STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
AMENDMENT NO. 1 TO
COMPTROLLER'S CONTRACT NO. PC63813
FOR
VOTING SYSTEMS AND RELATED SERVICES AND BALLOT MARKING OR OTHER VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES (Statewide)
WITH
SEQUOIA VOTING SYSTEMS, INC.

THIS AGREEMENT is made this 8 day of May, 2009, by and between the People of the State of New York, acting by and through John C. Egan, the Commissioner of General Services, whose office is on the 41st Floor of the Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as "OGS" or "State") and Sequoia Voting Systems, Inc. (hereinafter "Contractor"), with offices at 717 17th Street, Suite 310 Denver, CO 80202. The foregoing are collectively referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, the Parties entered into Comptroller's Contract No. PC63813 (hereinafter the "Base Contract"), on February 21, 2008 to provide voting systems and related services and ballot marking or other voting devices accessible to individuals with disabilities;

WHEREAS, the Parties desire to amend the Base Contract to change the payment schedule, the commencement of the warranty date, the insurance requirements and the prohibition on sales of products prior to certification;

NOW THEREFORE, in consideration of the mutual undertakings and covenants herein contained, the Parties agree as follows:

1. The Base Contract is hereby amended by deleting paragraph one of page six and replacing it with the following:

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies. Contractors are not authorized to sell voting systems and/or

ballot marking or other voting devices accessible to individuals with disabilities and related services until such machines, devices and/or services are certified by the New York State Board of Elections. The certification process will be a two step process. The first part of this process will be a provisional/conditional certification of Lot II machines, the Election Management System to be used with Lot I machines and/or Lot I machines which are determined by the New York State Board of Elections to be viable candidates for certification in 2009. Upon completion of the provisional/conditional certification process, OGS, in conjunction with the New York State Board of Elections, will approve the certified systems for purchase under the contract. Subsequently, the BOE will submit the Election Management System, the Lot II machines and all Lot I machines to the formal certification process. It is important to note that the formal certification process may necessitate modifications of the machines in order for them to comply with New York law and regulations and that with respect to such required modifications, the five year warranty period shall begin to run upon the completion of such changes. All such modifications are to be done at no cost to the Authorized User and are subject to the 5 year warranty required by New York State Law. Vendors shall be responsible for payment of the cost of the certification process, as determined by the New York State Board of Elections. Prospective contractors should be aware that there is an application fee of $5,000, unless such requirement is waived by the BOE, and testing costs are estimated at $1,000,000.00 unless such requirement is waived by the BOE. The certification requirement does not prevent the Contractor from selling training or support in accordance with the offerings set forth in the price list that has been approved by OGS and, the New York State Comptroller.

2. The Base Contract is hereby amended by adding the following to the beginning of page seven:

WORKERS' COMPENSATION / DISABILITY INSURANCE:

Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

ACORD forms are **NOT** acceptable proof of workers' compensation coverage.

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:

A) Be legally exempt from obtaining workers' compensation insurance coverage; or

B) Obtain such coverage from insurance carriers; or

C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan.

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

A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); *or*

B) *Certificate of Workers' Compensation Insurance:*

1) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, **contractor must request its carrier** to send this form to the New York State Office of General Services;

or

2) **Form U-26.3** if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services; *or*

C) *Certificate of Workers' Compensation Self-Insurance* - **Form SI-12**, available from the New York State Workers' Compensation Board's Self-Insurance Office; *or*

D) *Certificate of Participation in Workers' Compensation Group Self-Insurance* **Form GSI-105.2**, available from the contractor's Group Self-Insurance Administrator.

All forms must name the Office of General Services - Procurement Services Group, Team 1, 38th Floor, Mayor Erastus Corning 2nd Tower, Empire State Plaza, Albany NY 12242, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

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

A) Be legally exempt from obtaining disability benefits coverage; or

B) Obtain such coverage from insurance carriers; or

C) Be a Board-approved self-insured employer.

