

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

REQUEST FOR PROPOSAL

**IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

BID OPENING DATE: January 24, 2012 TIME: 11:00 AM	TITLE: Group 73012, Hourly-Based IT Services (HBITS) RFP Classification Code(s): 43, 80, 81, 82, 83, 84, and 86.
REQUEST FOR PROPOSAL NUMBER: 22439	SPECIFICATION REFERENCE: As Incorporated in the Request for Proposal
CONTRACT PERIOD: 5 Years with an optional one (1) year extension	
DESIGNATED CONTACTS:	
Dave Burmaster, Kathy McAuley and Patricia Billen NYS Strategic Sourcing Team, Corning Tower - 37th Floor Empire State Plaza Albany, New York 12242 E-Mail: ITSProcurement@ogs.ny.gov <u>No inquiries or questions submitted via phone will be accepted.</u>	

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APPENDICES

- Appendix A - Standard Clauses for New York State Contracts (Included within RFP)
- Appendix B - General Terms and Conditions (Included within RFP)
- Appendix C - Article 15-A requirements for Centralized Contracts (Included within RFP)

ATTACHMENTS

- Attachment 1 – Bidder Question Template
- Attachment 2 – Mandatory Pre-Bid Tasks
- Attachment 3 – Report of Contract Purchases
- Attachment 4A – Administrative Proposal
- Attachment 4B – Administrative Forms
- Attachment 5 – Technical Proposal Form
- Attachment 6 – Financial Proposal (Pricing Sheets)

SECTION 1. PROCUREMENT SCHEDULE

1.1 ISSUING AGENCY

This is a Request for Proposal (RFP) for Hourly-Based IT Services (HBITS). This document will be referred to as the HBITS RFP.

The issuing agency is the New York State Office of General Services (OGS) Procurement Services Group. The service contracts let as a result of this bid will be statewide contracts primarily for, but not limited to, New York State agencies. Additionally, services may be utilized by political subdivisions, school districts and others authorized by law. (See Non-State Agencies Participation in Centralized Contracts.) Accordingly, references to the State and its agencies as Authorized Users under this solicitation and the ensuing contract(s) encompass and include all such entities within the definition of “Authorized User” set forth in Appendix B.

This RFP outlines the terms and conditions, and all applicable information required for submitting a proposal. A Bidder should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, a Bidder should follow the format and instructions in Section 6, “Format and Content of Bid Submittal” of this RFP.

The scope of this RFP can be found in Sections 2 and 3.

1.2 INQUIRIES

1.2.1 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 a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this 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 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 Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

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

1.2.2 Designated Contacts

All inquiries and questions concerning this solicitation must be addressed to the following Designated Contact(s) and issuing office, and submitted via e-mail:

Dave Burmaster, Kathy McAuley and Patricia Billen
NYS Strategic Sourcing Team

E-Mail: ITSProcurement@ogs.ny.gov

No inquiries or questions submitted via phone will be accepted.

1.2.3 Original RFP Questions

All inquiries and questions concerning this RFP must be submitted to the official e-mail address above and in the format required by Attachment 1 by the closing date and time listed in Section 1.3. When e-mailing Attachment 1 to the designated contacts, Bidders shall annotate their submissions as follows: “**Question for HBITS RFP.**”

No inquiries or questions submitted via phone will be accepted.

A Bidder should raise any potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements of this RFP during the Question and Answer phase of the procurement. OGS will not entertain any exceptions to Appendix A. OGS will also not entertain exceptions to this RFP 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. Proposals that contain material changes to the terms and conditions, specifications, and requirements set forth throughout this RFP may be disqualified as non-responsive.

Responses to all questions of a substantive nature will be given to all Bidders in the form of a formal addendum which will become part of the ensuing contract.

1.2.4 Clarifying Questions

To ensure all Bidders fully understand the requirements, terms and conditions of this RFP, OGS will entertain clarifying questions to the initial answers provided by OGS in response to Bidders' questions. Clarifying questions will only be accepted after the Mandatory Pre-Bid Conference in accordance with the schedule listed in Section 1.3.

Clarifying Questions will only be accepted from a Bidder who submitted a Mandatory Intent to Bid before the deadline.

During the Clarifying Question phase, a Bidder may only raise potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements based upon the answers provided by OGS during the initial round of questions.

All clarifying questions must be submitted to the official e-mail address above and using the Clarifying Questions tab of Attachment 1 by the closing date and time listed in Section 1.3. OGS will respond to clarifying questions and will release official answers to the clarifying questions. Answers to all clarifying questions of a substantive nature will be given to all Bidders in the form of a formal addendum which will become part of the ensuing contract. OGS will determine whether questions submitted after the Pre-Bid Conference are "clarifying" or "new". OGS may at its sole discretion respond to "new" questions.

1.3 KEY EVENTS AND DATES

Event	Date (All times in EST)
Closing Date for Initial RFP Questions, Exceptions to Terms/Conditions	December 14, 2011 (by 5:00 PM)
Mandatory Items Due: 1) Intent to Bid 2) Pre-Bid Conference Registration 3) M/WBE Meet and Greet Registration	December 16, 2011 (by 5:00 PM)
Mandatory Pre-Bid Conference	December 21, 2011 (9:00 AM to 12:00 PM)
Mandatory SBE and M/WBE Meet and Greet	December 21, 2011 (1:30 PM to 4:30 PM)
Release of Answers to Initial RFP Question	December 23, 2011
Clarifying Questions Due	December 30, 2011 (by 5:00 PM)
Answers to Clarifying Questions Released (Target Date)	January 10, 2012
Bid Due Date and Time	January 24, 2012 (by 11:00 AM)
Bid Opening	January 24, 2012
Evaluation and Selection (Target Completion Date)	February 14, 2012
Tentative Contract Awards (Target Date)	February 15, 2012

1.4 MANDATORY PRE-BID TASKS

A Bidder must be aware of the three mandatory tasks that occur prior to the bid due date as stated in Section 1.3. **Any Bidder who does not complete all these tasks shall be disqualified from further participation in this Procurement.**

A Bidder must submit an Attachment 2, "Mandatory Pre-Bid Tasks" form which covers these three distinct tasks:

- Intent to Bid;
- Mandatory Pre-Bid Conference Registration; and
- Mandatory S/M/WBE Conference Registration.

Attachment 2 must be submitted in whole. An Attachment 2 submission that omits information for any of the three tasks will not be accepted.

A Bidder must electronically submit both components of Attachment 2 to ITSProcurement@ogs.ny.gov. No faxed and mailed submissions will be accepted. When submitting Attachment 2 to the designated contact, a Bidder shall annotate their submissions as follows: "Attention: HBITS RFP – Attachment 2 Submission."

1.4.1 Intent to Bid

A Bidder must signify its Intent to Bid using Attachment 2. This must be received by December 16, 2011 as set forth in Section 1.3 of this RFP.

1.4.2 Pre-Bid Conference

Attendance at the Pre-Bid Conference is mandatory. Attendance is **limited to three (3) representatives per Bidder. Each Bidder should bring a business card. A Bidder is advised that photo identification is required for parking at the Empire State Plaza and for security screenings.** The mandatory pre-bid conference will be held from 9:00 AM to 12:00 PM on December 21, 2011 at the Clark Auditorium, located in the New York State Museum, Albany, NY. Directions and parking information for the New York State Museum can be found here: <http://www.nysm.nysed.gov/information/general/muswhere.html>. The Clark Auditorium is also accessible from the Main Concourse of the Empire State Plaza.

A Bidder must submit Pre-Bid Conference attendance information using **Attachment 2**.

It is the intent of OGS to provide answers to RFP questions at the Pre-Bid Conference. Additional questions may not be raised at the Pre-Bid Conference. However, only those Bidders who have submitted a Mandatory Intent to Bid will be allowed to submit Clarifying Questions as stated in Section 1.2.4.

In-person attendance is required. There will be no telephone dial-in capabilities or recording devices afforded to a Bidder.

1.5 S/M/WBE MEET & GREET SESSION

Any Bidder who does not attend and participate in the Mandatory Meet & Greet Session shall be disqualified from further participation in this Procurement.

A Bidder for this RFP is required to attend and participate in a Mandatory Meet & Greet Session, by establishing a table to meet with Small, Minority and/or Women-Owned Business Enterprises (S/M/WBE) interested in providing hourly-based IT Consultants to the successful Bidders on a subcontracted basis. This session will be held in downtown Albany, NY at the Empire State Plaza and will be held on the same day as the Mandatory Pre-Bid Conference to help reduce travel costs for all Bidders. The Meet & Greet session will be held on December 21, 2011 at the Empire State Plaza, Main Concourse, Meeting Rooms 2, 3 and 4, Albany, NY. Additional details may be provided in advanced of the conference. Directions to the Empire State Plaza can be found here: <http://ogs.ny.gov/ESP/Directions.asp>. Parking information for the Empire State Plaza can be found here: <http://ogs.ny.gov/BU/BA/Parking/Visitor/>.

Both NYS Certified and non-certified S/M/WBEs are invited to attend the Meet & Greet Session. However, OGS strongly encourages non-NYS Certified S/M/WBEs to begin their registration process with NYS Empire State Development (<http://www.esd.ny.gov/MWBE/Certification.html>).

A Bidder is required to staff its table throughout the event with at least one (1) individual who has direct knowledge of this procurement and the Bidder's subcontracting business model. A Bidder must also provide its own signage, nametags and any necessary marketing materials to be used during the session.

The purpose of the event is to provide the S/M/WBEs with the opportunity to introduce themselves to the potential Bidders and describe what services they can provide. It is expected that attendees will be able to meet S/M/WBEs that can be listed in the utilization plans that will be required in each Bidder's proposal and that will be necessary to meet the M/WBE utilization goals established in Section 3 of this RFP.

OGS encourages all S/M/WBEs to attend this session regardless of whether they plan to bid on this RFP. Pre-registration is not required for attendees. However, a Bidder must submit a completed "Mandatory Pre-Bid Tasks" form, as part of Attachment 2B. OGS will provide a table for each registered Bidder.

1.6 DEFINITIONS

A Bidder is directed to review Appendix B for a listing of terms and the corresponding definitions.

In addition, OGS has provided the following definitions that fall within the scope of this RFP:

"Best Value" shall mean the basis for awarding a contract for services to the Bidder which best optimizes quality, cost and efficiency among Responsive and Responsible Bidders. See State Finance Law § 163(1)(j).

"Business Day" shall mean Monday through Friday, excluding NYS Holidays, between the hours of 7:30 AM and 5:00 PM EST.

"Candidate" shall refer to a person proposed by a Contractor in response to a request from an Authorized User, prior to selection by an Authorized User.

"Consultant" shall refer to a Candidate that has been selected by an Authorized User to perform work.

"CS" shall mean the New York State Department of Civil Service.

"DOB" shall mean New York State Division of the Budget.

"EEO" shall mean Equal Employment Opportunity.

"EST" shall mean Prevailing Eastern Standard Time.

"Executive Agency" or "Executive Agencies" shall mean all state departments, offices or institutions but, for the purposes of this RFP, excludes the State University of New York and excludes City University of New York. Furthermore, such term shall not include the legislature and the judiciary. For the sake of clarity, the term "Executive Agency" does not include any public benefit corporation, public authority, or local government entity.

"Government or Governmental Entity" shall mean an entity at the federal, state, county, city or provincial level.

"HBITS" shall mean Hourly-Based IT Services.

"Hourly Wage Rate" refers to the hourly rate that the Consultant will receive for services provided under each engagement, regardless of potential sub-contracting layers.

"Joint Venture" shall mean a contractual agreement joining together two or more business enterprises, for the purpose of performing on a State Contract.

"Markup" shall mean all costs a Bidder will incur beyond the hourly wage rate paid to a consultant. This may include, but is not limited, to statutory requirements (i.e.: FICA, FUTA, SUTA, Worker's Comp, etc.), overhead, recruiting costs, training, visa sponsorship, and profit.

"May" denotes the permissive in a contract clause or specification. Also see "Will."

"M/WBE" shall mean a business certified with Empire State Development (ESD) as a Minority and/or Woman-Owned Business (M/WBE).

“**MSP**” shall mean Managed Services Provider.

“**Must**” denotes the imperative in a contract clause or specification. Also see “Shall.”

“**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.

“**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.

http://www.cs.state.ny.us/attendance_leave/2011_legal_holidays.cfm

“**OSC**” shall mean the Office of the State Comptroller.

“**OFT**” shall mean New York State Office for Technology.

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

“**Request for Proposal (RFP)**” shall refer to this RFP.

“**SBE**” shall mean a Small Business Enterprise. A “New York State Small Business” is defined as a company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).

“**S/M/WBE**” shall mean Small, Minority and Women-Owned Business Enterprises (S/M/WBE).

“**SST**” shall mean Strategic Sourcing Team.

“**Shall**” denotes the imperative in a contract clause or specification. Also see “Must.”

“**Slight Deviation**” shall mean a deviation of no greater than 5% below the Hourly Wage Rate and any percentage above the Hourly Wage Rate, provided that that Hourly Bill Rate remains unchanged. This term shall only apply to the Hourly Wage Rate.

“**Will**” denotes the permissive in a contract clause or specification. Also see “May.”

1.7 SECTION HEADERS

The section headers and paragraph titles in this RFP are for informational purposes only and are not legally binding.

SECTION 2. INTRODUCTION

2.1 INTRODUCTION

Since taking office in January, Governor Andrew M. Cuomo has committed his administration to implementing enterprise-wide changes that will utilize modern business practices in running New York State government. New Yorkers need a government in which they can take pride, and this comprehensive overhaul of operations will help accomplish that goal. This RFP is a part of Governor Cuomo's Procurement Transformation initiative to cut waste and improve government efficiency. This initiative is being executed by the Division of the Budget and the Office of General Services and focuses on implementing best practices and identifying opportunities for savings. The new procurement process will balance the needs of achieving savings with the administration's policy goals of encouraging S/M/WBEs. The scope, contents and format of this RFP are structured in accordance with the goals of the initiative and Bidders are encouraged to review the information contained in this RFP thoroughly to understand the extent of changes from the present contracts. For more information on the initiative, a Bidder can refer to: <http://www.governor.ny.gov/press/10122011ImproveGovernmentEfficiency> and <http://ogs.ny.gov/BU/PC/SourcingFAQ.asp>.

2.1.1 In-Scope Work

This RFP is for the procurement of Hourly-Based IT Services. A Bidder should note that this RFP is different in nature from historical OGS contracts, including scope, operating model, and terms and conditions. The HBITS Contract is not a Continuous Recruitment contract. Rather, this is a competitive RFP for which there will be up to 25 awards made. The awarded Contractors will remain on the HBITS Contract for the duration of the contract unless terminated for convenience or cause. Awardees must comply with a uniform set of Terms and Conditions.

The rates that are asked for on the HBITS Contract are actual wage rates and actual Markups that a Contractor intends to charge the State. This bid does not include Not-to-Exceed pricing.

2.1.1 Out-of-Scope Work

The resultant HBITS contract will be different than the current IT Services Back-Drop contract (RFPS960275-E.1) which expires on 12/31/2011, henceforth referred to as the "Current Contract". The Current Contract shall not be renewed or replaced. There are several services on the Current Contract that will not be offered on the HBITS Contract; a summary of these services is in the table below.

Service	Details
Acquisition/sale of Hardware and /or Software	Available on alternate OGS contract
Consulting or other installation work which is considered Public Works	Projects should be competitively bid on an as needed basis
Maintenance of an Authorized User's local area networks (LANs)	Available on alternate OGS contract
Maintenance of telecommunications equipment and telecommunication services	Available on alternate OGS contract
Maintenance of Information Security systems	Available on alternate OGS contract
Imaging Services, including paper to image and microfilm/fiche to image	Available through the Preferred Source Program
Web Hosting Services	Under future consideration by the Strategic Sourcing and/or the IT Transformation projects
Webcasting Services	Under future consideration by the Strategic Sourcing and/or the IT Transformation projects
Equipment Maintenance Services	Available on alternate OGS contract
All services previously categorized under "Ancillary Services"	Minimal demand identified for Authorized Users during analysis
Computer-based training	Available on alternate OGS contract
Video-based training	Available on alternate OGS contract
Year 2000 Services	Minimal demand identified for Authorized Users during analysis

Service	Details
Training Services	Under future consideration by the Strategic Sourcing and/or the IT Transformation projects
Webinars	Available on alternate OGS contract
Systems Integration	Projects should be competitively bid on an as needed basis; services available on certain alternate OGS contracts

It is important to note that, in addition to the services listed in the table above, the HBITS Contract shall not be used for deliverable-based consulting services. This kind of work must be procured/bid individually by Authorized Users on a case by case basis, adhering to NYS Finance Law/procurement guidelines.

As noted in the table above, consulting or other installation work which is considered Public Works is excluded from purchase under the scope of this RFP. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be considered public work. Thus, this RFP does not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (i.e. installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, Clause 17, Prevailing Wage Rates - Public Works and Building Services Contracts. For questions about whether a proposed work constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in a specific area. A listing of district offices and contact information is available at <http://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>.

