendix B – OGS General Specifications (April 2016)
4. Bidder's Bid

The Parties' Contract shall be comprised of a separate document executed by the Contractor and OGS incorporating:

(i) Appendix A, Standard Clauses for New York State Contracts;
(ii) Solicitation 23043 including all Appendices and Attachments
(iii) Other documents identified by OGS for inclusion in the Contract during the course of the solicitation process.
(iv) Bidder's Bid

(Continued)

1.14 DEFINITIONS

The terms used in this IFB shall be defined in accordance with Appendix B, §2, Definitions). In addition, the following definitions shall apply. Additional definitions appear herein in Section 5, *Product Specifications*.

"Bidder" shall refer to any business entity who submits a response to this IFB. At the time that the Bidder executes a Contract resulting from this IFB with the State, a Bidder shall become a "Contractor". See also "Contractor".

"Commercial Price List" shall refer to an identifiable set of prices, from which a Bidder offers items for sale, that is comprehensive, published (either in hard copy, in electronic form, or posted on-line), regularly maintained, openly available to the public either in general distribution or upon request, contains non-discounted and non-NYS specific prices, and upon which a Bidder would base a discounted quote. *(The State acknowledges that different companies may use different terminology naming their price lists. It may be referred to by some as the Suggested List Price, Wholesale Price List, Dealers Price List, Retail Price List or Commercial Price List. Herein, "Commercial Price List," will be used as the standard term)*

"Contractor" shall refer to a responsive and responsible Bidder who has offered the lowest price in response to the IFB and is working under a Contract with New York State resulting from this IFB.

"Conventional Ordering & Shipping Conditions" shall refer to common practices experienced historically within the industry as related to what constitutes an average "normal" order which is typically received and processed by a vendor on a day by day basis whereby no extraordinary means would be needed to process and deliver the order to the end user.

"Core List" shall refer to a line item listing of specific products up for bid, assembled as individual lots in Attachment 1 - Price Pages (Revised February 2, 2017).

"Core List Item" shall refer to an individual Product or part found within the Core List in Attachment 1 - Price Pages (Revised February 2, 2017), Lot 1 Worksheet (Worksheet C), on which a Bidder must offer specific information and pricing.

"Current Product Line Catalog" shall refer to the most recently updated listing of items sold by a company.

"Dealer" shall refer to company which maintains a relationship with a manufacturer whereby said "dealer" acts as an authorized auxiliary sales representative for the manufacturer performing job functions of selling, distributing and servicing of the manufacturers Product line or lines. The term "Dealer" shall be considered synonymous with, Distributors, Subcontractors, Jobbers, Resellers, Retailers, Wholesalers and any other unnamed classification of a sales organization for the purposes of this procurement.

"Electronic Media" shall refer to a recording substrate used to store and transport digital data and data files. Accepted forms of Electronic Media are a Compact Disk (CD), a Digital Video Disk (DVD), a Secure Digital High-Capacity (SDHC) Flash Memory Card or a Universal Serial Bus (USB) (version 2.0 or above) Flash Drive

"Estimated Historical Annual Volume" as used in Attachment 1 - Price Pages (Revised February 2, 2017), refers to an estimate of annual Core List Item volume using historical purchasing data.

"Executive Agency" shall refer to all state departments, offices or institutions and, for the purposes of this IFB, includes the State University of New York. This definition excludes City University of New York, the legislature and judiciary. The term "Executive Agency" does not include any public benefit corporation, public authority, or local government entity.

"Final Offered Product List" is the listing of all products offered by the Bidder, found in the Bidder's catalog and complete Commercial Price List which are appropriate for inclusion in the Contract resulting from this IFB, and fit within the scope of the lot(s) being bid.

"Item Net, FOB Destination, Freight Prepaid and Added" refers to price as the net value to be charged for the item without any shipping charges included, based upon the shipping standard whereby freight charges are prepaid and added to the invoice while title to the item changes at the point of destination upon delivery acceptance.

"Item Net, FOB Destination - Freight Prepaid and Included" refers to price as the net value to be charged for the item with all shipping and handling charges included, based upon the shipping standard whereby freight charges are prepaid and the title to the item changes at the point of destination upon delivery acceptance.

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"Mandatory" refers to items or information that the State has deemed that a Bidder must submit as compulsory, required and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of "must" or "shall".

"Manufacturer" refers to a person, group or company, who derives most of their revenue from making manufactured goods through the production or refinement of such goods from either raw materials and/or component parts.

"May" denotes the permissive in a Contract clause or specification. "May" does not mean "required." It refers to items or information that the State has deemed are worthy of obtaining, but are not required or obligatory at the time of bid submission. Also see "Should".

"Must" denotes the imperative in a Contract clause or specification. "Must" is synonymous with "required." Requirements described as "must" have to be met by the Bidder for the Bidder's proposal to be considered responsive. Also see "Shall" and "Mandatory".

"M/WBE" shall refer to a business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

"**N/A"** is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available

"Non-Core List" shall refer to any Product line or group of products contained in the Bidder's catalog and offered to the State that is within the scope of a lot being bid but is not a part of the Core List. These items shall be entered along with their List Price on the Bidder's "Final Offered Product List" and shall be priced by a single discount rate, taken off of list, as entered in the bid.

"Non-Core Item" shall refer to any individual Product offered from a Bidder's catalog or Commercial Price List which is not a part of a specific "Core List" within the bid.

"Non-Executive Agency" shall refer to any 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. This term shall not include an Executive Agency.

"NYS Holidays" refers to the legal holidays for State Employees in the Classified Service of the Executive Branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Martin Luther King Day; Washington's Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas Day. This list is updated annually. The following link contains the 2015 posting. http://www.cs.ny.gov/attendance_leave/2015_legal_holidays.cfm.

OGS Procurement Services shall mean a division of the New York State Office of General Services which, among other things, lets centralized, statewide contracts for use by Authorized Users.

"NYS Vendor ID" shall mean the ten-character identifier issued by New York State to a vendor when they register on the Vendor File.

"Original Hard Copy" shall refer to a printed document containing a handwritten ink signature. A photocopied signature is considered a reproduction.

"Preferred Source Offering" shall refer to those commodities or services that have been approved in accordance with State Finance Law §162.

"Preferred Source Program" shall refer to the special social and economic goals set by New York State in State Finance Law §162 that require a governmental entity purchase select commodities and services from designated organizations when the commodities or services meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law §163, purchases of commodities and services from preferred sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State preferred sources include: Corcraft; New York State Preferred Source Program for People who are Blind (NYSPSP); New York State Industries for the Disabled; and the Office of Mental Health. These requirements apply to a state agency, political subdivision and public benefit corporation (including most public authorities).

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"Product Line Catalog" shall refer to a listing of types of products or specific items sold by a company required to be submitted with a Bid, from which Bidder identifies products as "Core List" and "Non-Core" for purposes of the Bid. The **Product Line Catalog** may also be referred to herein as "**catalog**".

"Price Realism" is an evaluative concept which is concerned with whether a Bidder's proposed prices are unrealistically low.

"Shall" denotes the imperative in a Contract clause or specification. "Shall" is synonymous with "required." Requirements described as "shall" have to be met by the Bidder for the Bidder's proposal to be considered responsive. Also see "Mandatory" and "Must".

"Should" denotes the permissive in a Contract clause or specification. It refers to items or information that the State has deemed are worthy of obtaining, but are not required or obligatory at the time of bid submission. Also see "May".

"Subcontractor" shall refer to company, specifically authorized and designated by a Bidder who shall perform Contract related functions on behalf of the Bidder, should they win a Contract award. Such functions may include but are not limited to sales, customer service, account management, logistics, promotion, and shipping.

"Unbalanced bid" shall refer to a bid based on bid prices that are significantly understated for some items and/or significantly overstated for other items such that there is a reasonable doubt that the bid will result in the lowest overall cost to the State.

"0 (Zero)" is both a number and the numerical digit used to represent that number in numerals. It is the integer immediately preceding 1 (one).

1.15 NYS CONTRACT REPORTER

You must register with the New York State Contract Reporter (NYSCR) at https://www.nyscr.ny.gov in order to receive notifications about this Solicitation. Navigate to the "I want to find contracts to bid on" page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must choose the option "send me notification updates on this," located in the lower right hand corner of the particular ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR. If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents. Submission of responses to the Solicitation that do not account for updated information may result in your bid/offer being deemed non-responsive.

SECTION 2 COST PROPOSAL REQUIREMENTS

Bidders shall offer pricing based on items found in their current Product Line Catalog, discounted from their openly available Commercial Price List.

Items designated by the State as "Core List" products shall be quoted separately, individually discounted from list price to Item Net, FOB Destination, Freight Prepaid and Added, quoting separate pricing indicating the average price (cost) to ship a Product unit under conventional ordering and shipping conditions to any location within New York State.

The remainder of the Contract items are designated by the State as "Non-Core Items" and shall be available through the vendor's current Product Line Catalog and shown by the Bidder in the Final Offered Product List *(see Section 2.8 below).* Price shall be discounted from list price to Item Net, FOB Destination - Freight Prepaid and Included using a single, all-inclusive discount rate stated in the bid and applied to the prices found in the Bidder's Commercial Price List.

All products shall be shipped FOB Destination from a point within the United States to a delivery location in New York State as designated by the ordering Authorized User including dock delivery and tailgating of load. Additional shipping fees may only be charged when delivery to the required delivery point is not possible via dock, any other door, stairway or elevator freight service and/or when specialized service is requested in writing by the purchaser. Authorized User must be informed of any additional shipping cost(s) prior to delivery and agree to the additional charge(s) in writing. Such cost(s) shall also be prepaid and added to the Contractor's invoice and the invoice must include a separate invoice from the carrier detailing the service premium. Any additional carrier charges for "extra" services may be disallowed. Authorized User will not be additionally charged for delivery to the building location since shipping is FOB Destination. Any additional

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shipping charges are subject to post-audit. If it is determined that a Contractor is charging excessive amounts for any shipping or delivery services, the State may seek reimbursement for such amounts, may remove the Contractor from the list of eligible Bidders, and may cancel the Contract.

All costs relating to the importing of foreign produced components and/or finished goods including any transportation, customs fees, tariffs, taxes and charges are solely the responsibility of the seller, not the buyer. In addition, upon mutual agreement of the Contractor and OGS, delivery locations may be expanded per the "Extension of Use" clause. *(See Section 7.1.1, Product Delivery).*

Price bid shall include ALL required insurance coverage costs. Each requirement should be reviewed carefully. *(Please see the insurance related requirements as found in Attachment 4.)*

2.1 USE OF DEALERS

Bidder may provide items included in the lot being bid directly, or through Dealers to insure maximum service capability throughout the State. The State agrees to permit Bidder to utilize dealers as Subcontractors to participate as alternative distribution sources for Contractor.

If utilizing Dealers, Bidder shall identify all Dealers in Attachment 1 - Price Pages (Revised February 2, 2017), Worksheet E. The Bidder shall indicate whether orders may be placed directly with each specific Subcontractor, in addition to being placed directly with the Bidder. Bidder must also note that should they allow subcontractors to accept and fulfill orders from contract users on their behalf, subsequent payment shall be made to the subcontractor for such orders. Subcontractors must adhere to all contract pricing and terms at all times.

Upon award, Contractor shall be fully liable for subcontractors' performance and compliance with all contract terms and conditions. Product(s) purchased through Dealers must be reported by Contractor in the required quarterly reports to the State as a condition of payment (see Section 7.5).

2.1.1 – Changes in Subcontractor Listing: If the Contractor allows Dealers to participate in the Contract in accordance with the Use of Subcontractors clause of this Contract, and wishes to add or delete subcontractors or to modify subcontractor information, requests must be submitted for prior approval of the State. Contractor may request changes quarterly to the designated Dealers List by submission of a completed, revised version of the worksheet of Attachment 1 - Price Pages (Revised February 2, 2017), Worksheet E – Dealer Directory.

2.2 CORE LIST ITEMS & PRICING

Attachment 1 - Price Pages (Revised February 2, 2017) is comprised of a worksheet (Worksheet C, Lot 1 Worksheet) representing the lot in this bid. This lot contains a specific Product area or Product line. Bidders shall select and complete this lot if they are qualified as a business to participate. This Worksheet contains a "Core List" which represents the individual line item listing of specific products up for bid making up the Product area or line for this lot. The Core List consists of Smooth Interior Corrugated Polyethylene Pipe in the sizes specified, that shall meet the requirements of AASHTO M294, Type S or Type SP. Bidder must bid on all Core List items in order for their bid to be considered responsive.

Bidders shall enter the information required per each column head above the bordered white cells. General information is required for each Core List Item line as follows: the Bidder's Catalog Part or Product Number, the Bidder's Item/Part Description, the Item Weight (of a single unit in Pounds/Ounces), the Primary Shipping Location (Point of Origin) and the Price List/Catalog Page Number.

The general information columns are followed by the actual line item bid. The quoted discount rate for Core List Line Items may vary from line item to line item. All discount rates shall be expressed by percent to the nearest 1/10th of a percentage point. "Zero", "0", "none" or a (-) negative number is not considered to be a discount rate. All Bidder entries will auto calculate within the worksheet. The Bidder will state their List Price for each Core List Item, followed by the individual discount percentage rate being offered to apply to that Core List Item so as to achieve a net item price less shipping.

