

New York State Office Of General Services
Procurement Services Group
Corning Tower Building
Empire State Plaza
Albany, New York 12242
<http://www.ogs.ny.gov>

PURCHASING MEMORANDUM

BID SOLICITATION UPDATE

IFB NUMBER: 22458

DATE: February 24, 2012

GROUP: 05900 – NATURAL GAS
(Firm Supply – Fixed and Indexed Price)
(Interruptible Supply – Indexed Price)

**PLEASE ADDRESS INQUIRIES TO
DESIGNATED CONTACTS:**

Colleen Messier
Purchasing Officer I
(518) 474-1108
colleen.messier@ogs.ny.gov

BID OPENING: February 29, 2012

Edwin Lucier
Team Leader
(518) 474-3540
edwin.lucier@ogs.ny.gov

SUBJECT: BID UPDATES AND CLARIFICATIONS TO VENDOR
SUBMITTED SOLICITATION QUESTIONS.

TO PROSPECTIVE BIDDERS:

Clarifications to the IFB are being made as noted on the following pages. Bids will be evaluated based on these changes.

If submitting a bid, this page and page 6 should be signed, attached to, and made a part of your bid.

BID OF (COMPANY): _____

ADDRESS: _____

CITY, STATE, ZIP: _____

SIGNATURE OF BIDDER: _____

PRINTED COPY OF SIGNATURE: _____ DATE: _____

NOTE: This Purchasing Memorandum consists of clarifications and responses to questions received from potential bidders.

PAGE UPDATES

PAGE 8, under Method of Award, 2nd sentence. Has been changed to read as follows:

Grand Total for all items within the Lot, to the lowest responsive and responsible bidder for the Lot determined to be in the best interest of the State based on a predetermined formula that takes into consideration factors such as alternate fuel cost, transportation charges and historically averaged interruptions.

PAGE 11, Under Definitions. Added:

Forward Basis Price - The forward basis cost shall be that cost quoted from a bonafide service such as Platts, Bloomberg or Clearport that is recognized by the Industry as indicative of forward natural gas deliveries. The publication shall be agreed to at contract award and incorporated into this contract.

PAGE 12, under Trigger Price (Firm Supply Only). Has been changed to read as follows:

The per Dth Commodity Charge for any volume designated by the Buyer (purchasing agency) for any month(s) during the Delivery Period may be converted from an indexed price to a fixed price by agreement of the parties ("Triggered") at any time prior to 12:00 noon on the 2nd day prior to the expiration date of such month's NYMEX futures contract (the "Pricing Deadline") in accordance with the procedures set forth below. If the parties do not agree on a price by the Pricing Deadline for any month during the Delivery Period, the commodity charge for that month will default to the index formulas set forth in herein. Once awarded, the parties agree that the Buyer has the right, but is not required, to trigger up to 100% of all Natural Gas needs for use during the contract period.

PAGE 13, under Trigger Price, 2nd paragraph

In the event that the triggering option is utilized, the final price for the given term will be determined as follows:

$$\text{Commodity Charge} + \text{Basis Cost} = \text{Triggered Price}$$

Has been changed to read as follows:

$$\text{Triggered price} + \text{Basis cost} = \text{Final price}$$

PAGE 13, under Trigger Price, the following is added:

All volumes in excess of the Triggered volumes used in a given month will be purchased at the awarded contract price.

PAGE 13, under Indexed Price – Firm Supply

The 6th bullet (listed below) has been removed from this IFB.

- The customer/facility can burn an alternate fuel for the purpose of testing or maintaining the equipment's capability of burning an alternate fuel, or in the event of the need for fuel tank turnover (burning and replacing the alternate fuel) to maintain the integrity of stored fuel. The customer/facility MUST notify the ESCO via e-mail at least 14 days prior to switching. The customer/facility MUST provide the ESCO with an estimate of the duration of the anticipated alternate fuel use.

PAGE 14, under Indexed Price-Interruptible Supply, 6th bullet down. Has been changed to read as follows:

- During upstream pipeline interruptions which prevent city gate delivery of customer's gas, the ESCO shall use all commercially reasonable efforts to secure replacement gas for the customers. Such efforts shall include, but not be limited to, supplies on alternate pipelines serving the effected LDC, requests to other the ESCOs, and requests to the effected LDC's of the availability of excess system supply gas ("excess city gas supply"). ESCO shall provide written documentation to customer of such efforts. If successful, ESCO must obtain facilities authorized personnel pre-approval and then confirm the transaction by submitting a Transaction Confirmation in the format as approved by the North American Energy Standards Board (NAESB).

Price per dekatherm will be calculated as follows:

$$\text{ESCO's actual cost} + \$.15$$

PAGE UPDATES (Cont'd)

ESCO's actual cost is defined as the price listed on the above mentioned Confirmation Sheet. This confirmation sheet is required for all quantities of gas purchased. Authorized user must document the reasonableness of price in the procurement record.

PAGE 19, Under Facility Close Mandate. 1st sentence should read as follows:

If as the result of an Executive or Legislative mandate that requires the closure of a facility in any **FIRM** Lot awarded under this IFB the sole and exclusive remedy for the remainder of that facilities contract requirement shall be settled as follows:

PAGE 19, Under Monthly Excess/Deficiency Usage Adjustment Program. (LOT 8 ONLY) The following paragraphs have been changed to read as follows:

FOR EXCESS USAGE DURING A MONTH

A). During the months of November through March, the price for the **excess city gate gas shall be the excess volume** multiplied by the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion North Point" plus the DTI Firm Transportation (FT) tariff rate in effect for Usage Charge, Fuel Retention and 1.75 times the pipeline Reservation Charge. If the Dominion North Point Price is not posted, the Dominion South Point Price will be used.

B). During the months of April through October, the price for the **excess city gate gas shall be the excess volume** multiplied by the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion South Point" plus DTI's Interruptible Rates (IT) in effect for the month including fuel retention charges.

FOR DEFICIENT USAGE DURING A MONTH

A). During the months of November through March, the price for the deficient **city gate gas shall be the deficient volume** multiplied by the difference between the contract price and the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion North Point" . If that is not posted, the Dominion South Point will be used.

B). During the months of April through October, the price for the deficient **city gate gas shall be the deficient volume** multiplied by the difference between the contract price and the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion South Point" .

PAGE 38, the lot 2 total Quantities were listed incorrectly.

Please submit the attached revised bid page with your bid package.

Questions Submitted by Potential Bidders and PSG's Responses

Question: Would OGS accept bids for the interruptible lots that limit the number of interruptions per month to a fixed number of days, for example 10 days of interruption per month? We understand that many of the facilities may be unhappy with the number of days they are being interrupted each month and we feel this level of service/savings could be more appropriate for them. There are many governmental accounts that use this level of service and are very happy with it.

Response: No, not at this time.

Question: The State is requesting index pricing that is based on the average of the last three days of NYMEX close, rather than the last day. This is no longer industry standard and adds price risk to the transaction. Would the State be willing to base their index pricing on the NYMEX last day settle price?

Response: No, not at this time.

Question: The language implies that the State will trigger 100% of their volume for any given month. Administratively, this could be cost prohibitive. Could you please confirm that the State would only trigger one time for any given month and the volume for that one trigger per month will be for 100% of the monthly volume?

Response: The State reserves the right to trigger at any time during the month at any percentage; but not to exceed 100% of the monthly volume.

Question: Natural Gas Week is not a widely used publication for customer pricing and may not provide liquidity to reflect an adequate index price. Would the State Consider using Platt's Gas Daily publication?

Response: No, not at this time

Question: On page 13, the last bullet, The State describes a process where they do not take firm supply in cases where they have to test back-up supply equipment. As this is firm supply, normally the supplier would be kept whole on the price for those volumes. We did not see any keep whole price language for this. Is this your intention?

Response: We have removed this bullet from the IFB

Question: Can you please confirm if you require pricing at the Burnertip or Citygate?

Response: Citygate

Question: It is not completely clear in the RFP whether the accounts are interruptible or firm. Can you please confirm each accounts designation as to be classified and Interruptible or Firm rate schedules?

Response: All accounts are classified with the LDC as Interruptible

Question: Will the State provide a copy of their current EFT form?

Response: See page 4 of the IFB, under contract billings and payments, B

Question: Page 7 of the RFP states that the State desires bids to remain firm until an award is made. Will a decision be made on Feb. 29th, if not; can the State confirm the window of time a bid must be held open for? Suppliers will need to know that window in order to price in the appropriate timing risk.

Response: Yes, a decision, phone confirmation and confirmation letter will be sent before the close of business on the 29th of February to all awardees

Question: On Page 3 of Appendix A, the document states that the contract will not be effective until Approved by the Comptroller; can you please clarify the amount of time for this approval to take place? Suppliers will not normally lock in forward pricing without an executed contractual document in place.

Response: The Office of General Services and the Office of the State Comptroller work together to ensure approval takes place by COB on the day of the bid opening.

Questions Submitted by Potential Bidders and PSG's Responses (Cont'd)

Question: Page 9, section 42 of Appendix B, indicates that the State can Increase or Decrease the contract quantities by 20%. Does the State view this as a one-time election between the award date and first flow date or does the state wish to have the ability to adjust the Contract Quantity and any time during the contract term?

Response: **This is a filed requirement contract, under the firm awards the ESCO is required to supply all gas needed (excluding when there is a utility imposed curtailment). For the interruptible awards please refer to page 14 of the IFB.**

Question: Would the State please add filing for Bankruptcy to the list of default/termination events:

Response: **No, not at this time.**

Question: Would the State please add a provision that should either party (supplier or state) require Litigation, both concede to waiving their right to a trial by jury?