2.2 CATEGORY HISTORY

New York State Executive agencies spent approximately \$140 million on HBITS during the 2010-2011 State Fiscal Year. See Section 3.3, Estimated Quantities. This spend has historically been dispersed across several contracting vehicles across multiple agencies, in addition to the Current Contract. Going forward, the State will drive most, if not all, spending on HBITS through the HBITS Contracts. While a Bidder should consider this volume of spend when completing their proposals, the State encourages firms, regardless of size, to submit a bid in response to this RFP and to partner with other firms, certified M/WBE firms, and/or SBE firms through subcontracting relationships in order to meet demand.

After performing a detailed analysis of spend in this category, the NYS Strategic Sourcing Team (SST) identified several areas for savings in the procurement of HBITS. The sourcing analysis showed that Executive Agencies were paying vastly different hourly rates for similar job titles, sometimes differing by more than 40% across Executive Agencies. In addition, the procurement process associated with the Current Contract proved to be costly and time consuming for both the State and for Contractors. As a result, several agencies have created their own contracts for procuring in this category and thus, each agency has a unique process for obtaining hourly-based consultants causing confusion within the State and the Contractor community. Finally, it was clear through the SST analysis that the State in many cases did not have visibility into the hourly bill rates being paid to Contractors, nor did the State have a view into the layers of subcontracting occurring with each placement. This HBITS RFP seeks to resolve these identified issues.

SECTION 3. STATEMENT OF WORK

3.1 HBITS MODEL FOR NEW YORK STATE

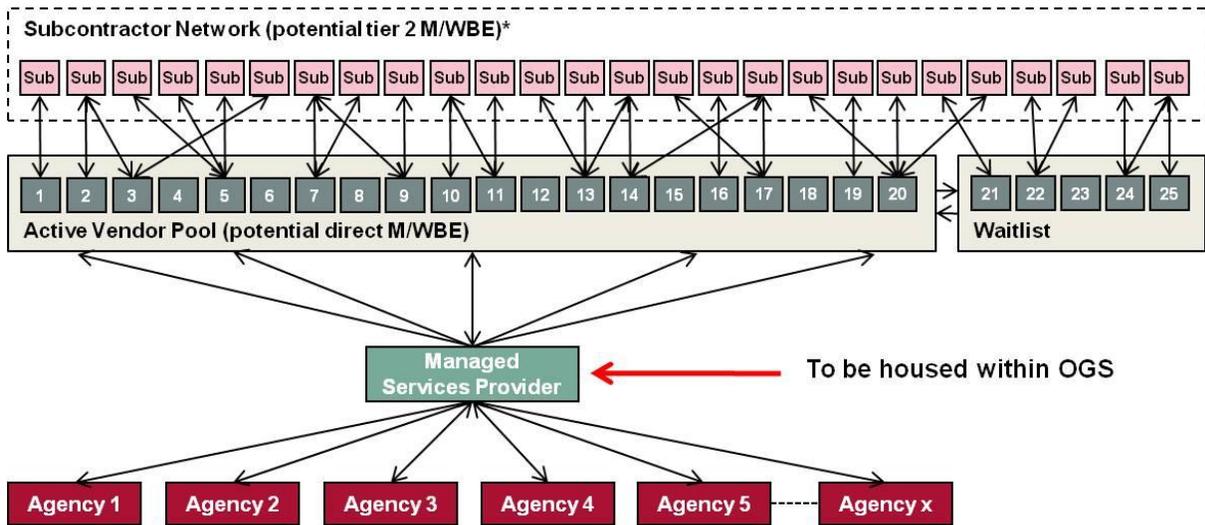
Through the issuance of this RFP and the resultant HBITS Contracts, New York State will adopt a new model for procuring hourly-based IT Services. This is a best value RFP; OGS will award to up to the top 25 Contractors. Of these awardees, the top 20 will be designated as “Active”, while the remaining awardees will be designated as “Waitlist.” The “Waitlist” concept is further explained in Section 3.2.4. Thus, the contracts will exist between OGS and the 25 Contractors.

Requests for placements of individual consultants under the HBITS contract will only be distributed to the “Active” Contractors. All Contractors awarded under the HBITS contract are expected to (but not required to) maintain a subcontractor network that may include New York State certified M/WBEs and SBEs.

OGS is establishing a goal of 11% for Minority-owned Business Enterprises (MBE) participation and 9% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE), for a total contract MWBE goal of 20%, for all cumulative purchases on the resultant HBITS contracts. This goal applies to all Active Contractors for the full term of the resultant contracts. Goals will not be set by individual State Agencies at the transactional level.

All Executive Agency placements under the HBITS contract will go through a State-run, centralized organization, housed within OGS, that will handle all administrative aspects of placing consultants, including centralized billing and payment for Executive Agency purchases, as well as several other key activities. This organization will act as a Managed Services Provider (MSP), and will serve as a key point of contact with the Contractor pool. The tasks of the MSP, Authorized Users (Executive Agencies), and Active Contractors and Waitlist Contractors are further explained in Section 3.2.

See diagram below for a visual of the interaction between the MSP and the pool of awarded Contractors. This diagram is for illustrative purposes.



*Model is illustrative; some vendors have sufficient in-house resources while others will sub-contract business to other vendors

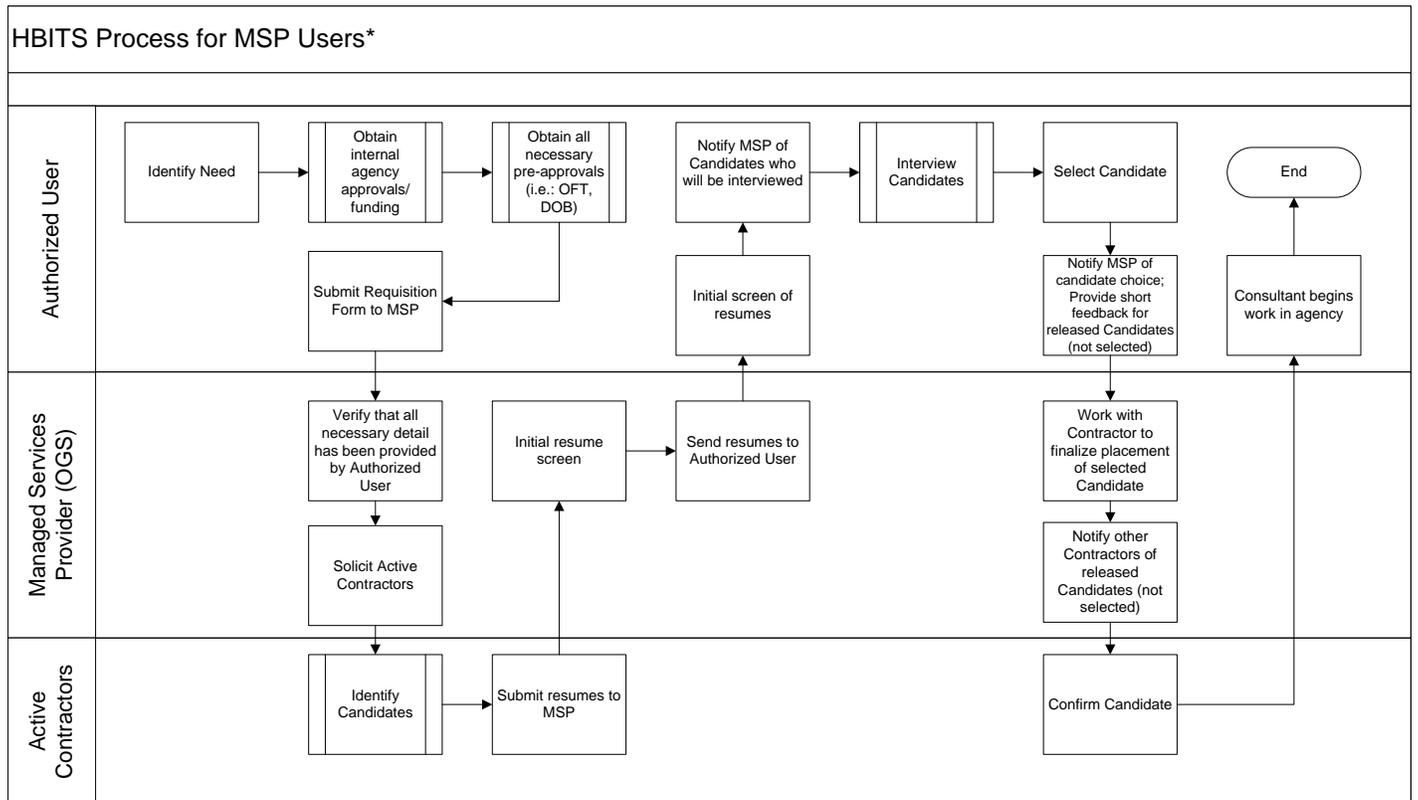
3.2 HBITS PROCESS

New York State is creating two distinct processes to procure HBITS. There will be one process for MSP users and one for non-MSP users. As of the release of this RFP, all Executive Agencies will be MSP users; all other Authorized Users of the resultant contracts will be non-MSP users. This is subject to change in the future. In addition, OGS reserves the right to change the processes that are outlined in this RFP. The remainder of this section details the MSP user process. Section 3.2.4 outlines the non-MSP user process.

A breakdown of responsibilities between the Executive Agency, MSP (NYS OGS) and the Contractor(s) is in the table below. The table below is for illustrative purposes and is not comprehensive; detailed Contractor requirements can be found in Section 9 of this RFP.

Authorized User	MSP (New York State/OGS)	Contractor(s)
Internal agency approvals	Initial screen of resumes from Contractor pool	Recruiting and maintaining adequate M/WBE network
All necessary pre-approvals (for example: OFT, DOB)	Forward qualified resumes to Authorized User	Candidate identification, initial screening, pre-interviews
Set position requirements and specifications in the initial Requisition	Solicit, receive and track Contractor Performance feedback from MSP Users; Communicate feedback to Contractor pool and facilitate potential Contractor meetings	Background checks, H-1B Visa sponsorship, Candidate training, foreign education vetting
Candidate interviews	Monitor M/WBE metrics and provide to Executive Agencies	
Final hiring authority	Ensure consistency in documentation	
Certification of Consultant Time Sheets	Centralized Billing and Payment for MSP users	

Based on the division of responsibility in the table above, the process flow below shows how Authorized Users will utilize this contract and the MSP to obtain hourly-based IT Services from Active Contractors.



*Process will be defined in greater detail during MSP operation planning

3.2.1 Requisitions

When a need is identified, Authorized Users are required to obtain all internal/control agency approvals necessary prior to initiating the HBITS process. Upon internal/control agency approvals, the Authorized User will inform the HBITS MSP of its need by submitting a completed Requisition Form. The Requisition Form will identify the selected Job Titles needed, as well as additional desirable qualifications.

The MSP will distribute a completed Requisition Form to all Active Contractors. The MSP will accept responses to the Requisition from Active Contractors by 5:00PM EST on the tenth Business Day (exclusive of the day of transmission to the Contractors).

The Authorized User may request a minimum of one (1) and a maximum of (2) resumes per position from each Active Contractor. Once resumes have been collected, the HBITS MSP team will consider bill rates and technical qualifications to select resumes to be forwarded to agencies for consideration. The HBITS MSP team will review resumes to determine that proposed Candidates meet the qualifications specified in the Requisition Form. Resumes that do not meet minimum position requirements will be rejected. The MSP may perform additional screening of resumes. Upon completion of this screening, suitable resumes (up to 40) shall be passed on to the Authorized User by 5:00PM EST on the second business day after receipt from Contractors (exclusive of receipt date) day. The MSP shall use the following methodology to determine the total number of suitable resumes to be passed on to the Authorized User for each position sought:

- a. If 10 – 40 qualified candidates: 50% of the resume forms with the lowest Hourly Bill Rates are forwarded to the AU.
- b. If 6 – 10 qualified candidates: resume forms with 5 lowest Hourly Bill Rates are forwarded to the AU.
- c. If 5 or fewer qualified candidates: MSP will investigate and determine whether to restart process or forward all resume forms.

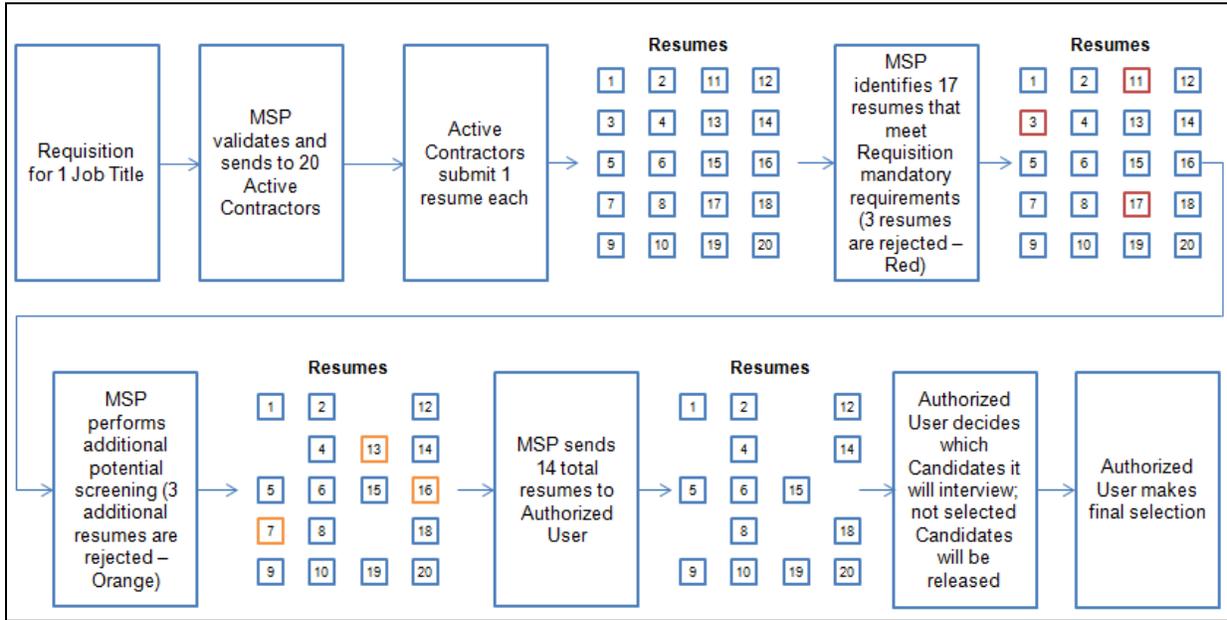
The Authorized User will then be recommended to evaluate the Candidate resumes within five (5) business days and alert the Contractors via the MSP of Candidates selected for interview.

Upon submission Contractors cannot submit the same Candidate for another position until such Candidate is released from consideration. By the end of the five (5) business days, the Authorized User will notify the MSP of the evaluation results, and the MSP will then inform the Contractors of their Candidates' status (interview requested or released). The MSP will not schedule interviews on behalf of the Authorized User. If the Authorized User does not notify the MSP of the evaluation results within five (5) business days, the Candidates will be deemed released. If a Candidate is released, the Contractor may resume submitting such individual's resume for other requests. Candidates selected for interview will not be considered released until the selection is made.

The Authorized User reserves the right to reject all Candidate resumes provided by the Active Contractors. In this case, the MSP may re-engage the Active Contractor pool for Candidate resumes.

Circumstances may arise in which an Authorized User has an urgent HBITS need. In this case the Authorized User will indicate on the Requisition Form that a five (5) business day turnaround time is required for Contractors to return resumes. This will occur in limited circumstances and will be regulated by the MSP.

A sample scenario of the MSP Requisition process is shown below. This scenario is for illustrative purposes only.



In the event that two Active Contractors submit the same candidate for the same requisition, only the Contractor with the lower Hourly Bill Rate shall be considered. In the event a Candidate is submitted for different requisitions with overlapping schedules, only the submission to the earliest announced requisition shall be considered. In neither case will the Contractor that submitted the rejected Candidate resume be permitted to resubmit a new Candidate.

3.2.2 Hourly Rates

Hourly Bill Rates are not negotiated at the time of placement. Rates are pre-determined based on Contractor response to this RFP (see Section 4.3, Financial Proposal). Hourly Bill Rates established in the resulting contracts will be a factor considered by the HBITS MSP when selecting resumes for Authorized User consideration.

3.2.2.1 Hourly Wage Rate Deviation

To allow the selected Contractors to better manage both their cost and the quality of candidates they can provide to the State, OGS will permit a Slight Deviation to the Hourly Wage Rates proposed in Attachment 6 when presenting candidates to Authorized Users, **provided that the Contracted Hourly Bill Rate remains unchanged** (see Section 1.6 for definitions). The Hourly Wage Rate refers to the actual hourly rate paid to the employee (direct or sub-contractor). Please see the example below for clarification of the Slight Deviation:

Rate Card in Bidder’s Financial Proposal (Attachment 6):

An Authorized User has selected from Job Title X, Skill Level Y, and Skill Demand Z in Service Group #1 for a Requisition. For this Requisition, Active Contractor ABC Company’s Attachment 6 has an Hourly Wage Rate of \$45.00 and a Markup of 40.00% that equates to an Hourly Bill Rate of \$63.00.

