



INVITATION FOR BIDS

See Section III - PROCUREMENT PROCESS and SUBMISSION REQUIREMENTS CLAUSES HEREIN

BIDS SHALL BE SENT TO THE ABOVE ADDRESS ONLY

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

BID OPENING DATE: April 30, 2015 TIME: 11:00 AM	TITLE: Group 37700 – Culvert & Underdrain Pipe & Tubing (w/Arches, Bands, Culverts & Accessories) - Metal & Plastic Based (Statewide) Classification Codes: 30 & 40	
INVITATION FOR BIDS NUMBER: 22719	SPECIFICATION REFERENCE: As Incorporated in the Invitation For Bids	
CONTRACT PERIOD: Contracts will be for a four (4) year term, beginning on the first business day following the execution of Contracts and may be eligible for a one year maximum extension period.		
DESIGNATED CONTACTS:		
James E. Malone (Primary) Contract Management Specialist II James.Malone@ogs.ny.gov	Adam Groesbeck (Secondary) Contract Management Specialist Adam.Groesbeck@ogs.ny.gov	Joseph Hodder (Secondary) Transportation/Road Materials Team Leader Joseph.Hodder@ogs.ny.gov

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

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See "New York State Vendor File Registration" clause)</i>			
If applicable, place an "x" in the appropriate box (check all that apply):	<input type="checkbox"/> NYS Small Business _____ # of Employees	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business	
Legal Business Name of Company Bidding:				
D/B/A - Doing Business As (if applicable):				
Street	City	State	Zip	County
If applicable, place an "x" in the appropriate box (check all that apply):		<input type="checkbox"/> Manufactured Within New York State	<input type="checkbox"/> Manufactured Outside New York State	
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 SERVICE'S USE ONLY

P.R. #22719	LIT <input type="checkbox"/>	<input type="checkbox"/> LETTER	<input type="checkbox"/> FLASH DRIVE <input type="checkbox"/>	<input type="checkbox"/> OTHER <input type="checkbox"/>	MISSING PAGES:
	MEMO <input type="checkbox"/>	<input type="checkbox"/> CD/DVD	<input type="checkbox"/> SDHC CARD <input type="checkbox"/>	_____	

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- Attachment 1 – Bidder Information & Bid (Excel®)
- Attachment 2 – General Questions, Bidder Agreements & Certifications (Excel®)
- Attachment 3 – Bid Submittal Checklist (Excel®)

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SECTION I INTRODUCTION

I.1 OVERVIEW & SCOPE

I.1.1 – Overview: This Invitation for Bids (IFB) is issued by the New York State Office of General Services – Procurement Services. The commodity contracts awarded as a result of this IFB will be centralized contracts for use Statewide by Authorized Users, including but not limited to New York State Agencies, political subdivisions, local governments, public authorities, State and Local Parks, Counties, Municipalities, Educational Organizations and Facilities and certain other nonpublic/nonprofit organizations (see Section I.3 – Non-State Agencies Participation in Centralized Contracts). “Authorized User” shall have the meaning set forth in the State Finance Law section 163(1)(k). See Appendix B, § 2, *Definitions*.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. A Bidder should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, Bidder must follow the format and instructions in Sections II, III and Appendix 1.

I.1.2 – Scope: The purpose of this IFB and resultant contracts is to provide Authorized Users with a means of acquiring equipment, associated accessories, parts and products manufactured and sold in the transportation and road construction industries for the building, maintenance, repair and rehabilitation of culverts and roadway drainage systems. Authorized Users will be encouraged to purchase from Contractors who offer products and pricing that best meet their needs in the most practical and economical manner. Products covered under this procurement include but are not limited to those designed as Culvert and Underdrain Pipe, Tubing, Arches, Bands, Culverts, Accessories and Parts (Metal and Plastic Based).

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

OGS Procurement Services intends to award multiple contracts by lot in accordance with the Method of Award (as found in Section IV), on either a statewide or a regional Supply Coverage Area basis as applicable and in the State’s best interest, to responsive and responsible Bidders who are able to meet the terms and conditions of this solicitation.

The awarded vendors will receive a four-year agreement, with potential extension(s) under the same terms and conditions for additional time period(s) not to exceed a total contract term of five (5) years in accordance with the Section VII.6 “Contract Period and Renewals.”

I.1.3 – Contract Award: Portions of the successful Bidder’s bid and of this IFB shall be incorporated into a final contract, with a separate document executed by Contractor and OGS. See Section IV.3 for additional information.

Once a contract is awarded, the OGS website will include a Contract Award Notification, Contractor’s contact information, contract modifications (including contract updates), and other information for Authorized Users including a link and login information (if needed) for the Contractor’s website where contract pricing or ordering may be hosted. See section VIII.16 for additional information regarding possible hosted Internet Websites.

I.2 M/WBE INTEREST IN PARTNERSHIP

If a New York State certified M/WBE vendor would like to indicate its interest in working with the participating Bidders, please send an email entitled “M/WBE INTEREST_M/WBE [INSERT NAME]” to James.Malone@ogs.ny.gov & cc’d to Adam.Groesbeck@ogs.ny.gov on or before March 10, 2015 at 4:00 PM ET. The email should include:

- Company Name
- Contact Name and Contact Information
- Company Web Site
- Brief description of company type (for example “Company ABC manufactures _____, sells _____, supplies _____, services _____, etc.”)
- Products &/Material available for sale
- Services available
- NYS Certification Type (Minority and/or Women-Owned Business Enterprise)

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

I.3 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law (Authorized Users) may participate in the contracts resulting from this IFB. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, § 27, *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of Section II – Cost Proposal Requirement shall be modified to include delivery to locations adjacent to New York State.

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

I.4 "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

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

I.5 PREFERRED SOURCE PRODUCTS

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

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

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

I.6 ESTIMATED QUANTITIES

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

Estimated annual quantities of core products are listed in column E on each Lot Group tab in Attachment 1. The "Estimated Historic Annual Volumes" set forth in column E for Lots 1 through 8, represent estimates of annual core item volume using historical purchasing data. Lot 9 is a new product line offering in this procurement. The "Estimated Annual Volumes" set forth in column E for Lot 9, are industrial estimates of core item volumes, and are not based on historical purchasing data. For each of the nine Lots, estimated percentages of volume attributable to the core list items versus the non-core list items are set forth in column B, lines 7 and 8.

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

- Such contracts will be nonexclusive contracts;

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

In OGS Procurement Services' experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated pricing, actual quantities purchased could be substantially lower than the estimates. By submitting its bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this IFB.

I.7 PRE-BID CONFERENCE

A Pre-Bid Conference will be hosted by OGS Procurement Services at the New York State Empire State Plaza. Additionally, there will be remote availability to attend, via an online webinar. The tentative date and time of the Pre-Bid Conference may be found in Section I.10 – Key Events/Dates. Attending the Pre-Bid Conference is not mandatory but is highly encouraged.

In order to attend the Pre-Bid Conference vendors must register by completing Attachment 1 – Tab B, Pre-Bid Conference Registration and submitting it as an excel workbook via e-mail to James.Malone@ogs.ny.gov & cc'd to Adam.Groesbeck@ogs.ny.gov by the date and time listed in Section 1.10 - Key Events/Dates. Actual on-site location is to be determined. Registrants will be notified as to the determined remote format and live location of the conference via e-mail after receipt of registration by OGS in advance of the conference. Vendors who fail to register for the Pre-Bid Conference by the date and time listed in Section 1.10 – Key Events/Dates shall not be permitted to attend the Pre-Bid Conference. There will be no day of event or on-site registration.

If attending on site, each vendor is permitted to send not more than three (3) representatives to the Pre-Bid Conference. There is no limit on remote attendees, however, all must be registered and identified. Bidders may copy and save the Attachment 1- Tab B Registration Form as multiple tabs for registering more than 3 remote attendees. Vendors who have registered for the Pre-Bid Conference by the date and time indicated in Section I.10 – Key Events/Dates and wish to revise which representatives shall attend the on-site Pre-Bid Conference must do so via e-mail to Adam.Groesbeck@ogs.ny.gov at least 48 hours prior to the Pre-Bid Conference. Corrections of remote attendees must be made at least 24 hours before the event. Any individuals arriving later than 10 minutes after the start time of the Pre-Bid Conference will not be admitted. Vendors are advised that photo identification is required for parking at the Empire State Plaza and for security Screenings. Directions to Empire State Plaza can be found at the following link: http://www.ogs.ny.gov/ESP/Directions.asp_.

Parking pricing and location information for Empire State Plaza can be found at the following link: <http://www.ogs.ny.gov/BU/BA/Parking/Visitor>. Bidders are encouraged to allow plenty of extra time for parking at the Empire State Plaza and are advised that all parking fees and fines are solely at the Bidder's expense.

At the discretion of **OGS Procurement Services**, materials may be provided prior to the Pre-Bid Conference to the e-mail address(es) submitted with registration or posted to the OGS website for viewing. At the discretion of **OGS Procurement Services**, inquiries submitted prior to the Pre-Bid Conference may be addressed by OGS at the Pre-Bid Conference. Any inquiry responses provided during the Pre-Bid Conference are unofficial; only written inquiry responses issued in accordance with Section I.9 and posted on the **OGS Procurement Services** website shall be official.

I.8 DESIGNATED CONTACTS

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

(Continued)

James E. Malone,
 Contract Management Specialist 2
 NYS Office of General Services
 Procurement Services
 Corning Tower - 38th Floor
 Empire State Plaza
 Albany, New York 12242
 E-Mail: James.Malone@ogs.ny.gov

In the event the primary designated contact is not available, the SECONDARY Designated Contacts are:

Adam Groesbeck Contract Management Specialist NYS Office of General Services Procurement Services Corning Tower - 38th Floor Empire State Plaza Albany, New York 12242 E-Mail: Adam.Groesbeck@ogs.ny.gov	Joseph Hodder Transportation/Road Materials Team Leader NYS Office of General Services Procurement Services Corning Tower - 38th Floor Empire State Plaza Albany, New York 12242 E-Mail: Joseph.Hodder@ogs.ny.gov
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For matters solely related to Section VI.10 - M/WBE PARTICIPATION AND GOALS of the procurement additional secondary designated contacts are:

Anuola Surgick NYS Office of General Services Office for Minority & Women Owned Business Enterprises Corning Tower - 29th Floor Empire State Plaza Albany, New York 12242 E-Mail: Anuola.Surgick@ogs.ny.gov	Tryphina Ramsey NYS Office of General Services Office for Minority & Women Owned Business Enterprises Corning Tower - 29th Floor Empire State Plaza Albany, New York 12242 E-Mail: Tryphina.Ramsey@ogs.ny.gov
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The primary contact should be cc'd on all correspondence and communications with any secondary contacts.

1.9 INQUIRIES

A Bidder should raise any questions, potential assumptions, exceptions, caveats etc. to the terms and conditions, specifications, and requirements of this IFB, during the inquiry period for the procurement. OGS will not entertain any exceptions to Appendix A. OGS will also not entertain exceptions to this IFB and Appendix B that are of a material and substantive nature. A Bidder should note that all clarifications and exceptions including those relating to the terms and conditions of the contracts are to be resolved prior to the submission of a bid. Bids that contain material changes to the terms, conditions, specifications, and requirements set forth throughout this IFB may be disqualified as non-responsive.

No inquiries submitted via phone, fax, or mail will be accepted.

All inquiries concerning this IFB will be addressed to the appropriate OGS Procurement Services designated contact(s) referenced in 1.9 above.

All questions must be submitted in writing using "Attachment 1, Tab C "Pre-Bid Inquiries", citing the particular IFB document name and document section. The Pre-Bid Inquiries Template must be emailed to James.Malone@ogs.ny.gov & cc'd to Adam.Groesbeck@ogs.ny.gov by March 27, 2015 at 4:00 p. m. ET for inquiries listed above, however, Bidders are strongly encouraged to submit questions at the earliest convenience. Answers to all questions of a substantive nature will be provided electronically to all Prospective Bidders in the form of a question and answer document which will be posted on the OGS website at: <http://www.ogs.ny.gov/purchase/biddocument/22719BID.ASP>, with notification of the posting released and forwarded by the NYS Contract Reporter which will become part of the ensuing contracts. It is recommended that prospective bidders register to receive notifications of information postings for this bid and for other bid opportunities with the NYS Contract Reporter at <https://www.nyscr.ny.gov>

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I.10 KEY EVENTS/DATES

IFB Release	3/17/2015	---
M/WBE Interest Deadline	3/24/2015	4:00 PM EDT
Pre-Bid Conference Registration Deadline	3/24/2015	4:00 PM EDT
Pre-Bid Conference	4/1/2015	
Closing Date for Inquiries	4/10/2015	4:00 PM EDT
Issuance of Question and Answer Document	4/17/2015	
Bid Opening Date/Time	4/30/2015	11:00:00AM EDT

I.11 WEBSITE ACCESS ERRORS

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

I.12 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

1. Reject any or all proposals received in response to the IFB;
2. Withdraw the IFB at any time, at the State's sole discretion;
3. Make an award under the IFB in whole or in part;
4. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
5. Seek clarifications and revisions of bids;
6. Clarify product substitutions or equivalents;
7. Prior to the bid opening date/time, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening date/time, direct Bidders to submit proposal modifications addressing subsequent IFB amendments;
9. Change any of the schedule dates with notification through the New York State Contract Reporter and Bidder Notification System;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all Bidders;
11. Waive any requirements that are not material;
12. Utilize any and all ideas submitted in the bids received;
13. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration.
14. Negotiate with the Bidder responding to this IFB within the IFB requirements to serve the best interests of the State;
15. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation;
16. Offer a Bidder the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to explain or justify the balance, realism and/or reasonableness of its pricing;
17. Should the State of New York be unsuccessful in executing a contract with a selected bidder within 30 calendar days of notification of tentative contract award, the State may begin contract negotiations with the next lowest price bidder in order to serve the best interests of the State of New York.
18. Select and award a contract to other than a selected bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the IFB requirements.
19. To consider bids with non-material deviations or non-material omissions and to waive non-material deviations or non-material omissions consistent with the intent and scope of the IFB;
20. To reject an unbalanced lot group bid, or a lot group bid containing incomplete, unreasonable or unrealistic pricing, as determined by the State;
21. To make "NO AWARD" for any item or Lot for reasons including, but not limited to incomplete, unbalanced, unreasonable, or unrealistic Bidder pricing as determined by the State, a change in Authorized User requirements and/or product(s), or an error in the bid solicitation (i.e., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of bids may be made on the remaining items or Lots unless as result of a NO AWARD Bidder fails to provide the minimum number of items required for the Lot.
22. To award all contracts for all lots to the lowest Bidder(s), either regionally by Supply Coverage Area or statewide, at the State's discretion, in the best interest of the State.

(Continued)

I.13 IFB DOCUMENTS

This IFB is composed of the following documents:

This IFB Document along with the following three appendices:

Appendix A – Standard Clauses for New York State Contracts (January, 2014)

[Included within this document beginning on page 76]

Appendix B – OGS General Specifications (June 2014)

[Included within this document beginning on page 82]

Appendix C – Insurance Requirements

[Included within this document beginning on page 109]

Attachment 1 – Bidder Information and Bid (Excel®)

Attachment 2 – General Questions, Bidder Agreements & Certifications (Excel®)

Attachment 3 – Bid Submittal Checklist (Excel®)

I.14 ORDER OF PRECEDENCE

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

1. Appendix A – Standard Clauses for New York State Contracts (January, 2014) [found herein beginning on page 76]
2. This IFB
3. Appendix C – Insurance Requirements [found here in beginning on page 109]
4. Attachment 2 – General Questions, Bidder Agreements & Certifications (Excel®)
5. Appendix B – OGS General Specifications (June 2014) [found here in beginning on page 82]
6. Attachment 1 – Bidder Information and Bid (Excel®)
7. Attachment 3 – Bid Submittal Checklist (Excel®)

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

- (i) Appendix A, Standard Clauses for New York State Contracts;
- (ii) Appendix B, OGS General Specifications;
- (iii) A Contract Award Notification containing portions of the successful Bidder's proposal and portions of the IFB.
- (iv) Other documents may be identified by OGS for inclusion in the contracts during the course of the solicitation process.