Response: **No, not at this time**

Question: Please include a provision that allows suppliers to pass through rate increases during the term of the contract that are the direct change in law (tax, regulatory)

Response: **Appendix B, 40 Modifications of contract Terms**

Question: In order to provide the most competitive firm price, would the state adjust the material usage deviation provision?

Response: **No, not at this time.**

Question: Referring to page 19 of the IFB, if a facility closes and if the contracted volumes aren't all hedged, no allowance is made for the contract basis for the non-hedged volumes for liquidation costs. Please advise if an adder can be added to the forward basis price and also when the forward basis price publication does not quote a city gate basis price and marketers will be using the quote for the immediate upstream pipeline trading point plus the pipeline firm transportation rate

Response: **No, we do not feel an adder is needed as we address both triggered and non-triggered volumes on page 19.**

**State of New York Executive Department
Office of General Services - Procurement Services Group
Corning Tower - 38thFloor
Empire State Plaza
Albany, NY 12242**

INVITATION FOR BIDS

**IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS OR FAXED TO (518) 486-5628 ONLY
(E-Mail Bid Submissions Are NOT Acceptable)**

BID OPENING DATE: February 29, 2012 TIME: 11:00 AM	TITLE: Group 05900 – NATURAL GAS (FIRM SUPPLY-INDEXED PRICE) (INTERRUPTIBLE SUPPLY-INDEXED PRICE) Classification Code(s): 15
INVITATION FOR BIDS NUMBER: 22458	SPECIFICATION REFERENCE: As Incorporated in the Invitation For Bids
CONTRACT PERIOD: NOVEMBER 1, 2012 THRU OCTOBER 31, 2014	
DESIGNATED CONTACTS: Team # 3	
Colleen Messier, Purchasing Officer I Telephone No. (518) 474-1108 E-mail address: colleen.messier@ogs.ny.gov	Steve Starowicz, Energy Planning & Procurement Telephone No. (518) 486-7865 E-mail address: stephen.starowicz@ogs.ny.gov

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

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

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See "New York State Vendor File Registration" clause)</i>				
Legal Business Name of Company Bidding:					
D/B/A - Doing Business As (if applicable):					
Street	City	State	Zip	County	
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____					
Bidder's Signature:		Printed or Typed Name:			
Title:		Date:			
Phone : ()	-	ext ()	Toll Free Phone : ()	-	ext ()
Fax : ()	-	ext ()	Toll Free Fax : ()	-	ext ()
E-mail Address:		Company Web Site:			

FOR PROCUREMENT SERVICES GROUP USE ONLY

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	LET <input type="checkbox"/>	OTHER <input type="checkbox"/>	

GENERAL INFORMATION

IMPORTANT NOTICE TO POTENTIAL BIDDERS: Receipt of these bid documents does not indicate that the Office of General Services' Procurement Services Group has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

NOTICE TO BIDDERS:

The Commissioner of General Services will receive bids pursuant to the provisions of Article XI of the State Finance Law or the provisions of the State Printing and Public Documents Law. The following procedures shall be used for bid submittals:

1. BID PREPARATION

Prepare your bid on this form using indelible ink. Print the name of your company on each page of the bid in the block provided. One copy of the bid is required, unless otherwise specified herein.

2. BID DEVIATIONS

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

3. BID DELIVERY

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. **LATE BIDS may be rejected. E-mail bid submissions are not acceptable and will not be considered.**

- **Bid envelopes and packages**

An envelope and/or package containing a bid should be clearly marked "**BID ENCLOSED**" and should state the **Bid Number, Bid Opening Date, and Time**. Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality. See "Bid Submission" in Appendix B, OGS General Specifications. Bids shall be delivered to:

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

- **FAX transmittals**

If permitted by this solicitation, fax transmittals shall be sent to: **(518) 486-5628 ONLY**
See "Facsimile Submissions" in Appendix B, OGS General Specifications.

- **Hand deliveries**

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

4. IMPORTANT BUILDING ACCESS PROCEDURES

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

Bidders attending bid openings are encouraged to pre-register for building access by contacting the Procurement Services Groups (PSG) receptionist at 518-474-6262 at least 24 hours prior to the bid opening.

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. Vendors 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.

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GENERAL INFORMATION (Cont'd)

NON-COLLUSIVE BIDDING CERTIFICATION:

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

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

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

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

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

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

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

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

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

DISPUTE RESOLUTION POLICY:

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

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GENERAL INFORMATION (Cont'd)

CONTRACT BILLINGS AND PAYMENTS:

a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

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

b. Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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.**

CONFLICT OF TERMS AND CONDITIONS:

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. This Invitation For Bids
- c. Appendix B (General Specifications)
- d. Bidder's Bid

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GENERAL INFORMATION (Cont'd)

ATTENTION:

An “Intent to Bid Form” was released through the Bidder Notification Service on January 5, 2012. “The Intent to Bid Form” must have been submitted to our office no later than January 30, 2012 to be eligible to bid on this Invitation for Bids.

MERCURY-ADDED CONSUMER PRODUCTS:

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information:
<http://www.dec.ny.gov/chemical/8512.html>.

ELECTRONIC BID OPENING RESULTS:

The Procurement Services Group (PSG) posts bid prices on the OGS/PSG web page. The web page makes available bid tabulations (i.e.: photocopies of price pages or spreadsheets) received by PSG for scheduled bid openings. Such information is anticipated to be available online within two business days after the bid opening.

The Bid Opening Results Page is available at: <http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>

DEBRIEFING:

A bidder shall 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. 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 30 days of posting of the contract award on the OGS website.

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GENERAL INFORMATION (Cont'd)

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:

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

Bidder 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.

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

Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (MWBE)

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the contract does not offer any opportunities for participation by MWBEs.

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

(continued)

GENERAL INFORMATION (Cont'd)

INQUIRIES/ISSUING OFFICE:

All inquiries concerning this specification will be addressed to the following PSG designated contact(s) and issuing office:

PRIMARY CONTACT

Colleen Messier
NYS Office of General Services
Procurement Services Group
Corning Tower - 38th Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 474-1108
FAX No. (518) 474-1160
E-Mail: colleen.messier@ogs.ny.gov

SECONDARY CONTACT

Steve Starowicz
NYS Office of General Services
Energy Planning & Procurement
Corning Tower - 38th Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 486-7865
FAX No. (518) 486-2570
E-Mail: stephen.starowicz@ogs.ny.gov

All questions should be submitted in writing no later than February 17, 2012, citing the particular bid section and paragraph number. The prospective bidder should notify the DESIGNATED CONTACT of any term, condition, etc., that precludes the vendor from submitting a compliant, responsive bid. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders 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. Bidders entering into a contract with the State are expected to comply with **all** the terms and conditions contained herein. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing contract.

SPECIAL NOTES TO BIDDER:

It is the intent of the Office of General Services to make an award by close of business February 29, 2012 until that time bids must remain firm, and cannot be withdrawn. If, however, an award is not effected within this period, bid shall remain firm until such later time as either a contract is awarded by the State, or the bidder submits to the Procurement Services Group written notice of the withdrawal of its bid.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

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

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<http://www.ogs.ny.gov/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.

EXTENSION OF USE:

Any contract resulting from this bid solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the ESCO. 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.

(continued)

GENERAL INFORMATION (Cont'd)

METHOD OF AWARD:

Award shall be made between Lot 1 or Lot 2; Lot 3 or Lot 4; Lot 5 or Lot 6; Lot 7, Lot 8 or Lot 9; Lot 10 or Lot 11; Lot 12 or Lot 13; Lot 14 or Lot 15. Grand Total for all items within the Lot, to the lowest responsive and responsible bidder for the Lot determined to be in the best interest of the State.

ESTIMATED QUANTITIES:

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

CONTRACT OPTION:

Agency shall have the right after contract approval and prior to the beginning delivery period to trigger forward prices pursuant to the "trigger price" section of this IFB on Page 12.

REPORT OF CONTRACT PURCHASES:

ESCO shall furnish quarterly reports containing total sales for both state agency and authorized non-state agency contract purchases no later than forty-five (45) days after the close of each calendar quarter.

In addition to contractor direct sales, contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. ESCO shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. ESCO shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each contractor at time of award for completion in accordance with the contract terms and conditions:

	Total Dekatherms Purchased	Total Value Purchased (\$)
All Political Subdivisions/Authorized Users		
All State Agencies		
TOTAL SALES		\$

The report is to be submitted electronically in Microsoft Excel 2007 or lower format to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name.

The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

GENERAL INFORMATION (Cont'd)

EMERGENCY PURCHASING:

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

DIESEL EMISSION REDUCTION ACT OF 2006:

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

(continued)

GENERAL INFORMATION (Cont'd)

SCOPE:

This Invitation for Bids describes a contract to be awarded for the purchase of natural gas directly from gas suppliers and/or ESCO's for use at the facilities listed herein. This concept is in accordance with gas deregulation actions of the Federal Energy Regulatory Commission, the New York State Legislature and the New York State Public Service Commission.

DEFINITIONS:

Except in those instances where the text states another meaning, the following terms, as used in this Invitation for Bids and specification shall have the meanings as set forth below:

Alternate Fuel - fuel used other than natural gas

Alternate Transporting Pipeline(s) - the pipeline(s) which transports the gas to the LDC (City gate) when the primary pipeline is unavailable

Average of the last three days of the Close of the NYMEX - shall mean the average of the last three days NYMEX Close (Settlement Price) of the NYMEX for natural gas at the Henry Hub Louisiana delivery point as published in the Wall Street Journal Futures Column and shown on the NYMEX website.

Basis Cost - all costs associated with the acquisition and transportation of natural gas from the ESCO's point of acquisition to the LDC's City gate. This includes all costs associated with balancing services to the burner tip, fuel retainage losses, GRI surcharge, and overhead and profit carried to the fourth decimal place. Basis costs shall be firm for the life of the contract and does not include the commodity cost.