The Bidder will calculate and enter the average cost of shipping a single unit of the listed Core List Item purchased and shipped under conventional ordering and shipping conditions to any point within New York State.

All Authorized Users will have the option to provide their own or alternate means of transportation to obtain any Core List Item, in which case the net discount price of the Core List Item will be charged to the Contract User with NO shipping charges.

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2.3 NON-CORE (OR CATALOG) ITEMS & NON-CORE (CATALOG) DISCOUNT RATE

Other Products found in the Bidder's Product Line Catalog and on their Commercial Price List, which meet the scope of this IFB, and/or support or supplement the Core List Items in form, function, and utility may also become a part of the bid. These items are referred to as the Non-Core Items for this lot and shall consist of other Smooth Interior Corrugated Polyethylene Pipe sizes not listed under the Core List, as well as Polypropylene Pipe, Perforated Corrugated Polyethylene Underdrain Tubing, and Corrugated Interior Polyethylene Pipe Products that meet the scope and specification requirements of the bid. They shall be quoted at a single discount rate for the entire lot – Freight included (per the lead paragraph above for Section 2) - by entering a discount rate in space provided in Column B - Line 6 on the worksheet for the lot in Attachment 1 - Price Pages (Revised February 2, 2017), directly adjacent to the label "Discount for Contract Items not on the Core List". "Zero", "0", "none" or a (-) negative number is not considered to be a discount rate. All entries made for the Non-Core (Catalog) Discount may be subject to additional negotiation prior to the awarding of any Contract. The individual Non-Core Items shall be listed by the Bidder in the Final Offered Product List as found in Attachment 1, Worksheet D. *See Section 2.8, Final Offered Product List* for additional information.

2.4 PRODUCT LINE CATALOGS

All Bidders shall submit one (1) hard copy of each identifiable Product Line Catalog(s) containing their available products, options and accessories pertinent to this offering and to the lot being bid as a part of their bid. The submitted catalog(s) shall be properly identified as required in Attachment 1- Price Pages (Revised February 2, 2017), Worksheet B.

The Product Line Catalog(s) shall also be supplied electronically in Microsoft Word, Excel or PDF format. Bidder should supply with their bid a copy of the electronic file, and if available online, the URL address where the catalog may be obtained (See Attachment 1 – Worksheet B).

Bidders Note: Should any web address submitted in the bid subsequently be changed, an awarded Contractor must promptly notify the Contract Management Specialist of record regarding the update. Bidders may bid more than one manufacturer's Product Line Catalog for this Lot but must identify the additional catalogs in Attachment 1, Worksheet B. Note that only one discount rate for items not on the Core List may be bid for this Lot.

If the Product line requires or offers user serviceable replacement parts and such standard service related parts are not necessarily part of the formal Product Line Catalog, these items should be noted in an appendix to Bidder's submitted Commercial Price List as "Service Parts".

2.5 COMMERCIAL PRICE LIST

Per Section 3.6, *Bid Submittal Instructions*, Bidders shall submit an electronic copy of their Commercial Price List(s), as defined in Section 1.14, in either Microsoft Word or Excel or PDF format, matching the designated submitted Product Line Catalogs. The submission shall be properly identified as required in Attachment 1 – Price Pages (Revised February 2, 2017), Worksheet B.

The Commercial Price List(s) must contain List Prices for all Products and be the most recently published version at the time of the bid opening date.

Submission of list price schedules developed specifically for this bid will result in disqualification of the bid. Commercial Price Lists referencing The State of NY, OGS Procurement Services, NYSDOT or the NYSTA in its identity or description will be rejected. However, should your Product line contain PRODUCTS specifically developed for use in New York State by a NYS Agency or Authority, the use of an item designation containing "New York" or "NYS" etc. will be allowed.

"Governmental Price Lists" are not acceptable as the Commercial Price List(s). Such lists are prepared specifically for a jurisdictional location's use and likely contain hidden discounts which may disadvantage the Bidder. However, they may be included with the bid as an evaluation tool, to assist OGS Procurement Services in determining reasonableness of price.

All bids shall be based on units of measure listed in catalog and Commercial Price List offered. Pricing shall be rounded off to no more than two (2) decimal places.

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2.6 DISCOUNTS

Discount rates bid for Core List and Non-Core List items shall be in effect for the entire contract period. Decreases of the discount rates bid will not be allowed at any time. However, discount rates may be increased at the Contractor's option on either an individual order or long term basis at any time. In the event of a long term increase in the discount rate, the Contract Management Specialist of record must be notified as to the discount rate and duration. The discount rate will return to the rate bid at the end of any term increase.

2.6.1 – Additional Prompt Payment and Volume Discounts: Optional prompt payment and volume discounts may also be offered and shall also be based on the Commercial Price List of record. Prompt payment and volume discounts shall not be evaluated. Bidders shall indicate any additional prompt payment and volume discounts offered in the space provided in Attachment 5 - Bidder Information Questionnaire (Revised February 2, 2017). See Section 4.2.2.3, *Tie Bids*.

2.7 PRODUCTS

Contractor shall offer products that are listed in their Product Line Catalog and Commercial Price List. Product offerings should be consistent with the terms and scope of this IFB as found in Section 1.1, Section 5, and in Attachment 1 - Price Pages (Revised February 2, 2017). Products offered through the catalogs should be representative of the items required for use within this Lot being bid and contain all of the appropriate items, over and above the Core List items, needed to complete the mission under this Lot. Catalogs should include any auxiliary items and service parts required for proper installation and support within this Product Lot.

2.7.1 – Exclusions: There may be overlapping products excluded from the scope of this Contract. A summary of automatically excluded products is as listed below:

1. Design & Engineering Services
2. Installation or Assembly
3. Excavation Services
4. Paving Services

OGS Procurement Services reserves the right to delete, before or after award, any Product included in the Bidder's Final Offered Product List. OGS Procurement Services also reserves the right to request a Bidder add an item from either their Product Line Catalog or Commercial Price List which may not have been originally included by the Bidder in the Final Offered Product List. The Final Offered Product List may list products covered by other State contracts, as well as those available from preferred sources. It is the obligation of the Authorized Users to order from the appropriate source. *See Section 1.5, Preferred Source Products* for additional information.

2.8 FINAL OFFERED PRODUCT LIST

The Bidder will prepare a Final Offered Product List using Worksheet D of Attachment 1 - Price Pages (Revised February 2, 2017), to show all offered products (Core Items and Non-Core Items) taken from the catalog and commercial price list which you are offering for this procurement. The listing should contain the information requested in the chart headers on the pre-formatted Excel worksheet. This list will become the complete directory of items offered for sale through an awarded Contract. Submission of this list is mandatory at the time of the bid opening. All pricing to be posted by the Bidder on this directory shall be the undiscounted list price, thereby matching the price found in your designated Commercial Price List.

The Bidder should exclude from the Contract any Product or lines contained in its Product Line Catalog and Commercial Price List which may be unrelated to the lot being bid by omitting them on the Final Offered Products List.

Products specifically excluded under Section 2.7.1, *Exclusions* should not be entered on the Final Offered Product List.

Bidders may offer more than one manufacturer's lines, multiple catalogs or use multiple price lists. The Final Offered Product List (Attachment 1- Worksheet D) is set up to be a single comprehensive list. Items and pricing based on multiple submissions should be separated on different pages of the Worksheet, and properly identified at the bottom of each page.

Multiple lines will be reviewed individually.

Only Final Offered Product Lists based on the submitted Commercial Price Lists and the referenced catalogs shall be considered for award.

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Bidders Note: *The Final Offered Product List must be submitted with the bid in the supplied Attachment 1 (Worksheet D) and saved as an .xlsx excel file. Use of any other file format for this requirement is not acceptable and may result in the bid being rejected as non-responsive.*

2.9 CATALOG TERMS & CONDITIONS

Any pre-existing or pre-published terms and conditions contained in the Bidder's submitted Product Line Catalog and/or Commercial Price List are of no force and effect. Also, any addition of terms and conditions by the Bidder to the Bid will be considered an exception to the bid and may be subject to Section 3.2 and may be cause for rejection. Only the Terms and Conditions contained within Appendix A, Appendix B and this IFB apply.

SECTION 3 BID SUBMITTAL

3.1 NOTICE TO POTENTIAL BIDDERS

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

3.2 BID DEVIATIONS

Bidders should submit any bid deviations, including assumptions, exceptions, and caveats to the terms, conditions, specifications, or requirements of this Solicitation during the inquiry period of the procurement in accordance with Section 1.8, *Pre-Bid Inquiries*. The Bidder shall explain such deviation(s) or qualification(s); and if necessary, provide details as part of the inquiry. Bidder is advised that OGS will not entertain any exceptions to Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions to the Solicitation and Appendix B (General Specifications) that are of a material and substantive nature. Bid deviations that are not requested or raised during the inquiry period should be submitted with the Bid Submission, but may not be considered by OGS.

Please note that if OGS and the Bidder are unable to reconcile any Bid Deviations, all or part of the Bid may be deemed non-responsive.

3.3 RESPONSIVENESS

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

3.4 BID LIABILITY

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a proposal or Bid or for any work performed prior to the formal execution of a Contract. Bids must be received at the specified location on or before the date and time listed in Section 1.9, *Key Events/Dates*. Bidder assumes all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date/time of the bid opening. Late bids shall be rejected except as provided in Appendix B §5 Late Bids. E-mail or faxed Bids are not acceptable and shall not be considered. The received time of Bids will be determined by OGS by the clock at the final receiving location.

3.5 BID VALIDITY

Bids must remain open and valid for at least 180 calendar days from the bid opening date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder, who shall thereupon be obligated to execute a formal Contract.

3.6 BID SUBMITTAL INSTRUCTIONS

It is recommended that the Bidder open, review and save/download all electronic files (identified in Section 1.12, *IFB Documents*) that make up this Solicitation to the Bidder's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to portable electronic media. Do not return copies of Appendices A and B to OGS.

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Bidder shall submit those items listed below in Part 1 on portable electronic media (CD or memory stick) in accordance with the instructions below. Only completed files (in the specified format) should be saved to the portable electronic media. Only those items listed below in Part 2 are required in paper hard copy. Submitting a bid by fax or e-mail is not acceptable. A complete Bid consists of one (1) copy of each of the following:

1. **Portable electronic media containing:**
   1. Completed Attachment 1 – Price Pages (Revised February 2, 2017) (Microsoft Excel);
   2. Completed Attachment 3 – Encouraging Use of NYS Businesses (Revised February 2, 2017) (Microsoft Word);
   3. Completed Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017) (Microsoft Excel);
   4. Electronic copy of Bidder's Product Line Catalog(s) in Microsoft Word, Excel or PDF format in accordance with Solicitation Section 2.4, *Product Line Catalogs*;
   5. Electronic copy of Bidder's Commercial Price List(s), in either Microsoft Word or Excel or PDF format in accordance with Section 2.5, *Commercial Price List*;
   6. Electronic copy of Equal Employment Opportunity Staffing Plan (Form EEO 100) in accordance with Section 6.9.3, *Equal Employment Opportunity Requirements (EEO)*; Form EEO 100 available at: http://ogs.ny.gov/MWBE/Forms.asp (scanned PDF copy of original);
   7. Electronic copy of MWBE Utilization Plan (Form MWBE 100) in accordance with Section 6.9.5, *MWBE Utilization Plan.* Form MWBE 100 and accompanying instructions for completing the form are available at: http://ogs.ny.gov/MWBE/Forms.asp (scanned PDF copy of original); and
   8. Proof of capability to supply products being bid and demonstration of continuous operation for at least the last three (3) years in accordance with Section 6.5, *Qualifications of Prospective Bidders*.

2. **Bound, original hard copy versions of each of the following:**
   1. Pages 1 and 2 of the IFB (signed with original ink signatures and notarized);
   2. Completed Equal Employment Opportunity Staffing Plan (Form EEO 100) with original ink signature in accordance with Section 6.9.3, *Equal Employment Opportunity Requirements (EEO)*; Form EEO 100 available at http://ogs.ny.gov/MWBE/Forms.asp
   3. Completed MWBE Utilization Plan (Form MWBE 100) with original ink signature in accordance with Section 6.9.5, *MWBE Utilization Plan*; Form MWBE 100 and accompanying instructions for completing the form are available at: http://ogs.ny.gov/MWBE/Forms.asp;
   4. Completed Attachment 2 - New York State Required Certifications with original ink signatures;
   5. Proof of all Insurance coverage in accordance with Attachment 4 - Insurance Requirements (PDF)
      a. New York State Workers Compensation Insurance,
      b. New York State Disability Insurance,
      c. Commercial General Liability Insurance, and
      d. Automobile Insurance or the Business Automobile Liability Insurance Attestation, as applicable in the event not providing Automobile Insurance;
   6. Completed Manufacturer's Statement of Authorization and Commitment(s) (Attachment 1 – Price Pages (Revised February 2, 2017), Worksheet F) for any products not manufactured by the Bidder, in accordance with Section 6.7, *Manufacturer's Statement of Authorization and Commitment*;
   7. Hard copy of Bidder's Product Line Catalog(s) in accordance with Solicitation Section 2.4, *Product Line Catalogs*;
   8. Completed Form ST-220-CA, Contractor Certification notarized with original ink signatures; and
   9. Completed, signed and notarized paper copy of Vendor Responsibility Questionnaire For-Profit Business Entity if online Questionnaire has not been completed.