The following are examples of allowable Hourly Wage Rate deviation scenarios for a Requisition for Job Title X/Skill Level Y/Skill Demand Z:

Allowable Scenario	Hourly Wage Rate To Be Paid	Implied Markup	Hourly Bill Rate	Rationale
#1	\$44.00	43.18%	\$63.00	The Hourly Wage Rate to be paid is within the 5% Slight Deviation.
#2	\$48.00	31.25%	\$63.00	

The following are examples of **non-allowable** Hourly Wage Rate deviation scenarios for a Requisition for Job Title X/Skill Level Y/Skill Demand Z:

Non-Allowable Scenario	Hourly Wage Rate To Be Paid	Implied Markup	Hourly Bill Rate	Rationale
#1	\$35.00	80.00%	\$63.00	The Hourly Wage Rate to be paid falls outside the allowable "Slight Deviation".
#2	\$41.00	53.66%	\$63.00	

3.2.3 Engagement Duration

Engagements under the HBITS contract shall be a minimum of 2 months and a maximum of 24 months in length.

There will be no optional extensions for individual engagements. For the purposes of this RFP, an engagement is defined as the period of time that a Consultant works for an Authorized Users that begins on the first working day after a successful placement.

3.2.4 Active and Waitlist Contractors

OGS will maintain twenty (20) Active Contractors and up to five (5) Waitlisted Contractors at any given point during the HBITS contract. Contractors will be assessed on their performance as stated in Section 9.4 of this RFP on an annual basis. As a result of this assessment, the five (5) Active Contractors with the lowest performance scores will be moved to the Waitlist at the end of each contract year and the five (5) Waitlisted Contractors will be moved to Active status. In the event of a tie amongst the five (5) Active Contractors with the lowest performance scores, the MSP will compare each Contractor's rate card by calculating a Weighted Average Bill Rate based on that Assessment Period. The Contractor with the lower Weighted Average Bill Rate will win. This performance cycle will repeat at the end of each 12 month period; a Contractor will not be on the Waitlist for more than one (1) year at a time.

The following table contains the start and end dates for each assessment period:

Start of Contractor Assessment Period	End of Contractor Assessment Period	MSP Assessment and Determination of Active/Waitlisted Contractors
Contract Month 1	Contract Month 11	No later than end of Contract Month 12
13	23	24
25	35	36
37	47	48
49	59	60

The figure below illustrates a possible scenario, showing how the Waitlisted Contractors will shift based on the performance scores of the Active Contractors between Contract Years 1 and 2.

Contract Year 1 Begin	End of Contract Year 1 Performance Evaluation	Contract Year 2 Begin
Active Contractors	Active Contractors	Active Contractors
Contractor 1	Contractor 1	Contractor 1
Contractor 2	Contractor 2	Contractor 2
Contractor 3	Contractor 3	Contractor 3
Contractor 4	Contractor 4	Contractor 5
Contractor 5	Contractor 5	Contractor 6
Contractor 6	Contractor 6	Contractor 7
Contractor 7	Contractor 7	Contractor 9
Contractor 8	Contractor 8	Contractor 10
Contractor 9	Contractor 9	Contractor 11
Contractor 10	Contractor 10	Contractor 14
Contractor 11	Contractor 11	Contractor 15
Contractor 12	Contractor 12	Contractor 16
Contractor 13	Contractor 13	Contractor 17
Contractor 14	Contractor 14	Contractor 19
Contractor 15	Contractor 15	Contractor 20
Contractor 16	Contractor 16	Contractor 21
Contractor 17	Contractor 17	Contractor 22
Contractor 18	Contractor 18	Contractor 23
Contractor 19	Contractor 19	Contractor 24
Contractor 20	Contractor 20	Contractor 25
Waitlist Contractors	Waitlist Contractors	Waitlist Contractors
Contractor 21	Contractor 21	Contractor 4
Contractor 22	Contractor 22	Contractor 8
Contractor 23	Contractor 23	Contractor 12
Contractor 24	Contractor 24	Contractor 13
Contractor 25	Contractor 25	Contractor 18

The second figure below illustrates a possible scenario, showing how the Waitlisted Contractors will shift based on the performance scores of the Active Contractors between Contract Years 2 and 3.

Contract Year 2 Begin	End of Contract Year 2 Performance Evaluation	Contract Year 3 Begin
Active Contractors	Active Contractors	Active Contractors
Contractor 1	Contractor 1	Contractor 1
Contractor 2	Contractor 2	Contractor 2
Contractor 3	Contractor 3	Contractor 3
Contractor 5	Contractor 5	Contractor 5
Contractor 6	Contractor 6	Contractor 6
Contractor 7	Contractor 7	Contractor 7
Contractor 9	Contractor 9	Contractor 9
Contractor 10	Contractor 10	Contractor 11
Contractor 11	Contractor 11	Contractor 15
Contractor 14	Contractor 14	Contractor 17
Contractor 15	Contractor 15	Contractor 19
Contractor 16	Contractor 16	Contractor 21
Contractor 17	Contractor 17	Contractor 23
Contractor 19	Contractor 19	Contractor 24
Contractor 20	Contractor 20	Contractor 25
Contractor 21	Contractor 21	Contractor 4
Contractor 22	Contractor 22	Contractor 8
Contractor 23	Contractor 23	Contractor 12
Contractor 24	Contractor 24	Contractor 13
Contractor 25	Contractor 25	Contractor 18
Waitlist Contractors	Waitlist Contractors	Waitlist Contractors
Contractor 4	Contractor 4	Contractor 10
Contractor 8	Contractor 8	Contractor 14
Contractor 12	Contractor 12	Contractor 16
Contractor 13	Contractor 13	Contractor 20
Contractor 18	Contractor 18	Contractor 22

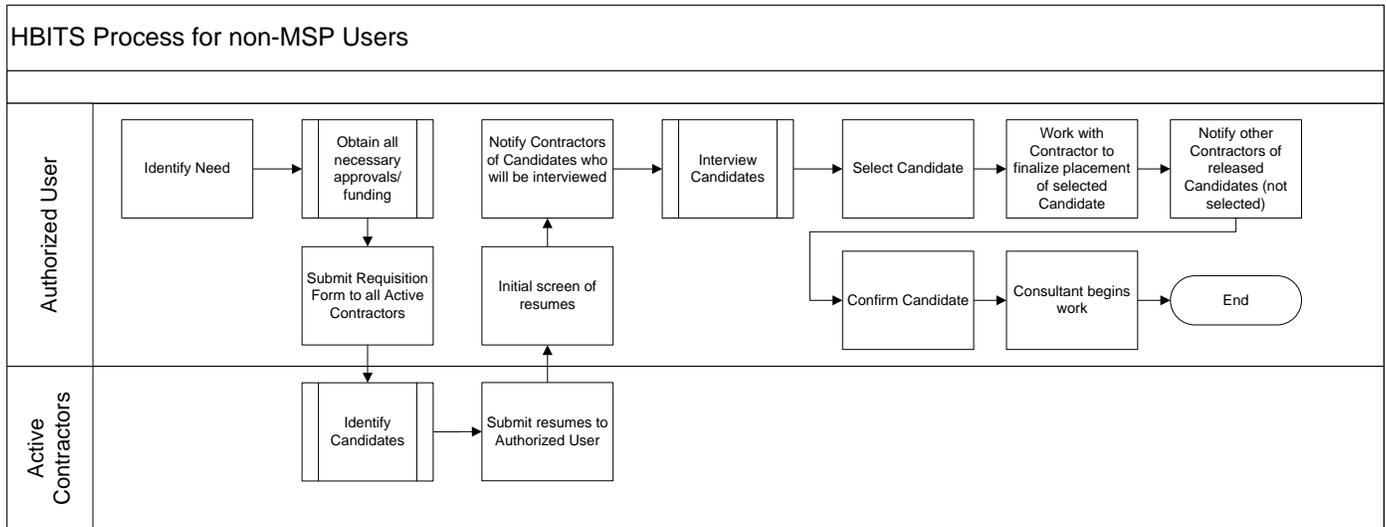
Contractors should note that even if they are awarded in the top twenty Active Contractors at the time of evaluating response to this RFP, they are not guaranteed business with the State. Further, Contractors must continually perform well in order to retain the Active designation.

Only Active Contractors shall receive solicitations from Authorized Users of this contract. No Authorized Users (Executive Agencies or Other Entities) shall be permitted to solicit Contractors on the Waitlist for new services. However, any existing engagements with an Active Contractor that is moved to the Waitlist will survive the waitlist period.

While OGS intends to maintain pools of 20 Active Contractors and five (5) Waitlisted Contractors, there are instances that could result in a size reduction of these pools. Accordingly, the State reserves the right to decrease the size of each pool. Such reduction may occur as a result of contract termination, mergers and acquisitions, etc.

3.2.5 HBITS Process for Non-MSP Users

Non-MSP users will follow the process outlined in the diagram below.



OGS recommends that non-MSP users use the same requisition process as MSP users set forth in Section 3.2.1, with the exception of utilizing the MSP.

3.3 ESTIMATED QUANTITIES

As noted previously, SST undertook a detailed analysis of spend in the HBITS category. SST collected detailed, line-item spend data from 67 Contractors that showed Executive Agency spend of approximately \$140M on hourly-based IT Services in the 2010-2011 State Fiscal Year. This dollar value is estimated only. The State anticipates that the spend in the next Fiscal Year will be similar to or larger than that of SFY10-11. Each awarded HBITS contract shall be for the quantities or dollar values actually ordered during the contract period. The individual value of each contract is indeterminate. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

A breakdown of the SFY2010-2011 spend against the HBITS Job Titles is seen below. The State expects that this breakdown will be similar in the coming years.

Job Title Category	HBITS Title	Normal Skill Demand	High Skill Demand	Total Historical Spend
Programmer/Analyst	Business Analyst	\$27.9	\$16.6	\$44.5
	Programmer			
	Tester			
	Technical Writer			
Project Manager	Project Manager	\$6.1	\$8.6	\$14.7
Specialist	Specialist	\$19.0	\$17.6	\$36.6
	Database Administrator			
	System Administrator			
	Technical Architect			

Job Title Category	HBITS Title	Normal Skill Demand	High Skill Demand	Total Historical Spend
Microsoft Specialty	Technician V	N/A		\$2.5
	Principal Consultant			
IBM Specialty	Technical Specialist 3	N/A		\$13.5
	Technical Specialist 4			
	Technical Specialist 5			
	Software Architect #1			
	Software Architect #2			
Unisys Specialty	Architectural Specialist I	N/A		\$26.3
	Architectural Specialist II			
	Sr. Production Control			
	Production Control Operator			
	Sr. Equipment Operator			
	Equipment Operator			
	Service Delivery Specialist I			
	Service Delivery Specialist II			

SECTION 4. PROPOSAL REQUIREMENTS

4.1 ADMINISTRATIVE PROPOSAL REQUIREMENTS

Attachments 4A and 4B contain forms required to be submitted by all Bidders. A Bidder must include these Attachments and all completed forms in this section. Failure to submit each item above in the Administrative Proposal may result in disqualification of a Bidder's proposal.

4.1.1 Affirmative Statements

A Bidder is required to provide a series of affirmative statements to the State as part of its Administrative Proposal.

Please see Attachment 4A for a list of affirmative statements that must be agreed to in order to bid on this RFP. A Bidder will select Yes for each statement and returned this completed Attachment with their proposal.

4.1.2 Bid Deviations and Extraneous Statements

Pursuant to Appendix B, Clause 13 of the RFP, a Bid must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

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

Should a Bidder decide to include a bid deviation and/or extraneous statement with its proposal, please use Attachment 4A. This Attachment should be included with all other documents required by the Administrative Section.

4.1.3 Additional Administrative Statements

Attachment 4A contains two additional administrative statements. A Bidder must respond if these statements are applicable and provide necessary documentation.

4.1.4 Administrative Proposal Format

A complete administrative proposal will consist of several items that will be bound together in a single binder. Original copies of the following items must be included:

1. Completed and signed COVER SHEET from Attachment 4A;
NOTE: JOINT VENTURE - If the Bidder is submitting as joint venture, only the Prime Bidder shall complete and sign the COVER SHEET.
2. Completed Attachment 4A;
3. Completed and signed Attachment 4B;
NOTE: JOINT VENTURE - Each member entity of a joint venture shall complete and sign a separate Attachment 4B.
4. Proof of Compliance with Workers' Compensation Coverage and Disability Benefits Coverage as specified in Section 9.6.3;
NOTE: JOINT VENTURE - Each member entity of a joint venture shall provide Proof of Compliance with Workers' Compensation Coverage and Disability Benefits Coverage as specified in Section 9.6.3.
5. Completed and signed Contractor Certification, ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf).
6. Completed and signed Form # MWBE 100 - Utilization Plan (<http://ogs.ny.gov/MWBE/Forms.asp>).
7. Completed and signed Form # EEO 100 – Staffing Plan (<http://ogs.ny.gov/MWBE/Forms.asp>).
8. If applicable, a Bidder must complete the tab, "Joint Ventures" in Attachment 4A, Administrative Proposal. This tab is included to account for Joint Venture proposals.

4.1.4.1 MWBE Utilization Plan

For the purposes of a response to this RFP, the MWBE Utilization Plan **must be completed in full** unless otherwise specified below:

- Under Contract Number, enter the RFP Number, 22439.
- Under MWBE Goals in Contract, enter 11% for MBE and 9% for WBE.

- Under Certified M/WBE Subcontractors/Suppliers, enter a **minimum** of 1 MBE and 1 WBE Subcontractor which you will work with if awarded a contract.
- Under Detailed Description of Work, describe the nature of subcontracts/ supplies/ services the Bidder intends to obtain from each identified M/WBE.
- Under Dollar Value of Subcontracts/ supplies/ services and intended performance dates of each component of the contract, enter the amount, if known. If unknown at this time, you should say “Unknown at this time.” You do not have to include the performance dates.
- Please do **not** send a copy of the M/WBE Utilization Plan to the OGS Division of Finance when submitting a response to this RFP. This document must be included in the Administrative portion of the proposal.

4.1.4.2 EEO Staffing Plan

For the purposes of a response to this RFP, the EEO Utilization Plan **must be completed in full** unless otherwise specified below:

- Under Solicitation Number, enter the RFP Number, 22439.
- Under Reporting Entity, check the box for “Contractor.”
- Check the box entitled “Contractor’s work force to be utilized on this contract.”
- In the table requesting the total number of employees for each classification, a Bidder must identify all staff that will be utilized specifically for the resultant HBITS contracts if known. At a minimum, a Bidder must account for the following:
 - All management level staff that will oversee the Bidder’s execution of the contract.
 - All recruiting staff that the Bidder will use to identify candidates for Authorized Users.
 - All staff responsible for identifying and maintaining the Bidder’s subcontracting network.
 - All staff responsible for accounts payable and receivable.
 - All Contract Administrators.
 - All clerical staff that will assist the individuals above.
- Although it is stated on Form # EEO 100, please do **not** send a copy of the M/WBE Utilization Plan to the OGS Division of Finance when submitting a response to this RFP. This document must be included in the Administrative portion of the proposal.

4.2 TECHNICAL PROPOSAL REQUIREMENTS

4.2.1 Qualifications of Bidders

A Bidder is advised that the State's intent in having requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the contract. The Bidders shall have the burden of demonstrating to the Office of General Services' satisfaction that it can in fact perform the work.

OGS retains the right to request any additional information pertaining to the Bidder's ability, qualifications, and procedures used to accomplish all work under this contract as it deems necessary to ensure safe and satisfactory work.

The Bidder should submit with its bid satisfactory evidence that it has had previous experience, adequate financial resources, and organization as herein specified to perform the type, magnitude, and quality of work specified qualifications.

4.2.1.1 Joint Ventures

Joint ventures between two or more companies are permitted, however one (1) single company must be designated as the primary Bidder and only the primary Bidder may submit a full response to the RFP.

A company must not appear as a bidder (joint venture or not) in more than ONE proposal. Joint ventures should submit one technical proposal in total – the responses can and should be based on combined experience from the companies that comprise the joint venture

A company must bid in ONE of the following ways:

- As a prime bidder with no joint venture;
- As the primary bidder in association with a joint venture; or

- As a joint venture member entity with a primary bidder.

4.2.2 Mandatory Qualifications

A Bidder shall set forth its response to the Mandatory Qualifications in the Narrative section of the Technical Proposal, as set forth in Section 4.2.5. The below is a summary of the qualifications that a Bidder is expected to meet – specific responses to each requirement must be outlined in the Bidder’s Technical Proposal.

Bidders shall meet the following Mandatory Minimum Qualifications of this RFP in order to be evaluated for award. Failure to meet any one of these mandatory minimum qualifications shall result in disqualification:

1. A Bidder shall have been in continuous operation for the past three (3) years (December, 2008 through November, 2011).
2. A Bidder shall possess a minimum of three (3) years of experience in the delivery of Hourly-Based IT Services in one of the two service groups as defined in Sections 4.3.1 and 4.3.2.
 - If the Bidder has merged with another business, then one of the merging businesses shall meet the requirement above, for one of the two service groups being bid. Please specify which entity performed the services at the time the services were rendered.
3. A Bidder must have provided at least five (5) IT resources to governmental entities for one of the Service Groups (as listed in Section 4.3 and Attachment 6) within the last two years (do not count the same resources placed multiple times).
4. Minimum Hourly-Based IT Services sales volume of \$500,000 with governmental entities over the past two (2) years.