Commodity - Natural Gas

Burner Tip - Consumption at end user's billing meter

Buyer – Authorized agency personnel assigned to trigger gas buy

City gate - The point of interconnection between a pipeline and a Local Distribution Company where gas is delivered to the LDC

Contract - Any contract award resulting from this Invitation for Bids

Contractor - any bidder to whom a contract award has been made by the State as a result of bidding process.

Curtailment - interruption of flowing natural gas supplies imposed by pipelines and LDCs as a result of the demand for transportation service exceeding the capacity of the pipeline

DTI - Dominion Transmission, Inc.

ESCO – Energy Service Company

Event - Any day when an authorized user is receiving firm supply to the city gate and is required by the LDC to switch to its alternative fuel.

FERC - Federal Energy Regulatory Commission

FT - Firm Transportation

(continued)

GENERAL INFORMATION (Cont'd)

DEFINITIONS: (Cont'd)

Firm Supply - service that anticipates no interruptions. Firm supply means primary firm, non-recallable primary delivery point capacity to the city gate and does not mean secondary firm supply. All natural gas specified herein as firm supply shall be primary firm supply.

Fuel Retainage Losses - charges for fuel retention due to gas used for "PRESSURE"

GRI- Gas Research Institute

Gas day - A period of twenty-four (24) consecutive hours commencing at a specified hour on a given calendar day and ending at the same specified hour on the next succeeding calendar day.

Indexed Price – the combined price of indexed commodity cost and the "basis cost". The commodity price will vary monthly based on the last 3 day settlement of the New York Mercantile Exchange (NYMEX) futures commodity prices. A fixed "basis cost" will be added to the commodity price to determine each month's Indexed price.

Interruptible Supply – gas service which may be interrupted by the ESCO with satisfactory justification, which is an interstate pipeline or LDC curtailment.

LDC - Local Distribution Company, also known as Local Utility Company, which transports gas from the City gate to the customer's meter.

Line Loss - the reduction in quantity of natural gas that results from leaks, venting, and other physical circumstances on a pipeline system

MPDQ - The MPDQ assigned per customer represents the use of certain pipeline assets and storage assets to accommodate the daily imbalance tolerance. The MPDQ pass through should not be included in the bid price.

MMBtu's - one million British Thermal Units, also known as a dekatherm.

Month - a period beginning at 10:00 a.m. on the first day of a calendar month and ending at 10:00 a.m. on the first day of the calendar month immediately following.

NYMEX - New York Mercantile Exchange

Natural Gas - a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface and used as a fuel

PSC/DPS - New York State Public Service Commission

Primary Point of Delivery - the point where the gas enters the LDC (City Gate)

Primary Pipeline - the pipeline(s) that transports the gas to the LDC (City Gate)

Seller – The Awarded Contractor

Shrinkage - reduction in volume of wet natural gas due to removal of natural gas liquids, hydrogen sulfide, carbon dioxide, water vapor, and other impurities

State - The State of New York, its agencies and authorized non-State users

(continued)

GENERAL INFORMATION (Cont'd)

DEFINITIONS: (Cont'd)

System Alert - An announcement of actual or pending events that if unchecked may result in an operational flow order

Taxes - Contact NYS Tax Department at 1-800-225-5829 with questions concerning any relative taxes/refund

Trigger Price – Pricing alternative made available under the Indexed Price-Firm Supply that authorizes designated agency individual to instruct the ESCO to fix the commodity price for a future month(s) based on the NYMEX natural gas futures price.

FILED REQUIREMENTS CONTRACT:

The natural gas contract is referred to as a filed requirements contract, placing special obligations on a participating agency and governed by Uniform Commercial Code section 2-306. In a filed requirements contract, an agency that wishes to purchase must commit in advance to make all necessary purchases for the natural gas from the awarded contractor. In the Indexed price/Firm supply and the Indexed price/Interruptible supply lots, the quantities listed are intended to be indicative of the amount of natural gas to be purchased, however it is expressly agreed and understood that the contract shall only be for the quantities actually used during the contract term, unless the customer is participating in the monthly excess/deficiency usage adjustment program.

See also "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

CUSTOMER OBLIGATIONS:

While OGS Procurement Services Group is responsible for administering the natural gas contract, it is expected the customer will attempt to work directly with the ESCO to resolve any difficulties that may arise. OGS Procurement Services Group is available to provide assistance as needed, but should not be considered the first avenue of recourse.

PRICE:

Prices shall be bid as Indexed, as either Firm or Interruptible Supply as specified in each Lot.

INDEXED PRICE:

For Lots indicated as indexed price, the ESCO shall include only basis cost in the bid price. Indexed prices shall be calculated monthly by taking the average of the last three (3) day's closing settlement price of NYMEX natural gas daily settlement for the month of gas delivery and adding the basis cost. Prices will be carried to the 4th decimal place. While commodity price may increase or decrease from month to month, increases to basis costs are not allowed. However, basis cost decreases are allowed at anytime.

TRIGGER PRICE: (FIRM SUPPLY ONLY) (Lot 2, Lot 4, Lot 6, Lot 8, Lot 9, Lot 10, Lot 13 and Lot 15)

The per Dth Commodity Charge for any volume designated by the Buyer (purchasing agency) for any month(s) during the Delivery Period may be converted from an indexed price to a fixed price by agreement of the Parties ("Triggered") at any time prior to 12:00 noon on the expiration date of such month's NYMEX futures contract (the "Pricing Deadline") in accordance with the procedures set forth below. If the Parties do not agree on a price by the Pricing Deadline for any month during the Delivery Period, the Commodity charge for that month will default to the index formulas set forth in herein. Once awarded, the parties agree that the Buyer has the right, but is not required, to trigger up to 100% of all Natural Gas needs for use during the contract period.

Between 8:30 a.m. and 2:30 p.m. on any business day, the buyer may request the Awarded ESCO (Seller) provide a quote for the Commodity Charge for any month or months during the Delivery Period for which no Commodity Charge has yet been agreed or determined. Upon receiving such request, the Seller shall provide the buyer with a Commodity Charge quote for such month or months, as applicable. The Parties acknowledge and agree that if the Buyer accepts a quoted Commodity Charge offered by the Seller for one or more months, such Commodity Charge will be triggered and will be legally and validly binding on the Parties from the moment of such acceptance. The Buyer acknowledges and agrees that any quote provided by the Seller shall be valid, and may be accepted; only during the call on which such quote is offered.

(continued)

GENERAL INFORMATION (Cont'd)

TRIGGER PRICE: (Cont'd)

Any Triggered price shall be confirmed by the Seller in writing or such other form as the Seller may prescribe from time to time. The Seller shall deliver the written confirmation of such agreed Commodity Charge promptly after such charge is agreed by the Parties; provided that the Seller's failure to deliver such written confirmation shall not give rise to an event of default in respect of the Seller. The Seller's written confirmation of the agreed Commodity Charge shall be deemed binding on the Buyer.

In the event that the triggering option is utilized, the final price for the given term will be determined as follows:

$$\text{Commodity Charge} + \text{Basis Cost} = \text{Triggered Price}$$

If in any month the volumes consumed by the accounts are less than the volumes that the Buyer Triggered for that month pursuant to the above, than the difference between the consumed volumes and the Triggered (the "Under-Consumed Volumes") shall be settled as follows. All Under-Consumed Volumes shall be priced at the difference between the (Commodity Charge + Basis Cost) for that month and the average of all daily prices for that month as reported by Natural Gas Week's Gas Market Reconnaissance under Natural Gas Spot Prices for the applicable sales point. The difference, whether positive or negative, shall be credited or debited accordingly by the Seller to the buyer on that month's invoice.

NOTE: Agency shall have the right after contract approval and prior to the beginning delivery period to trigger forward prices pursuant to the "Trigger Price" section above. Additionally, payment for Triggered gas should not be invoiced until the delivery month.

TAXES:

Governmental entities are to be automatically considered federal and state tax exempt. No supplier/ESCO shall incur separately identifiable taxes with the expectation that they are to be passed along to the governmental user, except in such cases where the agency specifically agrees in writing in advance.

CONTRACT TYPES:

The sales and deliveries of gas shall commence as soon as practicable after the completion of necessary transportation arrangements. Each contract type has distinct characteristics and requires specific customer commitments and obligations. The more significant aspects of each contract type are described as follows:

INDEXED PRICE - FIRM SUPPLY:

- The customer will receive "firm" supply.
- The customer will pay for quantities actually used. (with the exception of Lot 8 if awarded)
- The commodity price for natural gas will vary monthly based on the New York Mercantile Exchange (NYMEX) futures commodity prices. A fixed "basis cost" will be added to the commodity price to determine each month's indexed price. Prices are revised and released by the OGS Procurement Services Group during the last week of the month preceding the month of delivery.
- The ESCO is responsible for all balancing to the burner tip.
- The ESCO is required to deliver a firm supply of natural gas at all times. Firm supply specified in this Invitation for Bids means primary firm non-recallable primary delivery point capacity to the city gate and not secondary firm supply.
- The customer/facility can burn an alternate fuel for the purpose of testing or maintaining the equipment's capability of burning an alternate fuel, or in the event of the need for fuel tank turnover (burning and replacing the alternate fuel) to maintain the integrity of stored fuel. The customer/facility **MUST** notify the ESCO via e-mail at least 14 days prior to switching. The customer/facility **MUST** provide the ESCO with an estimate of the duration of the anticipated alternate fuel use.