Conflicts among the documents comprising the contracts shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The separate document executed by Contractor and OGS;
3. The Contract Award Notification
4. Appendix B, OGS General Specifications; and
5. Other documents identified by OGS for inclusion during the course of the solicitation process.

I.15 DEFINITIONS

The terms used in this IFB shall be defined in accordance with Appendix B, , §2, Definitions). In addition, the following definitions shall apply. Additional definitions may be also found in Section V – Product Specifications.

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

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

“Contractor” shall refer to a responsive and responsible Bidder who has offered the lowest price for the IFB and is working under a contract with New York State resulting from this IFB.

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

“**Core List**” shall refer to a line item listing of specific products up for bid, assembled as individual lots in Attachment 1

“**Core List Item**” shall refer to an individual product or part found within a Core List in an Attachment 1 Lot Tab on which a bidder must offer specific information and pricing

“**Current Product Line Catalog**” shall refer to the most recently updated listing of items sold by a company

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

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

“**Estimated Annual Volume**” as used in Attachment 1 for Lot 9, refers to an estimate of annual core item volume which is not based on historical purchasing data.

“**Estimated Historical Annual Volume**” as used in Attachment 1 for Lots 1 through 8, refers to an estimate of annual core item volume using historical purchasing data.

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

“**Final Offered Product List**” is the listing of all products offered by the bidder, found in the bidder’s catalog and complete Commercial Price List which are appropriate for inclusion in the contracts resulting from this IFB, and fit within the scope of the lot(s) being bid.

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

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

“**Mandatory**” refers to items or information that the State has deemed that a Bidder must submit as compulsory, required and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of “must” or “shall”. Mandatory requirements must be met by the Bidder for Bidder’s proposal to be considered responsive.

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

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

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

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

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

“**Non-Core**” shall refer to any product line or groups of products contained in the bidders catalog and offered to the State for contract, that are within the scope of a lot being bid but are not a part of the Core List. These items shall be entered along with their List Price on the bidders “Final Offered Product List”, and be priced by a single discount rate, taken off of list, as entered in the bid.

“**Non-Core Item**” shall refer to any individual product offered from a bidder’s catalog or Commercial Price List which are not a part of a specific “Core List” within the bid.

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

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

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

“**NYS Vendor ID**” shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

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

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

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

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

“**Price Realism**” is an evaluative concept which is concerned with whether a bidder’s proposed prices are unrealistically low.

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

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

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

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

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

* * * * *

SECTION II COST PROPOSAL REQUIREMENTS

Bidders shall offer pricing based on items found in their current product line catalog, discounted from their openly available Commercial Price List.

Items designated by the State as “Core List” products shall be quoted separately, individually discounted from list price to Item Net, FOB Destination, Freight Prepaid and Added, quoting separate pricing indicating the average price (cost) to ship a product unit under conventional ordering & shipping conditions to any location, within four distinct “service areas” or regional supply coverage areas (as per Section II.2 below), and/or as a single average cost to ship a product unit to any location anywhere within the State also purchased and shipped under conventional ordering & shipping conditions.

The remainder of contract items are designated by the State as “Non-Core Items” and shall be available through the vendor’s current product line catalog and shown by the bidder in the Final Offered Product List (see Section II.5 below). Price shall be discounted from list price to Item Net, FOB Destination - Freight Prepaid and Included using a single, all-inclusive discount rate stated in the bid and applied to the prices found in the bidders Commercial Price List.

All products shall be shipped FOB Destination from a point within the United States to a delivery location in New York State as designated by the ordering Authorized User including dock delivery and tailgating of load. Additional shipping fees may only be charged when delivery to the required delivery point is not possible via dock, any other door, stairway or elevator freight service and/or when specialized service is requested in writing by the purchaser. Authorized User must be informed of any additional shipping cost(s) prior to delivery and agree to the additional charge(s) in writing. Such cost(s) shall also be prepaid and added to the Contractor’s invoice and the invoice must include a separate invoice from the carrier detailing the service premium. Any additional carrier charges for “extra” services may be disallowed. Authorized User will not be additionally charged for delivery to the building location since shipping is FOB Destination. Any additional shipping charges are subject to post-audit. If it is determined that a Contractor is charging excessive amounts for any shipping or delivery services, the State may seek reimbursement for such amounts, may remove the Contractor from the list of eligible bidders, and may cancel the contract.

All costs relating to the importing of foreign produced components and/or finished goods including any transportation, customs fees, tariffs, taxes and charges are solely the responsibility of the seller, not that of the buyer. In addition, upon mutual agreement of the Contractor and OGS, delivery locations may be expanded per the “Extension of Use” clause.

(See Section VII.1.1 for delivery terms and conditions.)

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

II.1 USE OF SUBCONTRACTORS

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

If utilizing subcontractors, Bidder shall identify all Subcontractors in Attachment 1, Tab A. The bidder shall indicate whether orders may be placed directly with each specific Subcontractor, in addition to being placed directly with the bidder. Bidder must also note that should they allow subcontractors to accept and fulfill orders from contract users on their behalf, subsequent payment shall be made to the subcontractor for such orders. Subcontractors must adhere to all contract pricing and terms at all times.

Upon award, Contractor shall be fully liable for subcontractors’ performance and compliance with all contract terms and conditions. Product(s) purchased through subcontractors must be reported by Contractor in the required quarterly reports to the State as a condition of payment (see Section VII.6).

II.1.1 Changes in Subcontractor Listing: If the Contractor allows Dealers to participate in the Contract in accordance with the Use of Subcontractors clause of this Contract, and wishes to add or delete subcontractors or to modify subcontractor information, requests must be submitted for prior approval of the State. Contractor

(Continued)

may request changes quarterly to the designated Subcontractors List by submission of a completed, revised version of the tab of Attachment 1, Tab A – Identification.

II.2 SUPPLY COVERAGE AREAS & REGIONAL BIDDING

Bidders will be able to bid on either a statewide or regional basis (within specifically defined Supply Coverage Areas as found in the chart below). A map defining the four areas may be found in Attachment 1 and on the last page of this document.

The State reserves the right to make awards in the best interests of the State, including awarding statewide offerings by regional Supply Coverage Areas as well as awarding regional Supply Coverage Area offerings statewide, at the option of the State.

If opting for its bid to be a statewide bid, it will also be the bidder’s option as to whether to offer a single Core List Item shipping rate structure applicable to the entire state with one rate covering all supply coverage areas, or whether to offer individual Core List Item shipping rate packages to cover specific Supply Coverage Areas. The Supply Coverage Areas are composed of counties grouped together as indicated below:

A		B		C		D
Allegany	Ontario	Broome	Madison	Albany	Rensselaer	Bronx
Cattaraugus	Orleans	Chenango	Oneida	Clinton	Schenecta	Kings
Chautauqua	Schuyler	Cortland	Onondaga	Columbia	dy	Nassau
Chemung	Seneca	Delaware	Oswego	Dutchess	Saratoga	New York
Cayuga	Steuben	Herkimer	Otsego	Essex	Schoharie	Orange
Erie	Tompkins	Jefferson	St.	Franklin	Sullivan	Putnam
Genesee	Wayne	Lewis	Lawrence	Fulton	Ulster	Queens
Livingston	Wyoming		Tioga	Greene	Washingto	Richmond
Monroe	Yates			Hamilton	n	Rockland
Niagara				Montgomery	Warren	Suffolk
						Westchester

Bidders may also opt to bid regionally by selecting only the Supply Coverage Area or Area’s in which it wishes to cover.

The State’s decision to award on a regional supply coverage area basis would be contingent on having sufficient participation to ensure full contract coverage in all supply coverage areas. Should such offers not be available, the bidder may be asked by the State to extend their offer at the same prices and terms bid to an adjacent supply coverage area in which there is no contractor. Such a change will be effective upon agreement between the State and bidder and will be indicated either in the Contract Award Notification or in a post award Purchasing Memorandum.

II.3 CORE LIST ITEMS & PRICING

Contained within Attachment 1 - Bidder Information & Bid is a series of nine tabs, each representing a lot in this bid. Each lot contains a specific product area or product line. Vendors shall select and complete the lots in which they are qualified as a business to participate under. Each tab contains “Core Lists” which represent the individual line item listing of specific products up for bid making up the product area or line for that lot.

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

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

The bidder will calculate and enter the average cost of shipping a single unit of the listed core item purchased and shipped under conventional ordering & shipping conditions as follows:

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II.3.1 – Entering a STATEWIDE bid: Bidder shall determine and enter the average price (cost) to ship a product unit under conventional ordering & shipping conditions of each core list item to any point within the entire State (Statewide Shipping Price - under Column “M”), as well as the average price (cost) to ship a product unit under conventional ordering & shipping conditions to any point within each of the four (4) Supply Coverage Areas as indicated herein under Section II.1 – Supply Coverage Area.

It is the bidder’s option as to whether to offer a single price applicable within all supply coverage areas in Column “M”, or whether to offer a single statewide price along with individual prices in each specific supply coverage area or multiple supply coverage areas. Bidder must list shipping price for Areas “A through D” in Columns “N through Q”. If offering only a single Statewide price, Bidder should enter that price across all five (5) columns “M” through “Q” when making your tab entry. If a Statewide bid is received where shipping pricing is only posted in Column “M”, OGS Procurement Services will automatically apply the posted rate across the Supply Coverage Area Columns “N through Q”, for evaluation. If offering individual supply coverage area pricing without a entering a single Statewide price, the bidder must place an “X” in the Column “M” Statewide rate cell.

II.3.2 – Entering a SUPPLY COVERAGE AREA (Regional) bid: Bidder shall determine and enter the average price (cost) to ship a product unit under conventional ordering & shipping conditions of each core list item to any point within any of the four (4) Supply Coverage Areas of their choice as indicated herein under Section II.1 – Supply Coverage Area.

The bidder may bid no more than three (3) Supply Coverage Areas unless bidding statewide. As noted - It is the bidder’s option as to whether to offer a single price applicable to the all supply coverage areas bid or to offer individual prices in each specific supply coverage area in which being bid. The shipping prices for Supply Coverage Areas “A through D” are to be entered in Columns “N through Q”.

A Bidder offering to cover a limited supply coverage area, not encompassing a full Statewide offer shall enter an “X” in the Statewide shipping column cells (Column M), as well as in columns pertaining to the specific supply coverage areas that you are not offering to compete within (Columns N through Q).

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

II.4 NON-CORE (or CATALOG) ITEMS & Non-Core (Catalog) DISCOUNT RATE

Other products found in the bidder’s product line catalog and on their Commercial Price List, which meet the scope of the lot being bid, and/or support or supplement the lot’s core items in form, utility and function may also become a part of the bid. These items are referred to as the Non-Core Items for the lot. They shall be quoted at a single discount rate for the entire lot – Freight included (per the lead paragraph above for Section II) - by entering a discount rate in space provided in Column B - Line 6 on the tab for the lot(s) being bid in Attachment 1, directly adjacent to the label “Discount for Contract Items not on the Core List”. “0”, “Zero”, “none” or a (-) Negative number is not considered to be a discount *rate*. All entries made for the Non-Core (Catalog) Discount may be subject to additional negotiation prior to the awarding of any contracts. The individual Non-Core items shall be listed by the bidder in the Final Offered Product List as found in Attachment 1, Tab I. *See Section II.6, Final Offered Product List, below for additional information.*

Vendors bidding multiple lots may offer different non-core discounts rates from lot to lot. However, if a bidder wins award for multiple lots with varying discount rates, and there are common non-core items contained within these lots, the non-core rate applied to these items shall be the rate most advantageous to the State.

II.5 PRODUCT LINE CATALOGS

All bidders shall submit four (4) hard copies of an identifiable product line catalog containing their available products, options and accessories pertinent to this offering and to the lot(s) being bid as a part of the bid. The submitted catalog(s) shall be properly identified as required in Attachment 1- Bidder Information & Bid, Tab D.

The product line catalog shall also be supplied in an electronic format either as an independent file or as an online at a web location, the bidder should supply with their bid a copy of the electronic file, and if also available online the URL address where the catalog may be obtained. (See Attachment 1 – Tab D)

Bidders Note: Should any web address submitted in the bid subsequently be changed, an awarded contractor must promptly notify the Contract Management Specialist of Record regarding the update.

Bidders may bid more than one manufacturer’s product line catalog within a lot but must identify the additional catalogs on separate workbook (Attachment 1 – Tab D) pages. Only one manufacturer’s principal product line

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catalog may be offered per page. Bidders may duplicate additional catalog worksheets (Attachment 1 – Tab D) as necessary. However, note that only one discount rate for items not on the core list may be bid per lot.

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

II.6 COMMERCIAL PRICE LIST

Per Section III.1, Format and Content of Bid Submittal, Bidders shall submit two (2) hard copies and one (1) electronic file containing the Commercial Price List(s), as defined in Section I.12, matching the designated submitted product line catalogs. The submission shall be properly identified as required in Attachment 1, Tab D.

This Commercial Price List must be the most recently published at the bid opening date/time.

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

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

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

II.7 DISCOUNTS

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

II.7.1 - Additional Cash Discounts: Cash Discounts for prompt payment will not be considered in determining low bid, but cash discounts of any size may be considered in awarding tie bids. See Section IV.2.3.2, *Tie Bids*. Bidders shall indicate any additional cash discounts offered in the space provided on Tab J "Additional Discount Rates" in "Attachment 1 – Bidder, Catalog and Price List Identification".

II.7.2 - Additional Volume Discounts: Optional volume discounts may also be offered and shall also be based on the Commercial Price List of record. Volume discounts shall not be evaluated. At the Bidders option, volume discounts may be applied per purchase order, cumulatively per authorized user, and/or cumulatively statewide. Volume discounts shall be defined and applied as follows: Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount or based upon exceeding threshold quantities of an individual items. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under a contract. Any cumulative discounts shall be annually based with thresholds being reset annually with each anniversary date of the contract start date. The bidder shall indicate the basis for applying the volume discount(s) on the bid document form and shall state the type and threshold of the volume discount(s) offered in the space provided in "Attachment 1 – Bidder Information & Bid on Tab J - "Additional Discount Rates".

II.8 PRODUCTS

Contractor shall offer products that are listed in their product line catalog and Commercial Price List. Product offerings should be consistent with the terms and scope of this IFB as found Sections I.1, V and in Attachment 1. Products offered through the catalogs should be representative of the items required for use within the lot being bid and contain all of the appropriate items, over and above the core list items, needed to complete the mission under the lot for which it is being bid. Catalogs should include any auxiliary items and service parts required for proper installation and support within the product lot being bid.

II.8.1 – Exclusions

There may be overlapping products excluded from the scope of these contracts.

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A summary of automatically excluded products is as listed below:

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

OGS Procurement Services reserves the right to delete, before or after award, any product included in the Bidder's Final Offered Product List. OGS Procurement Services also reserves the right to request a bidder add an item from either their Product Line Catalog or Commercial Price List which may not have been originally included by the bidder in the Final Offered Product List. The Final Offered Product List may list products covered by other State contracts, as well as those available from preferred sources. It is the obligation of the Authorized Users to order from the appropriate source. See Section I.6, Preferred Source Products for additional information.

II.9 FINAL OFFERED PRODUCT LIST

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

The Bidder should exclude from the contract any product or lines contained in its product line catalog and Commercial Price List which may be unrelated to the lot or lots being bid by omitting them on the Final Offered Products List.

Products specifically excluded under Section I.5, Exclusions, should not be entered on the Final Offered Product List.