4.2.3 Technical Proposal Contents

A complete Technical Proposal shall consist of the following items bound together in a single binder. Bidders must use the form provided in Attachment 5 for the Executive Summary and Detailed Narrative sections of their proposals.

- Executive Summary
- Detailed Narrative

Bidders are reminded that no Hourly Wage Rate or Markup information shall appear in the Technical Proposal.

4.2.4 Executive Summary

The Bidder must include in its Technical Proposal an overall strategy which describes the Bidder’s understanding of the requirements presented in the RFP, the State’s approach and how the Bidder can assist the State in accomplishing this effort.

4.2.5 Detailed Narrative

It is the intent of this section for a Bidder to indicate how it meets the mandatory minimum qualifications of this RFP, as set forth in Section 4.2.2.

A Bidder shall address six (6) topics in the detailed narrative portion of the technical proposal. All contents of this response should be included in the format provided in Attachment 5.

1. Company Background;
2. Organizational Structure;
3. Capacity;
4. Recruitment, Retention and Attrition;
5. Subcontractor Management; and
6. Client Management.

1. Company Background

The Bidder must have a strong background in providing Hourly-Based IT Services, in the areas described in this RFP. The Bidder must be able to hire, deploy and manage IT Consultant staff in the quantities required by Authorized Users and within a two-week timeframe. This section of the Bidder’s proposal should include responses on the following topics:

- Continuous period of operation (How long has the Bidder been in business?)
 - A Bidder's answer to this question should, at a minimum, address Mandatory Qualification #1 in Section 4.2.2
- Relevant experience with governmental entities;
- Bidder's experience in the delivery of Hourly-Based IT Services
 - A Bidder's answer to this question should, at a minimum, address Mandatory Qualification #2 in Section 4.2.2
- Bidder experience in deployment of consultants to multiple locations simultaneously; and
- Bidder's capacity to undertake, manage, and complete assignments promptly and to the satisfaction of OGS.

A Bidder shall be registered with the NYS Department of State as an entity authorized to conduct business in New York State. The Bidder must represent and warrant that, as of the date of submission of its proposal, the Bidder has completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of the services and that Bidder will, in order to perform said services during the term of the Contract, comply with any requirements imposed upon it by law during said Contract term.

2. Organizational Structure

A Bidder shall possess adequate staffing resources, financial resources and organization to perform the type, magnitude, and quality of work specified in the RFP. This section of the Bidder's proposal should include responses on the following topics:

- Staff that will execute and manage the resultant HBITS contract with New York State;
- Number of recruiters (staff) that will provide placements under the resultant HBITS contract; and
- Organization's current payment processes including how company ensures prompt payment of direct and sub-contracted employees.

3. Capacity

The Bidder must possess and/or demonstrate a business presence throughout New York State that supports its proposal to recruit staff across all regions in the State (specifically, the three regions identified in Attachment 6). The Bidder must describe the extent to which it has and/or will acquire an organizational presence throughout New York State, including the Bidder's operational units.

This section of the Bidder's proposal must include responses on the following topics:

- For Job Titles in Service Group #1 (see Section 4.3.1), the Bidder must fill out Table 1 in Attachment 5, demonstrating how many of each Job Titles the Bidder has provided (to any client) in the last two (2) years from the date of issuance of the RFP (do not count the same resources placed multiple times unless it was for a different engagement. Engagements are separate and distinct projects or agreements). Bidder's response shall be evaluated by their historical ability to provide the types of Job Titles set forth by New York State in this RFP.
- A Bidder must have provided at least five (5) IT resources to governmental entities for one of the service groups within the last two (2) years (do not count the same resources placed multiple times). The same client may be utilized for more than one service group being bid if resources were provided to that client for services in more than one service group
 - A Bidder's answer to this question should, at a minimum, address Mandatory Qualification #3 in Section 4.2.2
- Demonstrate minimum number of verifiable Hourly-Based IT Services sales of \$500,000 with governmental entities over the past two (2) years. If the business listed is with New York State, its departments, or political subdivisions, the Bidder should also include the contract number.
 - A Bidder's answer to this question should, at a minimum, address Mandatory Qualification #4 in Section 4.2.2

4. Recruitment, Retention and Attrition

Recruitment

At this part of its Technical Proposal, Bidder must provide a narrative description of how the Bidder proposes to use its resources to provide appropriate Consultant Candidates, including the methods, strategies, and resources to be employed to provide the services necessary to satisfy the terms of the contract resulting from this Procurement. Bidders should be specific in the response.

The Bidder will demonstrate an organizational philosophy that includes effective strategies for attracting, recruiting and retaining human capital. The Bidder must include in its proposal a description of its philosophy, strategies and outcomes in attracting, recruiting and retaining employees, including a description of the specific strategies that will be utilized under this procurement.

This section of the Bidder's proposal should include responses on the following topics:

- Describe how the Bidder will recruit, interview, hire, maintain and replace staff with the qualifications and in the numbers required by the New York State (see Section 3.3, Estimated Quantities), including identifying the plan for the sources and locations of recruitment, screening and review/interview mechanisms, and procedures and timeframes for acquiring new staff
- Provide a sample of relevant standards and procedures
- What process does the Bidder propose to provide appropriate Candidates as-needed to Authorized Users?
- Authorized Users of the contract resulting from this RFP will request response times between 5-10 Business days to meet their request. Please describe how you plan to meet these deadlines.
- Does the Bidder maintain a staff of consultants available for deployment within the timeframes specified?
- The proposed Consultant Candidate must be available to report to an engagement in no more than 10 Business Days from notification of placement. How does the Bidder propose to meet this requirement?
- What types of background checks and/or screening does the Bidder provide prior to recommending a Candidate for agency consideration?

Retention and Attrition

At this part of its Technical Proposal, a Bidder must provide a narrative description of the steps to enhance retention of Consultants. This section of the Bidder's proposal should include responses on the following topics:

- What methodologies are used to retain Consultants and fulfill their placements?
- What leads to Consultant turnover and how does Bidder handle it?
- What is a typical duration of the Consultant engagements that the Bidder is currently involved in (i.e., three months, six months, nine months, one year, two years)?
- Describe how Bidder handles a Consultant who needs to be terminated due to poor performance or security issues including all aspects from notification through resolution.
- How does Bidder retain valuable employees?
- What training and development opportunities (if any) does the Bidder offer/require for employees and/or subcontractors?

5. Subcontractor Management

This section of the Bidder's proposal should include responses on the following topics:

- Identify all proposed subcontractors and provide a description of how and to what extent Bidder proposes to utilize subcontractors
- If necessary, how do you plan to supplement your existing resume pool when desired Candidates may not be available for a current Authorized User Request?
- How does Bidder plan to recruit and/or utilize M/WBEs and SBEs?
 - A Bidder is reminded that OGS is establishing a goal of 11% for Minority-owned Business Enterprises (MBE) participation and 9% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE), for a total contract MWBE goal of 20%, for all cumulative purchases on the resultant HBITS contracts. This goal applies to Active Contractors for the full term of the resultant contracts. Goals will not be set by individual State Agencies at the transactional level.
 - A Bidder who is currently a NYS certified M/WBE will be expected to both address this question and engage other M/WBE's for subcontracting opportunities.

6. Client Management

A Bidder must demonstrate how it plans to maintain a relationship with New York State and manage their Consultants throughout the life of the resultant HBITS contract. This section of the Bidder's proposal should include responses on the following topics:

- Knowledge Transfer Methods
- Webcasting capabilities that can be leveraged by New York State for Candidate interview purposes
- Bidder's plans to address the need for a replacement of a Consultant(s) if an Authorized User finds a retained individual unacceptable or unable to perform the tasks
- What planning and monitoring of work will be provided for Consultants engaged by Authorized User?

4.3 FINANCIAL PROPOSAL REQUIREMENTS

A Bidder must submit its cost proposal using Attachment 6. OGS requires a Bidder to provide Hourly Wage Rates and Markup percentages for the following two (2) Service Groups:

1. Service Group 1 - Standard Titles
2. Service Group 2 - Software/Hardware Specific Titles

A Bidder is reminded that performance and quality of Contractors on the resultant HBITS contracts will be evaluated on an annual basis by the MSP (see Section 3.2.4). Therefore, a Bidder must propose hourly wage rates that are competitive, while allowing the Bidder to provide quality Candidates to the State.

Each Service Group contains a listing of specific job titles to be utilized by Authorized Users of the resulting contracts. In addition, a Bidder must provide a Markup that will be associated with each of the Service Groups. OGS is NOT seeking a Markup for each individual job-title.

For the purposes of this RFP and the resulting HBITS contracts, the following definitions apply:

- Hourly Wage Rate is defined as the hourly rate that the Consultant will receive, for services provided under each engagement, regardless of potential sub-contracting layers.
- Markup is defined as all costs a Bidder will incur beyond the Hourly Wage Rate paid to a Consultant. This may include, but is not limited to, statutory requirements (i.e., FICA, FUTA, SUTA, Worker's Comp, etc.), overhead, recruiting costs, training, visa sponsorship, and profit.
- Region 1 is defined as all counties that are not included in Regions 2 or Region 3.
- Region 2 is defined as the Mid-Hudson Region which contains Dutchess, Orange and Putnam Counties.
- Region 3 is defined as the New York City Metro Region which contains Nassau, Rockland, Suffolk, Westchester, Bronx, Kings, New York, Queens, and Richmond Counties.

All Job Titles, Levels, and Skill Demands are defined in Attachment 6.

4.3.1 Service Group 1, Standard Titles

For Service Group 1, OGS requires a Bidder to provide, via Attachment 6, the following information for each job title:

1. Hourly Wage Rates for all listed Job Titles at four distinct experience levels labeled Junior, Mid-Level, Senior and Expert and for two demand levels, Normal Demand and High Demand hourly rate
 - a. Normal demand is defined as technologies and skills of a low to normal technical level, and/or there is a high supply and low demand for resources with the technology or skill
 - b. High Demand is defined as technologies or skills of a high technical level, and/or the technology is new, and/or there is a low supply and a high demand for resources with the technology or skill
 - c. A Bidder should refer to the Skill Demand Definitions, located in Attachment 6, for a listing of technologies and/or skills that the State considers Normal or High Demand.
2. Hourly Wage Rates for each of the three geographic regions identified in Attachment 6.
3. One Standard Title Markup percentage that will be applied to all Standard Title Wage Rates, across all three (3) Regions, within Service Group 1.

4.3.2 Service Group 2, Software/Hardware Specific Titles

For Service Group 2, OGS requires a Bidder to provide, via Attachment 6, the following information for each job title:

1. Hourly Wage Rates for all listed Job Titles
2. Hourly Wage Rates for each of the three (3) Regions identified in Attachment 6
3. One Software/Hardware Specific Markup percentage that will be applied to all Software/Hardware Specific Title Wage Rates, across all three (3) Regions, within Service Group 2.

OGS is NOT seeking the four distinct experience levels (Junior, Mid-Level, Senior and Expert) for Service Group 2.

4.3.3 Additional Financial Considerations

A Bidder is reminded of the following when submitting their Financial Proposal:

1. An official authorized to contractually bind the Bidder must sign the Cost Proposal.
2. A proposal with a fee format different from the format indicated in Attachment 6 shall be considered non-responsive and will not be considered for evaluation.
3. All rates must be presented as a fixed U.S. dollar amount and a dollar figure must be proposed for each contract title and year of the contract; a U.S. dollar rate of \$0 is not acceptable. Further, a Bidder must submit only one rate for each title; a range of hourly rates is not acceptable and shall be deemed non-responsive.
4. The Hourly Wage Rates proposed for each Service Group, as listed in Attachment 6, and as set forth in the resultant contracts from this RFP shall be deemed **EXCLUSIVE** of travel, meals and lodging (see Section 8.21.2 for detailed terms on travel, meals and lodging).

SECTION 5. PROCUREMENT AND ADMINISTRATIVE BACKGROUND

5.1 NEW YORK STATE PROCUREMENT RIGHTS

A Bidder is hereby notified that New York State reserves the right to:

1. Reject any or all proposals received in response to the RFP.
2. Withdraw the RFP at any time, at the sole discretion of OGS.
3. Make an award under the RFP in whole or in part.
4. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
5. Seek clarifications and revisions of proposals.
6. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
7. Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments.
8. Change any of the schedule dates with notification through the Bidder Notification System.
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Bidders.
10. Waive any requirements that are not material.
11. Utilize any and all ideas submitted in the bids received.
12. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration.
13. Negotiate with the Bidder responding to this RFP within the RFP requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' proposals.
14. 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.
15. Should the State of New York be unsuccessful in negotiating a Contract with the selected Contractor within twenty (20) business days of Contract award, the State may begin Contract negotiations with the next best value Bidder in order to serve the best interests of the State of New York.
16. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the RFP requirements.
17. Request current Bidder financial statements documenting past sales history that demonstrates ability to service a contract with dollar sales volume similar to the scope of this bid; documents must be provided within five business days of request.
18. Request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services.
19. Reject any Bidder who does not demonstrate financial stability sufficient for the scope of this bid.

5.2 PROPOSAL SECURITY

The content of each Bidder's proposal will be held in strict confidence during the bid evaluation process, and details of a proposal will not be revealed (except as may be required under the Freedom of Information Law or other State Law).

5.3 DISPUTE RESOLUTION POLICY

It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations or contract awards. OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.

5.3.1 Dispute Resolution Policy for the HBITS RFP Only

From the time period commencing with the issuance of this RFP up to and including the Office of the State Comptroller's approval of the resultant contracts, the following policy will apply:

- **Policy.** It is the policy of the OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations. Bidders are encouraged to seek resolution of disputes through consultation with OGS staff. All such matters will be accorded full, impartial and timely consideration.

Interested parties may also file a formal written dispute according to the following procedures.

- **Formal Disputes**
 - **Definitions**

1. Filed means the complete receipt of any document by OGS before its close of business.
2. Interested party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual Bidder whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
3. Interested party for the purpose of filing a dispute relating to a contract award, as used in this section, means an actual Bidder for the subject contract.
4. Dispute means a written objection by an interested party to any of the following:
 1. A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
 2. The cancellation of the solicitation or other request by OGS.
 3. An award or proposed award of the contract by OGS.

2. Submission of Disputes

1. A formal dispute by an interested party as defined in II.A.2 must be filed in writing to OGS by mail.
2. The dispute must include:
 1. Name, address, e-mail address, fax and telephone numbers of the filer.
 2. Solicitation or contract number.
 3. Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.
 4. Copies of relevant documents.
 5. Request for a ruling by the agency.
 6. Statement as to the form of relief requested.
 7. All information establishing that the filer is an interested party for the purpose of filing a dispute.
 8. All information establishing the timeliness of the dispute.
3. Disputes should be filed with the OGS Deputy Commissioner of Information Technology & Procurement Services at the following address:

**Deputy Commissioner
New York State Office of General Services
Information Technology & Procurement Services
41st Floor, Corning Tower
Empire State Plaza
Albany, NY 12242**

The filing must clearly identify the materials with the subject line, "Subject: HBITS RFP Dispute"

4. Disputes concerning a solicitation shall be filed by an Interested Party (see II.A.2) with the Deputy Commissioner no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, formal disputes concerning the solicitation document shall be filed with the Deputy Commissioner at least twenty-four (24) hours before the time designated for receipt of bids.
5. Disputes concerning a pending or awarded contract must be filed within ten (10) business days by an Interested Party (see II.A.3) after the disputing party knows or should have known of the facts which form the basis of the dispute; however, a dispute may not be filed later than 10 days after issuance of the award.
6. OGS may consider the merits of any dispute.

3. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed procurement action prior to issuance of a formal dispute decision.
2. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
3. The Deputy Commissioner shall hear and make a final determination on the dispute or may designate a person or persons to act on his/her behalf. The final determination on the dispute shall be issued within twenty (20) business days of receipt of the dispute.

4. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based shall be sent to the filer or its agent by regular mail within twenty (20) business days of receipt of the dispute.

4. Legal Appeals

Nothing contained in these provisions is intended to limit or impair the rights of any vendor or contractor to seek and pursue remedies of law through the judicial process.

5.3.2 Dispute Resolution Policy for Resultant Contracts

For the time period following Office of the State Comptroller's approval of the contracts resulting from this RFP to the end of this HBITS Contract, Contractors are directed to the following site: <http://www.ogs.ny.gov/BU/PC/Docs/VendorDisputePolicy.pdf>.

5.4 MANDATORY EVENTS

Bidders are reminded of the mandatory events related to this RFP as listed in Section 1.3.

5.5 ELECTRONIC BID OPENING RESULTS

OGS will post the names of the Bidders who have responded to this RFP on the OGS/PSG web page. This information will be available at: <http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>. There will not be a public bid opening for this RFP.

5.6 DEBRIEFING

A debriefing is available to any Bidder. A Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing.

A Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing. 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 pre-award debriefing should be requested in writing within ten (10) business days of notification of non-Award. After contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such Bidder was not selected for a contract award. The post-award debriefing should be requested in writing within ten (10) business days of posting of the contract award on the OGS website.

A Bidder's request for a debriefing shall be electronically submitted to the Designated Contacts of this RFP as denoted in Section 1.2.2.