(continued)

GENERAL INFORMATION (Cont'd)

CONTRACT TYPES: (Cont'd)

INDEXED PRICE - INTERRUPTIBLE SUPPLY:

- The customer must have 100% dual fuel capability.
- The commodity price for natural gas will vary monthly based on the New York Mercantile Exchange (NYMEX) futures commodity prices. A fixed "basis cost" will be added to the commodity price to determine each month's indexed price. Prices are revised and released by the OGS Procurement Services Group during the last week of the month preceding the month of delivery.
- The ESCO is responsible for all balancing to the burner tip.
- The customer may nominate "0" for any month if the alternate fuel is more economical than the transportation natural gas. Also, the customer may have its gas supply interrupted when the supplier can provide satisfactory justification for an interruption or curtailment under the conditions stipulated in this Invitation for Bids and the subsequent award.
- If the natural gas prices are greater than the customer's alternate fuel, the State reserves the right to buy the alternate fuel but only if the decision to switch from gas is made at the time of nominations for that particular month. Other arrangements can be made providing mutual consent is established between ESCO and the facility.
- As a result of a scheduled and confirmed nomination ("Nominated") on the delivering upstream pipeline(s) being interrupted which prevents city gate delivery of customer's gas, ESCO shall use all commercially reasonable efforts to secure replacement gas for the customers. Such efforts shall include, but not be limited to, securing supply on alternate pipeline serving the affected LDC and requests to other ESCOs, energy brokers, and requests to the affected LDC for the availability of excess system supply gas ("excess city gate supply"). As demonstration of the nominated pipeline(s) interruption and the efforts put forth to secure replacement supply, ESCO must provide a screen print from the nominated interrupted pipeline(s) Electric Bulletin Board "EBB" demonstrating that customer's gas was indeed nominated to the city gate but was interrupted and written documentation to customer verifying the efforts expended to secure replacement gas each day during the curtailment period. If successful, ESCO must obtain facility's authorized personnel pre-approval and then confirm the transaction by submitting a Transaction Confirmation in the format as approved by the North American Energy Standards Board (NAESB). ESCO's actual cost is defined as the price listed on the NAESB Transaction Confirmation Sheet. This confirmation sheet is required for all quantities of gas purchased.

NOMINATIONS FOR INTERRUPTIBLE SUPPLY:

The customer shall notify the ESCO in writing not less than five (5) calendar days before the first day of each delivery of the estimated monthly and/or daily gas nomination of the agency. If agreed to by the ESCO, nominations may be submitted to the ESCO on an alternate date. The ESCO should make certain that the using agency submits a nomination each month, even if the nomination is zero. If agency nominations are not timely, the ESCO may contact the Office of General Services for assistance.

Customers in an Interruptible Service can only implement alternate fuels usage if decided at time of monthly nomination and the alternate fuel is determined to be less costly based on price information available at the time of nomination. Other arrangements can be made providing mutual consent is established between the ESCO and the end user.

INTERRUPTIBLE CUSTOMERS ARE NOT PERMITTED TO FUEL SWITCH DURING THE DELIVERY MONTH EXCEPT WHEN THERE IS A PIPELINE OR UTILITY INTERRUPTION/OPERATION FLOW ORDER (OFO) UNLESS MUTUALLY AGREED UPON BY ESCO AND INDIVIDUAL FACILITY.

(continued)

GENERAL INFORMATION (Cont'd)

Dominion Transmission, Inc. (DTI) receipt point at south of Valley Gate will not be accepted in the bid unless the bidder holds primary firm capacity that can deliver gas from the south of Valley Gate to north of Valley Gate during the winter months. (November 1st to March 31st).

THE ESCO'S RESPONSIBILITIES DURING CURTAILMENTS/INTERRUPTIONS:

If an agency nominates natural gas, and there is pipeline capacity available to the ESCO, the ESCO is expected to supply gas for the entire month and the facility is required to burn gas for the entire month. The State agrees to be interrupted only when the ESCO can provide satisfactory justification of interruptions or curtailments that occur on pipelines or at the LDC level, as a result of demand for transportation service exceeding capacity.

ESCO's shall be responsible for notifying both customer and the Office of General Services, in writing via fax or e-mail of any pipeline curtailments as soon as possible after ESCO becomes aware that a curtailment will take place.

ESCO's are required during periods of upstream pipeline interruptions, to contact LDC for the availability of excess city gate supply, enabling facility to purchase gas directly from the LDC. Price shall be approved prior to purchase by the individual agency.

As a result of a scheduled and confirmed nomination ("Nominated") on the delivering upstream pipeline(s) being interrupted which prevents city gate delivery of customer's gas, ESCO shall use all commercially reasonable efforts to secure replacement gas for the customers. Such efforts shall include, but not be limited to, supplies on alternate pipeline serving the affected LDC requests to other ESCOs, energy brokers, and requests to the affected LDC for the availability of excess system supply gas. (See page 14, 5th bullet for more details)

If gas should flow due to ESCO's failure to notify the customer and the Office of General Services of curtailment, and customer purchases gas directly from the utility, the customer will have sufficient justification to apply a charge-back, which shall be the difference between the contract natural gas prices versus the utility supplied price, including any LDC imposed charges.

If customer nominates "0" or at the time of the monthly nomination notified ESCO of a scheduled a plant shutdown/maintenance during said month, and gas flows, ESCO will be liable for all added cost incurred caused by failure to manage customers account.

ESCO is required to notify customers and the Office of General Services of lifting of curtailment/ interruption as soon as possible and to enable gas flow at the next available opportunity. ESCO will be liable for any charges caused by ESCO's failure to inform customer and LDC, if applicable, of lifting of curtailment/ interruption. Curtailment/Interruption of one or more pipelines will not be considered a force majeure situation.

SALES/TITLE TRANSFER POINT:

ESCO shall be deemed to exercise or continue in control and possession of the gas being delivered and responsible for any damage or injury caused until gas has been delivered at the LDC city gate (delivery point). Also, ESCO shall be responsible for the coordination and scheduling of transportation volumes including completing all arrangements for transportation services for delivery of the natural gas to existing meter at each agency.

WARRANTY OF TITLE:

ESCO warrants title to all natural gas delivered and warrants that it has the right to sell the same and that such natural gas is free from liens and adverse claims of every kind. ESCO shall indemnify and save the State harmless against all loss, damage and expense of every kind on account of adverse claims that accrue before delivery to the State.

TRANSPORTATION CHARGES (Other Than Those Requested in this Invitation for Bids):

The ESCO shall pay all costs associated with the transportation of the gas to the LDC city gate. The State (i.e. ordering agency) shall enter into a separate agreement with the LDC and pay all costs associated with the transportation of gas from the LDC city gate to the existing meter at each agency.

PUBLIC SERVICE COMMISSION RETAIL ACCESS BUSINESS RULES:

The ESCO shall abide by the New York State Public Service Commission (PSC) Uniform Retail Access Business Practices Cases including all updates/revisions during the term of contract for all natural gas transactions and practices under this contract. This includes any PSC provisions covering "Single Billing". A copy of the PSC Uniform Retail Access Business Practices is available for download from the PSC web page: www.dps.state.ny.us.

(continued)

GENERAL INFORMATION (Cont'd)

QUANTITY:

Subject to the terms and conditions of the contract, the ESCO agrees to sell and deliver to designated facilities, and customers agree to purchase and accept from the ESCO the nominated quantity of MMBtu's of natural gas per month. (Delivery Schedule reflects estimated quantities only.) Customers will be billed for actual quantity consumed (excluding facilities in Lot 8). The sale and delivery of gas by the ESCO shall be on an interruptible or firm basis, as specified within each Lot. Where interruptible gas is specified, the ESCO shall not be liable to the State for any interruption or curtailment of deliveries of natural gas to the State where satisfactory justification for such action can be provided in writing to the Office of General Services.

QUALIFICATION OF BIDDER:

Bids will be accepted only from established natural gas producers or brokers (ESCO's) who have access to a supply of natural gas from which it is willing to make sales to the State, subject to completion and continuance of necessary transportation arrangements. In the event a bid is submitted by a broker, the broker hereby guarantees that a producer has agreed to supply the broker with quantities of gas to be ordered by the broker pursuant to any resulting contract with the State and agrees further to provide the State with a certificate from the producer acknowledging same, if requested. Also, no bid will be considered unless bidder is authorized to transfer gas under Section 311 of the Natural Gas Act of 1978 or be able to enter into an agreement with the LDC to gain access to appropriate interstate pipeline for delivery to using agency.

For each Lot that is bid, supplier is required to furnish an agreement number on a major pipeline that supplies that LDC as well as the volume flowed on that pipeline during the previous year. (See page 20) Failure to furnish this information may disqualify the bid from consideration.

AGENCY TRAINING:

ESCO is responsible for conducting training sessions of appropriate length for critical agency personnel. Such sessions shall explain the mechanism of the transportation gas contract and shall be scheduled as requested by agency.

DELIVERY PRESSURE:

The gas purchased shall be delivered for the account of the State at a pressure sufficient to affect delivery into the pipeline facilities of the transporter.

NATURAL GAS QUALITY:

All gas delivered to the LDC's city gate shall have a total heating value of not less than 967 Btu per cubic foot and not more than 1100 Btu per cubic foot. The gas delivered to the local distribution company's city gate shall be commercially free from objectionable odors, dust or other solid or liquid matters which might interfere with the merchantability of the gas or cause injury to or interference with proper operation of the lines, regulators, meters, or other appliances through which gas flows. The gas supplied to the local distribution company's city gate shall not contain any active bacteria or bacterial agent capable of contribution to or causing operational problems. The gas delivered to the local distribution company's city gate shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered, and shall not contain any hydrocarbons which might condense to free liquids under normal conditions in the local distribution company's pipelines and shall not contain more than seven pounds of water in vapor phase per one million cubic feet. The gas delivered hereunder at the primary point of delivery shall be commercially free of gum, gum-forming constituents, gasoline and other solid and/or liquid matter that may become separated from the gas during transportation thereof and shall conform to quality specifications included in the interstate transporter's tariff as approved by the Federal Energy Regulatory Commission (FERC) and/or those required by delivering pipelines.