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

Multiple lines will be reviewed individually.

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

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

II.10 CATALOG TERMS & CONDITIONS

Any pre-existing or pre-published terms and conditions contained in the Bidder's submitted Product Line Catalog and/or Commercial Price List are of no force and effect. Also, any addition of terms and conditions by the Bidder to the Bid will be considered an exception to the bid and may subject to Section III.3 and may be cause for rejection. Only the Terms and Conditions contained within Appendix A, Appendix B and this IFB apply.

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SECTION III - PROCUREMENT PROCESS AND SUBMISSION REQUIREMENTS

IMPORTANT NOTICE TO PROSPECTIVE BIDDERS: The receipt of bid documents does not indicate that the Office of General Services' New York State Procurement division 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.

III.1 FORMAT AND CONTENT OF BID SUBMITTAL

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

III.1.2 – Bid Submittal: Bidder shall submit their bid proposal in both Hard Copy and on Electronic Media. If a Bidder does not submit its bid in the formats required, the bid may be deemed non-responsive. All bids must be machine produced. Handwritten bids are unacceptable and will be rejected. In the event that there are any inconsistencies between the electronic submission versus ORIGINAL hard copy submissions, or between multiple hard copy submissions, the electronic version will be deemed controlling by OGS when reviewing the bid.

III.1.2 – Signature Pages: The bid must be signed by a partner, corporate officer or other person authorized to commit the firm to all provisions of the IFB and its bid as submitted. The complete bid package contains five (5) distinct signature sections requiring legal notarization of the signing for each individual section. The notary blocks are located on page 2 of this document and on Tabs 1 through 4 of Attachment 2. All notarization is mandated for submission. The Appendix C forms, the ST-220 CA Sales tax certification and some insurance forms also require signatures, however notarization is not required.

Page 1 and 2 of this IFB text shall be completed and saved as a Microsoft Word Document® (.doc or .docx), printed twice signed and notarized. They will be submitted in Microsoft Word Document® (.doc or .docx) format, completed prior to signature, along with the printed, signed and notarized hard copies.

All Attachment pages requiring signatures shall be filled out electronically, saved in Excel® (.xlsx) format. They should then be printed twice for signing and notarization. They must be submitted in Excel® (.xlsx) format, completed prior to signature, along with the printed, signed and notarized hard copies.

If post-signature a bidder wishes to scan the completed hard copies to a pdf file and supply the file as an additional record; that is an acceptable option. The completed Excel Files must remain in Excel format and must be supplied with the printed, signed and notarized hard copies.

Tabs 3 and 4 of Attachment 2 (if applicable to your submission), require notarized signatures from manufacturers and suppliers, and may be deferred for post bid opening submission. See the attachment and Section III.1.3 below for more information.

III.1.1 – Electronic Submission of Bid: The bid shall be submitted by the bid opening date and time on Electronic Media, as defined in Section 1.16, Definitions, and shall include all documents required.

Each bulleted item below shall be saved in its own file, properly marked as to its contents and burned to the Electronic Media.:

1. Microsoft Word Document® (.doc or .docx) of the completed first page of this bid document
2. Excel® (.xlsx) Bid Attachments (1, 2, and 3)
3. Complete Electronic version of the vendor's designated Commercial Price List
4. Vendors designated Product Line Catalog(s) – in electronic format.
5. Any other Electronic Documents required for the evaluation of the bid per Section IV.2, Method of Award or noted in Section III.5 "Information to be Furnished" which may be ready and available at the time of the submission

Unless specifically stated herein as required in hard copy, any other hard copy documents (including Product Line Catalogs) which a bidder plans to submit may be scanned to PDF files, properly titled and submitted electronically. Should any document stated as being required in hard copy, the submission of a PDF version would be for back-up purposes only, and such submission does not absolve a bidder from providing the requested document in hard copy.

All files should be saved as and named using the following key: "IFB 22719 – Attachment # - COMPANY NAME"

(Continued)

Office of General Services New York State Procurement reserves the right to reject any bid submission or portion(s) thereof determined to have been altered/modified from the original format by the vendor. Such alterations/modifications include but are not limited to any change(s) to document header(s), footer(s) and/or cell(s); unprotecting worksheet(s)/workbook(s); hiding/unhiding cell (s)/column(s)/row(s)/worksheet(s); and locking/unlocking cell(s).

Only those cells provided for entering vendor information are to be accessed by the vendor.

Bidders should clearly label the electronic media package with the Bid (#) number, Bid Opening date/time and Company Name as indicated below in Section IV.1.2.1. Bidders should confirm that the media has been properly formatted and burned with a readable file(s).

III.1.1.1 Important Instructions Regarding Use Of Microsoft Excel® & Office®: Bidders shall note that the file versions in use within the attachments for this bid are the most currently available format (.xlsx) and are compatible with Microsoft Excel® and Microsoft Office® versions 2010 through 2013 and 365.

The Attachments of this bid contain numerous cell links, and the lot tabs contain mathematical formulas which automatically perform calculations. These features assist both the bidder in the preparation and filling out of the bid, and OGS Procurement Services with the review of the entry. File formats must not be changed from the original format (.xlsx) when using, saving or submitting.

Bidders using earlier/older versions of the Excel program suite may experience difficulty when using or viewing the information being calculated within and may not be able to save their work to the .xlsx format as required by the bid. As these legacy programs are no longer supported by Microsoft, it is recommended that bidders obtain and use as up to date software as possible to achieve the maximum benefit of the program and information being supplied.

III.1.1.2 – Back up Files: Bidders may also opt to include a backup/duplicate media source. Such a submittal should be clearly designated and marked as “backup” or “duplicate”. Should a submission include multiple undesignated electronic media resources, the State reserves the right to designate which resource will be used.

III.1.1.3 – Unauthorized Changes: OGS Procurement Services reserves the right to reject any bid submission or portion(s) thereof determined to have been altered/modified from the original format by the vendor. Such alterations/modifications include but are not limited to any change(s) to document header(s), footer(s) and/or cell(s); unprotecting worksheet(s)/workbook(s); hiding/unhiding cell(s)/column(s)/row(s)/worksheet(s); and locking/unlocking cell(s).

III.1.1.4 – Cell Restrictions: Only those cells provided for entering bid information and vendor information are to be accessed or used by the bidder.

III.1.1.5 – File Usability: Any bid received wherein the submitted electronic Excel® file of Attachment #1 found on the Primary Media Source, as well as if offered on a backup source, are determined by OGS Procurement Services to be unreadable on OGS Procurement Services’ computers will be rejected

III.1.2 – Hard Copies: The hard copies of the bid proposal should be organized and submitted in a total of two (2) different loose-leaf three ring binders. These binders should have the official name of the Bidder’s organization(s) as well as the Group Number and id Number on the outside front cover. The cover and spine of the binders should be marked “Original 1” and “Original 2”. The materials in each binder shall contain the original signature(s) of an official(s) authorized to bind the Bidder to its bid. Each binder shall have all documents listed below separated by marked dividers (i.e., Bid Signature Page and Acknowledgement Form, Attachment 1, Attachment 2...)

The following ORIGINAL documents shall be included in each binder:

- Invitation for Bid Signature Page and Acknowledgement Form (pages 1 and 2 of this document)
- (1) Hard copy of all identified product line catalogs containing their available products, options and accessories pertinent to this offering in the bid.
- (1) Hard copy of vendor’s Commercial Price List upon which contract pricing is being based.
- Attachment 1 – Bidder Information & Bid [Tabs A, C, D, G, H, I, J, K, L are mandatory with the bid]
 - NOTE: Bidders should not print and include hardcopies for Lots that you are not participating in.
- Attachment 2 – General Questions, Bidder Agreements & Certifications [Tabs 1 & 2 are mandatory with the bid]
- Attachment 3 – Bid Submittal Checklist

Bidder must further submit in hard copy two (2) additional copies of the vendor’s product line catalog outside of the two (2) bound bid versions. A total of four (4) hard copies of the vendors product line catalog are required to be submitted per Section II.4

(Continued)

III.1.3 – Deferred Mandatory Items: The following items are mandatory requirements for this bid, however at the bidder's option they may be deferred and forwarded separately from the bid package and/or upon request by the Contract Management Specialist of record. Any information request will include an appropriate time frame for response and submittal.

- Proof of Compliance with all insurance requirements as specified in Section VI.6 and Appendix C.
- ST-220 CA Sales tax registration certification (per Section VI.4) may be deferred until requested.
- Proof that bidder is financially stable (Section VI.5)
- The M/WBE Utilization Plan (Form MWBE-100) and Equal Employment Opportunity Staffing Plan (Form EEO-100) (printed, completed and signed) as found on line at <http://www.ogs.ny.gov/MWBE/Forms.asp>
- Attachment 2 – Tabs 3 & 4 are mandatory if they are applicable to the bid. They may be deferred until requested.
- Any Federal Certifications for products being offered shall be supplied upon request by the Contract Management Specialist of record, or subsequent to award upon request by a resident engineer of any Authorized User.
- Any additional documents requested by the Contract Management Specialist of record.

III.1.4 – Revisions: In the event a Bidder may need to submit revisions to their bid prior to the Bid Submission Deadline, any revised pages submitted by a Bidder to be incorporated into the bid, shall show the date of the revision and indicate the portion of the page being changed and the reason the revision was required. Two (2) Hard Copies of revised page(s) and one electronic data copy on Electronic Media shall be submitted indicating the date of revision.

Bidders Note: *It is recommended that bidders carefully review the full contents of this bid to ascertain all submission requirements. The State, however, reserves the right to request any additional information deemed necessary for the proper evaluation of bids. All information requests must be submitted within the time frame set forth by the Contract Management Specialist of Record within a specific request.*

III.1.5 – Additional Information to Be Furnished: The bidder shall submit either with its bid or within the time frame specified by the Contract Management Specialist upon request four (4) detailed copies each of the:

1. Specifications
2. Instruction Manuals,
3. Training Materials,
4. Circulars & Any necessary technical data regarding product use for products to be furnished within the lots bid

If the product offered differs from the provisions listed, such differences must be explained in detail. Failure to submit any of the above data may result in rejection of the bid. These materials may be submitted in either paper hard copy or on electronic media as a PDF Format File, or if responding upon request, transmitted as PDF format files directly to the primary contact.

Bidders Note: *The State reserves the right to request any additional information deemed necessary for the proper evaluation of bids. Any other information or additional clarifications requested by OGS Procurement Services after the bid opening is to be accurately submitted within the time frame stated or set or by the Contract Management Specialist of Record within a specific request. Late responses or responses supplied on incorrect forms may be deemed non-responsive and be cause for rejection of the bid.*

III.2 PACKAGING OF IFB RESPONSE

III.2.1 – Labeling of Shipping Containers or Envelopes

All packages, boxes and envelopes used to transport the bid should be labeled accordingly.

If using a commercial delivery company that requires their shipping package or envelope be used, the bid must be placed within the second sealed envelope labeled as detailed below. This will ensure that the bid/proposal is not prematurely opened.

Mark all envelopes and mailers prominently as "BID ENCLOSED" and label according to label format seen below right. Address all packages as detailed below in section III.3

Bidder's bid must be submitted in sealed packages and received on or before 11:00 AM ET on April 21, 2015.

III.2.2 – Labeling of Electronic Media

For Electronic Media, use label format similar to what is shown below on the left. Label, sign and date (please use a permanent marker). Affix to front of all CD cases or flash drives. When labeling a CD or DVD, do NOT adhere

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any sticker or make any markings on the bottom side (data side) of the disk. Only mark or label the TOP of the disk. If submitting a Secure Digital High-Capacity (SDHC) Flash Memory Card label the top of the card with the bid number and a company identifier, do not adhere anything to the bottom (contact side) of the card. USB Flash Drives may be labeled on both the top and bottom with bid number and company identifier using caution not to obstruct the drive's connection tab. OGS Procurement Services recommends testing all media for readability after labeling.

Place all media in a mailer and enclose both the mailer and all hard copies of the bid and product catalog in an envelope. Mark all envelopes and mailers prominently as "BID ENCLOSED" and label according to label format seen below right. Address all packages as detailed below in section III.

Electronic Media Label Format

Co. Name: _____ Group #37700 – Culvert & Underdrain Pipe & Tubing IFB #22719 Bid Opening Date: April 21, 2015 Time: 11:00 AM File: Contractor Bid Signature: _____ Date: _____
--

Label Format

FROM: _____ _____ _____ _____ <table border="1"> <tr> <td>B. O. DATE:</td> <td>April 21, 2015</td> </tr> <tr> <td>B. O. Time:</td> <td>11:00 A.M.</td> </tr> <tr> <td>Group No.:</td> <td>37700 – Culvert & Underdrain Pipe & Tubing</td> </tr> <tr> <td>IFB No.:</td> <td>22719</td> </tr> </table>	B. O. DATE:	April 21, 2015	B. O. Time:	11:00 A.M.	Group No.:	37700 – Culvert & Underdrain Pipe & Tubing	IFB No.:	22719
B. O. DATE:	April 21, 2015							
B. O. Time:	11:00 A.M.							
Group No.:	37700 – Culvert & Underdrain Pipe & Tubing							
IFB No.:	22719							

III 2.3 – Labeling of Binders: See paragraph 1 in Section III.1.2 – Hard Copies above, for detailed instructions

III.3 INSTRUCTIONS FOR IFB SUBMISSION

The complete bid package must be received by OGS/ OGS Procurement Services at the 38th floor reception desk by the date and time of the bid opening. Shipments received after the bid opening date and time, regardless of carrier guarantees of prompt delivery times, will be deemed late.

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

III.3.1 – Bid Delivery via Mail or Commercial Carrier: 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.

Bids shall be mailed or delivered to:

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

III.3.2 – Bid Delivery by Hand: A Bidder must allow extra time to comply with the Building Access procedures (see Section III.3.3 below) in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. A Bidder assumes all risks for timely, properly submitted deliveries. The received time of IFBs will be determined by OGS by the clock at the above noted location.

III.3.3 - Important Building Access Procedures: To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk. A Bidder who elects to deliver its proposal is encouraged to pre-register for building access by contacting the OGS Procurement Services receptionist at 518-474-6262 at least 24 hours prior to the bid opening date/time. 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 OGS Procurement Services Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct OGS Procurement Services business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. Note: Bids

(Continued)

not received at the OGS Procurement Services Reception Desk by the bid opening date/time will be considered late.

III.4 BID DEVIATIONS/EXTRANEIOUS TERMS

As noted in, Appendix B, OGS General Specifications, §8, 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. Bidders should raise any questions, concerns and deviations which they may have prior to the bid opening in the pre bid inquiry period using Tab C herein as provided.

There are instances where additional deviations may become evident after the inquiry period, or a bidder may find specific problems where they would like to have a deviation noted or may find or wish to propose a modification or the introduction of an additional term or specification. Attachment 1 Tab L is supplied for this purpose. If the bid being submitted differs from the specifications as set forth in this IFB, such deviation(s) or qualification(s) shall be explained on Attachment 1, Tab L "Extraneous Terms Template" and submitted it with the bid. Bidders are reminded that OGS will not entertain any exceptions to Appendix A (Standard Clauses For New York State Contracts). OGS will also not entertain exceptions to this IFB and Appendix B that are of a material and substantive nature. See *Appendix B, §8, Extraneous Terms, for additional information.*

The submission of Attachment 1, Tab L is a mandatory requirement and is to be included at the time of the bid, whether or not Bidder is proposing extraneous terms.

III.5 LIABILITY AND VALIDITY

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a contract.

A Bid shall remain an effective offer, firm and irrevocable, for at least 180 days from the due date, unless the time for awarding the contracts is extended by mutual consent of OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180 day period until either tentative award of a contract by OGS is made or withdrawal of the bid in writing by Bidder. Tentative award of a contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal contract.