Also, please note that in the case of discrepancies between paper copies and electronic media submissions of the documents submitted in both formats, the electronic copy shall take precedence over the paper copy. To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in the Solicitation. A Bid that fails to conform to all requirements may be considered non-responsive and may be rejected.

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3.7 BID DELIVERY

Bidders assume all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. Late bids shall be rejected except as provided in Appendix B §5 *Late Bids.* **E-mail or fax bid submissions are NOT acceptable and shall not be considered.**

Bid envelopes and packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Group Number (Group 37700)
3. Bid number (IFB #23043)
4. Bid Opening Date and Time (March 7, 2017 at 11:00 AM ET)
5. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

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

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

Hand Deliveries

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

Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk. A Bidder attending bid openings is encouraged to pre-register for building access by contacting the NYS OGS Procurement Services receptionist at 518-474-6262 at least 24 hours prior to the bid opening. Visitors who are registered can check in directly with the Security Desk. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct Procurement Services business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. **Note:** Bids not received within Procurement Services, or the OGS Mailroom, by the time and date shown on the front page of the Solicitation will be considered late.

3.8 ELECTRONIC BID OPENING RESULTS

NYS OGS Procurement Services posts bid results on the OGS/Procurement Services web page. The web page makes available information about the list of Bidders that responded to this Solicitation. The Bid Opening Results Page is available at: http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp.

3.9 DEBRIEFING

Unsuccessful Bidders shall be notified upon Notification of Award to the winning Contractor(s). A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's proposal or Bid. The debriefing prior to Contract award should be requested in writing within ten (10) business days of notification that the Bid or proposal was disqualified from further consideration or that the Bidder was a non-awardee.

After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the Solicitation, regarding the reason that the Bid submitted by such Bidder was not selected for a Contract award.

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Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The post-award debriefing should be requested in writing within fifteen (15) calendar days of posting of the Contract award on the OGS website.

SECTION 4 EVALUATION PROCESS AND SELECTION CRITERIA

4.1 RECEIPT OF BID

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

4.2 METHOD OF AWARD

Award shall be made for the Lot to the lowest responsive and responsible Bidder.

4.2.1 – Evaluation Process: Bids will be routed through evaluation as follows:

A. Financial Evaluation Process
B. Administrative Bid Screening
C. Technical Review

Bidders Note: Administrative Bid Screening and Technical Review may be conducted concurrently.

4.2.2 – Financial Evaluation Process:

After a set of responsive bids for this lot has been determined, the following Microsoft Excel generated calculations shall be performed for each submitted Attachment 1 - Price Pages (Revised February 2, 2017) to establish the tentative awardee.

4.2.2.1 – Calculation of Bids:

Bids received will be calculated by OGS as follows:

A. Determine **Core List Item Pricing** – for each Item, subtract the Core Item % Discount from List Price, add shipping, and multiply that amount by the Estimated Historic Annual Volume.

B. Determine the **Sum of Core List Item Pricing** by adding together the Core List Item Pricing for all Items as calculated in step “A”.

C. Determine **Non-Core Full Dollar Value** by multiplying “B” (Sum of Core List Item Pricing) by the Estimated Annual Non-Core Percentage.

D. Determine **Non-Core Net Value** which equals “C” (Non-Core Full Dollar Value) minus Vendor’s Quoted Discount for Catalog Items not on the Core List.

E. Determine **Total Bid Price** (equal to Final Lot Value) by adding “B” (Sum of Core List Item Pricing) to “D” (Non-Core Net Value). This value can be viewed in Cell B13 of the Attachment 1 “E Lot 1 Worksheet.”

F. The Final Lot Value is the **Total Bid Price** for each Bidder and will be ranked from low to high.

Bidder must bid on all Core List items in order for their bid to be considered responsive.

4.2.2.3 – Tie Bids - Appendix B, *§*17, Tie Bids, is hereby deleted and replaced with the following: In the event of a tie in the lot, the State will first review the bid information to determine if any cash discounts have been offered as a part of the bid. Bidder offering the best cash discount terms to Authorized Users will be moved ahead as the low Bidder in the bid review. Should there be no cash discounts offered, the State reserves the right to use a multiple award within the lot to the lowest tied Bidders and require subsequent contract transactions to be determined through the use of a quick quote by the Authorized User to the multiple awardees whereby the Contractors will state their best price for the items needed at the time of sale, not to exceed the awarded or currently adjusted price at the time of the request. Should a multiple award within the lot be necessary, a supplemental Quick-Quote document, detailing the procedures to follow, along with a formal Quick-Quote form, will be included with the Contract and will be published along with the Contract Award Notification (CAN) on the OGS contract website.

(Continued)

4.2.2.4 – Reasonableness of Price:

OGS reserves the right to verify that all prices proposed are reasonable. Upon request, Bidder shall submit a copy of at least one governmental contract to verify price reasonableness. Examples of acceptable contracts for comparing pricing are:

- Approved federal contracts such as a GSA Supply Schedule (indicate GSA Schedule #)
- Prices on any awarded NASPO ValuePoint (formerly WSCA-NASPO) contracts or other cooperative contracts
- Prices on any awarded NYS Contract (indicate NYS Contract #)
- Contracts with another state or governmental entity (indicate entity and contract #)

OGS reserves the right to conduct additional research and request additional information to assess the reasonableness of pricing. If reasonableness of pricing is not demonstrated to OGS' satisfaction, the Bid may be deemed non-responsive and ineligible for Contract award. Contractors may also be required to demonstrate reasonableness of price pursuant to this section under a resultant Contract when submitting Product Line Catalog Updates pursuant to Section 7.4, *Product Line Catalogs Updates – Addition & Deletion of Products*.

4.2.3 – Administrative Bid Screening: After the bid opening, each Bidder's Bid will be screened for completeness and conformance with requirements for bid submission as specified in Section 6, *Administrative Requirements*. Bids that do not meet the Administrative requirements as set forth in this IFB may be deemed non-responsive and given no further consideration.

The list of Administrative Requirements includes the following:

1. the affirmation of agreement to comply with all mandatory agreements and certifications (6.1);
2. obtaining and supplying a New York State Vendor File Registration Number (6.2);
3. filing a currently certified NYS Vendor Responsibility Questionnaire for Profit Business Entity (6.3);
4. compliance with NYS Tax Code regarding the collection and payment of NYS Sales Tax, and certifying such agreement with the filing of the Department of Taxation and Finance ST220 TD form with the Department and the ST220CA with the Office of General Service(6.4);
5. Compliance with the stated Qualifications of Prospective Bidders Clause (6.5);
6. Obtaining and supplying proper documentation of all required contractor insurances (6.6);
7. If not a manufacturer obtaining manufacturers certification of commitment to participate in the Contract (6.7);
8. Guarantee that a good faith effort will be made in achieving the Minority and Women Owned Business Entity Goals set for this procurement (Section 6.9),
9. Affirmation of Non-Collusive Bidding, all NYS Required Certifications and confirmed acceptance of the State contracting initiatives as noted in Appendix 2 Tabs 1 and 2.

The Catalog and Commercial Price List submitted will be reviewed to determine that their submission meets the requirements of the IFB and that there is no conflict with a preferred source offering. Bids will be reviewed for compliance with the terms and conditions of this IFB regarding proper submission of noted bid requirements and documents, as well as the review for vendor responsibility, insurance requirements and M/WBE compliance. Successful completion of this part of the evaluation is required for award. Bids meeting the requirements of the Administrative Bid Screening will proceed in the evaluation.

Upon examination and review of all documents received, the Bidder may or may not be deemed a responsive and responsible Bidder.

4.2.4 – Product Evaluation: The Product Evaluation will be based upon review of information received in Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017) and a review of the designated Product Line Catalogs to determine that the submitted Product line fills a need within the State, contains products meeting the requirements noted in the scope and in Section 5, *Product Specifications* for the lot or lots included in the bid. Product Evaluation may take place concurrently with the Administrative screening. Failure to meet any mandatory specifications found in this IFB or its attachments may result in rejection of the lot group bid or a Bidder's removal from further consideration. Bidders should note that if specific samples are requested, the samples must be provided within the time frame requested. Products sampled must pass all inspections and tests performed by the OGS Procurement Services Evaluation team or their appointed agents.

(Continued)

4.3 NOTIFICATION OF AWARD

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

SECTION 5 PRODUCT SPECIFICATIONS

5.1 TECHNICAL SPECIFICATIONS

Technical Specifications in the form of **excerpts** from NYS Department of Transportation (NYSDOT) Detailed Specifications for contracting being let in January 2017, NYSDOT Engineering Bulletins, Qualified/Approved Products Lists from the NYSDOT Materials Division, NYSDOT & NYS Thruway Authority Standard Sheet Drawings, and references to official NYS web sites and Manufacturers' web sites for items being sought in this procurement are found herein. The complete NYSDOT Standard Specification for contracting being let in January 2017 may be found at https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc/usc-repository/2017_1_Specs_USC.pdf.

Many entries found herein are **excerpted** and **adapted** from this document. **Users shall note that while the NYSDOT Document is the guiding technical specification steering this procurement, these specifications herein may not be verbatim from the department's document and the terms and conditions of both the main IFB, these specifications and any subsequent contract awards supersedes all administrative guidelines that are contained within the NYSDOT Specification Publication.**

When progressing through section 5.6, any sequential gap in topic listings are to be considered as vacant in the current Complete NYSDOT Specification Book as found on the NYSDOT web site.

5.1.1 – NYS Dept. of Transportation Materials Lists: In addition to the general terms set forth by this IFB, due to the impact on public safety, NYSDOT may designate and require specific products be prequalified and listed on a NYSDOT Qualified List or Approved Products List prior to their purchase and use by NYSDOT. This list as related to this procurement is found at the end of this section of the Solicitation.

While OGS Procurement Services and NYSDOT highly recommend that other Authorized Users take advantage of the benefits of the NYSDOT qualified lists, other Authorized Users have the option to determine and purchase the items of their choice based on their own requirements of utility, form and function, whether prelisted or not.

5.1.2 – Specification Updates: Should updates be made to specifications by the State during the course of the contract term, Contractors are expected to update products as soon as possible in accordance with the provisions of Section 7.4 of this Invitation for Bids. No changes or substitution of products or pricing is permitted without the express approval of OGS Procurement Services.

Bidders Note: *It is a Contractor's responsibility to make sure that all items delivered meet the submitted specifications at all times.*

5.2 SCOPE

The purpose of this IFB and resultant Contract is to provide Authorized Users with a means of acquiring Products and associated accessories manufactured and sold in the transportation and road construction industries for the building, maintenance, repair and rehabilitation of plastic based roadway drainage systems. These Products shall include Smooth Interior Corrugated Polyethylene Pipe, Polypropylene Pipe, Perforated Corrugated Polyethylene Underdrain Tubing, and Corrugated Interior Polyethylene Pipe compliant with the specifications detailed in this section for delivery to various locations throughout the State.

Installation is not a part of this procurement. Authorized Users will be responsible for providing or procuring installation of Products purchased as needed.

OGS Procurement Services intends to award the lot in accordance with the Method of Award (as found in Section 4), on a statewide basis to the responsive and responsible Bidder who meets the terms and conditions of this Solicitation.

(Continued)

5.3 CONTENTS

This section contains links to and reproductions of appropriate guidance documents for Bidders to determine suitability of Core List and Full Line Catalog Offerings. The documents include specifically selected chapters and sections from the most recently published General Specifications Guide from NYSDOT for the department's January 2017 agency letting, along with supplemental Engineering Bulletins from the Department all of which are make up the guiding technical specification for both the open market and the proprietary items found in this procurement.

Additionally, Bidders may find herein a number of internet links directing them to other pertinent NYSDOT and Private Sector documents and technical drawings containing products and information from which the bid should be derived and composed of. Bidders are reminded that should a link be unavailable, per Section 1.10, Web Site Access Errors, request assistance from the Primary and Secondary Designated Contacts at maria.macgilfrey@ogs.ny.gov and jose.deandres@ogs.ny.gov. Do not contact representatives of the site host.

The section contains the appropriate, most up-to-date listings from the NYSDOT Materials Bureau Qualified/Approved Products List, as well as a cross reference chart, matching up the contents of the section with the lot found in Attachment 1 - Price Pages (Revised February 2, 2017) of this IFB.

5.4 PRODUCT QUALIFICATION

Prior to the initial purchase of any Transportation/Public Safety contract item by the New York State Department of Transportation, the Department reserves the right to request submission of Product samples for testing, approval and subsequent listing on NYSDOT's Approved and or Qualified Products Lists. The existence of such a designation or listing restricts NYSDOT's purchase of such a Product to the items contained therein. This requirement may be waived for products that have previously been appointed to and are currently on a list; however, the State may at any time request a Product be retested.

Testing of these items requires contractors to prepare and submit copies of drawings, specifications, test reports, and Federal acceptance letters as directed. The review process requires a minimum of 30 calendar days. Physical inspection of the Product will be at the request of the State. Upon approval, the name of the manufacturer and the Product will be placed on the Approved List. Failure of a Product to qualify will result in the issuance of a Purchasing Memorandum to advise buyers of the test results.