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

A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); *or*

B) **Form DB-120.1**, *Certificate of Disability Benefits Insurance.* Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; *or*

C) **Form DB-155**, *Certificate of Disability Benefits Self-Insurance.* The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All forms must name the Office of General Services - Procurement Services Group, Team 1, 38th Floor, Mayor Erastus Corning 2nd Tower, Empire State Plaza, Albany NY 12242, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

3. The Base Contract is hereby amended by deleting paragraphs three and four of page nine and replacing them with the following:

PAYMENTS:

Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal notice of inspection for the specified Product by the Authorized User's Purchasing Official. Such notification shall not be unreasonably withheld. Billings for Authorized Users must

contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices, including, but not limited to, Article 11-A of the New York State Finance Law. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Payment shall be in accordance with the following Payment Schedule: 60% at the completion of acceptance testing and acceptance at the central location, 20% at delivery to the Authorized User after the completion of acceptance testing, provided certification has been granted by the New York State Board of Elections and 20% after the first general election following certification. In the event that a Lot I voting system, that has been certified, is not used in a general election in 2009, but has been delivered and accepted by the Authorized User 10% will be paid on December 31, 2009 and the remaining 10% will be paid after the first use in a general election in 2010.

4. The Base Contract is hereby amended by deleting paragraphs one through four of page ten and replacing them with the following:

Delivery shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board §6209.10 and the guidelines established by the New York State Board of Elections. The Authorized User and the Contractor shall mutually agree to a delivery schedule which shall be preapproved by Commissioner and the NYS Board of Elections. It is expected that there will be in initial delivery, to accommodate Authorized User training and outreach needs, and incremental deliveries, as per production schedules provided by vendors, with the balance of machines delivered no later than 30 days prior to use by the applicable County Board of Elections and in accordance with the terms of the Contract or Contract Award Notice.

Said agreed upon delivery schedule shall be adhered to by the Contractor.

The decision of the Commissioner and the NYS Board of Elections as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately, but in no event more than three (3) days from the date that the contractor first learns of the delay or potential for delay in delivery, notify the Commissioner, the NYS Board of Elections 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 Commissioner, the NYS Board of Elections and the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner and the NYS Board of Election's discretion, the Contract.

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products and/or Services have been received, inspected and accepted by the Authorized User. Acceptance is expected to begin within seventy-two hours of delivery and shall be completed in accordance with the acceptance testing procedures developed by the New York State Board of Elections after they conduct their dry-run of system specific acceptance testing, but such time period does not include any time provided to a Contractor to cure an identified failure. With respect to Lot II machines purchased prior to December 31, 2008, risk of loss is deemed to have passed on September 9, 2008.

5. The Base Contract is hereby amended by deleting the Performance Bond section of pages 11 and 12 and replacing it with the following:

SECURITY:

Upon receipt of a Purchase Order by the Contractor, the Contractor has fifteen (15) business days to provide sufficient security to the New York State Board of Elections. Said security can be provided by either: forwarding a Performance Bond in the amount of 0.5% of the total estimated value of each Lot (One Hundred Eighty Million dollars ($180,000,000.00) for Lot I and the value of Lot II is estimated to be Thirty Five Million dollars ($35,000,000.00) for a maximum of 6500 ballot marking devices) to the New York State Board of Elections, or provide the New York State Board of Elections with a $1,075,000.00 Cash Collateral Deposit for the faithful performance of Contractor's obligations hereunder to be held in escrow by the State of New York against which recovery may be had as set forth hereinafter. Said Cash Collateral Deposit will be paid as follows:

The first $900,000.00 will be retained from the first 60% to be paid to the Contractor pursuant to the payment schedule set forth herein. The remaining $175,000.00 to be deposited with the New York State Board of Elections on or before the close of business on the 15th business day following receipt of a Purchase Order by the Contractor. If the security is not received by the close of business on the 15th business day following the receipt of a Purchase Order by the Contractor, the award may be cancelled. The security in the form of either a Performance Bond or Cash Collateral Deposit must be maintained for five years unless said term is extended after agreement by both parties.

OGS has the right to recover damages under the terms and conditions of the Contract on behalf of the State where standard arrangements for the refund of monies cannot be recovered by a credit issued by the Contractor against present or future payments due, or under circumstances where the Contractor has refused credits to the State where such credits are due under the terms of the Contract.

The New York State Board of Elections may permit substitution of a performance bond of a lesser value during the term of the contract.