III.6 POSTING OF BID OPENING RESULTS

OGS Procurement Services may post certain bid information about this IFB on the OGS website. The web page makes available bid information about the list of bidders that responded to the IFB. 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>

III.7 BIDDER DEBRIEFING

Unsuccessful Bidders shall be notified upon Notification of Tentative Award to the winning Contractor(s). A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's proposal or bid. 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. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The post-award debriefing should be requested in writing within 30 days of posting of the Contract award on the OGS website.

III.8 DISPUTES

Appendix B, §64, Disputes, is hereby deleted and replaced with the following:

I. Policy

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration. OGS Dispute Resolution Procedures

(Continued)

may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

II. Dispute Resolution Procedures

A. Informal Dispute Resolution Process

1. In the event there is a dispute under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

B. Formal Dispute Process

1. Definitions

a. Filed means the complete receipt of any document by OGS before its close of business.

b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.

c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.

d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.

e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

f. A Formal Dispute means a written objection by an Interested Party to any of the following:

i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.

ii. The cancellation of the solicitation or other request by OGS.

iii. An award or proposed award of the Contract by OGS.

iv. A termination or cancellation of an award of the Contract by OGS.

v. Changes in the scope of the Centralized Contract by the Commissioner.

vi. Determination of "materiality" in an instance of nonperformance or contractual breach.

vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Formal Disputes

a. A Formal Dispute must be filed in writing with the Director of OGS Procurement Services by mail, email or facsimile, using the following contact information:

(Continued)

**Director, New York State Procurement
A Division of the Office of General Services**

38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437
Email: Donald.Greene@ogs.ny.gov

b. The Formal Dispute must include:

- i. Name, address, e-mail address, fax and telephone numbers of the filer.
- ii. Solicitation or Contract number.
- iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
- iv. Copies of relevant documents.
- v. Request for a ruling by the agency.
- vi. Statement as to the form of relief requested.
- vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
- viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.

5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.

6. Agency Response

- a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.
- b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.
- c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
- d. OGS reserves the right to consider or reject the merits of any Formal Dispute.
- e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

- a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or facsimile, using the following contact information:

**Chief Procurement Officer
New York State Procurement
A Division of the Office of General Services**

38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

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b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of OGS Procurement Services shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of OGS Procurement Services shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

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

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SECTION IV EVALUATION PROCESS AND SELECTION CRITERIA**IV.1 RECEIPT OF BID**

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

IV.2 METHOD OF AWARD

Multiple awards may be made by lot. It will be determined by the State on a lot by lot basis as to whether it is in the best interests of the State to award each lot on an individual supply coverage area basis or on a statewide basis, based on lowest cost among responsive and responsible bidders. The lowest responsive and responsible bidder shall be determined Statewide **and** in each of the four supply coverage areas. If the Statewide lowest bid for a given lot is equal to or lower than each of the four supply coverage areas' lowest bids for that same lot, then such lot may be awarded statewide (1 award). If the Statewide lowest bid is higher than any of the four supply coverage areas' lowest bids for the same lot, then such lot may be awarded by supply coverage area (up to 4 awards per lot).

In the event a bidder is to be awarded multiple lots or multiple supply coverage areas for a lot or lots, or, the awards will be integrated into a single contract for execution.

The State plans to award contracts in the procurement's' entirety, however, may opt to award contracts to lots separately or in groups. Should individual or group awards be made, OGS Procurement Services will use supplemental Contract Award Notifications to announce any subsequent awards at the State's convenience.

IV.2.1 – Evaluation Process: Bids will be routed through evaluation as follows:

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

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

IV.2.2 - Financial Evaluation Process:

Bids will first be reviewed to determine regional status. All bids received pertaining to a specific region will be segmented for evaluation only within that region. Should all bids received for a given lot be determined to have been submitted by each individual bidder using a singular shipping price bid covering all Supply Coverage Areas, no regional review will be necessary and award shall be made on a statewide basis.

After a set of responsive bids for a lot has been determined, the following Microsoft Excel generated calculations shall be performed for each completed Attachment 1 Lot Tab, for Lot 1 through Lot 9 to establish the tentative awardees in each lot.

IV.2.2.1 – Calculation of Statewide Bids:

Bids received as containing a statewide component with shipping prices quoted in Column "M" will be calculated by OGS as follows:

- A. The **Net Core Price** for each Core Item is determined as follows:

Whereas: L represents a List Price for a Core List Item (*as entered in Column K*).

D represents the Discount quoted for the specific Core Item (*as entered in Column L*).

Q represents the Estimated Annual Quantity listed for the Core Item (*as stated in Column E*).

The Net Core Price is calculated by multiplying the List Price (L) submitted for each Core List Item by the Discount bid (D) for that Core Item with the result multiplied by the Estimated Annual Quantity(Q) listed for the Core Item, per the following formula: $((L \times (1-D)) \times Q = \text{Net Core Price}$.

The Total Net Core Price is the sum of the Net Core Price of all Core List Items within a lot.

- B. The Cumulative Statewide Shipping Price is the product of the quoted Statewide Shipping prices multiplied by the Estimated Annual Quantity stated in Column "E" for each item. This annual shipping price for each item is then added together to reach the Cumulative Statewide Shipping Price.
- C. Total Net Core Price + Cumulative Statewide Shipping Price = Statewide Core Bid Price (SCB)
- D. The Statewide Core Bid Price will then be divided by the estimated/historic core percentage rate (Core%) indicated in Column B, Line 7, then multiplied by the estimated non-core percentage rate (Non-Core %) as found in Column B row 8, to determine the Non-Core Value without the bid

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discount. This non-core value is multiplied by the “discount for contract items not on the core list” as quoted in Column B Row 6 to achieve the Non-Core Bid Price.

- E. The resulting Non-Core Bid Price will then be added to the Statewide Core Bid Price resulting in the Total Statewide Bid Price, which can be viewed in Column C Row 17 of the applicable Attachment 2 tab.
- F. The Total Statewide Bid Price for each bidder will be ranked from low to high.

IV.2.2.2 – Calculation of Supply Coverage Area Bids:

Supply Coverage Area Bids will be calculated as necessary for each of the four Supply Coverage Area shipping columns as follows:

- A. Where a Supply Coverage Area Shipping Price listed in Columns “N” through “Q” varies from the Statewide Shipping Price listed in Column “M”, A Supply Area Bid Price shall be determined as follows:
 1. A Supply Coverage Area Net Core Price shall be calculated by reducing Net Core Price calculated above under IV.2.1.1.1 (using the supply area price quote instead of the statewide price) to the net percentage stated by the Estimated Supply Coverage Area’s Purchasing Allocation listed on the lot’s Tab in Column “B”, Lines 13 through 16 to obtain a net area value for the area bid, with each individual item added to become the Total Supply Coverage Area Net Core Price.
 2. A Cumulative Supply Coverage Area Item Shipping Price is the product of the quoted Supply Coverage Area Shipping price, multiplied by the Estimated Annual Quantity stated in Column “E” for each item. This annual freight for each item is then reduced in calculation to the net percentage stated by the Estimated Supply Coverage Area’s Purchasing Allocation listed on the lot’s Tab in Column “B” Lines 13 through 16, for the appropriate area, with each individual item added to become Cumulative Supply Coverage Area Shipping Price.
 3. Total Supply Coverage Area Net Core Price + Cumulative Supply Coverage Area Shipping Price = Supply Coverage Area Core Price (SCB)
 4. The Supply Coverage Area Core Price will then be divided by the estimated/historic core percentage rate (Core %) indicated in Column B, Line 7. This value will then be multiplied by the estimated non-core percentage rate (Non-Core %) as found in Column B, Row 8, to determine the Non-Core Value without the bid discount. This value is multiplied by the “discount for contract items not on the core list as” quoted in Column B, Row 6 to achieve the Non-Core AREA Bid Price.
 5. The resulting Non-Core Supply Coverage Area Bid Price will then be added to the Supply Coverage Area Core Price resulting in the Total Supply Area Bid Price.

The Total Supply Coverage Area bid price can be viewed in Column C, Rows 13 through 16

- B. Total Supply Coverage Area Bid Prices for each bidder, in each lot, will be ranked from low to high.
- C. The low Total Supply Coverage Area Bids for each area within each lot will be compared with the low Statewide Bid Price for each lot for determination of award in the best interest of the State.

IV2.2.3 - Mathematic Formula: The Excel Formula in use in Attachment 2 on all 17 Bid Tabs to determine a bid price, applicable to all bid values entered both Statewide and in individual Supply Coverage Areas is as follows:

$$\left(A_X + \left(\frac{B_X}{C} * D * (1 - E) \right) \right) F_X = \text{Total Area Price}$$

Where:

- A(X) represents the Annual Net Value of the Core List (including shipping) to Area (X) and shall be calculated by multiplying the Discounted Bidders Price for Area (X) and the Historic (or estimated) Annual Volume for each Core List item, then summing the resulting values of all Core List items.
- B(X) represents the Annual List Value of the Core List (including shipping) to Area (X) and shall be calculated by multiplying the Bidders List Price for Area (X) and the Historic (or estimated) Annual Volume for each Core List item, then summing the resulting values of all Core List items.

(Continued)

- C represents the percentage of Historic/Estimated Annual Purchasing comprised by the Core List and shall be a constant value and shall be pre-determined by OGS. The specific value for C can be found in Attachment 2 – Bid Pricing – Core List & Catalog Discount.
- D represents the percentage of Historic/Estimated Annual Purchasing comprised by the items not on the Core List and shall be a constant value and shall be pre-determined by OGS. The specific value for D can be found in Attachment 2 – Bid Pricing – Core List & Catalog Discount.
- E represents the Discount percentage bid for all items not contained in the Core List.
- F(X) represents the percentage of Historical/Estimated Annual Purchasing comprised by Area (X).

The specific values for F(x) can be found in the tabs containing the lots in Attachment 1 – Bidder Information and Bids.

IV.2.2.4 – Tie Bids - Appendix B, §23, Tie Bids, is hereby deleted and replaced with the following:

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

IV.2.2.5 – Reasonableness of Price: Additionally, Bidder may need to justify that bid pricing received in response to this Solicitation is reasonable. OGS Procurement Services should be able to individually evaluate products and/or product lines found within a submitted price list. Bidders must be able to provide appropriate documentation to accomplish a proper review proving reasonableness of pricing on their complete catalog. If a listed product or line is not reviewable, it may be excluded from the award as per the Exclusions sub-clause (Section II.8.1) of this document. The bidder is to submit any other documentation that the bidder may deem relevant to be considered. *Please see Section VI.5 – “QUALIFICATIONS OF PROSPECTIVE BIDDERS” “Ability to Perform and Reasonableness of Price” for additional information.*

IV.2.3 - Administrative Bid Screening: After the bid opening, each Bidder's Bid will be screened for completeness and conformance with requirements for bid submission as specified in Section VI - Administrative Requirements. Bids that do not meet the Administrative requirements as set forth in this IFB may be deemed non-responsive and given no further consideration.

The list of Administrative Requirements includes:

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

The Catalog and Commercial Price List submitted will be reviewed to determine that their submission meets the requirements of the IFB and that there is no conflict with a preferred source offering. Bids will be reviewed for compliance with the terms and conditions of this IFB, regarding proper submission of noted

(Continued)

bid requirements and documents, as well as the review for vendor responsibility, insurance requirements & M/WBE compliance. Successful completion of this part of the evaluation is required for award. Bids meeting the requirements of the Administrative Bid Screening will proceed in the evaluation.

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

IV.2.4 - Product Evaluation: The Product Evaluation will be based upon review of information received in Attachment 2 – “General Questions, Bidder Agreements and Certifications” and a review of the designated product line catalogs to determine that the submitted product line fills a need within the State, contains products meeting the requirements noted in the scope and in Section V - Product Specifications.” for the lot or lots included in the bid. Product Evaluation may take place concurrently with the Administrative screening. Failure to meet any mandatory specifications found in this IFB or its attachments may result in rejection of a lot group bid or a Bidder’s removal from further consideration.

Bidders should note that if specific samples are requested, the samples must be provided within the time frame requested. Products sampled must pass all inspections and tests performed by the OGS Procurement Services Evaluation team or their appointed agents.

IV.3 NOTIFICATION OF AWARD

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

Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute the formal contract.

* * * * *

SECTION V PRODUCT SPECIFICATIONS

V.1 TECHNICAL SPECIFICATIONS

Technical Specifications in the form of **excerpts** from NYS Department of Transportation (NYSDOT) Detailed Specifications for contracting being let in January 2015, NYSDOT Engineering Bulletins, Qualified/Approved Products Lists from the NYSDOT Materials Division, NYSDOT & NYS Thruway Authority Standard Sheet Drawings, and references to official NYS websites and Manufacturer’s Websites for items being sought in this procurement are found herein. The complete NYSDOT Standard Specification for contracting being let in January 2015 may be found <https://www.dot.ny.gov/main/business-center/engineering/specifications/english-spec-repository/espec1-8-15english.pdf>.

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

When progressing through section V.6, any sequential gap in topic listings are to be considered as vacant in the current Complete NYSDOT Specification Book as found on the NYSDOT Web.

V.1.1 - Federal Certifications: Bidders for Lots 1, 2, 3 and 9, shall supply upon request documentation certifying that all steel supplied has been procured in accordance with the provisions of the Buy America and Buy American Acts in regards to the use of American produced Steel. The provisions are set forth in the Code of Federal Regulations under 49 C.F.R. § 661 *et. seq.* as required under the provisions of the Buy America Act (49 U.S.C. § 5323) and the provisions of the Buy American Act (41 U.S.C. §§ 8310 - 8305) as they apply to transportation projects.

V.1.2 - NYS Dept. of Transportation Materials Lists: In addition to the general terms set forth by this IFB, due to the impact on public safety, NYSDOT may designate and require specific products be prequalified and listed on a NYSDOT Qualified or Approved Products List prior to their purchase and use by NYSDOT. This list as related to this procurement is found at the end of this section of the bid document.

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

(Continued)

V.1.3 – Specification Updates: Should updates be made to specifications by the State during the course of the contract term, Contractors are expected to update products as soon as possible in accordance with the provisions of Section VII.4 of this Invitation for Bids. No changes or substitution of products or pricing is permitted without the express approval of OGS Procurement Services.

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

V.2 SCOPE

It is the intent of these specifications to cover the minimum requirements for plastic, polyethylene, polyvinylchloride, steel and aluminum culvert and drainage system pipe, tubing, arches, bands end sections, accessories and parts for culvert and underground drain installations, service and rehabilitations, for delivery to various locations throughout the State.

V.3 CONTENTS

This section contains links to and reproductions of appropriate guidance documents for bidders to determine suitability of Core List and Full Line Catalog Offerings. The documents include specifically selected chapters and sections from the most recently published General Specifications Guide from NYSDOT for the departments' January, 2015 agency letting, along with supplemental Engineering Bulletins from the Department all of which are make up the guiding technical specification for both the open market and the proprietary items found in this procurement.

Additionally, bidders may find herein a number of internet links directing them to other pertinent NYSDOT and Private Sector documents and technical drawings containing products and information from which the bid should be derived and composed of. Bidders are reminded that should a link be unavailable, per Section 1 Clause 8 of this document, request assistance from the Primary and Secondary Designated Contacts at James.Malone@ogs.ny.gov and Joseph.Hodder@ogs.ny.gov . Do not contact representatives of the site host.

The section contains the appropriate, most up to date listings from the NYSDOT Materials Bureau Qualified/Approved Products List, as well as a cross reference chart, matching up the contents of the section with the nine (9) lots found in Attachment 1 of this IFB.

V.4 PRODUCT QUALIFICATION

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

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

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

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

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

Should updates be made to specifications by the State during the course of the contract term, contractors are expected to update products as soon as possible in accordance with the provisions of Section VII.4 of this Invitation for Bids. No changes or substitution of products or pricing is permitted without the express approval of OGS Procurement Services.