SECTION 6. FORMAT AND CONTENT OF BID SUBMITTAL

6.1 RESPONSIVENESS

To be considered responsive, a Bidder must submit a complete proposal that satisfies and addresses all requirements stated in this HBITS RFP. **A PROPOSAL THAT FAILS TO CONFORM TO ALL REQUIREMENTS MAY BE CONSIDERED NON-RESPONSIVE AND MAY BE REJECTED.**

6.2 INCORPORATION

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

Once the Contracts resulting from this RFP are approved by the Office of the State Comptroller, the contracts and the Contractor's Hourly Bill Rates will be posted on the OGS website.

6.3 PROPOSAL FORMAT

Bidder's proposal shall be organized in three (3) separate parts: Administrative Proposal, Technical Proposal, and Financial Proposal (collectively referred to herein as "Submissions"). Each part will be evaluated separately. Each part shall indicate content/be labeled, as applicable: ADMINISTRATIVE, TECHNICAL or FINANCIAL PROPOSAL. Bidder **MUST** supply TWO ORIGINAL COPIES of the bid and include as part of their bid,

- Bidders shall submit a total of five (5) separately bound hard copies, two (2) of which must be original, of the Administrative, Technical and Financial Sections, which respond to requirements set forth in Section 4 of this RFP. In addition, two (2) electronic versions are to be submitted as described in 6.3.1.
- The Administrative, Technical and Financial Proposals shall be **separately bound, sealed and labeled**. The official name of the Bidder's organization(s) as well as name and number of the RFP must appear on the outside front cover of each copy of the Bidder's Administrative, Technical and Financial Proposal. If the Proposals are submitted in loose-leaf binders, this information must also appear on the spine of the binders.
- **BIDDER SHALL NOT INCLUDE ANY HOURLY WAGE RATE OR MARKUP INFORMATION IN THE BIDDER'S ADMINISTRATIVE PROPOSAL OR TECHNICAL PROPOSAL. Inclusion of such information in the Administrative or Technical Proposals may result in the Proposal's disqualification.**
- The Financial Proposal must not contain any material that is applicable to the Administrative Proposal or the Technical Proposal.
- Each original hard copy shall be marked "ORIGINAL" on the cover page, contain the original signature(s) of an official(s) authorized to bind the Bidder to its Proposal, be numbered sequentially, i.e. Original #1 and Original #2.
- In the event that there are any inconsistencies between the electronic Submissions versus hard copy Submissions, or between multiple hard copy Submissions for each of the three (3) parts of the Proposal, the hard copy marked "Original #1" will be deemed controlling by OGS when reviewing the Proposal.
- Proposal Amendments: A Bidder may submit amendments to their Proposal(s) prior to the Proposal Submission Deadline as described in Section 1.3. Any amended pages submitted by a Bidder to be incorporated into the Proposal shall show the date of the revision and indicate the portion of the page being changed

6.3.1 Submission of Electronic Media

As stated in Section 6.3, a Bidder shall submit two (2) electronic versions for each of the Administrative, Technical and Financial Proposals, which respond to requirements set forth in Section 4 of this RFP. Electronic media shall be a CD with files in the following format for each Proposal Section:

- Administrative Proposal
 - Attachment 4A, Cover Sheet – PDF (printed, signed and scanned)
 - Attachment 4A, all other worksheets – Microsoft Excel (2007 version or higher)
 - Attachment 4B – PDF (printed, signed and scanned)
- Technical Proposal
 - Attachment 5, Page 1 – PDF (printed, signed and scanned)
 - Attachment 5, all other pages– Microsoft Word (2007 version or higher)

- Financial Proposal
 - Attachment 6, Cover Sheet – PDF (printed, signed and scanned)
 - Attachment 6, all other worksheets – Microsoft Excel (2007 version or higher)

The CD should be labeled with:

- 1) Name of Bidder,
- 2) RFP # 22439,
- 3) Administrative, Technical or Financial Section.

6.4 PROPOSAL DELIVERY INSTRUCTIONS

Only those Bidders who furnish all required information shall be considered for evaluation. The following procedures shall be used for proposal submission:

Complete bids in response to this RFP are to be packaged, sealed and submitted to the Office of General Services, Strategic Sourcing Team. Responses must be addressed to:

NYS Office of General Services
Corning Tower, 38th Floor
Reception Desk
Empire State Plaza
Albany, NY 12242-0064

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. Bid number (RFP 22439)
3. Bid Opening Date and Time (January 24, 2012, 11:00 AM EST)
4. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

6.5 PROPOSAL LIABILITY

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the preparation and production of a proposal or for any work performed prior to the formal execution of a Contract. Proposals must be received in the above office on or before **11:00 AM EST on January 24, 2012. 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. E-mail or faxed bid submissions are not acceptable and shall not be considered.** The received time of proposals will be determined by OGS by the clock at the above noted location.

NO CONSIDERATION WILL BE GIVEN TO PROPOSALS RECEIVED AFTER THE STATED DATE AND TIME.

6.6 IMPORTANT BUILDING ACCESS PROCEDURES

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk.

A Bidder who elects to deliver its proposal is encouraged to pre-register for building access by contacting the Procurement Services Group's (PSG) receptionist at 518-474-6262 at least 24 hours prior to the bid submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the PSG Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct PSG 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 the Procurement Services Group, or the OGS Mailroom, by the time and date shown on the front page of the bid document will be considered late.

6.7 PROPOSAL VALIDITY

Proposals must remain open and valid for at least 270 days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A proposal shall continue to remain an effective offer, firm and irrevocable, subsequent to such 270 day period until either tentative award of the Contract by OGS is made or withdrawal of the proposal in writing by Bidder. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal Contract.

SECTION 7. METHOD OF AWARD/EVALUATION PROCESS

7.1 STATE EVALUATION PHILOSOPHY

Pursuant to Article XI of the New York State Finance Law, the basis for these contract awards is **best value**. A best value optimizes quality, cost and efficiency among responsive and responsible Bidders and is consistent with the best interests of the State of New York.

New York State evaluates bids for goods and services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Through this process the State identifies Contractors who will best meet its needs and will be the most cost effective. During the evaluation process, OGS may require clarifying information from a Bidder. If specific sections of the written proposal require clarification, OGS will contact the Bidders and request clarifying information. The Bidder must respond by the deadline provided by OGS.

All proposals will be evaluated uniformly and consistently, ensuring that each Bidder has an equal opportunity to be considered. The evaluation process will be conducted as described in this section.

Bidders are reminded that the State is not seeking maximum Not-to-Exceed pricing.

7.1.1 Awarded Contracts

The State shall award up to 25 contracts to responsive and responsible Bidders. The top 20 ranked Bidders, after the evaluation process is completed, will be awarded Active contracts for the first contract year. An Active contract means that a Contractor will be able to receive Requisition Forms from the MSP or a non-State Agency Authorized User (see Section 3).

The next five ranked Bidders will be awarded Waitlist contracts for the first contract year. A Waitlist contract means that a Contractor will not be able to receive Candidate requisitions from Authorized Users. However, Waitlisted Contractors will be eligible to become Active during the length of this Contract. All Contracts that are Waitlisted in the first year will automatically become Active in the second year. See Section 3.2.4 for details on the Active and Waitlist Contract process.

A Contractor's contract status will be evaluated every year based upon performance criteria established in Section 9. Active Contractors may become Waitlisted Contractors and vice versa (see Section 3).

7.1.2 Proposal Weighting

The Technical and Financial Scores of the bids will be evaluated separately bearing the weight assigned below:

Technical Score = 40% of Final Score, Up to 40 Points Can Be Awarded

Financial Score = 60% Final Score, Up to 60 Points Can Be Awarded

7.2 EVALUATION PROCESS

7.2.1 Administrative Proposal Screening

After the bid opening, each Bidder's Administrative Proposal will be screened for completeness and conformance with requirements for bid submission as specified in Section 4.1, Administrative Proposal Requirements and Section 6, Format and Content of Bid Submittal of this RFP. Proposals that do not meet the Administrative requirements as set forth in this RFP may be deemed nonresponsive and given no further consideration. Proposals meeting the requirements of the Administrative Section will proceed to the Financial Proposal Evaluation.

7.2.2 Financial Score Evaluation (60 Points)

Each Bidder whose Administrative Proposal is deemed responsive will be evaluated financially. The Financial Score Evaluation will be evaluated independently and separately from the Technical Score Evaluation. The Financial Score Evaluation will be based on the Bidder's financial response provided in Attachment 6.

The Financial Score is 60 percent (60 points) of the final score. Each Financial Proposal will be opened and reviewed for responsiveness to the financial requirements. If a Financial Proposal is found to be non-responsive, that proposal will not

receive a financial score and the Bidder will be disqualified from consideration for this procurement. Each responsive proposal that meets the Financial Proposal requirements will receive a financial score.

Financial proposals from a Bidder must be presented as directed in Attachment 6 to enable the evaluation of financial costs according to the State's prescribed formula. A Financial Proposal will be evaluated based on a pre-determined formula using the Bidder's proposed Hourly Wage Rates and corresponding Markup percentages for each Service Group as listed in Attachment 6. The maximum Financial Score (60 points) will be allocated to the proposal with the lowest financial cost according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following calculation:

$$\text{Financial Score} = (60 \text{ points}) \times (\text{Lowest Financial Cost} / \text{Bidder's Financial Cost}).$$

Based on Financial Score, Bidders that have a mathematical impossibility of being susceptible to award shall be eliminated from further consideration. All other responsive proposals will proceed to the Technical Score Evaluation.

If the Bidder's proposal with the lowest Financial Score fails to meet the mandatory qualifications of the Technical Evaluation, refer to Section 7.2.3.1.

7.2.3 Technical Score Evaluation (40 Points)

The Technical Score Evaluation will be based on requirements set forth in Section 4.2, Technical Proposal Requirements. Failure to meet any mandatory specifications found in this RFP may result in a Bidder's removal from further consideration.

Proposals deemed responsive, as a result of the review specified above, will then be evaluated in detail against weighted criteria. A Bidder's Technical Score will be based on the following criteria, which are listed in order of importance:

- Recruitment, Retention and Attrition
- Subcontractor Management
- Client Management
- Capacity
- Company Background
- Organizational Structure

The State reserves the right to weight each of the factors listed above as it deems appropriate, but which shall be determined prior to the bid opening. All scoring for the items appearing above will total a maximum of 40 possible points.

7.2.3.1 Re-Evaluation of Financial Scores

If it is determined by OGS that the Bidder's proposal that received the maximum Financial score, as identified in Section 7.2.2, fails to meet the mandatory technical qualifications of the RFP, all scores will be re-calculated using the financial score of the next highest ranked responsive proposal.

7.2.4 Proposal Ranking and Selection

As indicated in Section 7.1, the basis for these HBITS contract awards is best value. Best value will be determined by ranking the Final Scores of responsive and responsible Bidders.

A Bidder's Final Score will be calculated by combining the Bidder's Technical Score (maximum of 40 points) and the Financial Score (maximum of 60 points). The maximum Final Score any Bidder can receive is 100 points.

The 20 responsive and responsible proposals with the highest Final Scores (technical plus financial) will be selected for Active contract award.

The next five (5) responsive and responsible proposals with the highest Final Scores (technical plus financial) will be selected for Waitlisted contract award.

In the case of tied bids, please see Appendix B, Clause 33 entitled “Equivalent or Identical Bids.”

In the event OGS does not receive twenty-five (25) proposals from responsive and responsible Bidders, the following table will be used to determine the number of Active and Waitlisted Contractors.

Number of Responsive and Responsible Bidders	Number of Active Contracts Awarded	Number of Waitlisted Contracts Awarded
10 – 14	8	Up to 2
15 – 20	10	Up to 5
21 – 24	15	Up to 5
25+	20	Up to 5

7.2.5 Notification of Award

The successful Bidders will be advised by OGS in accordance with Section 38 of Appendix B. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal Contract.

SECTION 8. TERMS AND CONDITIONS

8.1 CONTRACT PERIOD

This contract shall commence after approval by the New York Office of the State Comptroller, effective upon mailing by OGS (see Appendix B, Clause 38) and shall be in effect for five (5) years with the State's sole option to extend for a period not to exceed one (1) year. The contract is expected to begin on or about April 1, 2012. Notwithstanding the termination of this contract pursuant to the above stated term, the terms and conditions hereof shall be effective and binding for all Authorized User engagements entered into before the termination hereof.

The contract term may be adjusted forward beyond two months only with the approval of the successful Bidder. If, however, the Bidder is not willing to accept an adjustment of the contract term beyond the two month period, the State reserves the right to proceed with an award to another Bidder.

8.2 GENERAL REQUIREMENTS

1. For discrepancies between the Bid Specifications and the Bid involving the nature, quality, or scope of services to be furnished, it shall be assumed that the Contractor has based the bid on the more expensive manner. Final decision will rest with the Commissioner.
2. The State shall not be liable for any expense incurred by the Contractor as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
3. OGS's interpretation of specifications shall be final and binding upon the Contractor.

8.3 APPENDICES AND ATTACHMENTS

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.

APPENDIX A:

Appendix A, Standard Clauses For New York State Contracts, dated December 2011, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

APPENDIX B:

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

8.3.1 APPENDIX B AMENDMENTS

Appendix B is amended as follows:

1. Section 4, Conflict of Terms, of Appendix B is deleted and replaced with the following:

The following shall be incorporated into the resulting Contract. Other documents may be identified for inclusion during the course of the solicitation process. Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The resulting Contract;
3. Appendix B, General Specifications; and
4. Other Appendices as deemed necessary.

2. Section 60 (Termination) is hereby amended through the addition of a new (e):

(e) Cancellation by Authorized User for Convenience

An Authorized User retains the right to cancel a Purchase Order for convenience upon at least thirty (30) calendar days written notice to Contractor without penalty or other early termination charge. This provision

should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. If the Purchase Order is cancelled pursuant to this section, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of cancellation.

3. Section 62 (Contract Billings) is deleted and replaced with the following language:

62. CONTRACT BILLINGS AND PAYMENTS FOR AUTHORIZED USERS THAT UTILIZE MANAGED SERVICES PROVIDER:

- a) Billings. Contractor shall provide complete and accurate billing invoices to the Office of General Services in order to receive payment. Billing invoices submitted to OGS must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the OGS Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate. Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.
- b) The OGS and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.
- c) **CONTRACT BILLINGS AND PAYMENTS FOR AUTHORIZED USERS THAT DO NOT UTILIZE MANAGED SERVICES PROVIDER:**
 - (i) Billings. Contractor shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate. Contractor shall provide, upon request of the Authorized User, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Authorized User and in a media commercially available from the Contractor. The Authorized User may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.
 - (ii) Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment: The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above. This does not apply for Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment.

- (iii) 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.

8.4 SHORT TERM EXTENSION

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

8.5 CANCELLATION

8.5.1 Cancellation by Authorized Users for Cause

The Authorized User's rights to cancel a Purchase Order for cause are set forth in Section 60 (a) of Appendix B. The Authorized User's rights to seek remedies for contract breach are set forth in Section 65 of Appendix B.

8.6 PERFORMANCE AND BID BONDS

There are no BONDS for this contract. In accordance with Appendix B, Clause 58 "Performance/Bid Bond," the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Initial Term, or any renewal term, for this Contract.

8.7 LIQUIDATED DAMAGES

The only liquidated damages in this Contract are set forth in Section 9.5.4 and in Appendix C.

8.8 CONTRACT AMENDMENT PROCESS

During the term of the Contract, the Contract may be amended as changes occur within the industry. OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the State. OGS, an Authorized User, or the Contractor may suggest amendments. All amendments are subject to approval by OSC.

8.9 GENERAL DESCRIPTION CONTRACTS

OGS has various types of Contracts available for use by State Agencies, political subdivisions, and other Authorized Users. The Contracts that shall result from this RFP are known within OGS as a "PS" Contract. For a description of the various types of Contracts, please refer to Appendix B. This type of Contract is for services which an Authorized User utilizes on an intermittent basis. Purchase orders under this type of Contract are issued:

- a) To a given Contractor for a specific term;
- b) For either a fixed amount (if known) or a not-to-exceed amount (if known).

Payments are then made each month against the purchase order for actual expenditures.

8.10 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS AND EXTENSION OF USE

New York State political subdivisions and others authorized by New York State law may participate in Contracts resulting from this solicitation. 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.39 "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), services to be provided may include locations adjacent to New York State.

In order for services to be extended to additional States or governmental jurisdictions there must be mutual written agreement between New York State (the lead Contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

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

Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3) (iv) of the State Finance Law, as per section 39c of Appendix B.

8.11 USE OF CONTRACT BY STATE AGENCIES, POLITICAL SUBDIVISIONS AND OTHER AUTHORIZED USERS

OGS shall provide, at a later date, the Authorized Users with specific information on the appropriate procedures and methods to obtain services from the HBITS Contracts. Such procedures and methods shall be in accordance with the provisions of this RFP. Also, please see Section 3, "Statement of Work."

8.12 NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) and any designated authorized reseller(s) who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the 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 resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage 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 vendor must enter the vendor's ten-digit Vendor ID on the first page of this bid document. An authorized reseller already registered in the Vendor File must enter its ten-digit Vendor ID along with the authorized reseller's information on the first page of this bid document.