Bidders shall also supply upon request a certified test report for tensile strength, yield point, drop-weight tear requirements or any other parameters specified in this document for the products listed in their offering.

The State also reserves the right to test any Product and/or material supplied by a contractor at any time for compliance to specifications, and assess to the contractor total test cost for non-compliance.

Strict compliance with the NYSDOT's Quality Control and Quality Assurance requirements and standards shall be required with all resultant contractors. These requirements include, but are not limited to, strict penalties for non-compliance, such as back-charging for using agency, costs to remove defective units, installation of replacement units, repackage and ship defective units to contractor, etc.

Should updates be made to specifications by the State during the course of the contract term, contractors are expected to update products as soon as possible in accordance with the provisions of Section 7.4 of this Invitation for Bids. No changes or substitution of products or pricing is permitted without the express approval of OGS Procurement Services.

For items covered by specification numbers 706-08, 706-12, 706-13 and 706-14, bids will be accepted only from established manufacturers or their authorized dealers who are on the NYSDOT Materials Bureau Approved List as listed herein or as listed in any subsequent purchasing memoranda.

Companies wishing to participate in the procurement process for these areas who are not currently Product qualified should, at the conclusion of the restricted contact period, submit a review request to the NYSDOT Material Bureau, 50 Wolf Road, Albany, NY 12232, containing the required Product information and supply the bureau with samples to begin the qualification process. Successful completion of the process with placement on the qualified list would enable participation in future bids for this commodity.

Non-approved manufacturers may submit material and products for consideration of approval for subsequent offerings to the Materials Bureau by following the submission requirements as found in the NYSDOT's Materials Bureau's Publication: Materials Procedure No. 05-02, Issued August, 2005. Subject Code 7.42-2, Subject: Quality Assurance Procedure for Standard Specifications, Construction and Materials Section 700 – Materials and Manufacturing.

(Continued)

5.5 CORE LIST SPECIFICATIONS

*The following chart cross references the Lot and Core list items listed within Attachment 1 - Price Pages (**Revised February 2, 2017**), to corresponding specification information in Section 5.*

LOT Number and General Product Line	NYSDOT Specification No.
LOT 1 - HDPE Pipe – 12” to 48" Diameter Type S or Type SP	706-12

706-12 SMOOTH INTERIOR CORRUGATED POLYETHYLENE PIPE

SCOPE. This specification covers the material and quality requirements for smooth interior corrugated polyethylene pipe and fittings.

MATERIAL REQUIREMENTS. The polyethylene material for the pipe and fittings shall meet the requirements of AASHTO M294, Type S or Type SP. In addition, when checked with a 12 inches straight edge the smoothness of the interior liner shall not deviate more than 1/4 inch.

BASIS OF ACCEPTANCE. Smooth interior, corrugated polyethylene pipe will be accepted on the basis of the manufacturer's name and location appearing on the Department’s Approved List and a material certification that specifies the Product conforms to this specification.

The supplier shall provide two copies of the approved Materials Details through the Contractor to the Engineer as part of the evidence of acceptability for the material at least 10 days prior to shipment of the Product to the job site.

ADDITIONAL CATALOG REQUIREMENTS:

Split Coupler - Connectors
T Joints
Straight Inside Connectors
Straight Outside Connectors
45° Connectors
End Caps
Storm Drain Pipe – 12" ∅, M294
Storm Drain Pipe – 15" ∅ – M294
Storm Drain Pipe – 18" ∅ – M294
Storm Drain Pipe – 24" ∅ – M294
Storm Drain Pipe – 30" ∅ – M294
Storm Drain Pipe – 36"∅ – M294
Storm Drain Pipe – 42" ∅ – M294
Storm Drain Pipe – 48" ∅ – M294

Catalogs applying to supply items covered by specifications 706-12 should contain the following products available for sale. All Connectors, joints, and capping accessories should be available to support the pipe diameters (∅) contained in the Product line.

Catalogs applying to supply items specified to cover the above should contain liner and accessories to support the following dimensional requirements:

(Continued)

Existing Pipe	Liner		
Size (ID) in.	Clearance* OD of the Liner Pipe		Clearance* ID
	Minimum (in.)	Maximum (in.)	Minimum ** (in.)
12	1.25	1.25	1.910
15	1.61	2.25	3.034
18	2.00	4.00	4.872
21	2.00	3.00	4.108
24	2.40	4.00	5.230
27	2.70	3.00	4.476
30	3.00	6.00	7.476
33	3.30	5.00	6.724
36	3.60	4.00	5.970
42	4.20	6.00	8.216
46	4.60	4.00	6.584
48	4.00	6.00	8.584

* Clearance is the difference between the inside diameter (ID) of the existing pipe and the outside diameter (OD) of the pipe liner.

** Distance between the ID of the existing pipe and minimum ID of the liner.

5.6 NON-CORE LIST SPECIFICATIONS

Products meeting the following specifications may be offered as Non-Core Items.

706.8 POLYPROPYLENE PIPE

SCOPE. This specification covers the material and quality requirements for polypropylene pipe (PP) and fittings.

GENERAL. The corrugated polypropylene pipe covered by this specification is classified as follows:

1. Type S- This pipe shall have a full circular cross section, with an outer corrugated pipe wall and a smooth inner liner. Corrugations shall be annular.

2. Type D- This pipe shall consist of an essentially smooth waterway braced circumferentially or spirally with projections or ribs joined to an essentially smooth outer wall. Both walls shall be fused to, or continuous with, the internal supports.

MATERIAL REQUIREMENTS. The polypropylene material for the pipe and fittings shall meet the requirements of AASHTO M330, Type S or Type D, and be in accordance with “Materials Method 30”. When checked with a 12 inch straight edge the smoothness of the interior liner shall not deviate more than ¼ inch.

BASIS OF APPROVAL. Application for approval shall be submitted to the Materials Bureau by the manufacturer, accompanied by independent lab test results in accordance to this specification or in conjunction with the National Transportation Product Evaluation Program (NTPEP), and certification that the product conforms to this specification. Approval and continued residence on the Approved List will also be subject to the requirements of “Materials Method 30”.

BASIS OF ACCEPTANCE. Polypropylene pipe will be accepted on the basis of the manufacturer’s name and location appearing on the Department’s Approved List. The approved Materials Details will be posted on the Department’s Approved List.

706-13 PERFORATED CORRUGATED POLYETHYLENE UNDERDRAIN TUBING

SCOPE. This specification covers the material and quality requirements for corrugated polyethylene tubing and fittings.

(Continued)

MATERIAL REQUIREMENTS. The corrugated polyethylene tubing and fittings 4 thru 10 inches in diameter shall meet the requirements of AASHTO Designation: M252, Corrugated Polyethylene Drainage Tubing except that tubing manufactured from material meeting A.S.T.M. Designation D1248, Class B, shall also be acceptable.

Corrugated polyethylene tubing and fittings 12 inches in diameter shall meet the requirements of AASHTO M252 except the pipe stiffness requirement shall be 45 psi at 5% deflection.

BASIS OF ACCEPTANCE. Perforated corrugated polyethylene underdrain tubing will be accepted on the basis of the manufacturer's name and location appearing on the Department's Approved List and a material certification that specifies the product conforms to this specification.

706-14 CORRUGATED INTERIOR POLYETHYLENE PIPE

SCOPE. This specification covers the material and quality requirements for corrugated interior polyethylene pipe and fittings.

MATERIAL REQUIREMENTS. The polyethylene material for the pipe and fittings shall meet the requirements of AASHTO M294, Type C.

BASIS OF ACCEPTANCE. Corrugated interior polyethylene pipe will be accepted on the basis of the manufacturer's name and location appearing on the Department's Approved List and a material certification that specifies the Product conforms to this specification.

(Continued)

5.7 NYSDOT MATERIALS BUREAU - APPROVED PRODUCT LISTS

CORE LIST

SMOOTH INTERIOR CORRUGATED POLYETHYLENE PIPE (706-12)[1] – *Revised January 27, 2016*

MANUFACTURER AND LOCATION	SUPPLIER AND LOCATION	PRODUCT NAME (CONNECTION TYPE)	DIAMETER (inches)	DIAMETER (millimeters)	MATERIALS DETAILS NO. (APPROVAL DATE)
ADS[2] Findlay, OH	ADS Findlay, OH	Blue Seal (watertight) SureLok (bell spigot) (split coupler)	12, 15, 18, 24, 30, 36, 42, 48, 60	300, 375, 450, 600, 750, 900, 1050, 1200, 1500	NY A/H 3/08 (03/08)
ADS[2] Logan Township, NJ	ADS Logan Township, NJ	N-12 (split coupler) N-12 ST IB (bell spigot) N-12 WT IB (watertight)	12, 15, 18, 24, 30, 36, 42	300, 375, 450, 600, 750, 900, 1050	
ADS[2] Ludlow, MA	ADS Ludlow, MA	N-12 (split coupler) N-12 ST IB (bell spigot) N-12 WT IB (watertight)	12, 15, 18, 24, 30, 36, 42	300, 375, 450, 600, 750, 900, 1050	
ADS[2] Muncy, PA	ADS Muncy, PA	N-12 (split coupler) N-12 ST IB (bell spigot) N-12 WT IB watertight)	12, 15, 18, 24, 30, 36, 42, 48, 60	300, 375, 450, 600, 750, 900, 1050, 1200, 1500	
ADS[2] N. Springfield, VT	ADS N. Springfield, VT	Blue Seal (watertight) SureLok (bell spigot) (split coupler)	12, 15, 18, 24, 30	300, 375, 450, 600, 750	
ADS[2] Wooster, OH	ADS Wooster, OH	N-12 (split coupler) N-12 ST IB (bell & spigot) N-12 WT IB (watertight)			

(Continued)

Baughman Tile Company, Inc. Paulding, OH	Baughman Tile Company, Inc. Paulding, OH	Poly Smooth-Line (bell spigot) (double bell coupler) (split coupler)	12, 15, 18, 24, 30, 36, 42, 48	300, 375, 450, 600, 750, 900, 1050, 1200	NYSDOT - DW (09/12)
JM Eagle Meadville, PA	JM Eagle Meadville, PA	Inline Bell (bell spigot)	12, 15, 18, 24, 30, 36, 42, 48, 60	300, 375, 450, 600, 750, 900, 1050, 1200, 1500	NYMD (06/11)
Lane Enterprises Shippensburg, PA	Lane Enterprises Ballston Spa, NY Bath, NY Shippensburg, PA Wytheville, VA	LokTite (bell) (bell watertight joint)	12, 15, 18, 24	300, 375, 450, 600	Lane-NYSDOT-TYPE S ENGLISH (06/15)
		Inline Bell (bell spigot)	12, 15, 18, 24, 30, 36, 42, 48, 60	300, 375, 450, 600, 750, 900, 1050, 1200, 1500	
		Split Coupler (split coupler)	12, 15, 18, 24, 30, 36	300, 375, 450, 600, 750, 900	
Lane Enterprises Wytheville, VA	Lane Enterprises Ballston Spa, NY Bath, NY Shippensburg, PA Wytheville, VA	Inline Bell (bell spigot)	12, 15, 18, 24, 30, 36, 42, 48, 60	300, 375, 450, 600, 750, 900, 1050, 1200, 1500	Lane-NYSDOT-TYPE S ENGLISH (06/15)
		Split Coupler (split coupler)	12, 15, 18, 24, 30, 36	300, 375, 450, 600, 750, 900	
Soleno, Inc. Iberville, QC, Canada	Soleno, Inc. Iberville, QC, Canada	Unimax (bell spigot) (split coupler)	12, 15, 18, 24, 30, 36, 42, 48	300, 375, 450, 600, 750, 900, 1050, 1200	MD SOLENO (07/05)
Soleno, Inc. Macadam, NB, Canada	Soleno, Inc. Macadam, NB, Canada				

NOTES:

1. The Supplier must submit two copies of the approved Materials Details through the Contractor to the Engineer as part of the evidence of acceptability for the material at least 10 days prior to use of the product.