The State and the Contractor agree that recovery against the Cash Collateral Deposit or Performance Bond will be subject to the following conditions:

(1) FOR AMOUNTS LESS THAN $1,000,000
(a) signed and dated certification from an authorized representative of the State of New York ("State") stating that:
(i) as applicable, Contractor has failed to issue credits under Contract No. PC63813 with the State;
(ii) the State and Contractor have attempted, through good faith dispute resolution efforts undertaken at the Contractor's Vice-Presidential levels and equivalent State senior executive management levels, to `resolve such matters to the parties' satisfaction, and such attempts have not been successful;
(iii) after the conclusion of such dispute resolution efforts, the State notified Contractor, as applicable, by either overnight express mail with verifiable delivery or by certified mail, return receipt requested, of the unresolved matters, and, in such notice, gave Contractor 30 days from receipt of such notice to remedy such matters.
(iv) as applicable, Contractor did not satisfactorily remedy such matters; and
(v) the State has calculated the amount of the damages requested in the draft in accordance with the provisions of the Contract and the laws governing the Contract.

(2) FOR AMOUNTS MORE THAN $1,000,000
(a) signed and dated certification from an authorized representative of the State containing the statements set forth in paragraphs 1(a)(i) through 1(a)(v) above, and
(b) such certification shall have attached a certified copy of a final order of a court of competent jurisdiction finding that as applicable, Contractor materially breached and defaulted under the Contract, and that Contractor is liable to the State in the amount requested in the draft. Partial drafts will be permitted.

(3) FOR ALL AMOUNTS
(a) any notice of the issue or the material breach will be specific as to the nature of the issue or the material breach claim and the remedy sought to satisfy such claim.
(b) drafts shall be drawn periodically upon confirmation of the claim by the State and the Contract with partial drafts will be permitted.
(c) all drafts must reference the number and issue date of the Performance Bond and have attached the certified letter of notice of identifying either the issue or the material breach that was sent to Contractor, as applicable. Draft(s) must clearly specify that they are drawn under the Performance Bond and must be presented to the issuer not later than thirty (30) days after expiration of the Contract term.

6. The Base Contract is hereby amended by deleting paragraph 44 of Appendix B and replacing it with the following:

44. PRODUCTS AND SERVICES DELIVERY

Delivery for Acceptance Testing:
Vendors must make delivery of machines for acceptance testing to the centralized acceptance testing location specified by the New York State Board of Elections and the New York State Office of General Services as required by the New York State Board of Elections. Once acceptance testing is completed, the vendor is responsible for repackaging and shipping the machines to the Authorized User. Delivery shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board of Elections. Said procedures shall comply with §6209.10 and the guidelines established by the New York State Board of Elections.

General Delivery After Acceptance Testing:
Delivery must be made as mutually agreed to in the purchase order issued by the Authorized User or the New York State Office of General Services. It is expected that there will be an initial delivery, to accommodate Authorized User training and outreach needs, and incremental deliveries, as per production schedules provided by vendors, with the balance of machines delivered no later than 30 days prior to use by the applicable County Board of Elections and in accordance with the terms of the Contract or Contract Award Notice. Delivery shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board §6209.10 and the guidelines established by the New York State Board of Elections. The acceptance testing period will be based upon the time identified in the State Board's dry run of system-specific acceptance testing, which would not include any time provided to a vendor to cure an identified failure. The Authorized User and the Contractor shall mutually agree to a delivery schedule which shall be preapproved by Commissioner and the NYS Board of Elections. It is expected that there will be an initial delivery, to accommodate Authorized User training and outreach needs, and incremental deliveries, as per production schedules provided by vendors, with the balance of machines delivered no later than 30 days prior to use by the applicable County Board of Elections and in accordance with the terms of the Contract or Contract

Award Notice. Said agreed upon delivery schedule shall be adhered to by the Contractor. The decision of the Commissioner and the NYS Board of Elections as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately, but in no event more than three (3) days from the date that the contractor first learns of the delay or potential for delay in delivery, notify the Commissioner, the NYS Board of Elections and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner and the NYS Board of Election's discretion, the Contract. Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products and/or Services have been received, inspected and accepted by the Authorized User. With respect to Lot II machines purchased prior to December 31, 2008, risk of loss is deemed to have passed on September 9, 2008. Acceptance is expected to begin within seventy-two hours of delivery and shall be completed in accordance with the acceptance testing procedures developed by the New York State Board of Elections after they conduct their dry-run of system specific acceptance testing, but such time period does not include any time provided to a Contractor to cure an identified failure.