(continued)

GENERAL INFORMATION (Cont'd)

AGENCY/ESCO RESPONSIBILITIES FOR ALL UTILITY TERRITORIES:

Customers Responsibilities:

Customer will be responsible for placing nominations for natural gas supply to the ESCO “in writing” not less than five (5) calendar days prior to the first day of the month for which supply is needed; or, at a later date if mutually agreed upon by ESCO and the agency.

Customer will be responsible for supplying usage data to ESCO on an as-needed basis as required by the ESCO in order to serve Agency under the utility/LDC.

Customer will be responsible for supplying faxed meter reads to ESCO on an as-needed basis.

Customer will be responsible for having installed and utility approved remote telemeter devices, if needed.

Customer will be responsible for timely completion of utilities aggregation form upon receipt from ESCO for further submission to Utility Company.

Customer will be responsible for completion of any additional documentation as deemed necessary by ESCO and Utility/LDC.

ESCO Responsibilities:

ESCO will be responsible for placing nominations for natural gas supply to LDC “in writing” in accordance with utilities nomination schedule. (See Appendix B, Article 42 - "Estimated Quantity Contracts" and "Quantity" clause elsewhere herein.)

ESCO, prior to the start of contract, will inform user agencies of the format and manner of billing, including whether commodity will be billed separately by the contractor, or whether the contractor will be billing for the utility transportation on a single bill, and will provide a sample billing format.

ESCO will be responsible for requesting faxed meter reads from the Agency locations as deemed necessary by the ESCO in order to serve Agency under the applicable utility company's program.

ESCO will be responsible for executing the completion and submission of the utilities aggregation form as required by the utility/LDC.

ESCO will be responsible for creating a pool of customers within the LDC's pooled balancing program to better facilitate its daily balancing responsibilities. This pool will consist of customers included on this solicitation but may also include other customers served by the successful bidder within this LDC territory.

ESCO is responsible for monitoring customers accounts at all times, including but not limited to system alerts.

ESCO will be responsible for requesting any usage data from the Agency locations as deemed necessary by the ESCO in order to serve Agency under utility/LDC's program.

ESCO will be responsible for completion of any additional documentation as deemed necessary by the State or utility/LDC.

ESCO will be responsible for any and all daily/end-of-month “cash outs” as imposed by LDC, if applicable.

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GENERAL INFORMATION (Cont'd)

AGENCY/ESCO RESPONSIBILITIES FOR ALL UTILITY TERRITORIES: (Cont'd)

ESCO shall bill customer for actual quantities of natural gas consumed.

ESCO shall be required to deliver 100% of the buyers' natural gas requirements on a daily basis and shall be required to balance deliveries to conform to actual consumption by lot on a daily basis.

ESCO must be compliant with all Federal, State and NYS Public Service Commission tariffs governing each individual utility territory bid, including but not limited to load aggregations, balancing and individual utility programs.

ESCO will be responsible for notifying the OGS Procurement Services contract administrator immediately of any difficulties obtaining meter reads from individual facilities.

ESCO, where required, (all lots excluding interruptible supply) will secure adequate upstream capacity (and storage, when applicable) to ensure that service is "firm."

ESCO will be responsible to own the balance control account for all agencies listed herein, in accordance with individual utility/LDC when applicable.

REBATES:

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

INVOICES:

ESCO may be required to furnish copies of monthly invoices to PURCHASING TEAM 3, NYS OFFICE OF GENERAL SERVICES, PROCUREMENT SERVICES GROUP, 38TH FLOOR CORNING TOWER, ESP, ALBANY, NY 12242 for recording sales transactions and analysis.

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GENERAL INFORMATION (Cont'd)

FACILITY CLOSURE MANDATE:

If as the result of an Executive or Legislative mandate that requires the closure of a facility in any of the Lots awarded under this IFB the sole and exclusive remedy for the remainder of that facilities contract requirement shall be settled as follows:

Forward Triggered Volumes:

All remaining Triggered months shall be priced at the difference between the weighted average Trigger Price plus contract Basis Cost minus the Forward Natural Gas Cost plus the Forward Basis Price times the triggered volume. The difference, whether positive or negative, shall be credited or debited accordingly by the Seller to the buyer on that month's invoice.

Non -Triggered Volumes:

Shall be priced at the difference between the contract Basis Cost minus the Forward Basis Price times the remaining monthly contract quantity. The difference, whether positive or negative, shall be credited or debited accordingly by the Seller to the buyer on that month's invoice.

Note: In the event the Forward Basis Price publication does not quote a City Gate basis, the Forward Basis Price shall be calculated by using the quote for the immediate upstream pipeline trading point (i.e. Columbia Gas Appalachia, Dominion South Point) plus the Pipeline Firm Transportation rates in effect if the facility was receiving Firm Supply or in the case of the facility receiving Interruptible Supply the lesser of the Pipelines Interruptible tariff rate or the forward capacity release market for the remaining contract period.

MONTHLY EXCESS/DEFICIENCY USAGE ADJUSTMENT PROGRAM (LOT 8 ONLY)

Except for a deficiency resulting from the Utility interruption, the following excess / deficient usage calculations will apply for usage in excess of 110% of the contracted monthly quantity and usage less than 90% of the monthly contracted quantity.

Although the delivery schedule in this IFB reflects estimated usage for lot 8, monthly nominations will be submitted for this Firm Lot. The customer shall notify the ESCO in writing not less than five (5) calendar days before the first day of each delivery of the estimated monthly gas nomination of the agency. If agreed to by the ESCO, nominations may be submitted to the ESCO on an alternate date.

FOR EXCESS USAGE DURING A MONTH

A). During the months of November through March, the price for the excess city gate gas usage shall be multiplied by the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion North Point" plus the DTI Firm Transportation (FT) tariff rate in effect for Usage Charge, Fuel Retention and 1.75 times the pipeline Reservation Charge. If the Dominion North Point Price is not posted, the Dominion South Point Price will be used.

B). During the months of April through October, the price for the excess city gate usage gas shall be multiplied by the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion South Point" plus DTI's Interruptible Rates (IT) in effect for the month including fuel retention charges.

FOR DEFICIENT USAGE DURING A MONTH

A). During the months of November through March, the price for the deficient city gate usage shall be multiplied by the difference between the contract price and the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion North Point" . If that is not posted, the Dominion South Point will be used.

B). During the months of April through October, the price for the deficient city gate usage shall be multiplied by the difference between the contract price and the average of the daily prices reported by Natural Gas Week's Gas Market Reconnaissance for the delivery month under the heading "Natural Gas Spot Prices for Dominion South Point" .

(continued)

GENERAL INFORMATION (Cont'd)

Dominion Transmission, Inc. (DTI) receipt points south of Valley Gate will not be accepted in the bid process, unless the bidder holds Primary Firm Capacity that can deliver gas south of Valley Gate to north of Valley Gate during the winter months. (November 1st to March 31st)

LOT	NAME OF LDC	PRIMARY TRANSPORTING PIPELINE	PIPELINE AGREEMENT NUMBER	VOLUME FLOWED 2011
1 - 4	Central Hudson			
5 - 6	Consolidated Edison			
7 - 11	National Grid (East Gate)			
12 - 13	National Grid (West Gate)			
14 - 15	Orange and Rockland			

LOT	NAME OF LDC	ALTERNATE TRANSPORTING PIPELINE	ALTERNATE PIPELINE AGREEMENT NUMBER	VOLUME FLOWED 2011
1 - 4	Central Hudson			
5 - 6	Consolidated Edison			
7 - 11	National Grid (East Gate)			
12 - 13	National Grid (West Gate)			
14 - 15	Orange and Rockland			

(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 1 OR LOT 2 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 1

CENTRAL HUDSON GAS & ELECTRIC TERRITORY

<u>Item No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo. Vol. MMBtu's</u>
<u>INDEXED PRICE/INTERRUPTIBLE SUPPLY</u>			
1.	Fishkill Correctional Facility 271 Matteavan Road Beacon, NY 12508	Glen Johns Tel. #: 845-831-4800 Fax #: 845-831-4800 ext. 3950	Nov 11 - 40,000 Dec 11 - 50,000 Jan 12 - 55,000 Feb 12 - 55,000 Mar 12 - 45,000 Apr 12 - 37,000 May 12 - 20,000 Jun 12 - 20,000 Jul 12 - 20,000 Aug 12 - 20,000 Sept 12 - 22,000 Oct 12 - <u>22,000</u> 406,000

(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 1 OR LOT 2 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 2

CENTRAL HUDSON GAS & ELECTRIC TERRITORY

<u>Item No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo. Vol. MMBtu's</u>
			<u>INDEXED PRICE/FIRM SUPPLY</u>
1.	Fishkill Correctional Facility 271 Matteavan Road Beacon, NY 12508	Glen Johns Tel. #: 845-831-4800 Fax #: 845-831-4800 ext. 3950	Nov 11 - 40,000 Dec 11 - 50,000 Jan 12 - 55,000 Feb 12 - 55,000 Mar 12 - 45,000 Apr 12 - 37,000 May 12 - 20,000 Jun 12 - 20,000 Jul 12 - 20,000 Aug 12 - 20,000 Sept 12 - 22,000 Oct 12 - <u>22,000</u> 406,000

(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 3 OR LOT 4 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 3

CENTRAL HUDSON GAS & ELECTRIC TERRITORY

<u>Item</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo.</u>
<u>No.</u>			<u>Vol. MMBtu's</u>

INDEXED PRICE/INTERRUPTIBLE SUPPLY

1.	Hudson River Psy. Center 10 Ross Circle Poughkeepsie, NY 12601	Steven Albamont Tel. #: 845-483-3741 Fax #: 845-437-5176 steven.albamont@omh.ny.gov	Nov 12 - 1,400 Dec 12 - 2,000 Jan 12 - 2,200 Feb 12 - 2,100 Mar 12 - 1,950 Apr 12 - 950 May 12 - 300 Jun 12 - 100 Jul 12 - 100 Aug 12 - 75 Sept 12 - 100 Oct 12 - <u>605</u> 11,880
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(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 3 OR LOT 4 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 4