2. ADS pipe is marked **A/H**.
ADS Brand pipe is identified with a **green** stripe.

* * * *

(Continued)

NON-CORE LIST

POLYPROPYLENE PIPE (706-08) – *Revised May 8, 2015*

MANUFACTURER AND LOCATION	DIAMETER (inches)	DIAMETER (millimeters)
ADS 1 Muncy, PA N. Springfield, VT Wooster, OH Mendota, IL	12, 15, 18, 24, 30, 36, 42, 48, 60	300, 375, 450, 600, 750, 900, 1050, 1200, 1500

NOTE:
1. ADS pipe is marked **A/H**;
ADS Brand pipe is identified with a **green** stripe;

PERFORATED CORRUGATED POLYETHYLENE UNDERDRAIN TUBING (706-13) - *Revised February 12, 2015*

MANUFACTURER AND LOCATION(s)	DIAMETER (inches)	DIAMETER (millimeters)
ADS 1 Findlay, OH Logan Township, NJ2 Ludlow, MA Muncy, PA N. Springfield, VT Wooster, OH	4, 6, 8, 10	100, 150, 200, 250
Baughman Tile Company, Inc. Paulding, OH	4, 6, 8, 10	100, 150, 200, 250
JM Eagle Meadville, PA	4, 6, 8, 10	100, 150, 200, 250
Lane Enterprises, Inc. Shippensburg, PA	4, 6, 8, 10	100, 150, 200, 250
Soleno, Inc. Iberville, QC, Canada Macadam, NB, Canada	4, 6	100, 150

NOTES:

1. ADS pipe is marked **A/H**;
ADS Brand pipe is identified with a **green** stripe;
2. Logan Township, NJ, plant produces 4 & 6 inch (100 & 150 mm) sizes only

(Continued)

CORRUGATED INTERIOR POLYETHYLENE PIPE (706-14) – *Revised January 29, 2015*

MANUFACTURER AND LOCATION	DIAMETER (inches)	DIAMETER (millimeters)
ADS [1] Findlay, OH Logan Township, NJ Ludlow, MA Muncy, PA N. Springfield, VT Wooster, OH	12, 15, 18, 24	300, 375, 450, 600
Baughman Tile Company Paulding, OH	12, 15, 18, 24	300, 375, 450, 600
Lane Enterprises, Inc. Shippensburg, PA Wytheville, VA	12, 15, 18, 24	300, 375, 450, 600

NOTE:

1. ADS pipe is marked **A/H**;
ADS Brand pipe is identified with a **green** stripe;

(Continued)

SECTION 6 ADMINISTRATIVE REQUIREMENTS

6.1 MANDATORY AGREEMENTS AND CERTIFICATIONS

In order to be eligible for consideration under this Solicitation, a Bidder must affirm its agreement to comply with the following requirements and Qualifications of Prospective Bidders clause. Such affirmations are set forth in Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017) and includes among others the following: Agreement to obtain all necessary Insurance as outlined in Attachment 4 – Insurance Requirements; Agreement to all reporting requirements in accordance with Section 7.5, *Administrative Reporting Requirements*; and Certification of its intent to undertake good faith efforts to meet the participation goals by certified minority owned business enterprises and certified women owned business enterprises (M/WBE) in accordance with the MWBE Participation and Goals sub-clause as found below in Section 6.9.

6.2 NEW YORK STATE VENDOR FILE REGISTRATION

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

If the Bidder is already registered in the Vendor File, the Bidder must enter its ten-digit Vendor ID number on the first page of this IFB. In addition, dealers who will be authorized as Dealers who are already registered in the Vendor File, should provide the Bidder with their Vendor ID for it to be entered in the space provided in Attachment 1 - Price Pages (Revised February 2, 2017), Worksheet A - Identification, which authorizes the dealer to act as a Dealer on behalf of the Bidder.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (available at http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf), and submit the form to OGS preferably in advance of bidding. Please send this document to the Designated Contact in the Solicitation. In addition, if an authorized dealer(s), distributor(s) and/or subcontractor(s) is to be used that does not have a Vendor ID, a OSC Substitute W-9 form should be completed by each designated authorized dealer, distributor and/or subcontractor and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and their authorized dealers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following web site:
http://www.osc.state.ny.us/vendor_management/

6.3 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information that the State may obtain from other sources, when making its responsibility determination.

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

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

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

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

1. 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.
2. The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.
3. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.
4. 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 his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or his or her designee to be non-responsible. In such event, the Commissioner of OGS or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
5. In no case shall such termination of the contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.
6. Contractor agrees it shall recertify its Questionnaire no later than the end of the eleventh month of each contract year.

BIDDERS NOTE:

- *A New York State Vendor File Registry Number is required to access the VendRep site (see above clause). Bidders who do not have an assigned NYS Vendor File Registration Number must submit a hard copy paper questionnaire with their bid.*
- *Bidders who are opting to, or who are required to complete the hard copy paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.*
- *While Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017) contains questions pertaining to the bid and the Bidder, it is NOT the Vendor Responsibility Questionnaire. The completion and submission of BOTH questionnaires is mandated by this bid.*

6.4 TAX LAW §5-A

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

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A Bidder is required to file the completed and notarized Form ST-220-CA with OGS Procurement Services certifying that the Bidder filed the ST-220-TD with DTF. NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. It is strongly recommended that Form ST-220-CA be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. If the forms are not completed and returned with bid submission proposed Contractors shall complete and return the certification forms within five (5) business days of request. Failure to make either of these filings may render a Bidder non-responsive. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

Form ST-220-CA must be submitted to OGS Procurement Services. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.
Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: http://www.tax.ny.gov/.

6.5 QUALIFICATIONS OF PROSPECTIVE BIDDERS

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

- Bidder shall have maintained an organization capable of supplying the products included in the lot(s) being bid in continuous operation for at least the past three (3) years. Bidder shall be capable of maintaining a business establishment with adequate inventories of the products offered, and shall be capable of processing and shipping large numbers of orders for such products to various destinations. Bidder shall also be capable of providing service to Authorized User facilities, and shall have trained personnel qualified to service the Product furnished at the Authorized User location within 48 hours.

  Proof of compliance with this requirement may be achieved through the submission of an independent verifiable business profile such as a Dun & Bradstreet Business information report. If a Bidder does not have access to an independent verifiable business profile, then the Bidder shall provide a narrative describing its ability to meet this requirement.

  ***BIDDERS NOTE**:*
  Bidder has the option of submitting proof of compliance with this requirement with the bid, or after bid submission in response to a request from, and within a time frame specified by, the OGS Procurement Services Contract Management Specialist.

- Bidder must be authorized to do business in New York State.
  a. Domestic corporations (or LLCs) shall be registered and in good standing with the New York State Department of State's Bureau of Corporations
  b. Foreign corporations (or LLCs) may bid provided they are either:
     1. Registered and are in good standing with the NYS Department of State's Bureau of Corporations, or are
     2. Able to provide, preferably with its bid, but otherwise within a time frame specified by the OGS Procurement Services Contract Management Specialist upon request, a Certificate of Good Standing from their jurisdiction of record.
  c. Sole Proprietors or Partnerships (regardless of location) must provide a certified copy of your legal business certificate which is on file with the County Clerk in your jurisdiction of record, preferably with its bid, but otherwise within a time frame specified by the OGS Procurement Services Contract Management Specialist upon request.

- Bids will be accepted only from established manufacturers or members of their established distribution network of authorized Dealers. See Section 1.14 for additional information.

(Continued)

- A Bidder shall certify its commitment to fulfill and maintain all requirements including items specifically detailed in Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017).

The following submissions will be evaluated by OGS only for the purpose of determining whether the Bidder is responsible, as that term is defined in State Finance Law §163(1)(c).

1. References: Upon request, all Bidders must provide a minimum of five references including references from two of the Bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the lot group(s) bid. The references shall include the:

- Name, address, contact person, telephone number, fax number, and number of years Bidder has serviced the referenced account;
- Volume of business performed within the past three years for each referenced account.

2. Ability to Perform and Reasonableness of Price: Upon request and within a timeframe determined by the Contract Management Specialist, Bidder must document its ability to service a contract with sales volume similar in scope of the lot(s) bid and that the pricing set forth in the bid is reasonable. This would be accomplished through submission of financial statements documenting past sales history. Bidders should provide information for up to five federal contracts, any other NY State contracts, contracts with other states or groups of states or any local government contracts (population of 75,000 or more) which are either currently held for public sector procurements or have been recently completed for products offered in this bid, along with the discounts offered under those contracts.

They must also provide verifiable information either in the form of a profile or a detailed record of their sales for each Product line offered to public entities for the 36-month period preceding the bid opening date/time. Required proof of sales may be demonstrated either by the submission of invoice copies of individual transactions or in the form of a summary of the total sales reported, which shall include the names of the purchasers, the total amount of sales by purchaser and the date of each sale.

In the event that a manufacturer's marketing structure involves using a network of independent dealers in designated "restricted territories" for sales and distribution, contract and / or sales information from either the manufacturer or from such related sellers should be obtained and supplied. Each example must be accompanied by an attached memo detailing the comparative values between the previous contract or transaction and the net value bid. It shall include any necessary analysis of price required to evaluate reasonableness as compared to FOB differences between the net bid pricing and other offerings. Comparative price information with market competitive products should also be disclosed.

Should examples of governmental sales be unavailable, private sector sales information may be substituted.

3. Financial Stability: The Bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within the time frame set forth by the Contract Management Specialist of Record. The State reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this bid.

The above materials may be submitted in either paper hard copy or on electronic media or if responding upon request, transmitted as PDF format files directly to the primary contact.

The State reserves the right to request any additional information deemed necessary for the proper evaluation of bids. All information must be submitted within the time frame set forth by the Contract Management Specialist of Record within a specific request.

6.6 INSURANCE

Contractors must obtain Business, NYS Workers Compensation and NYS Disability Insurances and maintain such insurance through the term of the contract, per the instructions and requirements set out in Attachment 4 – Insurance Requirements.

A Bidder is required to submit proof of Workers' Compensation and Disability Insurance (or an official waiver of such a requirement) either with the bid or within three (3) business days of the bid opening date.

After notification of tentative award, Bidder shall be required to procure all required contract-specific insurance within five business days.

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Bidder shall affirm its agreement to obtain all required contract-specific insurance and maintain proper proof of coverage in Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017).

Designated Contacts for insurance related questions are:

Robert Marriott
Kelly Smith
Suean McLaughlin
Leighann Brown
Phone: Phone No. (518) 457-6595
Email: ogs.sm.insrev@ogs.ny.gov

Bidders Note:
All required coverage must be maintained at the vendor's expense for the duration of the Contract. If awarded a Contract, Contractor must provide the appropriate proof of current insurance, certifications, licensing, etc. throughout the Contract term as requested by OGS Procurement Services.

6.7 MANUFACTURER'S STATEMENT OF AUTHORIZATION AND COMMITMENT

Bidders who are bidding products which are being offered as a resale of goods manufactured by others must obtain verification from the products' actual manufacturer of their right to sell. This is done through the completion and submission of a completed Manufacturer's Statement of Authorization & Commitment for the catalog(s) and products the bid is based on. The Bidder completes the Identity block at the top of the form and forwards the form to the manufacturer(s). If the Bidder is using more than one manufacturer as their Product source, a Manufacturer's Statement of Authorization and Commitment is required from each manufacturer being used.

Bidders who offer a combination of self-manufactured products and products being supplied as a dealer/distributor must supply certificates for any products offered that they do not manufacture.

The "Manufacturer's Statement of Authorization and Commitment" form found in Attachment 1 – Price Pages (Revised February 2, 2017), Worksheet F, is to be forwarded by the Bidder to its proposed supplier(s) for completion and returned to the Bidder for submission, either with their bid or within the time frame set forth by the Contract Management Specialist of record.

6.8 JOINT VENTURE OR PARTNERSHIP BIDS

Should the Contractor elect to undertake contract performance with a joint venture partner, the Contractor acknowledges that all other members of the joint venture would likely be deemed to be subcontractors and the Contractor may be liable for claims made against an uninsured Joint Venture partner. It is recommended that a Contractor require all such Joint venture partners, prior to commencement of an agreement between Contractor and the Joint venture partner, to secure and keep in force during the term of this contract the insurance requirements of this document on the Joint venture partner, as applicable.

In the sole discretion of the Commissioner, any bid may be rejected on the basis that such bid may unfairly affect competition or may not be able to fulfill the requirements of the contract.

6.9 M/WBE PARTICIPATION AND GOALS

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

1. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

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2. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

3. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over $25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 - Staffing Plan.
To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and

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Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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.

4. Contract Goals

A. OGS hereby establishes an overall goal of 5% for MWBE participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under the Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. The MWBE Regulations are located at 5 NYCRR §§ 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Business Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

5. MWBE Utilization Plan

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

B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.

D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.

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

F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

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

G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

6. Request for Waiver

A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the <u>OGS Office of Minority- and Women-Owned Business Enterprises for guidance.</u>**

B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

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

D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

7. Required Good Faith Efforts

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

A. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.

(Continued)

B. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
C. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
D. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
E. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
F. Other information deemed relevant to the request.

8. Monthly MWBE Contractor Compliance Report

A. In accordance with 5 NYCRR § 142.10, Contractor is required to report compliance with the MWBE goals of the Contract as identified in clause IV.A herein. OGS requests that Contractor use the MWBE 102 Non-Construction Contracts Monthly Payments Report Rev01 to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract.

B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. OGS requires Contractor to submit the MWBE 102 within ten (10) business days of Contractor's receipt of payment from OGS to: OGS MWBE Office, 29th Floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

C. Failure to submit the MWBE 102 as requested by OGS may jeopardize future payments pursuant to the MWBE liquidated damages provisions in clause IX below.

9. Breach of Contract and Liquidated Damages

A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated or other appropriate damages to OGS.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

10. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

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

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6.10 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

SECTION 7 CONTRACT ADMINISTRATION

7.1 SERVICE REQUIREMENTS

The following sets forth the mandatory service requirements for the resulting contract. Bidder must affirm its ability to meet these service requirements.