If the Bidder is not currently registered in the Vendor File, the bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form to OGS **in advance** of your bid. Please send this document to the Designated Contact in the solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) should be completed by each designated authorized reseller and submitted to OGS. **The OGS will initiate the vendor registration process** for all Bidders and their authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

8.12.1 NEW YORK STATE VENDOR FILE REGISTRATION- JOINT VENTURES

Each member entity of a joint venture must comply with the requirements in Section 8.12.

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

OGS conducts a review of Bidders to provide reasonable assurances that the Bidder is responsive and responsible. A New York State Vendor Responsibility Questionnaire For-Profit Business Entity (hereinafter the "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, the 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 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 OSC's website, http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Please note that a Vendor ID is required to enroll in the VendRep System. Please see section 8.12 for information on how to obtain a Vendor ID. Note: Allow up to four (4) business days to accommodate the verification process associated with assigning a Vendor ID and updating the OSC Online Services portal to allow a vendor to enroll to use the VendRep System.

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, the Bidder must complete and certify (or recertify) the Questionnaire no more than one (1) month prior to the bid opening 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 found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. 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.

8.13.1 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY- JOINT VENTURES

Each member entity of a joint venture shall comply with the requirements of Section 8.13.

8.14 METHOD OF PAYMENT

8.14.1 Method of Payment for MSP Users

This section only applies to governmental entities that utilize the MSP. **Contractor shall invoice OGS, not the Authorized User, monthly in arrears,** for all Services actually rendered during the month for the benefit of the Authorized User, with appropriate invoices with full supporting detail(s) to OGS' reasonable satisfaction. Invoices for payment shall be submitted to OGS at the end of each month on a New York State Standard Voucher or company invoice for services satisfactorily completed during that month. Bi-weekly or weekly billing for services actually rendered is not allowed.

At a minimum, said invoicing will include the Contract ID number, the name of the Authorized User, the location where service was performed, the name of the Consultant, the Hourly Wage Rate, markup percentage, Hourly Bill Rate (hourly wage rate times Markup) and, either in its body or as an attachment shall itemize services performed during that month, name(s) of individuals(s) being billed along with total hours worked for the given billing period, for each individual, signed by the Contractor. Such information will be supported by time sheets with original signatures, which will include the daily hours worked by the respective individual(s) attached to invoices as backup. The Authorized User will be obligated to review and validate all invoices submitted by the Contractor.

Timeliness of payment and any interest to be paid to the Contractor(s) is governed by Appendix B, Clause 62, Contract Billings and Clause 64, Interest on Late Payments. for late payment shall be governed by the laws of the State.

Payment of purchases made by Authorized Users under this Contract shall be the sole responsibility of OGS and the Contractor(s) shall bill OGS directly on vouchers authorized by OGS.

8.14.2 Method of Payment for Non-MSP Users

Contractor shall invoice the Authorized User, monthly in arrears, for all Services actually rendered during the month for the benefit of the Authorized User, with appropriate invoices with full supporting detail(s) to the Authorized User's reasonable satisfaction. Invoices for payment shall be submitted to the Authorized User at the end of each month on a New York State Standard Voucher or company invoice for services satisfactorily completed during that month. Bi-weekly or weekly billing for services actually rendered is not allowed.

At a minimum, said invoicing will include the Contract ID number, the name of the Authorized User, the location where service was performed, the name of the Consultant, the Hourly Wage Rate, markup percentage, Hourly Bill Rate (hourly wage rate times Markup) and, either in its body or as an attachment shall itemize services performed during that month, name(s) of individuals(s) being billed along with total hours worked for the given billing period, for each individual, signed by the Contractor. Such information will be supported by time sheets with original signatures, which will include the daily hours worked by the respective individual(s) attached to invoices as backup. The Authorized User will be obligated to review and validate all invoices submitted by the Contractor.

Timeliness of payment and any interest to be paid to the Contractor(s) is governed by Appendix B.62, Contract Billings and 64, Interest on Late Payments.

Payment of purchases made by Authorized Users under this Contract shall be the sole responsibility of the Authorized User and the Contractor(s) shall bill the Authorized User directly on vouchers authorized by the Authorized User.

8.14.3 Other Payment Information

Upon request, all eligible non-State agencies must furnish Contractor(s) with the proper tax exemption certificates. Contractor(s) is encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(iv) of the Procurement Act of 1995, as per section 39c of Appendix B.

8.15 SERVICES WARRANTY

The Authorized User shall have the right to interview a Candidate, either in-person, by telephone, and/or via webcasting, to determine his/her qualifications. The qualifications must reflect the position of the specific job title requested. The Authorized User reserves the right to reject the Candidate if the Authorized User determines that the Candidate is not qualified based on the referenced job title and other mandatory requirements. An Authorized User has the right to request a replacement Candidate if the original selected Consultant is deficient in the performance of an assignment (see Section 9.5.4 for details on Consultant replacement).

To ensure all services conform to Contract specifications, the Contractor shall implement quality control procedures and a quality assurance plan.

Contractor shall warrant that the services acquired under this Contract will be provided in a professional manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety (90) calendar days from performance of the services that gave rise to the warranty claim.

8.16 SUBCONTRACTORS

Subcontractor is defined in Appendix B, Clause 5. Contractor agrees that all Contracts between the Contractor and its Subcontractors shall be by bona fide written Contract. Contractor further agrees that such bona fide written Contract shall mandate compliance with the terms and conditions of the resultant HBITS Contract. Contractor further agrees that it shall be fully liable for Subcontractor(s)' performance and compliance with all Contract terms and conditions. **A Contractor is required to identify any and all subcontractors involved with the placement of a consultant with an Authorized User. This includes subcontractors that are directly paying the Hourly Wage Rate to the hired consultant.** A Contractor shall also identify if any subcontractor is a New York State certified M/WBE. A Contractor serving as a Prime Contractor under this procurement is prohibited from also serving as a subcontractor to another Prime Contractor.

Contractor shall include in all subcontracts related to the Contract, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying:

- That the work performed by the subcontractor must be in accordance with the terms and conditions of this Contract including, but not limited to, **APPENDIX A**;

- That the subcontractor must pass through all terms and conditions of the contract, including but not limited to **APPENDIX A** and Hourly Wage Rate requirements, to any lower tier subcontracts;
- That nothing contained in such subcontract shall impair the rights of the Authorized User or the State;
- That nothing contained herein shall create any contractual relationship between any subcontractor and Authorized User or the State;
- That subcontractors shall maintain and protect against any unauthorized disclosure all records with respect to work performed under the subcontract in the same manner as required of the Contractor;
- That the State and/or Authorized User shall have the same authority to audit the records of all subcontractors as it does those of the Contractor; and
- That subcontractor shall cooperate with any investigation, audit, or other inquiry related to the Contract or the resulting Contract or any litigation relating thereto.

Contractor shall be fully responsible to Authorized User for the acts and omissions of, and the performance of Services by, all subcontractors and/or persons either directly or indirectly employed by such subcontractors. Contractor shall not in any way be relieved of any programmatic or financial responsibility under the Contract by the terms of its agreement with any subcontractor.

8.17 TAX LAW §5-A

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

Website 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/2007/killin/st/st220td_507_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. 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.

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

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

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/>.

8.18 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as “Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*” (“covered consultant Contract” or “covered consultant services”). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, OSC, DOB and CS. The effective date of these amendments is June 19, 2006. The requirements will apply to covered Contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - Contractor’s Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

Form B - Contractor’s Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such Employees.
3. Total compensation paid to all Employees that performed consultant services under such Contract.*

*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to CS and OSC as designated below:

Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

Office of the State Comptroller - Bureau of Contracts
110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller’s Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>

INSTRUCTIONS FOR COMPLETING FORM A AND B:

Form A and Form B should be completed for Contracts for consulting services in accordance with OSC’s Bulletin G-226 <http://www.osc.state.ny.us/agencies/gbull/g-226.htm> and the following:

Form A - Contractor’s Planned Employment Form (available from and submitted to the using Agency, if necessary.)

Form B - Contractor’s Annual Employment Report (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.)

Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.

*(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)*

Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

8.19 PREFERRED SOURCE PRODUCTS

NYS State Finance Law §162 requires that governmental entities afford first priority to the products/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such products/services meet the form, function and utility of the Authorized User.

8.20 INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

8.21 PLACEMENTS UNDER HBITS CONTRACTS

In the event of a successful placement of a Consultant by a Contractor, the State shall not renegotiate the terms and conditions of the Contract resulting from this RFP with the Contractor or the Consultant.

8.21.1 Minimum Utilization

The State, under this Contract, shall not be held liable for any minimum utilization of the Contractor's Consultants.

8.21.2 Terms and Conditions for Travel, Meals and Lodging

1. Consultants will not be separately reimbursed for expenses incurred for travel to and from a designated work location (commuting expenses).
2. During the course of an assignment, the Consultant may be required to perform services at a location other than the assignment's designated work location (e.g., the designated work location is the Authorized User's main offices in the Corning Tower on the Empire State Plaza, however, the Consultant is required to attend a meeting in New York City). In such cases, with the prior written approval of the Authorized User, the Contractor shall be reimbursed for mileage, lodging and meals to the extent authorized by the NYS Office of the State Comptroller as further set forth at: <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>.
3. Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User or the State to the Consultant for travel. Therefore, the Contractor will be responsible for ensuring that the Consultant has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel. For the Contractor to obtain reimbursement for the use of a rental

vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of Consultant time). The Contractor shall provide evidence of three (3) written or telephone price quotes, and the paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return.

4. The Contractor is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services.
5. The Authorized User shall have prior approval of any travel that occurs during a Consultant engagement.

8.21.3 Work in the United States

All work done by Consultants under the resultant HBITS contracts must be performed within the United States.

8.22 ADDITIONAL PAYMENT PROVISION

The State shall not be liable for the payment of any taxes under this Contract however designated, levied or imposed. No person, firm, or corporation is exempt from paying the State Truck Mileage and Unemployment Insurances Taxes and other Federal, State, and local taxes to which the Contractor is subject.

8.23 OWNERSHIP OF WORK PRODUCT

Contractor agrees that its Consultants are engaged to perform services and that the Authorized User shall have full and complete ownership of all deliverables prepared by such Consultant. At the end of the engagement, Contractor agrees that the Consultant shall provide all deliverables and materials to the Authorized User.

8.24 ADDITIONAL REQUIREMENTS FOR FEDERALLY FUNDED PLACEMENTS

As a condition of placements made with Authorized Users using Federal funds, a Bidder must agree to all terms and conditions contained in this section. Authorized Users shall be obligated to identify its use of federal funds in the Requisition Form.

8.24.1

Upon request by the Authorized User, the Contractor agrees to provide a written document stating compliance with Federal Executive Order 11246, the Copeland “Anti-Kickback Act” (18 USC 874), Section 508 of the Federal Clean Air Act, Section 306 of the Federal Clean Water Act. This document must also certify that neither the Contractor nor its principals are debarred or suspended from Federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by the Authorized User (see Federal Executive Order 12549 and 7 CFR Part 3017). **An affirmative statement to this effect is found in Attachment 4.**

8.24.2

The Contractor agrees to comply with the provisions of Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). By accepting this engagement, the Contractor certifies that it will provide a Drug Free Workplace by implementing the provisions at 29 CFR 94, pertaining to the Drug Free Workplace. In accordance with these provisions, a list of places where performance of work is done in connection with this specific engagement will take place must be maintained at your office and available for Federal inspection.

An affirmative statement to this effect is found in Attachment 4.

8.24.3

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Contractor or grantee (such as the State) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The State’s certification in general provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans and cooperative agreements) and that all sub-clients shall certify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. The Contractor understands and agrees to the Federal requirements for certification and disclosure. Upon request by the Authorized User, the Contractor agrees to provide such certification. **An affirmative statement to this effect is found in Attachment 4.**

8.24.4

The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to Public Assistance or Medical Assistance clients and providers of services or benefits, which is obtained by it through its performance under this Contract, as confidential information to the extent required by the laws of the State and of the United States and any regulations promulgated there under.

8.24.5

Rights to Information

The Contractor agrees that the Federal granting agency shall be granted a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such documents and software and to authorize others to do so for government purposes to the extent that the services which resulted in the production of such documents and software are Federally funded. The grant excludes the proprietary products, documentation, materials and information (and derivative works thereto) of Contractor, Contractor's subcontractors and third party product providers.

8.24.5.1

Except for personal information relating to clients and providers which shall be kept confidential pursuant to requirements of State or Federal laws, and information relating to the business and finances of the State or the Contractor, confidential information disclosed by one party to the other continues to be subject to this Contract for six years following termination of this Contract. No obligation of confidentiality applies to:

1. Information the Contractor already possesses without an obligation of confidentiality.
2. Information the Contractor develops independently from publicly available data.
3. Information the Contractor receives without obligation of confidentiality from a third party.
4. Information that is, or becomes, publicly available without breach of this Agreement.

8.24.6

The Contractor agrees that the United States Government shall be deemed an entity authorized to conduct an examination in accordance with the provisions set forth in Appendix A, §10 Records.

8.24.7

The responsible Federal governmental agency authorized by law, reserve the right to inspect, review, investigate or audit all parts of any services provided herein by the Contractor's or any subcontractors' or vendors' facilities engaged by the prime Contractor in performing services in this Contract. In such capacity, the Authorized User or its representative(s) must have access to facilities, records, reports, personnel and other appropriate aspects of services furnished by the Contractor, in accordance with the requirements of the State Public Officers Law except for proprietary information for which the disclosure of which would cause substantial injury to the competitive position of the Contractor's enterprise.

8.24.8

To the extent permitted by law, the Contractor shall promptly notify the Authorized User of any request by anyone for access to any records maintained pursuant to this Contract. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to the Authorized User provided that rights of confidentiality or proprietary interests are preserved.

8.24.9

Should the State determine that Federal funds are unavailable, the Authorized User may terminate all or any part of the engagement immediately upon notice to the Contractor. Such notification will be in written format. The Authorized User shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as the Contractor receives notice of termination in writing from the Authorized User.

8.24.10

Nothing in this Contract shall be interpreted to limit such rights as the Authorized User and the Federal Government must reserve to conform to all applicable Federal regulations, including 45 CFR Part 74, 45 CFR 95.617, 7 CFR Part 277 and 7 CFR Part 3016, and such rights are hereby reserved.

8.24.11

The Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

8.24.12

The Contractor and its Consultants shall comply with the with the Authorized User's policies regarding compliance with the Health Insurance and Portability Act of 1996 (HIPAA).

8.25 DEPARTMENT OF LABOR SPECIFIC TERMS AND CONDITIONS

The New York State Department of Labor has certain stipulations for federally funded Contracts that must be made pursuant to regulations and laws imposed by the United States Department of Labor. As a condition of placements made at the Department of Labor, a Bidder must agree to all terms and conditions contained in this section

If the funding for the engagements undertaken by the New York State Department of Labor pursuant to the HBITS Contracts is provided by the United States Department of Labor, the following certifications are required:

A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

1. The Bidder certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the Bidder is unable to certify to any of the statement in this certification, such prospective participant shall attach an explanation to this proposal.
3. The Bidder shall pass the requirements of A.1. and A.2., above, to each person or entity with whom the Bidder enters into a subcontract at the next lower tier.

D. NONDISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the Contractor assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- (1) Section 188 of the Workforce Investment Act of 1998 (WIA) which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I - financially assisted program or activity;
- (2) Title VI of the Civil Rights Act of 1964, as amended which prohibits discrimination on the basis of race, color, and national origin;
- (3) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; and
- (4) The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age. The Contractor also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to the Contractor's operation of the WIA Title I - financially assisted program or activity, and to all agreements the Contractor makes to carry out the WIA Title I-financially assisted program or activity.

SECTION 9. IT SERVICES TERMS AND CONDITIONS

All terms in this Section apply to both MSP and non-MSP Authorized Users, unless otherwise noted.

9.1 CPI ADJUSTMENTS

At the start of Contract Year 3 and Contract Year 5, the Contractor's Hourly Wage Rates in Attachment 6 will be subject to an increase equal to the percentage increase, not to exceed 3%, in the Consumer Price Index (CPI) for all urban consumers (CPI-U) as published 90 days prior to the anniversary date for the preceding 24 month period by the U.S. Department of Labor, Bureau of Labor Statistics, Washington D.C. 20212. In the event the CPI reflects a negative adjustment, the hourly rates for the preceding twenty-four month period will remain flat. The index is also available through the Internet at the Bureau of Labor Statistics web site at <http://stats.bls.gov/>. Go to "Inflation and Consumer Spending" then click "Consumer Price Index" and then click on "Tables created by BLS" then click on "Table Containing History of CPI-U U.S. All Items Indexes And Annual % Changes 1913 To Present."

9.1.1 Calculation of CPI Adjustment

Price adjustments using the CPI involve changing the base payment by the percent change in the level of the CPI between the reference period and a subsequent time period. This is calculated by first determining the index point change between the two periods and then the percent change. The price adjustment shall be calculated as follows. Take the CPI for the 3rd month prior to the month of the start date of the Contract and subtract this figure from the CPI value for the 3rd month prior to the anniversary date of the Contract. (e.g., if start date begins in December, use the September CPI). That sum is then divided by the CPI value for the original 3rd month prior to start date and this result is then multiplied by 100 to equal the percent change that is the price adjustment value. This percentage of increase or decrease shall be applied to the Contract year, effective on the latter of the anniversary date or upon notification by OGS/PSG.