CENTRAL HUDSON GAS & ELECTRIC TERRITORY

<u>Item No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo. Vol. MMBtu's</u>
			<u>INDEXED PRICE/FIRM SUPPLY</u>
1.	Hudson River Psy. Center 10 Ross Circle Poughkeepsie, NY 12601	Steven Albamont Tel. #: 845-483-3741 Fax #: 845-437-5176 steven.albamont@omh.ny.gov	Nov 12 - 1,400 Dec 12 - 2,000 Jan 12 - 2,200 Feb 12 - 2,100 Mar 12 - 1,950 Apr 12 - 950 May 12 - 300 Jun 12 - 100 Jul 12 - 100 Aug 12 - 75 Sept 12 - 100 Oct 12 - <u>605</u> 11,880

(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 5 OR LOT 6 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 5

CON EDISON TERRITORY

<u>Item</u> <u>No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo.</u> <u>Vol. MMBtu's</u>
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INDEXED PRICE/INTERRUPTIBLE SUPPLY

1.	Bedford Hills Correctional Facilities 247 Harris Road Bedford Hills, NY 10507	Al Mann Tel. #: 914-241-3100 Fax #: 914-241-3100 ext. 2098 alfred.mann@docs.ny.gov	Nov 11 - 15,000 Dec 11 - 16,000 Jan 12 - 15,432 Feb 12 - 14,451 Mar 12 - 14,010 Apr 12 - 10,377 May 12 - 5,018 Jun 12 - 5,020 Jul 12 - 5,875 Aug 12 - 5,663 Sept 12 - 6,174 Oct 12 - <u>10,386</u> 123,406
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(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 5 OR LOT 6 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 6

CON EDISON TERRITORY

<u>Item No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo. Vol. MMBtu's</u>	<u>INDEXED PRICE/FIRM SUPPLY</u>
1.	Bedford Hills Correctional Facilities 247 Harris Road Bedford Hills, NY 10507	Al Mann Tel. #: 914-241-3100 Fax #: 914-241-3100 ext. 2098 alfred.mann@docs.ny.gov		Nov 11 - 15,000 Dec 11 - 16,000 Jan 12 - 15,432 Feb 12 - 14,451 Mar 12 - 14,010 Apr 12 - 10,377 May 12 - 5,018 Jun 12 - 5,020 Jul 12 - 5,875 Aug 12 - 5,663 Sept 12 - 6,174 Oct 12 - <u>10,386</u> 123,406

(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR (ONLY ONE) LOT 7, LOT 8 OR LOT 9 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 7

NATIONAL GRID TERRITORY (EAST GATE)

<u>Item</u>			<u>Approx. 12 Mo.</u>
<u>No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Vol. MMBtu's</u>

INDEXED PRICE/INTERRUPTIBLE SUPPLY

1.	OGS Utilities Management State Office Bldg. Campus (Room G20, Bldg. #4 SOBC) 1220 Washington Avenue Albany, NY 12226	Art MacAloney Tel. #: 518-457-5549 Fax #: 518-457-5531 art.macaloney@ogs.ny.gov	Nov 11 - 22,610 Dec 11 - 35,191 Jan 12 - 39,042 Feb 12 - 32,332 Mar 12 - 27,045 Apr 12 - 17,298 May 12 - 13,693 Jun 12 - 10,066 Jul 12 - 9,228 Aug 12 - 8,955 Sept 12 - 10,315 Oct 12 - <u>16,818</u> 242,593
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INDEXED PRICE/INTERRUPTIBLE SUPPLY

2.	OGS Utilities Management (Steam Plant) 79 Sheridan Avenue Albany, NY 12210	Terry Potter Tel. #: 518-474-3175 Fax #: 518-474-2128 terrance.potter@ogs.ny.gov	Nov 11 - 109,698 Dec 11 - 135,519 Jan 12 - 152,273 Feb 12 - 125,606 Mar 12 - 118,214 Apr 12 - 100,677 May 12 - 95,070 Jun 12 - 108,495 Jul 12 - 139,424 Aug 12 - 131,471 Sept 12 - 102,929 Oct 12 - <u>95,987</u> 1,415,363
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(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR (ONLY ONE) LOT 7, LOT 8 OR LOT 9 AS DESCRIBED IN THE METHOD OF AWARD

THIS LOT SHOULD BE BID CONSIDERING THE MONTHLY EXCESS/DEFICIENCY USAGE ADJUSTMENT PROGRAM AS DETAILED ON PAGE 19 OF THIS INVITATION FOR BIDS.

DELIVERY SCHEDULE

LOT 8

NATIONAL GRID TERRITORY (EAST GATE)

<u>Item</u>			<u>Approx. 12 Mo.</u>
<u>No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Vol. MMBtu's</u>

INDEXED PRICE/FIRM SUPPLY

1.	OGS Utilities Management State Office Bldg. Campus (Room G20, Bldg. #4 SOBC) 1220 Washington Avenue Albany, NY 12226	Art MacAloney Tel. #: 518-457-5549 Fax #: 518-457-5531 art.macaloney@ogs.ny.gov	Nov 11 - 22,610 Dec 11 - 35,191 Jan 12 - 39,042 Feb 12 - 32,332 Mar 12 - 27,045 Apr 12 - 17,298 May 12 - 13,693 Jun 12 - 10,066 Jul 12 - 9,228 Aug 12 - 8,955 Sept 12 - 10,315 Oct 12 - <u>16,818</u> 242,593
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INDEXED PRICE/FIRM SUPPLY

2.	OGS Utilities Management (Steam Plant) 79 Sheridan Avenue Albany, NY 12210	Terry Potter Tel. #: 518-474-3175 Fax #: 518-474-2128 terrance.potter@ogs.ny.gov	Nov 11 - 109,698 Dec 11 - 135,519 Jan 12 - 152,273 Feb 12 - 125,606 Mar 12 - 118,214 Apr 12 - 100,677 May 12 - 95,070 Jun 12 - 108,495 Jul 12 - 139,424 Aug 12 - 131,471 Sept 12 - 102,929 Oct 12 - <u>95,987</u> 1,415,363
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(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR (ONLY ONE) LOT 7, LOT 8 OR LOT 9 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 9

NATIONAL GRID TERRITORY (EAST GATE)

<u>Item</u>			<u>Approx. 12 Mo.</u>
<u>No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Vol. MMBtu's</u>

INDEXED PRICE/FIRM SUPPLY

1.	OGS Utilities Management State Office Bldg. Campus (Room G20, Bldg. #4 SOBC) 1220 Washington Avenue Albany, NY 12226	Art MacAloney Tel. #: 518-457-5549 Fax #: 518-457-5531 art.macaloney@ogs.ny.gov	Nov 11 - 22,610 Dec 11 - 35,191 Jan 12 - 39,042 Feb 12 - 32,332 Mar 12 - 27,045 Apr 12 - 17,298 May 12 - 13,693 Jun 12 - 10,066 Jul 12 - 9,228 Aug 12 - 8,955 Sept 12 - 10,315 Oct 12 - <u>16,818</u> 242,593
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INDEXED PRICE/FIRM SUPPLY

2.	OGS Utilities Management (Steam Plant) 79 Sheridan Avenue Albany, NY 12210	Terry Potter Tel. #: 518-474-3175 Fax #: 518-474-2128 terrance.potter@ogs.ny.gov	Nov 11 - 109,698 Dec 11 - 135,519 Jan 12 - 152,273 Feb 12 - 125,606 Mar 12 - 118,214 Apr 12 - 100,677 May 12 - 95,070 Jun 12 - 108,495 Jul 12 - 139,424 Aug 12 - 131,471 Sept 12 - 102,929 Oct 12 - <u>95,987</u> 1,415,363
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(continued)

AWARD SHALL BE MADE FOR EITHER LOT 10 OR LOT 11 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 10

NATIONAL GRID TERRITORY (EAST GATE)

<u>Item</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo.</u>
<u>No.</u>			<u>Vol. MMBtu's</u>

INDEXED PRICE/INTERRUPTIBLE SUPPLY

1.	Hudson Correctional Facility E. Court Street Hudson, NY 12534	Richard Hilbrandt Tel. #: 518-828-4311 ext. 3970 Fax #: 518-828-4311 ext. 3996 Richard.hilbrandt@docs.ny.gov	Nov 11 - 7,500 Dec 11 - 10,250 Jan 12 - 10,850 Feb 12 - 10,000 Mar 12 - 9,300 Apr 12 - 6,500 May 12 - 1,550 Jun 12 - 1,500 Jul 12 - 1,500 Aug 12 - 1,550 Sept 12 - 1,550 Oct 12 - <u>5,300</u> 67,550
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(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 10 OR LOT 11 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 11

NATIONAL GRID TERRITORY (EAST GATE)

<u>Item</u> <u>No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo.</u> <u>Vol. MMBtu's</u>
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INDEXED PRICE/FIRM SUPPLY

1.	Hudson Correctional Facility E. Court Street Hudson, NY 12534	Richard Hilbrandt Tel. #: 518-828-4311 ext. 3970 Fax #: 518-828-4311 ext. 3996 Richard.hilbrandt@docs.ny.gov	Nov 11 - 7,500 Dec 11 - 10,250 Jan 12 - 10,850 Feb 12 - 10,000 Mar 12 - 9,300 Apr 12 - 6,500 May 12 - 1,550 Jun 12 - 1,500 Jul 12 - 1,500 Aug 12 - 1,550 Sept 12 - 1,550 Oct 12 - <u>5,300</u> 67,550
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(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 12 OR LOT 13 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 12