7.1.1 – Product Delivery: Appendix B, §31, Product Delivery, is hereby deleted and replaced with the following:

Product will be required as soon as possible and delivery time may be considered by an Authorized User when issuing a purchase order. Estimated delivery shall be expressed by the average (or usual) number of calendar days required to ship and complete the Product delivery after receipt of a purchase order (ARO) which shall be indicated on Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017). The decision of the Commissioner as to compliance with delivery terms shall be final. If deliveries cannot be achieved within the stated time after receipt of order, the Authorized User must be advised immediately to facilitate possible use of an alternate source of supply. Deliveries must be made to the Authorized User within sixty (60) calendar days of the Contractor's receipt of order. There will be NO backordering of any items.

7.1.1.1 – Purchase Order Instructions: Delivery shall be made in accordance with instructions on purchase order from each Authorized User. If there is a discrepancy between the purchase order and what is listed on the contracts, it is the Contractor's obligation to seek clarification from the ordering party and, if applicable, from OGS Procurement Services (See also: Section 7.1.6).

7.1.1.2 – Shipping Dates and Delivery Time: Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order which will include an anticipated shipping date of each order. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. The Contractor must notify the Authorized User at least forty-eight (48) hours in advance of shipment so that necessary receiving arrangements can be made.

If shipment will not be made within the delivery time, the Contractor is required to notify the Authorized User and the Contract Management Specialist of record in writing at least two weeks prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the Product will be shipped. 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 a delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract. Contractor must take appropriate action to avoid any subsequent late deliveries.
Should the delay not be acceptable to the Authorized User, appropriate contract default proceedings may be initiated. Failure to supply timely written notification of delay may be cause for default

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proceedings. All correspondence on shipping dates and delivery time shall be directed to the ordering Authorized User's contact person.

7.1.1.3 – Delivery Condition: The Product delivered must be strictly in accordance with the one awarded. Contractor shall be responsible to make no shipment of the Product that will be exposed to conditions during transit, detrimental to the product. Product must be delivered strictly in accordance with specifications and shall be "Ready for Use."

7.1.1.4 – Delivery Certification: Contractor shall secure a signed receipt from Authorized User certifying to physical delivery of product. In the event deficiencies are later noted and a properly signed receipt is not available, Contractor will be responsible to ship adequate additional product, as soon as possible, to resolve the deficiency. Such certification does not imply acceptance of product. Acceptance shall be made only after the inspection of goods by the Authorized User, typically performed within five (5) business days of delivery.

7.1.1.5 – Expansion of Delivery Points: Upon mutual agreement, delivery locations may be expanded per the "Non-State Agencies Participation in Centralized Contracts" and "Extension of Use" clauses incorporated herein.

7.1.2 – Commercial Price Lists and Catalogs: Contractor shall be required to furnish, without charge, catalogs and commercial price lists identical to those accepted with their bid, including any changes (additions, deletions, modifications etc.) pursuant to the contract, to all Authorized Users which request them. Such changes may be shown by including copies of the Final Offered Product List with your response.

7.1.2.1 – Format Requirements: The Contractor shall provide, upon request and at no charge, sufficient awarded price lists and catalog(s) to service all Authorized Users. The publications may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. Upon request the Contractor shall assist Authorized Users in the use of catalogs and price lists. Contractor may refer the Authorized User to appropriate web locations containing the digital information.

7.1.2.2 – **Preferred Source Requirement -** The Contractor shall also identify products available from Preferred Sources by placing a letter code in a column next to the Products on the Contractor's Net Price List(s) (hard copy and electronic media) distributed to customers.

7.1.2.3 – Optional Dedicated Contract Website: If offering a dedicated NYS Contract Website *(per Section 8.14)*, the Contractor shall provide, on this supplemental website (and if applicable their web based ordering system), separate and distinct price lists for the NYS Net prices. It shall also provide on its website an electronic version of the supplier's catalog. Such lists shall be maintained at separate locations within the Contractor's website or web-based ordering system, either on separate pages, or at separate URLs. See Section 8.14, *Internet Web Sites* for additional information.

7.1.3 – Customer Service: The Contractor shall provide a sufficient number of employees who are knowledgeable and responsive to customer needs and who can effectively service the contract. The Contractor shall also designate a customer service representative for Authorized Users. Bidders shall indicate the contact information for the customer service representative in Attachment 1 – Price Pages (Revised February 2, 2017), Worksheet A – Identification.

7.1.3.1 -**Technical Assistance**: Generalized instruction and technical assistance for the offered products in the normal course of doing business, via a customer or technical service website or telephone hotline is to be available to Authorized Users on an as needed basis at no charge.

7.1.4 – Instruction Manuals: Simultaneous with delivery, the Contractor shall furnish to the Authorized User, at no charge, a complete instruction manual for the Product and for each component supplied. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

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

7.1.6 – Purchase Orders and Invoicing: Appendix B, §30, Purchase Orders, is hereby deleted and replaced with the following:
All orders and invoices/vouchers should include the contract number and a line by line listing of separate items and charges. Orders must be accepted by the Contractor between the hours of 8:00 a.m. through 5:00 p.m. ET, Monday through Friday, except NYS Holidays. Contractor shall be capable of accepting orders: (1) verbally via toll-free number; (2) manually, via e-mail, facsimile or postal delivery; and, (3) if the Bidder exercises their option to provide a personal computer web-based system, electronically.

7.1.6.1 – Purchase Order Acceptance –A purchase order shall be deemed to be received by the Contractor four (4) calendar days after placement of order by mail, or the same as day sent if submitted by electronic transmission. All purchase orders shall be confirmed as received by the Contractor.

7.1.6.2 – Purchase Order Contents – All orders (verbal, hard copied or electronic) shall reference contract number, requisition and/or purchase order number as required. Purchase Orders should include the detailed information stated as follows along with any delivery requirements, personnel contact numbers or additional information a contractor and shipping carrier may need to properly process and deliver the Product in a timely manner.

- Contractor Name and Address
- Contract Number and Description
- Authorized User information
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Anticipated Delivery Date
- Item or Stock Number
- Manufacturer Item Description
- Unit of Measure
- NYS Net Price
- Extended and Total Amounts

7.1.6.3 – **Invoices** – Authorized Users are instructed not to process invoices without needed information.

Invoices must be detailed and include all of the following:

- Contract Number
- Purchase Order Number
- NYS Vendor ID Number
- Item or Stock Number
- Manufacturer's Item Description
- Line item breakdown of all charges
- Line item breakdown of any deletion
- Shipped Date
- Shipping Company & Bill of Lading Number
- NYS Net Price
- Extended and Total Amounts

Failure to comply may result in lengthy payment delays. If the Contractor is using Dealers to service Authorized Users and allows the Dealer to directly invoice and receive payment, Dealer invoices must clearly identify their standing as a Dealer and indicate the actual Contractor along with their contact information.

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7.1.7 – Minimum Order: Minimum order shall be $500.00. Contractor may elect to honor orders for less than the minimum order.

7.1.8 – Method of Payment: Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, §45, Contract Invoicing, contained within this document.

7.1.9 – Discrepancies: The Contractor shall resolve all order and invoice discrepancies (e.g., shortages, incorrect item received, etc.) within seven (7) business days from notification.

7.1.10 – Settlements: OGS has the right to determine the disposition of any rebate, settlement, restitution, liquidated damage, etc. which arise from the administration of these contracts.

7.1.11 – Acceptance of Product: As noted above in 7.1.1.4 Delivery Certification – the receipt of goods does not constitute acceptance of product. Within five (5) business days of delivery of a shipment, the Authorized User will conduct an inspection of the goods received, confirming quantities received, accuracy of the shipment compared to the purchase order or requisition, and verify items received are as specified and suitable for use. If a shipment is in proper order, acceptance shall be indicated by the Authorized User approving the order for payment. If there are discrepancies or Product issues, the Authorized User shall notify the vendor immediately to facilitate proper corrective action. Upon written notification by the Authorized User to the Contractor and the Contract Management Specialist of record, products determined to have quality problems, outdated product, damage, etc., shall be picked up by the Contractor within ten business days after notification with no restocking charge.

Understanding that there is the potential for defects which may not become evident until a Product is being unpacked and prepared for deployment. Product defects may not be identified until long after Product acceptance. In the event that an item has been paid for prior to the discovery of a defect, the Authorized User shall elect whether to receive a replacement Product or a credit/refund for the full purchase price.

7.1.12 – Product Returns Due To Authorized User Error: Products ordered in error by an Authorized User shall be returned by Authorized User at its expense for credit within 15 business days of delivery. Standard stock products must be in resalable condition (original container, unused). The Contractor may charge a restocking fee not to exceed 10 percent for opened Product returns due to Authorized User error. There shall be no restocking fee if returned products remain factory sealed.

7.1.13 – Warranties: See Appendix B, §54, *Warranties*.
Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty. At time of bid opening, Product offered must meet all requirements of this Solicitation including full commercial/retail availability. Product literature and specifications must also be available.

Where accessories are to be supplied, they must be compatible with the rest of the product.

7.1.14 – Recalls: The Contractor must notify the Office of General Services' OGS Procurement Services of any recalls pertaining to a Product on contract within seven business days of the determination or manufacturer's notification of the recall.

7.1.15 – E-Mail & Telephone Contacts: Contractors will provide active e-mail addresses and telephone numbers for all personnel assigned by the Contractor to directly service the contract. Unless specifically designated as an emergency or after-hours contact the information should be adequate for the State to contact the party during normal working hours between 9:00 am and 4:30 pm EST, Monday through Friday. The information shall be entered in the spaces provided on Attachment 1 – Price Pages (Revised February 2, 2017), Worksheet A – Identification and submitted with your bid. If the Bidder does not currently maintain an e-mail communication system, the Bidder must be willing to establish one prior to award of contract. In such an instance, the Bidder may supply the e-mail information after set-up, at the request of the Contract Management Specialist of record. If opting to offer a NYS Contract Web Site per Section 8.14, *Internet Web Sites*, The Information should also be posted and accessible on line on the web site.

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7.1.16 – **Toll-Free Number:** A Bidder must provide (and note in Bidder Information and Bid, Worksheet A – Identification), a toll-free telephone number for the Authorized User usage. Bidder must staff this toll-free number at a minimum from 9:00 am to 4:30 pm ET Monday through Friday. If Bidder does not currently maintain a toll-free number, the Bidder must certify agree to establish one prior to award of contracts.

7.1.17 – **Emergency Service Number & Contact Information:** The Contractor will provide a toll free - emergency service, available seven days a week, twenty-four hours a day. Given the nature of the products, an emergency contact including name, number, cell number, fax, and email must be provided.

7.2 CONTRACT MODIFICATION (INCLUDING CONTRACT UPDATE) GUIDELINES

Product Catalogs and Commercial Price Lists submitted with the bid shall remain in effect for a minimum of one year from the contract start date. Following the first year of the contract, the Contractor may update these listings twice annually through the remaining term of the contract to reflect manufacturer's price changes and to facilitate the possible addition of new products as established by the manufacturer in their normal course of business.

The Contract Modification Guidelines found herein classify a number of different types of modifications available to the Contractor, and require a separate application for each. As only two modifications are allowed annually, the submission of multiple applications at a single time will constitute one request for modification.

For prompt processing and response, applications should be forwarded electronically with the notarized hard copy, followed by mail.

The Contractor shall submit all requests for price adjustments to add Products in accordance with the Contract Modification Procedures below. In connection with any contract modification, OGS reserves the right to: request additional information, reject Contract Modifications and Updates, remove Products from Contract Modifications and Updates, and request additional discounts for new or existing products. The following guidelines are subject to change at the discretion of OGS. The Contract Modification Form to be used in connection with this process is attached hereto as Appendix C and is subject to change at the sole discretion of OGS.

A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form (a copy of which will be supplied at the time of award).

7.2.1 – **Types of Contract Modifications**: In order to expedite processing of a contract modification, where proposed changes involve more than one category below, and each change should be submitted to OGS as a separate request.

7.2.1.1 – **Updates:** "Updates" are changes that do not require a change to the established centralized contract terms and conditions. Updates may include Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products within the scope of the contract and within the established, previously approved pricing structure; lowering pricing of products already on contract, deleting products available through the centralized contract, adding products that do not fall under the previously established price structure or discounts under the contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established centralized contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.

7.2.1.2 – Amendments: "Amendments" are changes that are not specifically covered by the terms and conditions of the centralized contract but inclusion is found to be in the best interest of the State. Requests for Product changes and other requests that would require changes to the terms and conditions of the centralized contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.

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7.2.2 – Contractor's Submission of Contract Modifications: In connection with any contract modification, OGS reserves the right to:

- request additional information
- reject contract modifications
- remove products from contract modification requests
- request additional discounts for new or existing products

7.2.2.1 – Price Level Justification – Format: Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Price level increases
- Price level decreases
- Products being added

7.2.2.2 – Supporting Documentation: Each modification request must include the current contract pricing discount relevant to the products included in the update.

7.2.2.3 – Submittal of Modification Requests: A contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall within the scope of the contract). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

7.3 PRICE ADJUSTMENTS & UPDATES

All percentage discounts bid shall remain firm (unchanged) or they may be increased by the Contractor for the duration of the resulting contract. Commercial Price Lists submitted with the bid shall remain in effect for a minimum of one year from the contract start date. Following the first year of the contract, the Contractor may update their Commercial Price List twice annually to reflect manufacturer's price changes and to facilitate the possible addition of new Products as established by the manufacturer in their normal course of business.