The following example illustrates the computation of percent change:

$$\begin{array}{r}
 \text{CPI for current period} \quad 136.0 \\
 \text{Less CPI for previous period} \quad (-) \quad 129.9 \\
 \text{Equals index point change} \quad = \quad 6.1 \\
 \text{Divided by previous period CPI} \quad \div \quad 129.9 \\
 \text{Equals} \quad = \quad 0.047 \\
 \text{Result multiplied by 100} \quad 0.047 \times 100 \\
 \text{Equals percent change} \quad = \quad 4.7\%
 \end{array}$$

9.1.2 Agreement of CPI Adjustment

The MSP will calculate the CPI adjustment and transmit to the Contractor. The Contractor must submit the CPI-adjusted rates in the form and manner specified by OGS no later than 30 days prior to the start of Contract Year 3 and 5. OGS shall confirm acceptance of the adjusted hourly rates in writing as soon as time permits. OGS reserves the right to independently calculate the CPI adjustments using the formula described in Section 9.1.1. In the event of a discrepancy, the Contractor must provide its CPI calculations to OGS for review.

9.1.3 CPI Adjustments for Consultant Placements Already In Effect

Under no circumstance shall a CPI adjustment be granted to an existing placement. CPI adjustments can only apply to Hourly Wage Rates prior to the start date of a new engagement.

9.1.4 CPI Adjustment to Markup

Under no circumstance will a CPI adjustment be applied to the Markup percentages submitted in Attachment 6, Financial Proposal. For additional considerations regarding Markup percentages, please see Section 9.2.11.

9.1.5 Government Mandated Program Price Adjustments

The State may, at its sole discretion, address the issue of Government Mandated Program Price adjustments on a case by case basis if and when such a government mandate comes to pass.

9.2 CONTRACTOR INTERACTION WITH AUTHORIZED USERS

As part of the MSP layer that is described in Section 3, Contractors will have frequent interaction with MSP staff who will administer this Contract. This Section outlines the key responsibilities and requirements that each Contractor must fulfill during the length of the Contract.

9.2.1 Contract Administrator

Contractor must provide a dedicated Contract administrator to support the updating and management of the Contract on a timely basis. This individual will act as the primary point of contact for Authorized Users and the MSP. This individual must be identified within 20 business days of notification of award. It is expected the Contract Administrator will fully understand the terms and conditions of this RFP and the resulting Contract.

The State seeks a person at the Contractor's management level to meet the needs of this position; therefore, this position must not and cannot be staffed by the Contractor's clerical personnel.

9.2.1.1 Secondary Contact

The Contractor must also identify a secondary point of contact for Authorized Users and the MSP in the event that the primary point of contact, that is the Contract Administrator, is unavailable. This individual must also be identified within 20 business days of notification of award. This position may be staffed by whomever the Contractor determines can provide the best service to the State, however, the individual assigned may not act as the Contract Administrator.

9.2.2 Toll-Free Number

The Contractor must provide a toll-free telephone number for the Authorized User usage which must be staffed at a minimum from 9:00 AM to 5:00 PM Monday through Friday. The Contractor must provide the toll-free number to OGS within 20 business days of notification of award.

9.2.3 Webcasting

The Contractor must have access to Webcasting technology, such as Skype or GoTo Meeting, throughout the life of this Contract. This service must be provided to the State and Authorized Users free of charge. Authorized Users may have security restrictions which preclude them from installing certain kinds of applications, software, and/or hardware.

OGS expects this technology to be utilized for Contractor meetings with OGS and Authorized Users. In addition, prospective Candidates offered by the Contractor may be expected to interview with the Authorized User via this technology. An Authorized User reserves the right to conduct Candidate interviews via the Contractor's Webcasting technology. An Authorized User also reserves the right to conduct in-person interviews for any Candidate placement.

A Contractor must provide a listing of the relevant Webcasting technologies to OGS within 20 business days of notification of award.

9.2.4 Administrative Fee

A Contractor is required to pay an Administrative Fee to the State in the amount of 0.75% for all sales under this Contract for Hourly-Based IT Services. This includes both sales to MSP users and non-MSP users. Costs associated with travel that are billed to the State are excluded from the Administrative Fee (see Section 8.21.2 for travel terms and conditions). These payments will be in accordance with the following schedule:

Payment No.	Billing Period for Each Calendar Year	Administrative Fee Due Date
1st Payment	January 1 st to March 31 st	May 1st
2nd Payment	April 1 st to June 30 th	August 1 st
3rd Payment	July 1 st to September 30 th	November 1st
4th Payment	October 1 st to December 31 st	February 1 st (of following calendar year)

Failure to remit payment in accordance with the above listed schedule shall affect the Contractor's yearly performance score. Repeated failure to remit the Administrative Fee may result in OGS terminating the Contract for cause. OGS shall communicate details of remittance payments upon award of Contracts, including form of acceptable payment and to what New York State Entity payments shall be remitted.

The State shall have the right to verify fee payments and to take any action(s) necessary to enforce its rights under the Contract and the requirements of this initiative, including but not limited to the right to stop payments until such fees are received, review Contractor's financial records pertaining to sales under their Contract and/or this initiative or suspend further sales under the Contract.

9.2.5 Quarterly Meetings with Managed Services Provider

The MSP, on behalf of the State, reserves the right to hold mandatory quarterly meetings in Albany, NY with a Contractor. At a minimum, the Contractor's designated Contract Administrator must be in attendance. The State reserves the right to meet individually with Contractor's staff. These meetings may be used as a venue to communicate interim Contractor performance findings. See Section 9.4 for Contractor Performance Criteria. The format of such meetings will be determined by OGS and communicated to Contractors prior to the meeting.

If the Contract Administrator is unable meet with the MSP, the MSP reserves the right to meet with whom it deems appropriate. It is expected these meetings will be held during the calendar months of January, April, July and October during the term of this Contract.

The Contractor shall also be available for meetings upon the State's request.

9.2.6 Report of Contract Purchases

The Contractor shall furnish quarterly reports, using the format specified in Attachment 3, containing total sales for both State Agency and Authorized non-State Agency Contract purchases no later than thirty (30) business days after the close of each calendar quarter. The report is to be submitted electronically in Microsoft Excel 2007 or higher format to the attention of the individual shown on the front page of the Contract Award Notification. Additional related Contract purchase information may be required and must be supplied upon request.

In any of the sales involved the use of a subcontractor, the Contractor shall both identify and verify if each subcontractor is a MBE, WBE, or is a New York State Certified Minority and Women Owned Business (M/WBE). Contractors shall verify such status through the Empire State Development Minority- and Women-Owned Businesses Database web site at: <http://www.esd.ny.gov/MWBE/directorySearch.html>.

The State reserves the right to modify the individual(s) and/or State governmental entity designated to receive these quarterly reports.

9.2.7 M/WBE Compliance

The MSP, on behalf of OGS, will be measuring M/WBE compliance as part of Contractor Performance Criteria. See Section 9.4 for a list of all Contractor Performance Criteria.

9.2.8 Format of Placement Response

The Contractor must comply with the State's format for requesting information about potential Candidates for Authorized Users. The State shall supply Contractors with this format for Candidates' information prior to the start of the Contract, time permitting.

9.2.9 Maintenance of Active and Waitlist Contractors

The MSP shall maintain the list of Active and Waitlisted Contractors. The MSP shall publish the list of each Contractor's status on the website containing the Contract details.

9.2.10 Authorized User Feedback

Authorized Users of the Contract resulting from this RFP will submit all feedback to the MSP. This information will include, but is not limited to the following: Candidate resume review, Candidate interviews, consultant performance, Contractor performance, etc. Authorized Users shall provide this information to the MSP, upon request, in a timely fashion. See Section 9.4 of this RFP for more detail on Contractor Performance Criteria.

9.3 CANDIDATE PLACEMENT REQUIREMENTS

Prior to Candidate placement with an Authorized User, the Contractor must comply with a series of requirements for each proposed Candidate. The Contractor will ensure that the provisions of this section are incorporated within all sub-

Contracts, and acknowledges the responsibility for ensuring that these provisions are fully complied with by all subcontractors. The Contractor's agreement to comply with the provisions of this section is a material representation of fact upon which reliance was placed when the Authorized User determined to enter into an engagement with the Contractor. The Contractor shall provide this information in form and manner requested by OGS.

1. **Eligibility to Work:** The Contractor must validate that the proposed Candidate is either a U.S. Citizen or non-U.S. citizen.
 1. Where the Candidate is a U.S. citizen, the Contractor must identify the proposed Candidate with, at a minimum, the first and last name of the Candidate as it appears on his/her Driver's License, Non-Driver's Identification Card, or other accepted forms of government identification.
 2. Where the Candidate proposed is not a U.S. citizen, the Contractor shall identify such to the Authorized User.
 3. Where the Candidate proposed is not a U.S. citizen, the Contractor must identify the proposed Candidate with, at a minimum, the first and last name of the Candidate as it appears on his/her Visa and/or Passport. No other names or derivations may be used.
 4. The Contractor must retain all necessary paperwork throughout the length of each Consultant's engagement with an Authorized User.
 5. The Contractor is responsible for ensuring each Consultant retains the authorization to legally work in the United States throughout the term of each engagement based on the length of term identified in the Requisition Form.
2. **Background Check:** An industry standard criminal history background check and all sound screening practices must be done prior to a Candidate's official start date. The Authorized User reserves the right to view the contents of a background check prior to approving the Candidate.
 1. If the Contractor is unable to determine a Candidate's fitness due to the results of a criminal history/security background check, as discussed herein, the Contractor shall forward a description of the results to the MSP and/or Authorized User, for review and determination. Such review and determination by the MSP and/or Authorized User shall be conducted in accordance with Correction Law Article 23-A. In conducting a criminal history/security background check, the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. If it is later determined that the Contractor knowingly, rendered a false positive determination of a Candidate's fitness, failed to conduct a criminal history/security background check, or failed to reasonably interpret the results in confirming a Candidate's fitness to perform duties under the terms of this Contract, in addition to any other remedies available to the MSP and the Authorized User, the Authorized User may terminate the Candidate placement for cause.
 2. The Contractor shall provide immediate written notice to the Authorized User if at any time the Contractor learns that its determination of a Candidate's fitness to perform duties under the terms of this Contract was erroneous or has changed by reason of changed circumstances.
3. **Education Credential Validation:** An Authorized User may require an associate's degree, bachelor's degree, or a higher level of degree as a requirement of the placement. For those Candidates who obtain an educational credential from a foreign institution, defined as institutions residing outside the United States, the credential must be verified by a company approved by the NYS CS (<http://www.cs.state.ny.us/jobseeker/degrees.cfm>).
 1. The Contractor shall retain this proof of degree equivalency at all times.
 2. The Contractor shall provide proof of degree equivalency to the State when responding to a Candidate placement request.
4. **Pre-Interviews:** The Contractor must interview each proposed Candidate and verify his/her qualifications prior to presenting a Candidate
 1. The Contractor shall be responsible for standing behind the accuracy of each proposed Candidate placement's work history, resume, technical skills, certifications, educational credentials, references and all other information presented to the MSP or non-State Agency Authorized User for review
5. **Employment Status:** When responding to a request, the Contractor must identify if the proposed placement will be a direct employee of the Contractor, an employee of a subcontractor or an independent contractor.
 1. If the Candidate is a subcontractor, the Contractor must provide the name, address and telephone number of all subcontractors involved in the placement. If there are two or more subcontractors involved in any Candidate placement, each subcontractor must be listed.
 2. If the Contractor fails to properly identify a Candidate's employment status, the Authorized User may immediately terminate the placement.

6. **S/M/WBE Status:** The Contractor must identify if the proposed Candidate will be provided by a New York State certified M/WBE and/or a business that meets the definition of a New York State small business.
7. **H1-B Status:** The Contractor must identify if the proposed Candidate will be working under a H1-B Visa during the time of the placement.
8. **Anticipated Absences:** The Contractor shall identify any dates in which the proposed Candidate will be unavailable during the duration of the proposed engagement.
 1. This includes absences related to work visas.
9. **Availability for Interview:** The Authorized User will provide timeframes to the Contractor for Candidate interviews.
 1. The Contractor shall make all reasonable efforts to accommodate the interview schedule of the Authorized User.
 2. As denoted in Section 9.2.3, an Authorized User may request to conduct an interview via the Contractor's Webcasting technology. The Contractor shall ensure the proposed Candidate is able to conduct an interview via Webcasting.
 3. The State reserves the right to conduct in-person interviews at no cost to the State.

9.3.10 Additional Requirements from Authorized Users

An Authorized User may have distinct requirements that must be met by all individuals employed by or working at the Authorized User. The Contractor's Consultants will be expected to comply with these requirements as a condition of the placement.

1. An Authorized User may at its discretion request additional background checks to be conducted, at the expense of the Authorized User, including, but not limited to, finger-printing and the signing of a confidentiality and/or a non-disclosure agreement.
2. An Authorized User may also conduct its own background checks at the expense of the Authorized User.
3. An Authorized User may require Candidates to provide photo identification such as a NYS Driver's License, Non-Driver's Identification Card, Passport, etc. in order to receive a State Identification card used for entrance into the Authorized User's building and/or facilities.
4. An Authorized User may require its Consultants to attend training, both for professional development and as required by State law or in accordance with the policy of the Authorized User. If required by an Authorized User, attendance at training sessions, during the course of a placement, will be mandatory. For trainings in which attendance will incur a cost on the attendee, the Authorized User shall pay for the Consultant's attendance.
 - a. Authorized User-mandated training is intended to augment a Consultant's skills in order to better perform on a current engagement. It is not intended to provide Consultants with the skills originally specified by the Authorized User in the Requisition Form.
5. Authorized Users may specify the manner and method by which the Consultant shall participate in knowledge transfer at the time of placement or at any time during the Consultant engagement.

9.3.11 Multiple Placement Requests

Contractors cannot submit the same Candidate for multiple placement requests until such Candidate is released from consideration by the MSP. If a Candidate is released the Contractor may resume submitting such individual's resume for other requests. Candidates selected for interview will not be considered released until the selection is made by the Authorized User.

Once a Consultant has begun an engagement, such Consultant will not thereafter be taken off of the engagement by the Contractor, or proposed by Contractor to fulfill a separate New York State engagement through the HBITS Contract unless the new engagement has a start date after the end date of the current engagement.

9.4 CONTRACTOR PERFORMANCE CRITERIA

As discussed in Section 3, a Contractor will be annually evaluated on its performance of contractual duties. By doing so, the State seeks continued performance and quality Candidates from its Contractors throughout the life of this Contract. The Performance Criteria below are not listed nor weighted in any particular order. All Contractors will be evaluated in a similar manner. Criteria 1 - 18 will be evaluated based on transactions with MSP users; criteria 19 will be evaluated based on transactions with non-MSP users.

The Contractor will be evaluated on all Performance Criteria as outlined in this Section.

1. Contractor will maintain an adequate organizational structure and resources sufficient to discharge its contractual responsibilities including time sheets, invoicing, billing and personnel issues;
2. Contractor will continue to be able to conduct business in NYS, pay taxes and be financially sound to fulfill obligations of this Contract;
3. Contractor will notify the State in writing of any relevant changes in an Consultant's status;
4. Contractor will be responsive to Authorized User concerns including the return of telephone calls and e-mails no later than two (2) business days.
5. Contractor will submit all required Form A and Form B reports as stated in Section 8.18. These reports must be submitted to the Authorized User, CS and OSC for all placements made against this RFP and its resulting Contracts by May 15th of each calendar year.
6. Contractor will submit all quarterly M/WBE compliance reports to the Authorized User for all placements made against this RFP and its resulting Contracts. Contractor shall comply with the Authorized User's reporting format for M/WBE compliance.
7. Contractor's best efforts to meet the Minority-owned Business Enterprises (MBE) participation goal of 11% and the Women-owned Business Enterprises (WBE) participation goal of 9%. See Appendix C for Contractor's requirements.
8. Contractor will remit the Administrative Fee in Section 9.2.4 in accordance with the outlined schedule.
9. Contractor will maintain all adequate insurance as identified in Section 9.6. The State reserves the right verify a Contractor's insurance levels at any point during this Contract.
10. Contractor will enforce all terms and conditions of this Contract with all independent contractors and subcontractors. The Contractor will retain full responsibility for the performance of subcontracted employees or independent contractors under this Contract, such as a failure to fulfill the terms and conditions.
11. Contractor will pay the Hourly Wage Rate, within the Slight Deviation as defined in Section 1.6, to each of its Consultants as specified in Attachment 6. The MSP will account for instances in which it finds that Consultants are not being compensated at the Hourly Wage Rate within the Slight Deviation.
12. Contractor must commit to paying Consultants no later than 15 business days after receiving payment from the Authorized User.
13. Contractor will be evaluated on the time and attendance of Candidate placements. Lateness is defined as late arrival to the agreed upon working hours with the Authorized User. Repeated lateness by a single employee is grounds for termination of a placement based on the discretion of the Authorized User. In addition, repeated lateness by multiple placements from a single Contractor will be considered by the MSP as part of the Contractor's performance criteria.
14. The MSP will evaluate all Authorized User feedback from both resume review and interview of prospective Candidates. A Contractor who receives both repeated positive and negative feedback will be scored accordingly.
15. Contractor will ensure prospective placements are available for interview by Authorized User on the agreed upon times. A Contractor who repeatedly reschedule interviews or fail to provide placements for the interview will be scored accordingly.
16. Contractor will provide potential Candidates to at least 60% of placement requests from Authorized Users during each Contract year within the specified time period of five (5) to ten (10) business days. However, if Contractors respond to 75% or more of placement requests, it will be accounted for in the evaluation process.
 1. For the purposes of this Contract, a response to a placement request is defined as providing a Candidate resume for review within the time period specified.
17. Contractor will be evaluated on their compliance with the Candidate placement requirements in Section 9.3.
18. Contractor will be evaluated on quality of each of its Consultant's performance, on factors including but not limited to: Authorized User feedback on Consultant performance and quality of work product, compliance with Authorized User work place rules, and the need to replace Consultants within one month of engagement commencement (see Section 9.5.4 on Consultant Replacement).
19. Contractor will be evaluated based on the satisfaction of non-MSP Authorized Users.