NATIONAL GRID TERRITORY (WEST GATE)

<u>Item No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo. Vol. MMBtu's</u>
<u>INDEXED PRICE/INTERRUPTIBLE SUPPLY</u>			
1.	Hutching Psy. Center 620 Madison Street Syracuse, NY 13210	Rick Howard Tel. #: 315-426-3600 ext. 3966 Fax #: 315-426-3967 richard.howard@omh.ny.gov	Nov 11 - 3,000 Dec 11 - 4,500 Jan 12 - 5,000 Feb 12 - 4,500 Mar 12 - 3,600 Apr 12 - 1,800 May 12 - 900 Jun 12 - 400 Jul 12 - 400 Aug 12 - 400 Sept 12 - 600 Oct 12 - <u>1,700</u> 26,800
<u>INDEXED PRICE/INTERRUPTIBLE SUPPLY</u>			
2.	Mohawk Valley Psy. Center 1400 Noyes Street Utica, NY 13502	Jeff Greene Tel. #: 315-738-3908 Fax #: 315-738-4444 jeff.greene@omh.ny.gov	Nov 11 - 5,000 Dec 11 - 8,300 Jan 12 - 9,000 Feb 12 - 7,700 Mar 12 - 5,800 Apr 12 - 4,000 May 12 - 1,500 Jun 12 - 500 Jul 12 - 500 Aug 12 - 500 Sept 12 - 2,000 Oct 12 - <u>4,000</u> 48,800

(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 12 OR LOT 13 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 13

NATIONAL GRID TERRITORY (WEST GATE)

<u>Item</u>			<u>Approx. 12 Mo.</u>
<u>No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Vol. MMBtu's</u>

INDEXED PRICE/FIRM SUPPLY

1.	Hutching Psy. Center 620 Madison Street Syracuse, NY 13210	Rick Howard Tel. #: 315-426-3600 ext. 3966 Fax #: 315-426-3967 richard.howard@omh.ny.gov	Nov 11 - 3,000 Dec 11 - 4,500 Jan 12 - 5,000 Feb 12 - 4,500 Mar 12 - 3,600 Apr 12 - 1,800 May 12 - 900 Jun 12 - 400 Jul 12 - 400 Aug 12 - 400 Sept 12 - 600 Oct 12 - <u>1,700</u> 26,800
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INDEXED PRICE/FIRM SUPPLY

2.	Mohawk Valley Psy. Center 1400 Noyes Street Utica, NY 13502	Jeff Greene Tel. #: 315-738-3908 Fax #: 315-738-4444 jeff.greene@omh.ny.gov	Nov 11 - 5,000 Dec 11 - 8,300 Jan 12 - 9,000 Feb 12 - 7,700 Mar 12 - 5,800 Apr 12 - 4,000 May 12 - 1,500 Jun 12 - 500 Jul 12 - 500 Aug 12 - 500 Sept 12 - 2,000 Oct 12 - <u>4,000</u> 48,800
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(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 14 OR LOT 15 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 14

ORANGE AND ROCKLAND TERRITORY

<u>Item</u> <u>No.</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo.</u> <u>Vol. MMBtu's</u>
<u>INDEXED PRICE/INTERRUPTIBLE SUPPLY</u>			
1.	OMH Rockland Psych. Ctr. 140 Old Orangeburg Road Orangeburg, NY 10962	John Fratto Tel. #: 845-680-8758 Fax #: 845-359-6856 john.fratto@omh.ny.gov	Nov 11 - 14,350 Dec 11 - 21,350 Jan 12 - 21,600 Feb 12 - 17,500 Mar 12 - 15,500 Apr 12 - 11,550 May 12 - 8,800 Jun 12 - 7,600 Jul 12 - 7,000 Aug 12 - 7,450 Sept 12 - 7,450 Oct 12 - <u>9,900</u> 150,050
<u>INDEXED PRICE/INTERRUPTIBLE SUPPLY</u>			
2.	OMH Rockland Psych. Ctr. Cook Chill Production Ctr. 145 Old Orangeburg Road Orangeburg, NY 10962	John Fratto Tel. #: 845-359-8758 Fax #: 845-359-6852 john.fratto@omh.ny.gov	Nov 11 - 1,360 Dec 11 - 2,065 Jan 12 - 2,110 Feb 12 - 1,750 Mar 12 - 1,780 Apr 12 - 1,300 May 12 - 1,060 Jun 12 - 650 Jul 12 - 560 Aug 12 - 625 Sept 12 - 590 Oct 12 - <u>1,040</u> 14,890

(continued)

GENERAL INFORMATION (Cont'd)

AWARD SHALL BE MADE FOR EITHER LOT 14 OR LOT 15 AS DESCRIBED IN THE METHOD OF AWARD

DELIVERY SCHEDULE

LOT 15

ORANGE AND ROCKLAND TERRITORY

<u>Item</u>	<u>Customer</u>	<u>Contact</u>	<u>Approx. 12 Mo.</u> <u>Vol. MMBtu's</u>
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INDEXED PRICE/FIRM SUPPLY

1.	OMH Rockland Psych. Ctr. 140 Old Orangeburg Road Orangeburg, NY 10962	John Fratto Tel. #: 845-680-8758 Fax #: 845-359-6856 john.fratto@omh.ny.gov	Nov 11 - 14,350 Dec 11 - 21,350 Jan 12 - 21,600 Feb 12 - 17,500 Mar 12 - 15,500 Apr 12 - 11,550 May 12 - 8,800 Jun 12 - 7,600 Jul 12 - 7,000 Aug 12 - 7,450 Sept 12 - 7,450 Oct 12 - <u>9,900</u> 150,050
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INDEXED PRICE/FIRM SUPPLY

2.	OMH Rockland Psych. Ctr. Cook Chill Production Ctr. 145 Old Orangeburg Road Orangeburg, NY 10962	John Fratto Tel. #: 845-359-8758 Fax #: 845-359-6852 john.fratto@omh.ny.gov	Nov 11 - 1,360 Dec 11 - 2,065 Jan 12 - 2,110 Feb 12 - 1,750 Mar 12 - 1,780 Apr 12 - 1,300 May 12 - 1,060 Jun 12 - 650 Jul 12 - 560 Aug 12 - 625 Sept 12 - 590 Oct 12 - <u>1,040</u> 14,890
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(continued)

GENERAL INFORMATION (Cont'd)

FOR LOTS 2, 4, 6, 8, 9, 11, 13 and 15 (INDEXED PRICE/FIRM SUPPLY)

Locations in 2, 4, 6, 8, 9, 11, 13 and 15 are utility classified as interruptible transportation rate. If on any day when facility is receiving firm supply and the facility is required by the LDC to switch to an alternative fuel (Event) supplier shall during such Event make a credit or debit adjustment for the excess city gate gas using the following calculations:

FOR NATIONAL GRID

For Sales Upstream of the City Gate:

A). During the months of November through March, the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion North Point. If that is not posted, the Dominion South Point will be used.

B). During the months of April through October, the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion South Point.

For Sales at the City Gate:

A). During the months of November through March, the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion North Point plus DTI Firm transportation variable and fixed charges plus losses to the city gate in effect at the time of the Event. If that is not posted, the Dominion South Point will be used.

B). During the months of April through October, the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Dominion North Point plus DTI Firm transportation variable and fixed charges plus losses to the city gate in effect at the time of the Event.

C). City Gate Sales shall include any LDC that has DTI Primary Delivery Points.

CON EDISON, CENTRAL HUDSON AND ORANGE & ROCKLAND

For Sales Upstream of the City Gate:

A). During any month the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Transco, Zone 6, Non-NY for Central Hudson, Transco NY for Con Edison, and Columbia Appalachia for Orange & Rockland.

For Sales at the City Gate:

A). During any month the price for the excess city gate gas will equal the difference between the contract price and the price reported by Natural Gas Week's Gas Market Reconnaissance for the Event day under Natural Gas Spot Prices for Algonquin City Gate. (Applicable to Central Hudson and Orange and Rockland.) Con Edison will be Transco - NY

(continued)

**PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX**

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

**LOT 8 - DELIVERY TO NATIONAL GRID
EAST GATE - CITY GATE**

INDEXED PRICE/FIRM SUPPLY

Item	12 Months Approx. Quantity
<u>No.</u> <u>Agency</u>	<u>MMBtu's</u>
1. OGS Utilities Management	242,593
2. OGS Utilities Management	<u>1,415,363</u>

LOT 8 - Total Quantities **1,657,956**
(Items 1 - 2)

TOTAL BID, LOT 8, ITEMS 1 - 2:

*Cost shall reflect all shrinkage including
Fuel Retaining Losses, GRI surcharge, etc.

(All prices to be carried to the 4th decimal place)

Indicate Location where natural gas is produced:

NOTE TO BIDDERS:

Bids must remain firm and cannot be withdrawn prior to close of business February 29, 2012. After that date, bids shall remain in effect until either a contract is awarded, or the bidder formally withdraws its bid, in writing. Customers shall be served, and natural gas supplied in accordance with all terms and conditions herein. Curtailments/interruptions will only be allowed as described in the General Information section of this Invitation for Bids. **THE BIDDER SHALL ACKNOWLEDGE THESE REQUIREMENTS AS STATED ABOVE BY SIGNING HERE:**

Basis Cost*
per MMBtu's
Delivered to
LDC City Gate

\$ _____
(INDEXED PRICE/FIRM SUPPLY)

\$ _____

**THIS LOT WILL UTILIZE THE
MONTHLY EXCESS/DEFICIENCY
USAGE ADJUSTMENT
SEE PAGE 19 FOR DETAILS**

Bidder Signature & Date

(continued)

**PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY’S NAME IN THE BOX**

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Bidder

**LOT 9 - DELIVERY TO NATIONAL GRID
EAST GATE - CITY GATE**

INDEXED PRICE/FIRM SUPPLY

<u>Item</u>	<u>Agency</u>	<u>12 Months Approx. Quantity MMBtu's</u>
1.	OGS Utilities Management	242,593
2.	OGS Utilities Management	<u>1,415,363</u>

LOT 9 - Total Quantities **1,657,956**
(Items 1 - 2)

TOTAL BID, LOT 9, ITEMS 1 - 2:

*Cost shall reflect all shrinkage including
Fuel Retaining Losses, GRI surcharge, etc.