For items covered by specification numbers 706-10, 706-11, 706-12, 706-13, 706-14, 707-02, 707-05, 707-09, 707-10, 707-11, and 707-13, bids will be accepted only from established manufacturers or their authorized dealers who are on the NYSDOT Materials Bureau Approved List as listed herein beginning on page 28 below or as listed in any subsequent purchasing memoranda.

(Continued)

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

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

V.5 SPECIFICATION REFERENCE CHART

The following chart cross references the lots and core list items listed within Attachment 1, to corresponding specification information in Section V.

LOT Number and General Product Line	NYSDOT Specification Number
LOT 1 - Metal Culvert Arches	706-10, 707-02, 707-03, 707-04, 707-05, 707-09, 707-10, 707-11, 707-13, 707-14, 707-20
LOT 2 - Metal Corrugated Culvert Pipe	706-10, 707-02, 707-03, 707-04, 707-05, 707-09, 707-10, 707-11, 707-13, 707-14, 707-20
LOT 3 - Metal Culvert End Sections	706-10, 707-02, 707-03, 707-04, 707-05, 707-09, 707-10, 707-11, 707-13, 707-14, 707-20
LOT 4 - HDPE Single Wall Underdrain Pipe - up to 24" Diameter	706-12, 706-13, 706-14
LOT 5 - HDPE Double Wall Underdrain Pipe – up to 48" Diameter	706-12, 706-13, 706-14
LOT 6 - HDPE Underdrain Pipe - above 48" Diameter	706-12, 706-13, 706-14
LOT 7 - Culvert Renew Systems	706-11
LOT 8 - Snap-Tite Systems	Supplemental Specification - 1 HDPE Plastic Liner Pipe & 706-11
LOT 9 - Steel Rehabilitation Systems	Supplemental Specification 2 – Steel Culvert Rehabilitation System
Products within a bidder's Product Line Catalog, meeting the requirements of any detailed specification found in Section V.6 that is not listed within this chart would be contract eligible as a non-core item, and should be listed on your Final Offered Products List.	

This chart is also available in Attachment 1 on Tab F.

V.6 NYSDOT SPECIFICATIONS Series 706 & 707

706-1 NON-REINFORCED CONCRETE PIPE

SCOPE. This specification covers the material and quality requirements for non-reinforced concrete pipe 24 inches and smaller used for culverts.

GENERAL. The provisions of §706-02, Reinforced Concrete Pipe, shall apply except that all references to reinforcing steel shall be deleted. In addition, physical and dimensional requirements of concrete pipe under 12 inches in diameter shall be as stated in Table 1, Class 1, of ASTM C14. Plain concrete pipe 12 to 24 inches in diameter shall conform to Table 1, Class 2, of ASTM C14.

MATERIAL REQUIREMENTS. The Material Requirements contained in §706-02 shall apply except that all references to reinforcing steel shall be deleted.

FABRICATION REQUIREMENTS. The Fabrication Requirements contained in §706-02 shall apply except as noted herein.

Marking. No pipe class or wall designation shall be marked on the pipe.

PHYSICAL REQUIREMENTS. The Physical Requirements contained in §706-02 shall apply except as noted herein.

Strength. The strength requirements for the respective diameter pipe sizes shall be as stated in Table 1 of ASTM C14. Details of the three-edge bearing test shall comply with ASTM C14.

(Continued)

SAMPLING AND TESTING. The Sampling and Testing requirements contained in §706-02 shall apply.

FINAL PRODUCTION INSPECTION. The Final Production Inspection requirements contained in §706-02 shall apply.

706-2 REINFORCED CONCRETE PIPE (CLASSES II, III, IV, V)

SCOPE. This specification covers the material, fabrication, and physical requirements of reinforced concrete pipe and cattle pass.

GENERAL. Apply the requirements of AASHTO M 170, Reinforced Concrete Culvert, Storm Drain and Sewer Pipe, Classes II, III, IV, and V, except as modified by this specification. Produce reinforced concrete pipe by either machine made or wet cast methods in accordance with working drawings approved by the Department and in full compliance with the details of this specification. Pipe manufactured for a specific class will be acceptable for any class having a lower design strength.

Methods of manufacture include the following:

- **Wet Cast Pipe & Cattle Pass.** Wet cast units are those made from concrete placed and consolidated by conventional equipment. These units develop resistance to freeze-thaw damage through the use of entrained air in the concrete. Air content in wet cast concrete shall range between 5.0% and 9.0%. Manufacture wet cast pipe, for Department acceptance, in accordance with this specification and the current Materials Procedure for precast concrete titled "Procedures for Achieving and Maintaining Precast Concrete Manufacturer's Approved List Status".
- **Machine Made Pipe.** Machine made units use very low slump concrete and methods of consolidation which produce a dense product with low permeability and good resistance to freeze- thaw damage.

Manufacture machine made pipe, for Department acceptance, in accordance with this specification and the current Materials Method titled "Quality Assurance Procedure for Concrete Pipe Items".

MATERIAL REQUIREMENTS

i. **Materials**

Portland Cement (Type 1, Type 2 or Type 3)	701-01
Concrete Repair Material	701-04
Concrete Repair Material - High Early Strength	701-12
Coarse Aggregate	703-02
Concrete Sand	703-07
Bar Reinforcement, Grade 60 (Reinforcement & Stirrups)	709-01
Wire Fabric for Concrete Reinforcement	709-02
Bar Reinforcement, Grade 40	709-03
Cold Drawn Wire for Concrete Reinforcement	709-09
Admixtures	711-08
Water	712-01
Concrete Pipe Joint Sealing Compound	705-16
Concrete Pipe Joint Elastomeric Gaskets	705-17
Fly Ash	711-10
Ground Granulated Blast Furnace Slag	711-12

- ii. **Cementitious Content.** Use a minimum combined cementitious content of 565 lb./cy. This includes the Portland Cement and pozzolan (fly ash and/or ground granulated blast furnace slag). The maximum allowable total chloride content in concrete shall not exceed 0.10 percent by weight of cementitious material tested in accordance with written procedural directives of the Materials Bureau.
- iii. **Pozzolans.** Fly ash and/or ground granulated blast furnace slag may, in total, be substituted for cement up to a maximum of 20% by weight of the total amount of cement plus pozzolan in the mix.
- iv. **Admixtures.** Calcium Chloride is not allowed in concrete. Admixtures, other than an approved Air Entraining agent for wet cast pipe, are not allowed unless otherwise approved by the Materials Bureau.
- v. **Reinforcement.** Sample the reinforcement in accordance with the written directives of the Materials Bureau. Accept stirrups based on the manufacturer's certification, unless otherwise directed by the Materials Bureau.
- vi. **Pipe Joint Materials**
 - a. **Elastomeric Gaskets.** The gaskets used in the installation of round pipe shall meet the specification requirements of §705-17 and only those types and sizes designated by the pipe manufacturer on the approved drawings of the particular pipe.

(Continued)

- b. **Sealing Compounds.** Concrete pipe joint sealing compound, meeting the specification requirements of §705-16, shall be used only on elliptical pipe and reinforced cattle pass.

FABRICATION REQUIREMENTS

Drawings. Submit detailed working drawings conforming to the Materials Bureau concrete pipe templates. All diameter sizes of a particular geometric shape can be included on one drawing. Separate drawings are required for cattle pass, jacking pipe and special designs.

Full approval of the working drawings is required prior to the manufacture of any concrete pipe.

- **Design, Reinforcement and Dimensions**

1. **General.** Apply the Design, Reinforcement and Permissible Variations requirements of AASHTO M 170 for Class II, III, IV and V pipe, walls B & C. The AASHTO tables show minimum reinforcement. The manufacturer may submit drawings detailing alternatives to the specified reinforcement and/or wall thickness for Materials Bureau consideration. To gain full approval of alternate designs, manufacture and test pipe samples in accordance with the written procedural directives of the Materials Bureau.
2. **Reinforced Concrete Cattle Pass.** Apply the requirements of applicable Standard Sheet with the following modification. A minimum length of 48 inches is required for each section. The maximum allowable variation in laying lengths of two opposite sides of a cattle pass section is 1/8 inch per 12 inches of diameter, not to exceed 5/8 inch in any length of cattle pass, except where beveled or curved cattle pass lengths have been specified.

- **Concrete Batch Placement**

- **Machine Made Pipe.** Clean and properly assemble the forms prior to placing any concrete. Transport and place the concrete mixture such that no segregation of the concrete materials or displacement of the reinforcing steel occurs within the form.
- **Wet Cast Pipe And Cattle Pass.** Apply the Concrete Placement And Consolidation requirements contained in §704-03.

Curing. Include the type of curing, curing time and any temperature requirements on the drawing.

- **Machine Made Pipe.** Cure the pipe in accordance with AASHTO M 170. Other methods of curing are subject to approval by the Director, Materials Bureau.
- **Wet Cast Pipe And Cattle Pass.** Apply the Curing requirements contained in §704-03.

Joints. Use either bell and spigot or tongue and groove design. Design the joints so as to permit effective jointing to reduce leakage and infiltration and to permit placement without irregularities.

Marking. The pipe markings must be identified on the inside barrel for pipe diameters of 1 1/2 feet and greater. If the diameter is less than 1 1/2 feet the markings may be stenciled on the outside of the pipe. Mark each piece of pipe with the following information, as applicable:

1. Name or trademark of manufacturer.
2. Date of manufacture.
3. Pipe class.
4. Wall designation.
5. Pipe diameter.
6. NYSDOT lot number ("NYSDOT") (Machine made pipe only.)
7. Indelibly mark the word "TOP" on the inside and outside of the barrel at

the appropriate location on each pipe length with elliptical or quadrant reinforcing.

Repair

A. Machine Made Pipe. Pipe may be repaired at the plant or in the field using 701-04 Concrete Repair Material or §701-12 Concrete Repair Material - High Early Strength. Repairs to more than 10% of a lot will not be permitted. Repairs will be acceptable if, in the opinion of the Department, the repairs are sound, properly finished and cured, and the repaired pipe conforms to the requirements of these Specifications and the written procedural directives of the Materials Bureau.

B. Wet Cast Pipe & Cattle Pass. Apply the Repair requirements contained in §704-03.

(Continued)

PHYSICAL REQUIREMENT

Strength. Apply the requirements of AASHTO M 170 except that the compressive strength requirements do not apply except for cattle pass. Conduct such number and type of three edge bearing tests as the Materials Bureau deems necessary to establish the quality of pipe

Reinforced concrete cattle pass will not require a three-edge bearing test. The minimum 28 day compressive strength for cattle pass, as determined by concrete cylinders, is 3000 psi.

Absorption Requirements For Machine Made Pipe. The maximum average absorption for all pipe is 8.0% by weight for the last three specimens tested.

Freeze-Thaw Requirements. The Materials Bureau reserves the right to test the pipe for durability by freeze-thaw testing. The test will be run in accordance with written procedural directives of the Materials Bureau.

SAMPLING AND TESTING. It is required that each manufacturer have a testing machine, of a type approved by the Materials Bureau, to carry out three edge bearing tests. Employ a commercial testing agency to calibrate the testing machine according to ASTM E4 at a minimum of once a year. Upon request of the Materials Bureau, furnish a record of this calibration. Sample and test reinforced concrete pipe and cattle pass units, manufactured under the requirements of this specification, as follows.

A. **Machine Made Pipe.** Separate machine made reinforced concrete pipe into specific and identifiable production lots. Follow the written procedural directives of the Materials Bureau to determine the maximum number and type of units in a lot and the number of samples to be taken per lot. Test each lot of machine made reinforced concrete pipe as follows:

1. **Three-Edge Bearing Test.** Follow the requirements for strength testing indicated above using the test procedure identified in the procedural directives issued by the Materials Bureau. Perform tests in the presence of a representative of the Department.

2. **Absorption Test.** Cores from each lot, drilled by the manufacturer in the presence of a representative of the Department, will be used for this test. The cores will be tested by the Materials Bureau in accordance with the test method specified in ASTM C497 except that under "absorption test" the drying period will be 48 hours at a temperature of 230°F.

Plug the holes when cores are taken. Ensure that plugs are sound, properly finished and cured according to the requirements of "Pipe Repair."

In addition to the above tests, pipe will be subject to inspection at any time prior to placing, and rejection may be made through failure to comply with the criteria shown in the written procedural directives of the Materials Bureau.

B. **Wet Cast Pipe & Cattle Pass.** Sample and test wet cast reinforced concrete pipe and cattle pass in accordance with Materials Bureau requirements contained in the current Materials Procedure for precast concrete, titled "Procedures for Achieving and Maintaining Precast Concrete Manufacturer's Approved List Status".

FINAL PRODUCTION INSPECTION. For wet cast units only, follow the Final Production Inspection requirements contained in §704-03.

706-3 REINFORCED CONCRETE ELLIPTICAL PIPE (CLASSES HE-II, HE-III, HE-IV, VE-IV, VE-V & VE-VI)

SCOPE. This specification covers the material and quality requirements for both horizontal and vertical elliptical reinforced concrete pipe of the classes noted above for use as culvert pipe. Pipe designed for placement with the major axis horizontal is designated as horizontal elliptical pipe. Pipe designed for placement with the major axis vertical is designated as vertical elliptical pipe.

GENERAL. The provisions of §706-02, Reinforced Concrete Pipe Classes II, III, IV, V shall apply except as noted herein.

All references to AASHTO M 170, contained in §706-02, shall be replaced with AASHTO M 207. All reference to Classes II, III, IV and V, contained in §706-02, shall be deemed to include all classes of elliptical pipe.

MATERIAL REQUIREMENTS. The Material Requirements contained in §706-02 shall apply except that the pipe joint material shall be a sealing compound meeting the requirements of §705-16.

FABRICATION REQUIREMENTS. The Fabrication Requirements contained in §706-02 shall apply except as noted herein.

(Continued)

Design, Reinforcement and Dimensions. In the case of elliptical pipe, the working drawings indicate the equivalent round pipe diameter, rise, span and class. A tolerance of plus or minus 2% from the nominal rise and span of the pipe, as shown on the approved working drawing, will be permitted.

Variations in laying lengths of two opposite sides of a pipe section shall not be more than 1/8 inch per foot of equivalent diameter, with a maximum of 5/8 inch in any length of pipe, except where beveled or curved lengths have been specified.

Marking. No wall designation shall be marked on the pipe. An equivalent round pipe diameter shall be used for markings.

PHYSICAL REQUIREMENTS. The Physical Requirements contained in §706-02 shall apply.

SAMPLING AND TESTING. The Sampling and Testing requirements contained in §706-02 shall apply.

FINAL PRODUCTION INSPECTION. The Final Production Inspection requirements contained in §706-02 shall apply.

706-4 PRECAST CONCRETE DRAINAGE UNITS

SCOPE. This specification covers the material and fabrication requirements for precast concrete drainage units including transverse drainage interceptors.

MATERIAL REQUIREMENTS. The Material Requirements contained in §704-03 shall apply except as noted herein.

The concrete used to fabricate round precast concrete drainage units shall have a minimum compressive strength of 4000 psi @ 28 days. The concrete used to produce machine made units shall have a maximum absorption of 8.0% by weight and is not required to be air entrained.

Additional materials listed below shall meet the requirements of the following subsections:

Frames and Grates	655
Concrete Grouting Material	701-05
Concrete Pipe Joint Sealing Compound	705-16
Concrete Pipe Joint Elastomeric Gaskets	705-17
Mortar For Concrete Masonry	705-21
Steps For Manholes	725-02

DRAWINGS. The Drawing requirements contained in §704-03 along with the following shall apply.

Fabricator Working Drawings are required for all round drainage structures. Cut sheets, showing structure heights, the size and location of pipe openings and step locations are required for all drainage structures.