7. The Base Contract is hereby amended by deleting paragraph 47 of Appendix B and replacing it with the following:

47. TITLE AND RISK OF LOSS

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products and/or Services have been received, inspected and accepted by the Authorized User. With respect to Lot II machines purchased prior to December 31, 2008, risk of loss is deemed to have passed on September 9, 2008. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Acceptance testing shall be the testing that is required by the New York State Board of Elections in compliance with §6209.10 and the guidelines established by the New York State Board of Elections. The acceptance testing period will be based upon the time identified in the State Board's dry run of system-specific acceptance testing, which would not include any time provided to a vendor to cure an identified failure. 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 and/or Services received. Any delivery of Product and Services that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner and the NYS Board of Elections. Upon notification of rejection, risk of loss of rejected or non-conforming Product and Services 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 and Services 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.

8. The Base Contract is hereby amended by deleting paragraph 61 of Appendix B and replacing it with the following:

61. CONTRACT BILLINGS

Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal notice of inspection for the specified Product by the Authorized User's Purchasing Official. Such notification shall not be unreasonably withheld. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices, including, but not limited to, Article 11-A of the New York State Finance Law. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Payment shall be due once all products have been delivered, received, inspected and accepted by the Authorized User and /or services have been satisfactorily performed. Payment shall be in accordance with the following Payment Schedule: 60% at the completion of acceptance testing and acceptance at the central location, 20% at delivery to the Authorized User after the completion of acceptance testing, provided certification has been granted by the New York State Board of Elections and 20% after the first general election following certification. In the event that a Lot I voting system, that has been certified, is not used in a general election in 2009, but has been delivered and accepted by the Authorized User 10% will be paid on December 31, 2009 and the remaining 10% will be paid after the first use in a general election in 2010. Submission of an invoice and payment thereof shall not preclude the Commissioner and the NYS Board of Elections from reimbursement or demanding a price adjustment in any case where the Product and Services delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate. Contractor shall provide, upon request of the Commissioner and the NYS Board of Elections, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and the NYS Board of Elections and in a media commercially available from the Contractor. The Commissioner and the NYS Board of Elections may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

9. The Base Contract is hereby amended by adding a new introductory sentence to the beginning of paragraph 71 of Appendix B as follows:

Notwithstanding anything to the contrary herein, with respect to Lot II machines purchased prior to December 31, 2008, the warranty period begins on September 9, 2008.

This Amendment and the Base Contract constitute the entire Agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both Parties hereto.

10. This Amendment shall not be deemed executed, valid or binding unless and until approved in writing by the Office of the State Comptroller.

11. All other portions of the Base Contract, including all Appendices and Attachments thereto remain in full force and affect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

CONTRACT NUMBER PC63813

Agency Certification

In addition to the acceptance of this contract amendment, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

THE PEOPLE OF THE STATE OF NEW YORK

By Monica Wilkes **Date** 5/8/09
Name: Monica Wilkes
Title: Acting Deputy Director, OGS PSG

SEQUOIA VOTING SYSTEMS, INC.

By _____ **Date** 5/6/09
Name: Peter McMahony
Title: CFO
Federal I.D. No.: 37-1274819

APPROVED:

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
MAY 14 2009
Lorraine I. Remo
LORRAINE I. REMO
ASSOCIATE ATTORNEY

Andrew M. Cuomo
Attorney General

APPROVED:

APPROVED
DEPT. OF AUDIT & CONTROL
MAY 29 2009
Charlotte E. Breuyear
FOR THE STATE COMPTROLLER

Thomas P. DiNapoli
Comptroller

CORPORATE ACKNOWLEDGMENT

STATE OF Colorado }

COUNTY OF Denver } ss.:

On the 6 day of May in the year 2011, before me personally came: Peter McMahon, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in Florida; that he/she/they is (are) CEO (the President or other officer or director or attorney in fact duly appointed) of Sequoia Voting Systems, the corporation described in and which executed the above instrument, and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Marianna Cutter

Signature and Office of Person Taking Acknowledgment

MARIANNA CUTTER
NOTARY PUBLIC, STATE OF COLORADO

My Comm. Expires April 27, 2013

CERTIFICATE OF APPROVAL

The undersigned hereby approve that this Contract Amendment for execution by the New York State Office of General Services.

BY: _____
Todd D. Valentine
Co-Executive Director
New York State Board of Elections

Date: 5/8/09

BY: _____
Stanley L. Zalen
Co-Executive Director
New York State Board of Elections

Date: 5/8/09

APPENDIX A
STANDARD CLAUSES FOR
NEW YORK STATE CONTRACTS

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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