(All prices to be carried to the 4th decimal place)

Indicate Location where natural gas is produced:

NOTE TO BIDDERS:

Bids must remain firm and cannot be withdrawn prior to close of business February 29, 2012. After that date, bids shall remain in effect until either a contract is awarded, or the bidder formally withdraws its bid, in writing. Customers shall be served, and natural gas supplied in accordance with all terms and conditions herein. Curtailments/interruptions will only be allowed as described in the General Information section of this Invitation for Bids. **THE BIDDER SHALL ACKNOWLEDGE THESE REQUIREMENTS AS STATED ABOVE BY SIGNING HERE:**

Basis Cost*
per MMBtu's
Delivered to
LDC City Gate

\$ _____
(INDEXED PRICE/FIRM SUPPLY)

\$ _____

Bidder Signature & Date

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

**LOT 10 - DELIVERY TO NATIONAL GRID
EAST GATE - CITY GATE**

INDEXED PRICE/ INTERRUPTIBLE SUPPLY

<u>Item No.</u>	<u>Agency</u>	12 Months Approx. Quantity <u>MMBtu's</u>
1.	Husdon Correctional Facility	<u>67,550</u>
<u>LOT 10 - Total Quantities</u>		<u>67,550</u>
(Item 1)		

TOTAL BID, LOT 10, ITEM 1:

*Cost shall reflect all shrinkage including Fuel Retaining Losses, GRI surcharge, etc.

(All prices to be carried to the 4th decimal place)

Indicate Location where natural gas is produced:

NOTE TO BIDDERS:

Bids must remain firm and cannot be withdrawn prior to close of business February 29, 2012. After that date, bids shall remain in effect until either a contract is awarded, or the bidder formally withdraws its bid, in writing. Customers shall be served, and natural gas supplied in accordance with all terms and conditions herein. Curtailments/interruptions will only be allowed as described in the General Information section of this Invitation for Bids. **THE BIDDER SHALL ACKNOWLEDGE THESE REQUIREMENTS AS STATED ABOVE BY SIGNING HERE:**

Basis Cost*
per MMBtu's
Delivered to
LDC City Gate

\$ _____
(INDEXED PRICE/INTERRUPTIBLE SUPPLY)

\$ _____

Bidder Signature & Date

**PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY’S NAME IN THE BOX**

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Bidder

**LOT 11 - DELIVERY TO NATIONAL GRID
EAST GATE - CITY GATE**

INDEXED PRICE/FIRM SUPPLY

<u>Item No.</u>	<u>Agency</u>	12 Months Approx. Quantity <u>MMBtu's</u>
1.	Hudson Correctional Facility	<u>67,550</u>
<u>LOT 11 - Total Quantities</u>		<u>67,550</u>
(Item 1)		

TOTAL BID, LOT 11, ITEM 1:

*Cost shall reflect all shrinkage including
Fuel Retaining Losses, GRI surcharge, etc.

(All prices to be carried to the 4th decimal place)

Indicate Location where natural gas is produced:

NOTE TO BIDDERS:

Bids must remain firm and cannot be withdrawn prior to close of business February 29, 2012. After that date, bids shall remain in effect until either a contract is awarded, or the bidder formally withdraws its bid, in writing. Customers shall be served, and natural gas supplied in accordance with all terms and conditions herein. Curtailments/interruptions will only be allowed as described in the General Information section of this Invitation for Bids. **THE BIDDER SHALL ACKNOWLEDGE THESE REQUIREMENTS AS STATED ABOVE BY SIGNING HERE:**

Basis Cost*
per MMBtu's
Delivered to
LDC City Gate

\$ _____
(INDEXED PRICE/FIRM SUPPLY)

\$ _____

Bidder Signature & Date

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY'S NAME IN THE BOX

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Bidder

NOTES TO BIDDERS: FAILURE TO ANSWER THE QUESTIONS WILL DELAY THE EVALUATION OF YOUR BID AND MAY RESULT IN REJECTION OF YOUR BID.

- Has Bidder completed and submitted their "Intent to Bid" to this office?

_____ YES _____ NO

- Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B, OGS General Specifications.
If "NO", please explain on a separate sheet.

_____ YES _____ NO

- Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply.)

_____ GSA _____ VA _____ NO

If yes, will you offer New York State pricing equal to or better than your GSA or VA pricing?

_____ GSA _____ VA _____ NO

If yes, a copy of the GSA or VA schedule is required. Have you included a copy?

_____ GSA _____ VA _____ NO

- If awarded a contract, will bidder accept the New York State Procurement Card for orders not to exceed \$15,000.00?

_____ YES _____ NO

(continued)

**PLEASE USE BLACK INK OR TYPEWRITER WHEN
 PREPARING YOUR BID. BE SURE YOU HAVE
 INSERTED YOUR COMPANY'S NAME IN THE BOX**

Bidder

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NOTES TO BIDDERS: (Cont'd)

- If bidder limits the maximum acceptable card amount to less than \$15,000, please indicate the maximum amount:

Additional discount for purchases made with the NYS
 Procurement Card:

- Cash Discount for payment within 15 days of delivery and/or receipt of voucher
- Cash Discount for payment within 30 days of delivery and/or receipt of voucher

- Person or persons to contact for expediting
 New York State contract orders: Name: _____

Title: _____

Telephone Number: () _____

Toll Free Telephone Number: () _____

Fax Number: () _____

Toll Free Fax Number: () _____

E-Mail Address: _____

\$ _____

_____ %

_____ %

_____ %

**PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX**

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

NOTES TO BIDDERS: (Cont'd)

- Person or persons to contact in the event of an emergency occurring after business hours or on weekend/holidays:

State Normal Business Hours (Specify M-F, Sat, Sun):

Name:

Title:

Telephone Number:

Fax Number:

Pager Number:

Cellular Telephone Number:

E-Mail Address:

() _____
() _____
() _____
() _____

(continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX

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Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Is your company a Minority or Women-Owned Business Enterprise, certified in accordance with Article 15A of the New York State Executive Law as defined below?

_____ YES _____ NO

2. Is your company listed in the Empire State Development Directory of Certified Minority and Women Owned Businesses?

_____ YES _____ NO

http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

NOTE: Contractors certified **and** listed in the Empire State Development's Directory of Certified Minority and Women-Owned Business Enterprises* will be identified by OGS as MBEs and/or WBEs in the OGS Contract Award Notification upon award of the contract.

- MINORITY-OWNED
- WOMEN-OWNED
- MINORITY AND WOMEN-OWNED

*For further information and or application please contact New York State Department of Economic Development, Division of Minority and Women-Owned Business Enterprise at 518-292-5250 (Albany) or 212-803-2414 (New York City).

"Minority or Women-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- (a) at least fifty-one percent owned and controlled by the minority members and/or women;
- (b) an enterprise in which such minority and/or women ownership interest is real, substantial and continuing;
- (c) an enterprise in which such minority and/or women ownership has and exercises the authority to independently control the day-to-day business decisions; and
- (d) an enterprise independently owned, operated and authorized to do business in New York State.

3. Is your company a New York Small Business Concern as defined in accordance with Article 11 of the New York State Finance Law?

_____ YES _____ NO

"Small Business Concern" means a business which:

- (a) is resident in New York State;
- (b) is independently owned and operated;
- (c) is not dominant in its field; and,
- (d) employs one hundred or fewer persons.

(continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX

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Bidder

4. Total number of people employed by your business in
New York State:

5. **BIDDER'S PRINCIPAL PLACE OF BUSINESS*:**

State of _____

*"Principal Place of Business" is the location of the primary
control, direction and management of the enterprise.

6. **"NONDISCRIMINATION IN EMPLOYMENT IN
NORTHERN IRELAND:
MacBRIDE FAIR EMPLOYMENT PRINCIPLES"**

In accordance with Section 165 of the State Finance Law, the
bidder, by submission of this bid, certifies that it or any
individual or legal entity in which the bidder holds a 10% or
greater ownership interest, or any individual or legal entity that
holds a 10% or greater ownership interest in the bidder, either:

(Answer Yes or No to one or both of the following, as
applicable),

A. have business operations in Northern Ireland:

_____ YES _____ NO

If yes,

B. shall take lawful steps in good faith to conduct any business
operations in Northern Ireland in accordance with the
MacBride Fair Employment Principles relating to non-
discrimination in employment and freedom of workplace
opportunity regarding such operations in Northern Ireland,
and shall permit independent monitoring of compliance
with such Principles.

_____ YES _____ NO

**PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE INSERTED
YOUR COMPANY'S NAME IN THE BOX**

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

7. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Pursuant to Procurement Lobbying Law (SFL §139-j)

- A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

_____YES _____NO

If yes, please answer the following question:

- B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

_____YES _____NO

- C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

_____YES _____NO

If yes, please provide details regarding the finding of non-responsibility:

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-Responsibility:
(add additional pages if necessary)

- D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

_____YES _____NO

If yes, please provide details:

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:
(add additional pages if necessary)

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

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

GENERAL

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

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

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

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

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

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

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

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

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

VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software,

firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

BID SUBMISSION

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

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

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

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

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

"BID ENCLOSED (bold print, all capitals)

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

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

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

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

9. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to

the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

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

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

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

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

13. 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 Order 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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