FABRICATION. The Fabrication requirements contained in 704-03, along with the following shall apply.

Manufacturing Process. Precast concrete drainage units shall be wet cast or machine made.

- A. Wet Cast.** Wet cast units are manufactured from concrete, placed and consolidated by conventional equipment, containing entrained air to develop resistance to freeze-thaw damage.
- B. Machine Made.** Machine made units are manufactured with very low slump concrete, consolidated to produce a dense product with low permeability and good resistance to freeze-thaw damage. Machine made units are those made by the following methods:
- Packerhead
 - Roller suspension
 - Centrifugal
 - Machine tamped
 - Machine vibrated
 - Other methods as approved by the Materials Bureau

Reinforcing. Reinforcing bar splices shall be lapped a minimum of 30 bar diameters and tied securely. Wire fabric splices shall be secured by one of the following methods:

1. **Tying.** Under this method the ends shall lap to a length of not less than 30 diameters of the reinforcement and the lap shall contain a longitudinal member. A sufficient number of laps shall be tied to maintain continuity of the cage through the period of placement and curing of the concrete.
2. **Welding.** Each circular member shall be lapped a minimum of 2 inches and welded. The weld shall develop a minimum of 50 percent of the specified strength of the wire.

(Continued)

Round Units. Precast bases, floors, risers, conical top sections, grade rings and flat slab tops shall conform to the design, dimension and reinforcement requirements of ASTM C478. The C478 requirements for splices, laps and welds shall not apply.

Transverse Drainage Interceptors. Bar reinforcement shall be epoxy coated meeting the requirements of §709-04.

Joints. Joints between precast riser sections shall be formed with male and female ends so that when the sections are assembled they will make a continuous and uniform unit.

Joint Sealant Materials. Joints between precast sections are to be sealed with flexible watertight Elastomeric Gaskets, Pipe Joint Sealing Compounds, and Mortar for Concrete Masonry, Concrete Grouting Material or Concrete Repair Material meeting the requirements of the Standard Specifications. If elastomeric Gasket Sealers are used the shape, size and placement shall be recommended by the precast manufacturer.

Steps for Drainage Units. Steps for drainage units shall conform to §725-02, Steps for Manholes. Steps in risers and conical top sections shall be aligned to form a continuous ladder with rungs equally spaced vertically in the completed unit at a maximum spacing of 16 inches. All steps in a completed drainage unit shall be the same size. Steps shall be embedded into the walls of the section a minimum of 3 inches. The rung shall project a minimum clear distance of 4 inches from the walls of the section measured from the point of embedment. If the steps are grouted, the grouting material shall conform to

§701-04 Concrete Repair Materials or §701-05 Concrete Grouting Material, or §701-12 Concrete Repair Material - High Early Strength. If plastic inserts are used for installing steps, they shall be approved by the Materials Bureau. Steps which are damaged during installation or handling shall be replaced.

Frames for Grates. Frames cast into the top slab or top of the uppermost riser shall be secured and held in place by a minimum of 4 stirrups or studs per frame, welded to the frame near the corners.

Parallel bar frames shall contain shear stud anchors, for the purpose of transferring loads, as required and detailed on the standard sheet for parallel bar grates and frames. Shear stud anchors, when required, shall replace the frame securing stirrups or studs.

▪ **Dimensional Tolerances.**

A. *Drainage Units (Rectangular / Square).*

- | | |
|------------------------------|------------------------------------|
| Internal dimensions | +5/8 inch, -1/2 inch |
| ○ Wall thickness | |
| 6 inches | +3/4 inch, -1/4 inch |
| ≥8 inches | +3/4 inch, -1/2 inch |
| ○ Reinforcing steel cover | |
| Walls (inside face) | 2 inches (min), 4 inches (max) |
| Base (inside face) | 2 inches (min), 3 1/4 inches (max) |
| Roof (all faces) | +5/8 inch, -1/4 inch |
| Pipe openings (2 inches) | ±1 inch |
| ○ Step spacing and alignment | ±3/4 inch |

B. *Drainage Units (Round).*

- | | | |
|--|------------|---------------|
| ○ Internal diameter | | |
| ≤60 inches | +5/8 inch, | |
| >60 inches & ≤ 96 inches | ±3/4 inch | |
| >96 inches | | ±1 1/2 inches |
| ○ Wall thickness | | |
| Internal diameter ≤60 inches | +5/8 inch, | -1/4 inch |
| Internal diameter >60 inches & ≤ 96 inch | +3/4 inch, | -1/2 inch |
| Internal diameter >96 inches | +1 inch, | -5/8 inch, |
| Reinforcing steel cover | | |
| Base, Roof and Walls | +5/8 inch, | -1/4 inch |
| Pipe openings (2 inches) | ±1 inch | |
| ○ Step spacing and alignment | ±3/4 inch | |

SAMPLING AND TESTING. The sampling and testing requirements contained in 704-03 shall apply except as noted herein.

A. Machine Made Units. Testing for air content is not required. Cores shall be taken from the hardened concrete and tested for absorption. A minimum of 3 cores per 5 batches of a single mix with a minimum of three cores per day per mix shall be used to measure absorption. The average absorption of the 3 cores shall not exceed the maximum

(Continued)

absorption specified herein. Testing shall be in accordance with ASTM C497 except that the drying period shall be 48 hours at a temperature of 230°F.

MARKING. The Marking requirements contained in §704-03 shall apply except as noted herein.

Markings shall be placed on the inside face of all precast pieces. Each flat slab top that doesn't have an integral frame or a design that readily indicates the top surface shall have the words "INSTALL THIS SIDE UP" placed on its top surface.

The markings on rectangular drainage units, including base slabs, bases and risers, shall include the maximum placement depth in feet ("MPD...feet"). The maximum placement depth is based on wall thickness and reinforcement and shall be in accordance with the Department's Standard Sheets or the contract plans.

Instead of marking the contract number on each unit they may be marked with "NYS DOT".

FINAL PRODUCTION INSPECTION. The Final Production Inspection requirements contained in §704-03 shall apply.

706-5 POROUS CONCRETE PIPE UNDERDRAIN

SCOPE. This specification covers the material and quality requirements for porous concrete pipe and extra strength concrete porous concrete pipe underdrains.

GENERAL. Porous concrete pipe and extra strength porous concrete pipe shall be manufactured in accordance with approved working drawings and in compliance with details set forth below.

MATERIAL REQUIREMENTS. All materials shall comply with the requirements of ' 706-02, Reinforced Concrete Pipe, except that reinforcement shall not be used.

FABRICATION. Porous concrete pipe and extra strength porous concrete pipe shall conform in size and shape to the details shown on the standard sheet for porous concrete pipe underdrain and the approved working drawing.

The inside surface of the pipe shall be straight and true to dimensions with a permissible variation from the true form of not more than 1 1/2 percent. A tolerance of 5% will be permitted in the diameter of the pipe. The wall thickness of the pipe may be greater than shown on the standard sheet, but it shall not be less than 95% of the stipulated wall thickness.

High early strength cement, calcium chloride or any other additive shall not be used unless otherwise approved by the Materials Bureau.

Concrete mix proportions will be such that will produce a concrete mix of such quality that the pipe will conform to the test and design requirements of these specifications.

Each length of pipe shall be clearly marked on the outside with the name or trademark of the manufacturer. Extra strength porous concrete pipe underdrain shall be clearly marked, "Extra Strength".

Curing. All pipe shall be cured in accordance with the provisions of ' 706-02.

Strength Requirements. The minimum ultimate strength for the size of the pipe being tested shall be as specified on the standard sheet. Requirements of ' 706-02 shall apply except that no determination of a 0.01 inch crack will be required and the ultimate strength values as determined on full length specimens shall be as specified on the standard sheet.

Infiltration Requirements. Pipe shall be tested for rate of infiltration in accordance with the method of test outlined in AASHTO Designation M176. The minimum rate of infiltration shall not be less than 1 gallon per minute per inch of internal diameter per foot of pipe for all sizes.

All tests shall be performed by the manufacturer at their plant and shall be witnessed by a representative of the Department. The number of samples for test shall be as directed by the Materials Bureau.

Other Requirements. In addition to the above tests, the pipe shall be subject to inspection at all times prior to placing and rejection will be made through failure to comply with any of the following conditions:

- C. Dimensions.** The pipe shall not vary in any dimensions more than permitted by this specification.
- D. Fractures or Cracks.** The pipe shall have no fractures or cracks passing through the shell or socket of the pipe, except that a single crack not exceeding 2 inches in length at either end of a pipe shall not be considered cause for rejection unless the defect exists in more than 5% of the lot offered for sampling and testing.
- E. Quality.** There shall be no defects that indicate imperfect mixing and molding.
- F. Strength.** There shall be no cracks that are sufficient to impair the strength, durability or serviceability of the pipe.
- G. Shape.** The shape of the pipe shall be such that there shall be no variation in alignment of more than 1/8 inch per linear foot.

(Continued)

BASIS OF ACCEPTANCE. The material will be considered for acceptance in stock lot quantities at the manufacturing location in accordance with procedural directives of the Materials Bureau. In addition, the manufacturer shall furnish the Department representative at the plant a certification for each lot manufactured certifying that all pipe in the lot was manufactured in accordance with the terms of this specification and that the pipe details conform to drawings previously approved by the Department. Pipe shall be considered ready for acceptance when a lot conforms to the indicated test requirements. The manufacturer shall be permitted to retest to determine specification compliance. Pipe not used within two years after its original acceptance shall be retested by the Department before it can be used.

706-7 REINFORCED CONCRETE PIPE END SECTIONS

SCOPE. This specification covers the material and fabrication requirements for reinforced concrete pipe end sections.

MATERIAL REQUIREMENTS. The Material Requirements contained in §704-03 shall apply.

DRAWINGS. The Drawing requirements contained in §704-03 shall apply.

FABRICATION. The Fabrication requirements contained in §704-03, along with the following, shall apply. The barrel portion of the end section shall meet the Design, Reinforcement and Permissible Variations requirements of AASHTO M 170 for Class III Pipe, Wall Designation B.

SAMPLING AND TESTING. The Sampling and Testing requirements contained in §704-03 shall apply, unless otherwise approved by the Director, Materials Bureau.

MARKING. The Marking requirements contained in §704-03 shall apply.

FINAL PRODUCTION INSPECTION. The Final Production Inspection requirements contained in §704-03 shall apply, unless otherwise approved by the Director, Materials Bureau.

706-9 CURED IN PLACE PIPE (CIPP) LINER

SCOPE. This specification covers the material requirements for cured in place pipe liners, or a resin and hardener system, used in rehabilitation of culverts and storm drains.

GENERAL. The flexible liner will be fabricated from one or more layers of polyester felt, or from an alternate material approved by the Director of the Materials Bureau. An impermeable material will be bonded to one or both sides of the felt liner. A styrene or a non styrene based thermoset resin and catalyst or an epoxy resin and hardener system, compatible with the proposed inversion process system and curing method must be used. If indicated in the contract documents, a resin containing less than five percent volatile organic compounds (VOCs) with less than 0.1 percent hazardous air pollutants (HAPs) and less than 0.1 percent of water quality pollutants as listed in 6 NYCRR Parts 700-705 shall be supplied. Proposed resin must be compatible with the proposed inversion process.

MATERIAL REQUIREMENTS. Supply a resin and hardener system material conforming to the following minimum values:

<u>Property</u>	<u>Standard</u>	<u>Required*</u>
Tensile Stress, psi	ASTM D638	2500
Flexural Stress, psi	ASTM D790	4500
Flexural Modulus, psi	ASTM D790	250000

* If the submitted design calculations indicate that higher values for the above listed material properties have been assumed, then the above listed values will become the minimum values for these liner material properties.

BASIS OF ACCEPTANCE. Acceptance of this material will be based on the manufacturer's / installer's name appearing on the Approved List for Rehabilitation of Culverts and Storm Drains. Application for approval and entering into the aforementioned list shall be in accordance with *Materials Procedure 04-001, "Approval Process for POLYESTER FORMED IN PLACE PIPE LINER 706-06"*.

706-10 POLYVINYL CHLORIDE PIPE (relining)

SCOPE. This specification covers the material requirements for polyvinyl chloride pipe when used in rehabilitation applications of culverts and storm drains.

GENERAL. The polyvinyl material from which the pipe and fittings are extruded or molded will not contain any reclaimed, recycled, reground or reworked material and will be comprised of virgin polyvinyl resins only. The resins

(Continued)

used will meet the requirements contained in this specification. The pipe and fittings will be manufactured in such a manner so that all cross sections will be dense, homogeneous, and free from any imperfections.

MATERIALS REQUIREMENTS. The Polyvinyl Chloride pipe materials must conform to ASTM F1803 (Profile Wall), ASTM F949 (Corrugated), ASTM F679, or ASTM D3034. All materials supplied will be clearly marked with the appropriate ASTM as certified.

BASIS OF ACCEPTANCE. Acceptance of this material will be based on the manufacturer's name appearing on the Approved List for Rehabilitation of Culverts and Storm Drains.

706-11 HIGH DENSITY POLYETHYLENE PIPE (relining)

SCOPE. This specification covers the material requirements for high density polyethylene pipe when used in rehabilitation applications of culverts and storm drains.

General. The high density polyethylene material from which the pipe and fittings are extruded will not contain any reclaimed, recycled, reground or reworked material and will be comprised of virgin high density polyethylene resins only. The resins used will meet the requirements contained in this specification.

The pipe and fittings will be manufactured in such a manner so that all cross sections will be dense, homogeneous, and free from any imperfections.

MATERIAL REQUIREMENTS. The high density polyethylene pipe material must conform to ASTM F894 (Profile Wall) or ASTM F714 (Smooth Wall). All materials supplied will be clearly marked with the appropriate ASTM as certified.

BASIS OF ACCEPTANCE. Acceptance of this material will be based on the manufacturer's name appearing on the Approved List for rehabilitation of Culverts and Storm Drains.

706-12 SMOOTH INTERIOR CORRUGATED POLYETHYLENE PIPE

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

MATERIAL REQUIREMENTS. The polyethylene material for the pipe and fittings shall meet the requirements of AASHTO M294, Type S or Type SP. In addition, when checked with a 12 inches straight edge the smoothness of the interior liner shall not deviate more than 1/4 inch. The material from which the pipe and fittings are extruded or molded will not contain any reclaimed, recycled, reground or reworked material and will be comprised of virgin material only.

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

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

706-13 PERFORATED CORRUGATED POLYETHYLENE UNDERDRAIN TUBING

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

MATERIAL REQUIREMENTS. The corrugated polyethylene tubing and fittings 4 thru 10 inches in diameter shall meet the requirements of AASHTO Designation: M252, Corrugated Polyethylene Drainage Tubing except that tubing manufactured from material meeting A.S.T.M. Designation D1248, Class B, shall also be acceptable. The material from which the pipe and fittings are extruded or molded will not contain any reclaimed, recycled, reground or reworked material and will be comprised of virgin material only

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

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

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706-14 CORRUGATED INTERIOR POLYETHYLENE PIPE

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

MATERIAL REQUIREMENTS. The polyethylene material for the pipe and fittings shall meet the requirements of AASHTO M294, Type C. The material from which the pipe and fittings shall be extruded or molded shall not contain any reclaimed, recycled, reground or reworked material whatsoever, but shall be compounded from virgin resins, plasticizers, stabilizers, and such materials that when compounded, it shall meet the requirements contained in this specification

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

706-15 PVC PLASTIC DRAIN PIPE SYSTEM

SCOPE. This specification covers the material and quality requirements for poly (vinyl chloride) plastic drain pipe, fittings and solvent cement when used as a drain pipe system.

GENERAL. The PVC material from which the pipe and fittings shall be extruded or molded shall not contain any reclaimed, recycled, reground or reworked material whatsoever, but shall be compounded from virgin PVC resins, plasticizers, stabilizers, and such materials that when compounded, it shall meet the requirements contained in this specification.