Contractor shall follow the Contract Modification Guidelines above, and complete and submit a Contract Modification Form, identify and detail changes from the previous price list via a cover correspondence, along with rationale explaining and justifying said changes. Additionally the Contractor shall submit the updated Commercial Price List upon which the contract pricing is based, and an updated Net Contract Price List. Both price lists shall be digitally supplied in Excel (.xls or .xlsx) format either on CD, DVD, Secure Digital High-Capacity (SDHC) Flash Memory Card or USB Flash Drive or via e-mail to the OGS Procurement Services Contract Management Specialist of record. The effective date of new Commercial Price Lists will be when they have been reviewed and approved by OGS Procurement Services and a notification to Authorized Users is published on the OGS Procurement Services website.

The review will include a comparison with market trends at the time of the submission versus those at the date and time of the bid opening and may include additional research data collected and published by both private sector and public sector agencies and services. This research may include, but is not limited to information obtained from: Plastics News or other private sector/open market pricing indices for raw materials such as Polyethylene and other materials, plastics or resins, as well as US Department of Labor, Bureau of Labor Statistics Producer Price Indices for related commodities and industries. Should the new submission, or any pricing listed therein, be determined by OGS Procurement Services to be unreasonable, Contractor will be notified and may submit a revision. Contractor should submit new Commercial Price Lists prior to publishing date if possible. Unless otherwise specified, any price adjustment performed or transacted by a Contractor prior to receipt of a notice of approval by the OGS Procurement Services is prohibited and may be cause for cancellation of the contract.

7.3.1 – Changes in Core List Item Pricing: Per the above, changes in the list price of Core List prices may be requested twice annually, at the same time as any other catalog or price list update, and will be addressed as follows:

1. Change of the list price shall be reviewed per the above paragraph for reasonableness.

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2. Should the change be deemed acceptable by OGS Procurement Services, the new list price shall be applied to the original bid formula to determine the new price structure.

7.3.2 – **Changes in Core List Shipping Pricing:** Per the above, changes in the shipping price of Core List prices may be requested twice annually by the contractor, at the same time as any other catalog, price list or Core List pricing update, and will be addressed as follows:

- A contractor may request an update in the Core List shipping price. Requesting a pricing update for a Core List Item will not automatically result in OGS Procurement Services updating the shipping component.
- The State reserves the right to independently implement a change in Core List Shipping Prices at any time that there is evidence indicating a significant change in freight or fuel pricing which would be in the best interests of the State. The State will notify contractors of any intent to exercise this provision 7 to 10 business days prior to implementation of any adjustment.

3. Change of the shipping price shall be calculated by OGS Procurement Services by calculating an adjustment rate to be applied to the originally bid rates by computing the percentage of change between the most recently published U. S. Department of Labor's Bureau of Labor Statistics Producer Price List Index for General Freight Trucking-Long Distance LTL Primary Services – Index number PCU484122484122P as compared to the index rate at the date and time of the bid opening (New Rate/Original Rate = Adjustment Percentage) which will be recorded at that time (whether or not noted as preliminary) and published to OGS Procurement Services contract website.

4. The adjustment percentage shall be applied (as either an increase or a decrease in rate depending upon the comparison) to the shipping rates bid. Increases to the shipping rates are capped and shall not exceed 10% for any adjustment period.

5. The new shipping rates shall be inserted into the original bid formula to determine the new Core List line item price and the updated award price will be calculated and posted in a notification to Authorized Users and Contractor published on the OGS Procurement Services contract website.

   As previously noted, unless otherwise specified, any change or update transacted by a Contractor prior to receipt of a notice of approval by the OGS Procurement Services is prohibited and may be cause for cancellation of contract.

7.3.3 **Lower Pricing**: The State reserves the right to negotiate lower pricing, or to advertise for bids, whichever is in the State's best interest as determined by the Commissioner, in the event of a significant decrease in market price of any Product listed. In addition, if the Contractor's normal pricing to the public or to the trade in general is less than the net/contract pricing with the application of a contract discount, etc., then the normal pricing to the public or to the trade in general shall also be granted to Authorized Users.

7.4 PRODUCT LINE CATALOG UPDATES – ADDITION & DELETION OF PRODUCTS

Contractor shall follow the Contract Modification Procedures as stated previously in 7.2 and 7.3, and complete and submit a Contract Modification Form. This form will be supplied to contract awardees post award. Any new products added to pricelists or catalogs should have a discount structure consistent with existing products on the pricelist or catalog that are comparable in scope. Contractors shall submit their updated pricelist or catalog to OGS Procurement Services for review and written approval prior to publicly releasing any update to Authorized Users. OGS Procurement Services reserves the right to accept or reject any or all products included in the Contractor's pricelist or catalog update.

As previously noted, unless otherwise specified, any change or update transacted by a Contractor prior to receipt of a notice of approval by the OGS Procurement Services is prohibited and may be cause for cancellation of contract.

7.4.1 – **Product Deletion, Discontinuation And 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 OGS Procurement Services to be equal to or better than the specified Product should be substituted by the Contractor at no additional cost or expense to the Authorized User. Contractor shall follow the

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Contract Modification Procedures above, and complete and submit a Contract Modification Form (which will be supplied post award). The Contractor shall provide to OGS Procurement Services, complete information on the replacement Product including, but not limited to a Specification List, Function and Feature list and Comparison of Performance between the new and old product.

If a Contractor believes that a Product will be **discontinued without replacement**, notification should be given to the Contract Management Specialist of Record as soon as possible following such a determination. Should, per the above, the Contractor find no suitable substitution or replacement, the notification must detail the reasons for that determination. The notification shall include the date of loss of availability and the current inventory level for the product. The request will then be reviewed by the engineering staffs of NYSDOT and/or the NYS Thruway Authority, who will determine if discontinuation without replacement is warranted. Should the determination be that a viable replacement is available, the contractor will supply the stated replacement the same price as the discontinued item.

It is the contractor's responsibility to inform the assigned OGS Procurement Services Contract Management Specialist, in a timely fashion for any Product discontinuation or deletion from contract availability. Contractor must supply documentation supporting the unavailability of the Product to the US market. Along with the notification of change, the Contractor must supply documentation detailing the reasons behind the need to discontinue the item(s) of note, as well as information pertinent to evaluating the appropriateness of any specified replacement item, as well as existing inventory status reports supporting any claims against Product availability on the outgoing item(s) must be supplied.

Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of the contract. In the event that a Contractor is unable to provide a replacement, it is the State's right to cancel the contract. Contractor should note, however, that all deletions approved by OGS Procurement Services are subject to a post audit by the Office of the State Comptroller

7.4.2 – Interim Government Program Adjustment: OGS Procurement Services **may** permit a change in product, catalog or price outside of the time frames and conditions, or in excess of annual limitations for change set up by this IFB if a federal government program, such as the United States Department of Transportation, The Federal Highway Administration, National Transportation Research Board, National Transportation Product Evaluation Program (NTPEP), The American Association of State Highway Transportation Officials (AASHTO), (or other similar entity) were to issue a Regulation, Specification, Standard, Engineering Recommendation or an amendment to The Manual for Uniform Traffic Control Devices (MUTCD) that failing to rapidly integrate could impact public safety.

Contractor shall follow the Contract Modification Procedures above, and complete and submit a Contract Modification Form. Suitable documentation would be submitted to OGS Procurement Services in accordance with the requirements set forth in this chapter of the IFB. OGS Procurement Services will determine if the requested change is reasonable and attainable. Replacement or new products may be subject to NYSDOT testing and approval by the Department and The Office of General Services.

As previously noted, unless otherwise specified, any change, modification or update transacted by a Contractor prior to receipt of a notice of approval by OGS Procurement Services is prohibited and may be cause for cancellation of Contract.

7.5 ADMINISTRATIVE REPORTING REQUIREMENTS

The Contractor shall provide the following reports to OGS at the e-mail address listed on the Notice of Contract Award. Failure to submit reports on a timely basis may result in contract cancellation and designation of Contractor as non-responsible. The Parties agree that OGS reserves the right to amend the data elements collected in these reports in its sole discretion. Such amendments shall not be substantive in nature and shall reflect information relevant to monitoring the expenditures under the contract.

With respect to any reporting requirements set forth in this IFB, prospective Bidders are hereby advised that the State reserves the right to implement and maintain specific on-line reporting modules and databases, in addition to those mentioned in this IFB, for reporting purposes, and to require Contractors to use such on-line functionality beginning with the earliest reporting period after notification of implementation. Should such functionality be implemented prior to the awarding of contracts, the requirement to report using such

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functionality will be reflected herein and/or in the contract document. After award, notification will be made via a notification to Authorized Users which will be published on the OGS Procurement Services website.

7.5.1 – Report of Contract Purchases: Contractor shall furnish quarterly reports containing total sales for All Authorized Users contract purchases no later than fifteen (15) calendar days after the close of each calendar quarter.

The required reporting elements will initially consist of a line item report of all orders shipped and invoiced, shall be forwarded electronically in Excel (.xls or .xlsx) format to the Contract Management Specialist of record containing line item detail for all transactions as requested by the administrator and may include among other information: Invoice #, Invoice Date, Purchase Order or Requisition #, State Agency/Entity, Facility/Location Name, Ship To Street Address, City /Town, Ship To Zip Code, County, Lot #, SKU ID #, SKU Description, Manufacturer Name, Manufacturer Part #, Unit of Measure, Quantity, Unit List Price, Awarded Discount % Rate, NYS Net Unit Price, NYS Extended Cost, MWBE Item (Yes/No). A more detailed Excel workbook may be supplied by the Contract Management Specialist of record, after awards are made.

In addition to Contractor direct sales, Contractor shall submit sales information for all authorized Dealers, where contract sales are provided by the Dealer. A separate report shall be provided for each authorized Dealer.

Should within the term of the contract, appropriate means be integrated into the NYS Statewide Financial System (SFS) Portal that allow for direct input of the required reporting information, submission of the Report of Contract Purchases will migrate to that venue and Contractors will follow the reporting format established within the SFS Vendor Portal. Announcement of any such new capability and reporting requirement will be made via a Contract update which will be forwarded to all Contractors by the Contract Management Specialist of record assigned to administer this Contract.

7.5.2 – M/WBE Contractor Compliance & Payment Reports*:* See Section 6.9 (E) for Contractor's reporting obligations with respect to Monthly MWBE Contractor Compliance.

7.5.3 – Authorized User Sales Reports: Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a quarterly basis, a report listing the following: name of Products purchased, quantity purchased, unit price and total dollar volume of purchases.

7.5.4 – Updated Certification of Required Insurances: As insurance coverage is traditionally of a term nature, it is the Contractor's responsibility to maintain not just the appropriate insurance coverages, but also their filed certifications with OGS. The Contractor shall furnish to the State up to date certifications of coverages for all insurance requirements per Attachment 4 – Insurance Requirements.

7.6 CONTRACT PERIOD AND RENEWALS

It is the intention of the State to enter into contracts for the term as stated on the first page of this Invitation for Bids, commencing on approval of the contract in accordance with Appendix B, §22, *Contract Creation/Execution.*

7.6.1 – Contract Renewals*:* If mutually agreed between the OGS and the Contractor, contracts may be renewed under the same terms and conditions until March 31, 2021.

7.6.2 – Short Term Extensions: 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, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three months in addition to the unilateral one month extension. However, this extension terminates should the replacement contract be issued in the interim.

7.7 EXTENSION OF USE

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

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7.8 NEW YORK STATE PURCHASING CARD

A Bidder shall indicate in Attachment 5 – Bidder Information Questionnaire (Revised February 2, 2017) if it will accept the NYS Purchasing Card for orders not to exceed $85,000. No extraordinary paper work is to be required of the Authorized User. No additional processing fees shall be applied to any procurement card transaction. A Bidder may also opt to offer an additional discount for transactions using the procurement card in Attachment 5 (see Appendix B, §15, Purchasing Card for additional terms and information.)

SECTION 8 ADDITIONAL TERMS AND CONDITIONS

This section sets forth additional terms and conditions that shall be incorporated into the resulting Contract.

8.1 APPENDICES

The Bidder's attention is directed to the appendices and attachments attached hereto and hereby incorporated by reference and made part hereto as fully as if it were set forth at length herein. The Bidder is responsible for adhering to all requirements of the appendices.

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

8.1.2 – **Appendix B**, Office of General Services, General Specifications, dated April 2016, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein and shall govern any situations not covered by this Solicitation or Appendix A. **Please retain this document for future reference and do not return it to OGS as part of the Bid submission.**

8.1.2.1 – Appendix B is amended within this IFB as follows:

- Section 4.2.2.3 ─ Tie Bids replaces Appendix B, §17, Tie Bids
- Section 7.1.1 ─ Product Delivery: replaces Appendix B, §31, Product Delivery
- Section 7.1.6 – Purchase Orders and Invoicing replaces Appendix B, §30 Purchase Orders

8 1.3 – **Appendix C** – Contract Modification Procedure **–** attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein, and shall govern any situation not covered by this Solicitation or Appendix A.

8.2 RESERVATION

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for Contract product(s) totaling more than $2,000,000 of an item (one size, style).