9.5 AUTHORIZED USER REQUIREMENTS

9.5.1 Requirements Prior to Using the Contracts

Prior to engaging the MSP, an Authorized User must obtain all required approvals. For example, an Executive Agency must obtain internal agency approvals, approvals from the Office for Technology and the Division of Budget (if required), and federal approvals (if required).

The process as outlined in Section 3 seeks to streamline the current process that is used to acquire HBITS. It is important for this process to be nimble and efficient. This RFP imposes the same streamlined process on all Authorized Users. It is expected this process will benefit both Contractors and Authorized Users as more definitive start dates for Consultants can be determined.

9.5.2 Requirements at Time of Contract Use

The Authorized User reserves the right to select the level of personnel for the tasks to be performed, as well as to stipulate the length of time that such personnel will be retained, provided that the Authorized User provides such information to the Contractor prior to the commencement of work.

9.5.2.1 Candidate Qualification Review

An Authorized User (both MSP and non-MSP users) will be expected to provide the following information, where available, when requesting a Candidate placement:

1. Job title and Level
2. Skill Demand
3. Home Base- Region
4. Office Location and anticipated work hours
5. Engagement Length (2-24 Months)
6. Projected Start Date
7. Job Specifications, including but not limited to:
 1. Environment
 2. Hardware and software used by the Authorized User
 3. Day to day tasks of the position
 4. Desirable Experience Requested in addition to mandatory requirements
 5. Role context – Is it part of large-scale project, day-to-day maintenance of mission critical systems, etc.
 6. Travel requirements associated with the placement
8. Additional Security Requirements, such as fingerprinting or additional screenings required and if a confidentiality/non-disclosure agreement must be executed
9. Identify if budgetary approval to fill position has been received
10. Identify if it is a new or incumbent position
11. Identify, where applicable, if attendance at trainings will be anticipated during the engagement
12. Identify, where applicable, the type or manner of knowledge transfer requested during the engagement.
13. It is anticipated that OGS will create and implement a template Requisition Form to be utilized for all Authorized Users.
14. Identify federal funding source (if applicable) and whether federal-specific terms of this Contract apply.

9.5.2.2 Candidate Placement Resume Review

The MSP will forward those qualifying resumes to the Authorized User. Upon receipt of resumes, an Authorized User is recommended to evaluate Candidate resumes within five (5) business days and to advise the MSP if interviews will be conducted with any of the submitted Candidates. Authorized User shall work directly with the Contractor to schedule and confirm Candidate interviews.

Authorized User shall provide the MSP with the appropriate feedback on each of the Candidates presented for initial review and interview. The Authorized User reserves the right to reject all Candidate resumes provided by the Active Contractors. In this case, the MSP shall re-engage the Active Contractor pool for Candidate resumes.

9.5.2.3 Candidate Interview

The Authorized User shall have the right to interview Candidates to determine his/her qualifications. The qualifications must reflect the position of the specific job title requested. The Authorized User reserves the right to reject the Candidate if the Authorized User determines that the Candidate is not qualified based on the referenced job qualifications.

Authorized User reserves the right to conduct in-person interviews for any Candidate placement. An Authorized User shall undertake its best efforts to schedule interviews with identified candidates within five (5) business days of advising the MSP of the candidates the Authorized User intends to interview.

9.5.2.4 Candidate Selection

The Authorized User (not the MSP) shall have final hiring authority of all Candidate placement requests.

9.5.3 Requirements During the Engagement

1. The Authorized User shall inform the Contractor of the Consultant's direct supervisor and/or the person responsible for signing the Consultant's time card.
2. The Authorized User is responsible for the provision of reasonable office space, utilities, janitorial services, security, work-related telephone service and furniture (desks, chairs, work tables) necessary for the Contractor's performance of services under this Contract. The Authorized User will also provide forms, equipment, including necessary computer hardware and software, and supplies necessary for the consultant to complete the tasks associated with the engagement.
3. The Authorized User shall provide all workplace rules to the Consultant. This includes, but is not limited to, the following: Time and attendance policy, time card submission, building access procedures, request for leave, computer/phone usage guidelines, and other agency policies (such as Drug-free Workplace Policy Statement, Workplace Violence Policy, and smoking policy).
4. Any Consultant that an Authorized User deems unfit to perform a position at the time after Placement start date shall be recorded by writing the Contractor and the Managed Service Provider and may result in that Consultant's termination under this engagement.
5. The Authorized User shall have prior approval of any and all Consultant absences, such as vacation days not previously identified during the Requisition process.
6. The Authorized User shall indicate the manner in which it requests knowledge transfer to occur from the Consultant to the Authorized User's staff.
7. The Authorized User shall indicate any training that the Consultant must attend.
8. The Authorized User shall indicate a change in working hours where appropriate, not previously specified during the Requisition process.

9.5.4 Consultant Replacements

OGS recognizes that circumstances may arise that necessitate Consultants to be substituted during the engagement. Replacement of Consultants will not be grounds for an increase in the Hourly Wage Rate or Markup, or an extension of the time for completion of the engagement. When providing a replacement Candidate, Contractor must respond in the format of the original Requisition. Any replacement Candidate must meet or exceed all requirements as set forth by the Authorized User in the original Requisition. Replacement Candidates are subject to all Candidate Placement Requirements in Section 9.3.

The Contractor expressly acknowledges that if the Contractor or the chosen Consultant does not fulfill the obligations of the Contract, costs to the Authorized User to replace the Consultant's services will result, and establishing the precise value of such costs would be difficult and time consuming.

Contractors are reminded that Appendix B, Clause 60 (e) states that an Authorized User retains the right to cancel a Purchase Order for convenience upon at least thirty (30) calendar days written notice to Contractor without penalty or other early termination charge. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. If the Purchase Order is cancelled pursuant to this section, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of cancellation.

9.5.4.1 Rapid Replacement (under 1 month)

In the event it becomes necessary to replace a Consultant prior to the completion of one month (160 hours) of work on a particular engagement, the Contractor shall provide the Authorized User with five (5) business days prior written notification describing the circumstances of the need for replacement. The Contractor shall identify a comparable replacement for the Authorized User within ten (10) business days. The Authorized User reserves the right to do one of the following:

- Allow the originally selected Contractor to provide a replacement Consultant if the replacement is necessitated by Consultant termination, sickness, or other similar material change in the employment circumstance of the Consultant. Contractor acknowledges that the failure to provide a consultant for the duration of the engagement constitutes a breach of contract and that as a liquidated damage, the Authorized User has the right to receive up to two working weeks (80 hours) of work from the replacement Consultant, at no cost to the Authorized User, during a transition/ramp-up period. This liquidated damage may be waived in whole or in part if it is determined that the need to replace the Consultant was beyond the control of the Contractor.
- Award the engagement to the next Candidate based on the initial Requisition.
- Terminate the engagement with the Contractor.

9.5.4.2 Steady State Replacement (1 month and over)

In the event it becomes necessary to replace a Consultant during the term of the engagement after one month (160 hours) of work, due to Consultant termination, sickness, or other similar material change in the employment circumstance of the Consultant, the Contractor shall provide the Authorized User with 20 business days prior written notification describing the circumstances of the need for replacement. The Contractor shall also identify a comparable replacement for the Authorized User within ten (10) business days. The Authorized User has the right to receive up to two working weeks (80 hours) of work from the replacement Consultant, at no cost to the Authorized User, during a transition/ramp-up period. This right may be waived in whole or in part if it is determined that the need to replace the Consultant was beyond the control of the Contractor.

The Authorized User reserves the right to terminate the engagement with the Contractor if a replacement is required.

9.6 INSURANCE

9.6.1 General Conditions

A Bidder must commit to obtaining all necessary proof of insurance via the Affirmative Statement section of the Administrative Proposal.

Upon tentative award, Bidder shall be required to procure all required insurance. If awarded a Contract, Contractor must provide proof of current insurance within twenty (20) business days of tentative award and throughout the Contract term if requested by an Authorized User or OGS. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (“admitted” carriers) with an A.M. Best Company rating of “A-” Class “VII”. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services (“OGS”) and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report. OGS may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OGS to accept insurance placed with a non-authorized carrier under any circumstances.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

9.6.1.1 Conditions Applicable to Insurance

All policies of insurance required by this Contract must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified in Paragraph B *Insurance Requirements* below.
2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by OGS, policies must be written on an occurrence basis.
3. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS, insurance within twenty (20) business days of tentative award before commencing any work under this Contract. Certificates shall reference the Contract Number. Certificates shall be mailed to the Office of

General Services, Procurement Services Group, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to OGS. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- Be in the form approved by OGS.
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.
- Specify the Additional Insured and Named Insured as required herein.
- Refer to this Contract by number and any other attachments on the face of the certificate,
- When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in OGS or the Authorized User's own policy of insurance.
5. Policy Renewal/Expiration. At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further Contract payments, treat such failure as a breach or default of the Contract.
6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. Subcontractors. Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Contract the endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OGS.

Acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall name The People of the State of New York, its officers, agents, and employees as additional insured to the extent of the liabilities assumed by Contractor as set forth in the Indemnification

Section of this Agreement. The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

9.6.2 Insurance Requirements

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a Contract) and explosion, collapse & underground coverage.

If such insurance contains an aggregate limit, it shall apply separately on a per job basis.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
 - Products – Completed Operations Aggregate \$1,000,000
 - Personal and Advertising Injury \$1,000,000
 - Each Occurrence \$1,000,000
2. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included. 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 for this Contract. See Section 9.6.3 below.
 3. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
 4. Professional Liability: The Contractor shall maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.
 1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
 2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS prior to the policy's expiration or cancellation.
 5. Crime Insurance.
 - The policy shall be issued with limits of \$50,000.
 - The policy shall include coverage for all directors, officers, agents and employees of the Contractor.
 - The policy shall include coverage for third party fidelity and name the State of New York as loss payee.
 - The policy shall include coverage for extended theft and mysterious disappearance.
 - The policy shall not contain a condition requiring an arrest and conviction.
 - Policies shall be endorsed to provide coverage for computer crime/fraud.

6. Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

9.6.3 Workers' Compensation Insurance and Disability Benefits Requirements

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

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

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

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

A Contractor seeking to enter into a Contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission:

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

2. Proof of Compliance with Disability Benefits Coverage Requirements:

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

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

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

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

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes,

except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B
GENERAL SPECIFICATIONS

GENERAL

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

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

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

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

a. **Appendix A** (Standard Clauses for NYS Contracts)

b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.

c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.

d. **Bid Documents** (Other than Appendix A).

i. Bid Specifications prepared by the Authorized User.

ii. Appendix B (General Specifications).

iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.

e. **Contractor's Bid or Mini-Bid Proposal**.

f. **Unincorporated Appendices** (if any).

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

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

BID DOCUMENTS Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS Contracts), Appendix B, (General Specifications). Where

these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term “Bid Documents” shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

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

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

COMPTRROLLER Comptroller of the State of New York.

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

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

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

c. Back-Drop Contracts Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be

accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the licensed version of a Product as may be generally offered and available to

Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

sealed envelope to ensure that the Bid is not prematurely opened.

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

"BID ENCLOSED (bold print, all capitals)

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

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

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

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

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

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

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

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

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

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

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

resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

b. Commissioner or Authorized User Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any

Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

15. RELEASE OF BID EVALUATION MATERIALS

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

16. FREEDOM OF INFORMATION LAW

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

17. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

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

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

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

b. Prevailing Wage Rate Applicable to Bid Submissions

A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

c. Wage Rate Payments / Changes During Contract Term

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

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

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

ii. **Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and

affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only

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

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

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

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

18. TAXES

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

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

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

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

19. EXPENSES PRIOR TO CONTRACT EXECUTION

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

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

21. PRODUCT REFERENCES

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

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

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

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

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

24. PRICING

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

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

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

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

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

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

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

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

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

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

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

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

g. Best and Final Prices As specified in the Bid Documents and Contract, a Contractor may be solicited

at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

25. DRAWINGS

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

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

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

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

27. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase Orders or Purchase

Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

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

28. SAMPLES

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

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

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

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

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

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

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

BID EVALUATION

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

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

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

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

33. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

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

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

36. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or

reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

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

TERMS & CONDITIONS

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

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

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

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

c. Voluntary Extension Purchase Orders issued against a State Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional

entities authorized to utilize commodity Contracts under Section 163 (3) (iv) of the State Finance Law.

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

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

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

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

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product

literature, “shrink wrap” terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User’s subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

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

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

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

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

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

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective

and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

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

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

45. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately

notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

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

47. SHIPPING/RECEIPT OF PRODUCT

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

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

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

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the

delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

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

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

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

Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PARTS / COMPONENTS

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

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

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

56. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm

or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

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

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

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

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

issues a formal written notice authorizing a resumption of performance under the Contract.

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

60. TERMINATION

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

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

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

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

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

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

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

a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or

b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or

c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's

performance that continued performance of the Contract would result in a substantial loss.

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

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

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

63. DEFAULT – AUTHORIZED USER

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

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

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

the specific facts, circumstances and grounds upon which a breach will be declared.

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

64. INTEREST ON LATE PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety

Data Sheet must be provided to and approved by the Authorized User agency representative.

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

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

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

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

72. ADDITIONAL WARRANTIES Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

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

b. Title and Ownership Warranty Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual

license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

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

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

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

Where Contractor, the Independent Software Vendor "ISV," or other third party manufacturer markets any Project Deliverable delivered by or through Contractor

with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

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

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

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

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

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

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data

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

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

h. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

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

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

74. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or

negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.

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

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

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

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

cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

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

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

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

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

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

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

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

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

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

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

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

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

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

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the

Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

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

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

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if

such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

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

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

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

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

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

79. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and

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

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

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

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

set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

80. AUDIT OF LICENSED PRODUCT USAGE

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

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

(ii) For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work

under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

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

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

(i) Existing Products:

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

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

(ii.) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether

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

c. Transfers or Assignments to a Third Party Financing Agent

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

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

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

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

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

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

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

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

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

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

85. NO HARDSTOP/PASSIVE LICENSE MONITORING

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

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and

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

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

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

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

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

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APPENDIX C

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

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

Policy Statement

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("the Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program.

Equal Employment Opportunity Requirements

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

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

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

For purposes of this procurement, OGS hereby establishes a goal of 11% for Minority-owned Business Enterprises (MBE) participation and 9% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE), for a total contract MWBE goal of 20%. A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract and Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/MWBE.html>. For guidance on how OGS will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

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

By submitting a bid or proposal, Offeror/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Offeror is required to submit a Utilization Plan on Form MWBE 100 with their bid or proposal. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State contract and a description of the Contract scope of work that the Contractor intends to structure to meet the goals on the State contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract that the Contractor intends to be performed by a NYS Certified minority- or woman-owned business. Any modifications or changes to the agreed participation by NYS Certified M/WBEs after the Contract Award and during the term of the Contract must be reported on a revised M/WBE Utilization Plan and submitted to OGS.
- B. OGS will review the submitted MWBE Utilization Plan and advise the Offeror of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- C. If a notice of deficiency is issued, Offeror agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OGS Office of Minority and Women-Owned Enterprises, [35th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 Phone: (518) 473-7083 Fax: (518) 486-2679], 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 Offeror and direct the Offeror to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form MWBE101/BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. OGS may disqualify an Offeror as being non-responsive under the following circumstances:
 - a) If an Offeror fails to submit a MWBE Utilization Plan;
 - b) If an Offeror fails to submit a written remedy to a notice of deficiency;
 - c) If an Offeror fails to submit a request for waiver; or
 - d) If OGS determines that the Offeror has failed to document good faith efforts.

An Offeror who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver on form MWBE 101/BDC 333, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses B-D above, will apply.

A 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.

A Contractor is required to submit a Contractor's Monthly Compliance & Payment Report on Form MWBE 102 to the OGS Office of Minority and Women-Owned Enterprises, [35th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 Phone: (518) 473-7083 Fax: (518) 486-2679], by the 10th day of each month during the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

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

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