The pipe and fittings shall be extruded or molded in such a manner that all cross sections shall be dense, homogeneous, and free from porosity or other imperfections.

The solvent cement shall be a solution of unplasticized PVC tetrahydrofuran and cyclohexanone.

MATERIAL REQUIREMENTS. The PVC material for the pipe and fittings shall meet the requirements of ASTM D1784 for Rigid Poly (Vinyl Chloride) Compounds and Chlorinated Poly (Vinyl Chloride) Compounds, Class 12444-B. The molded or extruded pipe shall conform to ASTM D1785 for Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedule 80, PVC 1120.

The molded or extruded fittings shall conform to ASTM D2467 for Socket-Type Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80, PVC I.

The solvent cement shall meet the requirements of ASTM D2564 for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Pipe and Fittings.

Nominal Size	Outside Diameter (Inches)	Inside Diameter (Inches)	Wall Thickness Schedule 80 (Inches)
4	4.500	3.826	0.337
5	5.563	4.813	0.375
6	6.625	5.761	0.432
8	8.625	7.625	0.500
10	10.750	9.564	0.593

DIMENSIONS. The dimensions and tolerances of the pipe and fittings shall conform to ASTM D1785 and D2467 respectively.

MARKING. All material furnished shall be plainly marked in accordance with ASTM D1785, D2467, and D2564 for the pipe, fittings and solvent cement, respectively.

BASIS OF ACCEPTANCE. All pipe, fittings and solvent cement shall be accepted on the basis of the manufacturer's certification that the material conforms to this specification.

706-16 CELLULAR POLYSTYRENE PROTECTIVE COVER

SCOPE. This specification covers the material and quality requirements for cellular polystyrene when used as protective cover for pipes.

GENERAL. The protective cover shall be fabricated from rigid extruded cellular polystyrene such that it shall meet the requirements contained in this specification.

The polystyrene shall be extruded in such manner that all cross sections shall be uniform and free from imperfections.

(Continued)

MATERIALS REQUIREMENTS. The fabricated cellular polystyrene protective cover shall meet the following requirements:

Property	ASTM Test Procedure	Requirement
Density, pcf	D1622	2.0 ± 0.15
Compressive Strength, psi	D1621	30 ± 5
Flammability	D1692	Self-Extinguishing

DIMENSIONS. The protective cover shall be fabricated in cylindrical half-sections of any convenient length for application to straight pipe and half-sections of suitable shape and length to protect any non-linear portions of the pipe or fittings.

The thickness of the protective cover shall be maintained within ± 1/16 inch of the thickness shown on the plans.

The protective cover shall be fabricated such that it mates with the pipe without leaving gaps at the seams. It shall have the following maximum clearance between outside diameter of nominal pipe and inside diameter of protective cover:

Nominal Pipe Size, Inches	Maximum Clearance, Inches
1/8 to 1 1/2 incl.	1/64
2 to 4 incl.	2/64
5 to 11 incl.	5/64
12 and over	6/64

BASIS OF ACCEPTANCE. All protective cover furnished shall be marked with the following information: manufacturer's name, type of material, and nominal size.

All protective cover shall be accepted on the basis of the Manufacturer's certification that the material conforms to this specification.

706-17 PRECAST CONCRETE BOX CULVERTS

SCOPE. This specification covers the material and quality requirements for precast concrete box culverts.

MATERIAL REQUIREMENTS. The Material Requirements contained in §704-03 shall apply except as noted herein.

The concrete used to fabricate precast concrete box culverts shall have a minimum compressive strength of 5000 psi @ 28 days. Joint gasket material shall meet the requirements of ASTM D1056, Grade # 2A1 or # 2A2.

DESIGN. When the contract plans contain complete design details for the culvert, alternate designs will not be considered. When the contract plans do not contain complete design details for the culvert the Contractor shall be responsible for providing them. Precast concrete box culvert designs shall meet the requirements of Highway Design Manual Section 19.5 "Design Guidelines for Reinforced Concrete Culverts". Design details for bridge size culverts shall also include load rating information. The Load Rating shall be determined in accordance with the current AASHTO "Manual for Bridge Evaluation," with all interim provisions in effect. The contractor shall show which method (allowable stress or load factor) was used in load rating computations. Load ratings shall also be computed by the Load and Resistance Factor Rating (LRFR) method. The contractor shall include all load rating computations in the design calculation submittal. Design calculations shall be stamped by a Professional Engineer. The transmittal, processing and approval of box culvert designs will be in accordance with procedural directives of the Materials Bureau.

DRAWINGS. The Drawing requirements contained in §704-03, along with the following shall apply.

All fabrication drawings for Contractor provided designs shall be stamped by a Professional Engineer licensed, and registered, to practice in New York State. Fabrication drawings for bridge size culverts shall include load rating information. Reproducible drawings are required for bridge size culverts only.

FABRICATION. The Fabrication requirements contained in §704-03, along with the following shall apply.

Reinforcing. Unless noted otherwise in the contract plans or approved fabrication drawings the concrete cover over reinforcing steel shall be 1 inch minimum on the walls, floor slab and roof slab of culverts and 1 1/2 inches minimum on wingwalls. When fill heights over the box culvert are less than 24 inches the concrete cover on the outside face of the roof slab shall be 2 inches minimum and all reinforcing steel in the top mat of the roof slab shall be epoxy coated or the concrete shall contain corrosion inhibitor. Fill heights shall be measured from the top of pavement to the top of the culvert roof slab. All reinforcing steel in the wall section of wingwalls shall be epoxy coated or the concrete shall contain corrosion inhibitor.

(Continued)

Joints. Precast concrete box culvert sections shall be fabricated with a female joint on the upstream end and male joint on the downstream end. Joint depth shall be a minimum of 2 inches and a maximum of 4 inches. The ends of longitudinal reinforcing steel shall have 1/2 inch minimum concrete cover at the mating surface of the joint. The circumferential reinforcing steel shall have 1 inch minimum concrete cover, as measured to the outermost bars, at the mating surface of the joint. When interferences occur which prevent this, the concrete cover shall be increased accordingly as shown on the approved fabrication drawings. Joints shall be fabricated such that when box culvert sections are fully drawn together the gap between adjacent culvert sections is 3/4 inch maximum. The outside mating surface of the joint shall have a continuous 1 x 1 inch gasket installed at the precast plant.

Corrosion Inhibitor. Corrosion inhibitor may be used in lieu of epoxy coated reinforcing.

Dimensional Tolerances

- Internal Dimensions

< 48 inches:	±1/2 inch
≥ 48 inches & ≤ 96 inches:	±3/4 inch
> 96 inches:	±1 inch
- Wall & Slab Thickness

< 10 inches:	+5/8 inch, -1/4 inch
≥ 10 inches:	+3/4 inch, -1/4 inch
- Design Laying Length

	+1 inch, -1/2 inch
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- Variation in Laying Length of Opposite Faces

Span / Rise ≤ 84 inches:	±5/8 inch
Span / Rise > 84 inches:	±3/4 inch
- Surface Irregularities on Mating Surface of Joint

	±1/4 inch
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 (when checked with a 3 foot straight edge)

Repair. Minor defects in the mating surface of the joint, that do not come in contact with the joint gasket material and are 1/4 inch or less in depth, do not require repair.

SAMPLING AND TESTING. The Sampling and Testing requirements contained in §704-03 shall apply.

MARKING. The Marking requirements contained in §704-03 shall apply except as noted herein. Markings shall be placed on the inside face of one wall of each culvert barrel section.

FINAL PRODUCTION INSPECTION. The Final Production Inspection requirements contained in §704-03 shall apply.

706-18 PERFORATED POLYVINYL CHLORIDE UNDERDRAIN PIPE

SCOPE. This specification covers the material and quality requirements for smooth-wall perforated polyvinyl chloride (PVC) plastic pipe, couplings and fittings intended for use in underdrains.

MATERIAL REQUIREMENTS. Perforated polyvinyl chloride underdrain pipe and fittings shall conform to AASHTO M278 Class PS46.

BASIS OF ACCEPTANCE. Acceptance of the perforated polyvinyl chloride underdrain pipe will be based on the manufacturer's certification of compliance with these specifications.

707-02 CORRUGATED STEEL PIPE

SCOPE. The material requirements of corrugated steel pipe with metallic, bituminous, Portland cement concrete/or polymer coating intended for use in construction of culverts and drainage systems.

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

1. Type I. A full circular cross-section, with a single thickness of corrugated sheet.
2. Type IR. A full circular cross-section, with a single thickness of smooth sheet, fabricated with helical ribs projecting outwardly.
3. Type II. A Type I pipe which has been reformed into a pipe-arch, having an approximately flat bottom.
4. Type IIR. A Type IR pipe which has been reformed into a pipe-arch having an approximately flat bottom.
5. Type III. A Type I pipe which has been perforated to permit the in-flow or out-flow of water.

(Continued)

MATERIAL REQUIREMENTS. Apply the requirements of AASHTO M 36 Types I, IR, II, IIR, and III except as modified herein for all metallic coated corrugated steel pipe. Apply the requirements of AASHTO M 190M except as modified herein for all bituminous coated corrugated steel pipe. Apply the requirements of AASHTO M 245M Types I and II except as modified herein for all polymer coated steel pipe. When Type IR or Type IIR corrugated steel pipe (spiral rib) is specified, the nominal dimension of the ribs shall be 3/4 x 3/4 inch at 7 1/2 inch pitch.

A. Coatings. Coat pipe with one of the following:

- 1. Metallic.** The steel sheet will have a protective coating of zinc galvanizing (AASHTO M 218) or of Aluminum-Coated (Type 2) (AASHTO M 274).
- 2. Fully bituminous coated and paved invert (AASHTO M 190, Type C).** In addition to one of the metallic coatings, the pipe will be fully bituminous coated and have a bituminous paved invert.
- 3. Fully bituminous coated and 100 percent paved (AASHTO M 190, Type D).** In addition to one of the metallic coatings, the pipe will be fully bituminous coated and have a fully paved, smooth bituminous interior.
- 4. Polymer coated.** The steel sheet will have a protective coating of zinc (galvanizing). In addition, the pipe will have a minimum interior polymer coating thickness of 0.01 inch and an optional exterior polymer coating. If an exterior polymer coating is applied, it will have a minimum thickness of 0.003 inch.
- 5. Polymer coated with a bituminous paved invert.** In addition to the zinc and polymer coatings, the pipe will have a bituminous paved invert.

Manufacturer's Standard Gage #	Thickness Equivalent(*) Inches	Manufacturer's Standard Gage #	Thickness Equivalent(*) Inches
1	0.27	15	0.067
2	0.25	16	0.060
3	0.24	17	0.054
4	0.224	18	0.048
5	0.21	19	0.042
6	0.20	20	0.036
7	0.18	21	0.033
8	0.164	22	0.030
9	0.150	23	0.027
10	0.134	24	0.024
11	0.120	25	0.021
12	0.104	26	0.018
13	0.090	27	0.016
14	0.074	28	0.015

***NOTE:** Minimum thickness shall conform to the appropriate AASHTO specifications.

- 6. Portland Cement Concrete Lined.** The steel sheet will be covered with dense, homogeneous, non-segregating concrete lining. The concrete will be a minimum thickness of 1/2 inch over the crest of the corrugations of the carrier pipe. In no case will the amount of Portland cement, blended cement, or Portland cement plus flyash be less than 17 pcf. Flyash in the mix may not exceed 20% by weight of the cementitious material. When type IP cement is used, no flyash will be added in batching. All concrete will have a water-cement ratio not exceeding 0.50 by weight. Cure the concrete lining prior to installation as per manufactures instructions.

The bituminous material for coating and/or paving will be homogeneous and have the following properties in addition to those specified by AASHTO M 190:

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Penetration at 77°F, 100g, 5 seconds	AASHTO T49	25-50
Penetration Ratio (40°F/77°F x 100)	AASHTO T49	80-90
Softening Point °F (Ball & Ring)	AASHTO T53	88-110

Apply the requirements of AASHTO M 246 for polymer material. Polymer coating materials must appear on the Department's Approved List.

Apply the material requirements of ' 501-2.02 Materials for Portland cement concrete liner material.

B. Gauge. The nominal metal thickness corresponding to any gauge is shown in Table 707-2-1.

C. End Finish. To facilitate field joining, reroll the ends of all helical corrugated steel pipe with diameters of 12 inches or greater to form a minimum of two annular corrugations of no less than 2 2/3 inch pitch by 1/2 inch depth. Reroll the ends of Type IR and IIR pipe to form only two corrugations.

D. Coupling Bands. Supply annular corrugated steel coupling bands for all round pipe sections (Types I, IR, and III) 12 inches or greater in diameter. The band corrugations will have the same dimensions as the pipe ends. Mesh the band with at least one full corrugation and lap it equally on each pipe end. The band width will be a minimum of 7 inches for pipe diameters up to and including 32 inches. The band width will be a minimum of 10 1/2 inches for pipe diameters greater than 32 inches. The thickness of the band cannot be less than 2 nominal sheet thicknesses thinner than the pipe and in no case thinner than 0.05 inch.

Pipe arches (Type II and IIR) may be joined by the annular corrugated bands described above or by special projection type coupling bands. The special projection bands will consist of two rows of projections at 3 inches center-to-center that will mesh with at least one full corrugation and will lap equally on each pipe end. The thickness of the special projection bands will not be less than 2 nominal sheet thicknesses thinner than the pipe and in no case thinner than 0.06 inch.

Regular projection type coupling bands (dimpled bands) will not be acceptable for 1 foot in diameter pipe and larger. Dimpled bands may be used on pipe diameters smaller than 1 foot, all sizes of perforated underdrain pipe (Type III), and for connecting pipe extensions to existing helical corrugated metal pipe without rerolled ends, unless otherwise shown on the plans.

Coupling bands may be one or two piece. Use two piece coupling bands on pipe 48 inches or greater in diameter.

Use one of the following coupling band connectors:

- Galvanized steel angles, 2 x 2 x 3/16 inches
- Lug connectors
- Bar and strap connectors

Rivet, bolt, or weld these connectors to the coupling bands. Any evidence of loose bolts or rivets, bearing failure, or weld or band tearing are cause for rejection and replacement of that coupling band. As an alternate to the coupling band connectors stated above, a corrugated angle which conforms to an approved Materials Detail may be used.

Coat the steel sheet used for coupling bands with a polymer or metallic coating. If polymer or metallic coated corrugated steel pipe is being joined, the bands must have the same coating as the pipe.

Joints for concrete lined pipe will meet the requirements of 603-3.06 Joints.

E. Coating Repair. Repair damaged metallic, bituminous, Portland cement concrete and/or polymer coating.

Metallic coating field repairs will be allowed only when the total damaged area on each piece is less than 2 sf of coated surface, excluding aluminum coated rerolled ends. Any piece having damaged areas totaling more than 2 sf, excluding aluminum coated rerolled ends, will be rejected.

Repair metallic coatings as follows:

- Power disk sand or mechanically wire brush areas of damaged coating to bright metal
- Remove oil, grease, and corrosion products from repair areas
- Spray or brush a zinc-rich paint on clean, dry repair areas.

The paint brand must appear on the Department's Approved List, Materials for Use in Repairing Galvanized Surfaces ' 719-01. The dry film paint thickness shall be at least 0.005 inch. Do not apply paint below 40°F.

Repair aluminum coatings damaged during rerolling at the manufacturing location. The rerolled ends may be either spot repaired or completely painted to repair small areas of damaged coating. Make repairs to the rerolled ends of aluminum coated pipe as referenced above. These rerolled end repairs, when properly completed, will not be counted toward the 2 sf of allowable damaged coating described above.

(Continued)

Repair damaged interior bituminous coatings using the original material or a Corrugated Metal Pipe Bituminous Coating Repair Material appearing in the Department's Approved List. Exterior damage to a bituminous coated pipe requires repair to the metallic coating only.