8.3 PERFORMANCE AND BID BONDS

There are no bonds for this contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract shall be required at any time during the initial term, or any renewal term, for this agreement.

8.4 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

(Continued)

governmental procurement contracts. Further information about these requirements can be found on the OGS web site at http://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

8.5 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

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

8.6 USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this bid Solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials." in Appendix B, §11.

8.7 MERCURY-ADDED CONSUMER PRODUCTS

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

8.8 EPA ENERGY STAR PROGRAM

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all applicable products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from contract selected products as mandated by any NYS energy legislation that is enacted during the term of this contract. The Contractor shall have no recourse with the State for such discontinuance/deletion.

8.9 SURPLUS/TAKE-BACK/RECYCLING

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html.
4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User

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in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

8.10 AMERICANS WITH DISABILITIES ACT (ADA)

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. Although it is not mandatory for Bidders to have this equipment in order to receive an award, it is necessary to identify any such equipment they have which falls into the above category.

8.11 NEW YORK STATE STATEWIDE FINANCIAL SYSTEM (SFS)

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

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

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

8.12 ENCOURAGING USE of NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State Contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/proposers for this Contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as Subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State Contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor’s optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its Contractors. The State therefore expects Bidders/proposers to provide maximum assistance to New York businesses in their use of the Contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

8.13 BULK DELIVERY & ALTERNATE PACKAGING

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the

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development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

8.14 INTERNET WEB SITES

The State acknowledges the importance of technology and encourages the use of informational exchange between contractors and Authorized Users via the web. To support this concept the State requests Bidders supplies the URL for any company website which would be of use to the authorized users.

Additionally, The State offers the option to, and encourages successful Bidders to supply authorized users with a designated NYS contract web site for direct access. This supplemental website would be listed under Contractor information in the Contract Award Notification or in a subsequent revision of the notification. A resultant contractor may exercise the option to supply such a supplemental website at any time within the term of the contract. Once accepted by the State and implemented by the contractor such a site must remain active and up to date for the remainder of the contract term, including through any extensions or renewals.

It shall be the responsibility of the Contractor to maintain and update this website, noting that changes in Product line or pricing posted to the site must be approved by OGS Procurement Services in accordance with any terms included in this bid prior to the updating of the website.

If the contractor stores, collects or maintains personal identification data electronically as a condition of accessing State Contract information, such data shall only be used internally by Contractor for the purpose of implementing the State Contract and shall not be disseminated to third parties or used for other marketing purposes.

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

8.14.1 – Web-Based Ordering System: The State suggests that successful Bidders having opted to offer a supplemental, designated NYS contract web site, provide access to a web based ordering system to facilitate and aid Authorized Users in the placement of orders. A resultant contractor may exercise the option to supply such a supplemental service at any time within the term of the contracts. However, once accepted by the State and implemented by the contractor the service must remain active and up to date for the remainder of the contracts term, including through any extensions or renewals. Should a Contractor opt to provide this type of service the State reserves the right to request a demonstration before implementation.

8.14.2 – Preferred Source Statement: A resultant Contractor shall clearly display on the home screen of any supplemental web site the following information:

"AUTHORIZED USER NOTE: Some products in this contract may be available from one or more "Preferred Sources". Authorized Users are reminded to comply with the statutory requirements under section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products available from Preferred Sources which meet your form, function and utility."

8.14.3 – Changes: All changes to products or pricing must be approved by the OGS Procurement Services in accordance with the terms of the resultant contracts prior to any change to the supplemental website by Contractor.

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8.14.4 – Web Order Elements: If an optional web-based ordering system is offered, the service must be capable of controlling, documenting and reporting the following minimum data elements:

- Contractor Name and Address
- Contract Award Description: (Group #37700 – Award 23043: Culvert & Underdrain Pipe &Tubing)
- Authorized User
- Authorized User's Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Anticipated Delivery Date
- Stock Number
- Manufacturer
- Item Description
- Unit of Measure
- List Price (unit)
- NYS Net Price (unit)
- Extended and Total Amounts
- Additional Shipping Charges (if applicable)

8.14.5 – AGENCY ACCESS TO WEB BASED ORDERING SYSTEM: Each Authorized User will be responsible for obtaining the appropriate communication software, phone or cable lines, and/or modems necessary to access a vendor's web based ordering system if offered

SECTION 9 USE OF CONTRACT BY STATE AGENCIES, POLITICAL SUBDIVISIONS & OTHER AUTHORIZED USERS

9.1 OVERLAPPING CONTRACT PRODUCTS

Products available in the resulting contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

9.2 PROCUREMENT INSTRUCTIONS

The Authorized User should be familiar with and follow the terms and conditions governing the use of the contract which appear in the contract document. Listed below are separate guidance for "Executive Agencies" and "Non-Executive Agencies". All Authorized Users shall issue purchase order(s) directly to the Contractor by mail, fax, or electronically either through e-mail, or through the Contractor's dedicated OGS website if offered and as listed in Contract Award Notification.

Upon Authorized User acceptance of products itemized on the purchase order, Contractor(s) will invoice Authorized User for any portion of products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all products in accordance with the contractual requirements.

9.2.1 – **For Executive Agencies:** An Executive Agency Authorized User shall first purchase all Culvert and Underdrain Pipe systems and materials from the appropriate Preferred Sources as required by State Finance Law §162. If the Preferred Sources do not provide a Product that meets the form, function and utility of the Executive Agency Authorized User, it may then purchase products from the Contractor, first using the applicable "Core List" and then the applicable "Non-Core (discount off list) List". It is highly encouraged that the Executive Agency Authorized User utilize the appropriate Core List, as Core List products should provide the lowest prices.

9.2.2 – **For Non-Executive Agencies:** A Non-Executive Agency Authorized User that is subject to the requirements of State Finance Law §162 (4) shall first purchase all Culvert and Underdrain Pipe systems and materials from the appropriate Preferred Sources as required by State Finance Law §162. If Preferred Source products do not meet the entity's form, function and utility (as required by State Finance Law §162) then it may purchase products from the "Core List" and "Non-Core (discount off list) List" offerings.

A non-Executive Agency Authorized User that is not subject to the requirements of State Finance Law §162 (4) is encouraged to purchase from the applicable Core List, as Core List products should provide the biggest savings.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS**APPENDIX A (JANUARY 2014)**

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract

is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

13. <u>CONFLICTING TERMS</u>. 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. <u>GOVERNING LAW</u>. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. <u>LATE PAYMENT</u>. 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. <u>NO ARBITRATION</u>. 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. <u>SERVICE OF PROCESS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

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

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

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

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

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

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

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

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

employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

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

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

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To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

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GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated

and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

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

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

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

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

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

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

u. PATCH Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

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

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

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

y. REQUEST FOR QUOTATION (RFQ) A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

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

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

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

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

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

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

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

gg. STATE State of New York.

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

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

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

kk. THIRD-PARTY SOFTWARE Any software that is developed independently of Contractor and which may be governed by a separate license.

***ll.* 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. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

BID SUBMISSION

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

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

5. LATE BIDS Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

6. CONFIDENTIAL/TRADE SECRET MATERIALS

a. BIDDER/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/Contractor. 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/Contractor. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The Commissioner's or Authorized User's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder/Contractor will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

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

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

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

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

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

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

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

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

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

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

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

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

8. TAXES

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

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

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

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

10. PRODUCT REFERENCES

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

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

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

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

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

13. PRICING

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

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

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. Specific price decreases:

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

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

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

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

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

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

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

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

BID EVALUATION

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

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

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

19. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

20. DEBRIEFINGS Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the

Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

21. CONTRACT PUBLICITY Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

TERMS & CONDITIONS

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

23. CONTRACT TERM - EXTENSION In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

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

25. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

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

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

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

26. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users 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 any Authorized User 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 and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User 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 an Authorized User 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.

27. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and

understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

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

29. 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 or 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, as the Commissioner in his or her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

30. 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 (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

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

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

31. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

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

33. SHIPPING/RECEIPT OF PRODUCT

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

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

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

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

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

36. 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.

37. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to the Authorized User 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.

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

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

40. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

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

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

Agency or to another Agency that assumes OGS responsibilities for the Contract.

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

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

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

43. TERMINATION

a. For Cause For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor an Authorized User shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. <u>CONTRACT INVOICING</u>

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

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

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

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

46. <u>DEFAULT – AUTHORIZED USER</u>

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

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 30 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

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

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

47. <u>PROMPT PAYMENTS</u>

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

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

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

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

48. REMEDIES FOR BREACH Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User, the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

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

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User.

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

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

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

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

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

50. 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 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 Safety Data Sheet must be provided to and approved by the Authorized User.

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

52. SECURITY Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

53. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the

Authorized User, as necessary to ensure delivery or performance of Product.

54. WARRANTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Authorized User must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

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

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

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

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

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

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

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

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

57. INDEMNIFICATION RELATING TO INFRINGEMENT The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

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

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

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is

not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters. This constitutes the Authorized User's sole and exclusive remedy for infringement of a patent, copyright, trademark, trade secret, or other proprietary right.

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

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

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

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

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

To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

60. 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 (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, 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.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

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. Product Documentation Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

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. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates,

enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee 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 Licensee 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 that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

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 within Agencies, between Agencies, and pursuant to governmental restructuring or reorganization ("permitted license transfers"). Licensees do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 days prior written notice to Contractor of such moves 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 Third Parties Third parties retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) such third party maintains 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.

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; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (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. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means 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. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

h. Confidentiality Restrictions If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

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

Unless 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 to be specified by Authorized User. Where using its own data or tests, Authorized User must have the tests or data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, which shall be made part of the Contractor's standard documentation and shall be covered by the Product warranty. 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 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.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, 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 30 days to correct the deficiency, and the Authorized User shall have an additional 60 days to evaluate the Product as provided herein.

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

62. <u>AUDIT OF LICENSED PRODUCT USAGE</u> 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. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee's security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee's normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (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. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

63. <u>NO HARDSTOP OR PASSIVE LICENSE MONITORING</u>
Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall 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). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee 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 Licensee shall be entitled.

64. <u>OWNERSHIP/TITLE TO PROJECT DELIVERABLES</u>

This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

a. Definitions

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

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

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

b. Title to Project Deliverables Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

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

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

(**ii) Custom Products**: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Products, 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 purposes as stated in paragraph (b)(i)(2), above.

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

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

e. Contractor's Obligation with Regard to Third–Party Software Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

65. <u>PROOF OF LICENSE</u> 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; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

66. <u>CHANGES TO PRODUCT OR SERVICE OFFERINGS</u>

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 and each Licensee 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 similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is <u>not</u> the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five 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 Commissioner and each Licensee 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 similarly situated, supported customer, or (b) not less than 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.

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APPENDIX C

CONTRACT MODIFICATION PROCEDURE

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

(1) **TYPES OF CONTRACT MODIFICATIONS**: In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.

a) **UPDATES**: "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding Product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.

b) **AMENDMENTS**: "Amendments" are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for Product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.

(2) **CONTRACTOR'S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:

- request additional information
- reject Contract modifications
- remove Products from Contract modification requests
- request additional discounts for new or existing Products

(3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Price level increases
- Price level decreases
- Products being added

(4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.

(5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

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

CONTRACT MODIFICATION FORM	
DATE OF THIS SUBMISSION:	**DATE DOCUMENTATION EMAILED:**
CONTRACTOR NAME:_____ OGS GROUP #:_____ OGS AWARD #:_____ OGS CONTRACT #:_____	**CONTRACTOR CONTACT:** Name:_____ Phone #:_____ Email:_____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

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

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

1. This request is for an: _____ Update _____ Amendment See Contract Modification Procedure for an explanation of these terms.	2. The intent of this submittal is to request: _____ Addition of new products or services _____ Deletion of products or services _____ Change in pricing level _____ Other Update _____ Other Amendment
3. All discounts are: _____ GSA _____ Most Favored Nation* _____ Other (provide explanation) _____ _____ _____ _____ *Prices offered are the lowest offered to any similarly situated entity.	4. Attached documentation includes: _____ Current approved GSA (labeled "For information only") _____ Current relevant Price List (labeled "For information only") _____ Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract _____ Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)

5. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to customers, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.

_____

_____

_____

_____

_____

_____

_____

The following ACKNOWLEDGEMENT statement must be signed by an individual authorized to sign on behalf of Contractor for the modification being requested in this Contract Modification document. The authorizing authority's signature must be notarized.

_____
Signature of Authorized Vendor Representative

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

STATE OF }
SS:
COUNTY OF }

On the ____ day of _____ in the year 20_____, before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____and further that:

[Check One]
(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.
(☐ **If a corporation, (☐ a partnership, ☐ a limited liability company):** _he is the _____ of _____, the *corporation/ partnership/ Limited Liability Company* described in the above instrument; that, _he is authorized to execute the foregoing instrument on behalf of the *corporation/ partnership/ Limited Liability Company* for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said *corporation/ partnership/ Limited Liability Company* as the act and deed of said *corporation/ partnership/ Limited Liability Company*.

_____
Signature of Notary Public

Notary Public Registration No.:_____

State of:_

OGS APPROVAL: Approved _____ Approved as amended _____ Disapproved_____

Signature:_____ Date:_____

Printed Name:_____ Title_____