Repair damaged interior polymer coatings using Polymer Repair Materials for Steel Sheet used for Corrugated Pipe appearing in the Department's Approved List. Exterior damage to a polymer coated pipe requires repair to the metallic coating only.

Repair damaged Portland cement concrete linings with Item 701-08, vertical and overhead patching material. The lining will be free of cracks exceeding 0.04 inch in width or the pipe will be rejected.

F. Marking. Mark or tag each length of corrugated steel pipe over the coating as approved by the Department to properly cross-reference the supplier's certification.

G. Additional Defects. In addition to coating damage and other criteria established in Materials Bureau procedural directives, the following additional defects along with those listed in AASHTO will be cause for rejecting the pipe when inspected at the project:

- Variation from a straight centerline of more than 3/4 inch in 20 feet.
- Any dents greater than 3 inches in diameter
- Any punctures
- Loosely formed or cracked lock seams
- Cracks through the metal
- Sharp bends in pipe arches that are less than the specified minimum corner radius for that size.

BASIS OF ACCEPTANCE. Corrugated steel pipe will be accepted on the basis of certified documentation issued by a supplier appearing on the Department's Approved List. Certification will accompany all shipments arriving at the project in accordance with Materials Bureau procedural directives. Shipments arriving without certification, or with improper certification will be rejected.

The Engineer will measure gauge and coating thicknesses at the project. The pipe will be rejected if the metal and/or coating thickness is less than required or certified. The Contractor will supply equipment required to measure metal and coating thicknesses as detailed in ' 603-3.02H, Thickness Measuring Equipment.

Acceptance requirements including thickness measurements, visual inspection instructions, certification format, and fabrication shop approval will be in accordance with Materials Bureau procedural directives. At the option of the Department, this material may be subjected to shop inspection. Polymer coatings, coating applicator facilities, and application methods are subject to Materials Bureau approval. Samples are required for laboratory and field testing. Field testing will be a minimum of two years duration. Upon approval, the brand of polymer coating and applicator will be placed on the Department's Approved List. Certifications for polymer coated pipe received at the project will include the brand and applicator of polymer coating, which must appear on the Department's Approved List. Corrugated connecting angles will be accepted provided an approved Materials Detail appears on the Department's Approved List from that supplier.

707-03 DUCTILE IRON PIPE (NON-PRESSURE)

SCOPE. This specification covers the material and quality requirements for 14 to 54 inches Ductile Iron Culvert Pipe.

GENERAL. Ductile Iron Pipe. (Non-Pressure) shall be a centrifugally cast iron pipe conforming to the requirements of ASTM A716, Ductile Iron Culvert Pipe.

BASIS OF ACCEPTANCE. Ductile Iron Pipe (Non-Pressure) shall be accepted on the basis of the Manufacturer's certification that the material conforms to this specification. The certification shall accompany the material delivered to the job site.

The Department reserves the right to sample and test this material subsequent to delivery at the project site.

707-04 DUCTILE IRON PIPE (PRESSURE)

SCOPE. This specification covers the material, and quality requirements for 3 to 54 inches Ductile Iron Pipe (Pressure).

GENERAL. Ductile Iron Pipe (Pressure) shall be a centrifugally cast iron pipe conforming to the requirements of ANSI A21.51., Ductile-Iron Pipe, Centrifugally Cast In Metal Molds or Sand line Molds, for Water or Other Liquids.

BASIS OF ACCEPTANCE. Ductile Iron Pipe (Pressure) shall be accepted on the basis of the Manufacturer's certification that the material conforms to this specification. The certification shall accompany the material delivered to the job site.

The Department reserves the right to sample and test this material subsequent to delivery at the project site.

(Continued)

707-05 TUNNEL LINER PLATE (relining)

SCOPE. This specification covers the material and fabrication requirements for tunnel liner plate.

MATERIAL REQUIREMENTS. Tunnel liner plate steel must conform to ASTM A569. Tunnel liner plate aluminum must conform to AASHTO M219 (ASTM B746). Before cold forming into tunnel liner plate the plates must conform to the following mechanical requirements:

	STEEL	ALUMINUM	
		(0.125-0.15 in.)	(0.173-0.25 in.)
Tensile Strength, psi	42,000 min.	35,000 min.	34,000 min.
Yield Point, psi	28,000 min.	24,000 min.	24,000 min.
Elongation in 2 inch, percent	30 min.	6 min.	8 min.

Prepare test specimens in accordance with ASTM A570 for steel sheets or ASTM A283 for steel plates and ASTM B209M for aluminum plates. Deliver the Mill test reports, for each heat and thickness to the Engineer with each shipment of liner plates.

Galvanizing. Galvanize steel plates in accordance with AASHTO M167 M. Galvanize after the plates are formed, punched and curved. Hot dip galvanize all bolts and nuts, when used with galvanized tunnel liner plate in accordance with ASTM A153.

Liner Plate. Punch all plate for bolting on both the longitudinal and the circumferential seams or joints and fabricate so as to permit complete erection from the inside of the tunnel liner plate structure. The minimum edge distance from the center of a bolt hole to the edge of a plate will be in accordance with the manufacturer's standard spacing. Provide a sufficient number of plates with 2 inches, or larger, grouting holes with pipe plugs, and spaced so that when the plates are installed there will be one line of holes at the crown of the pipe and one line on each side at approximately the midpoint. The holes in each line will not be more than 6 feet apart, and they will be staggered along the tunnel length.

Tunnel Liner Plate (Two-Flange). The minimum moment of inertia in inches⁴ per inch of plate width, based on the average of one ring of plates is as follows:

STEEL - Uncoated		ALUMINUM	
Plate Thickness (in.)	Moment of Inertia (in. ⁴ /in.)	Thickness (in.)	Moment of Inertia (in. ⁴ /in.)
0.135	0.064	0.125	0.0579
0.164	0.079	0.150	0.071
0.180	0.087	0.175	0.084
0.210	0.103	0.210	0.097
0.240	0.118	0.225	0.110

The longitudinal seams will be of the lap type. The depth of the offset will be equal to the thickness of the metal for the full width of plate, including flanges. Fabricate the lap to allow the cross section of the plates to be continuous through the seam. The lapped longitudinal joints will contain at least five (5) bolts per 18 inch plate width, with bolts in ridges and valleys staggered. Circumferential bolt spacing will be in accordance with the manufacturer's standard spacing and will be a multiple of the plate length so that the plates having the same curvature are interchangeable. Bolts and nuts for liner plate assemblies will not be less than 0.63 inch in diameter. Circumferential (flange) seams will conform to ASTM A307, with chemical and mechanical requirements conforming to Grade A and dimensions conforming to Grade B. Bolts and nuts for longitudinal seams will have square heads with a square shoulder to engage the plate. Longitudinal seams of plates 0.078 to 0.177 inches thick, inclusive will conform to ASTM A307, with chemical and mechanical requirements conforming to Grade A. Bolts for longitudinal seams of plates 0.2 to 0.25 inches or thicker will conform to the chemical and mechanical requirements of ASTM A449. Nuts, for use on ASTM A449 bolts, will conform to ASTM A307, with chemical and mechanical requirements conforming to Grade A, and dimensions conforming to Grade B.

BASIS OF ACCEPTANCE. Acceptance of this material will be based on the manufacturer's name appearing on the Approved List.

(Continued)

707-09 CORRUGATED STRUCTURAL STEEL PLATE FOR PIPE, PIPE ARCHES & UNDERPASSES

SCOPE. This specification covers corrugated structural steel plates intended for use in the construction of pipe, pipe arches and underpasses.

MATERIAL REQUIREMENTS. Structural steel plate, nuts and bolts shall conform to the requirements of AASHTO M167 except as herein specified, and shall be of the thickness and shape shown of the plans. When a gauge number is specified in the contract documents it shall conform to Table 707-2-1.

Plates shall have approximately a 2 inch lip beyond each end crest, which will result in the actual length of a given structure being approximately 4 inches longer than the nominal length, except where skewed or beveled.

If directed by the Engineer, the Contractor shall, at its own expense, repair damaged spelter on plate items as directed under ' 719-01, Galvanized Coatings and Repair Methods.

This repair method shall be allowed only when it is in the best interest of the Department. All repairs shall be made at no cost to the State.

BASIS OF ACCEPTANCE. This material will be accepted on the basis of certified documentation issued by a fabrication shop appearing on the Department's Approved List. Certification format and fabrication shop approval shall be in accordance with procedural directives issued by the Materials Bureau. At the option of the Department, this material may be subjected to shop inspection.

707-10 GALVANIZED STEEL END SECTIONS

SCOPE. This specification covers galvanized steel end sections to be attached to the inlet and outlet ends of corrugated steel pipe.

MATERIAL REQUIREMENTS. Galvanized steel end sections shall be manufactured from material meeting the requirements of AASHTO M218. The units shall conform to the shape, dimensions, and thickness shown on the applicable standard sheet and/or contract plans. The nominal metal thickness corresponding to any gauge shall be as shown in Table 707-2-1. Marking and coating repair shall meet the requirements of ' 707-02, Corrugated Steel Pipe.

BASIS OF ACCEPTANCE. End sections will be accepted on the basis of certified documentation issued by a fabrication shop appearing on the Department's Approved List. All shipments shall arrive at the project with certification prepared in accordance with Materials Bureau procedural directives.

Shipments arriving without certification, or with improper certification, will be rejected.

Metal and coating thicknesses will be measured at the project by project inspectors. If the metal and/or coating thickness is less than required or certified, the material shall be rejected. Equipment required to measure metal and coating thickness shall be supplied by the contractor as detailed in ' 603- 3.02G, Thickness Measuring Equipment.

Acceptance requirements including thickness measurements, visual inspection instructions, certification format, and fabrication shop approval shall be in accordance with Materials Bureau procedural directives. At the option of the Department, this material may be subjected to shop inspection.

707-11 ALUMINUM END SECTIONS

SCOPE. This specification covers aluminum end sections to be attached to the inlet and outlet ends of corrugated aluminum pipe.

MATERIAL REQUIREMENTS. Aluminum end sections shall be manufactured from material meeting the requirements of AASHTO M197M. The units shall conform to the shape, dimensions, and thickness shown on the standard sheet for galvanized steel end sections and/or contract plans. The nominal metal thickness corresponding to any gauge shall be as shown in Table 707-2-1. Marking shall meet the requirements of ' 707-13, Corrugated Aluminum Pipe.

BASIS OF ACCEPTANCE. End sections will be accepted on the basis of certified documentation issued by a fabrication shop appearing on the Department's Approved List. All shipments shall arrive at the project with a certification prepared in accordance with Materials Bureau procedural directives. Shipments arriving without certification, or with improper certification, will be rejected.

Metal thickness will be measured at the project by project inspectors. If the metal thickness is less than required or certified, the material shall be rejected. Equipment required to measure thickness shall be supplied by the contractor as detailed in ' 603-3.02H, Thickness Measuring Equipment.

Acceptance requirements including thickness measurements, visual inspection instructions, certification format, and fabrication shop approval shall be in accordance with Materials Bureau procedural directives. At the option of the Department, this material may be subjected to shop inspection.

(Continued)

707-13 CORRUGATED ALUMINUM PIPE

SCOPE. This specification covers corrugated aluminum pipe intended for use in the construction of culverts and drainage systems. The corrugated aluminum pipe covered by this specification is classified as follows:

Type I. This pipe shall have a full circular cross-section with a single thickness of corrugated sheet fabricated with annular (circumferential) or helical corrugations.

Type IA. This pipe shall have a full circular cross-section with an outer shell of corrugated sheet fabricated with helical corrugations and an inner liner of smooth (un-corrugated) sheet attached to the shell at helical lock seams.

Type IR. This pipe shall have a full circular cross-section with a single thickness of smooth sheet fabricated with helical ribs projecting outwardly.

Type II. This pipe shall be a Type I pipe which has been reformed into a pipe-arch having an approximately flat bottom.

Type IIR. This pipe shall be a Type IR pipe which has been reformed into a pipe-arch having an approximately flat bottom.

Type III. This pipe, intended for use as underdrains or for underground disposal of water, shall be a Type I pipe which has been perforated to permit the in-flow or out-flow of water.

MATERIAL REQUIREMENTS. Corrugated aluminum pipe shall conform to the requirements of AASHTO M196M Types I, IA, IR, II, IIR, and III except as modified herein. When Type IR and Type IIR corrugated aluminum pipe (spiral rib) is specified, the nominal dimension of the ribs shall be 3/4 x 3/4 inch at 7 1/2 inches spacing.

Gauge. The nominal metal thickness corresponding to any gauge shall be as shown in Table 707-2-1.

End Finish. To facilitate field joining, the ends of all helical corrugated aluminum pipe with 12 inches or greater diameters shall be rerolled to form a minimum of two annular corrugations of no less than 2 2/3 inch pitch by 1/2 inch depth. When the ends of Type IR or Type IIR pipe are rerolled, there shall be only two such corrugations. Rerolled pipe ends shall be uniquely and indelibly labeled so the pipe may be assembled in the field in the same order it was manufactured.

Coupling Bands. All round pipe sections (Types I, IA, IR, and III) 12 inches or greater in diameter shall be field joined with aluminum coupling bands. Helical corrugated pipe without rerolled ends may be joined with helical corrugated bands. Pipe with rerolled ends or annular corrugations shall be joined with annular corrugated coupling bands.

All bands shall have corrugations with the same dimensions as the pipe ends. Annular corrugated bands shall mesh with at least one full corrugation and shall lap equally on each pipe end. The band widths shall be a minimum of 7 inches for pipe diameters up to and including 32 inches. The band widths shall be a minimum of 10 1/2 inches for pipe diameters greater than 32 inches.

The bands shall not be more than 2 nominal sheet thicknesses thinner than the pipe and in no case thinner than 0.05 inch.

Pipe arches (Type II and Type IIR) may be joined by the annular corrugated bands described above or by special projection type coupling bands. The special projection bands shall consist of two rows of projections at 3 inches center-to-center that will mesh with at least one full corrugation and will lap equally on each pipe end. The special projection bands shall not be more than 2 nominal sheet thicknesses thinner than the pipe and in no case thinner than 0.063 inch.

Regular projection type coupling bands (dimpled bands) will not be acceptable for pipe 12 inches in diameter and larger. Dimpled bands may be used on pipe smaller than 12 inches in diameter, all sizes of perforated underdrain pipe, and for connecting pipe extensions to existing helical corrugated pipe without rerolled ends, unless otherwise shown on the plans.

Coupling bands may be one or two piece. Two piece coupling bands shall be used on pipe 48 inches or greater in diameter.

Coupling band connectors shall be one of the following types:

- Aluminum angles, 2 x 2 x 3/16 inches
- Aluminum lug connectors
- Aluminum bar and strap connectors.

These connectors shall be riveted, bolted, or welded to the coupling bands. Evidence of loose bolts or rivets, bearing failure, or weld or band tearing shall be cause for rejection and replacement of that coupling band. As an alternate to the coupling band connectors stated above, an aluminum corrugated angle which conforms to an approved Materials Detail may be used.

MARKING. Each length of corrugated aluminum pipe shall be marked or tagged as approved by the Department to properly cross-reference the supplier's certification.

Additional Defects. In addition to criteria established in Materials Bureau procedural directives and defects listed in AASHTO, the following defects will be cause for rejecting the pipe when inspected at the project:

(Continued)

- Variation from a straight centerline of more than 3/4 inch in 20 feet.
- Any dents greater than 3 inches in diameter
- Loosely formed or cracked lock seams
- Any punctures
- Cracks through the metal
- Sharp bends in pipe arches that are less than the specified minimum corner radius for that size.

BASIS OF ACCEPTANCE. Corrugated aluminum pipe will be accepted on the basis of certified documentation issued by a supplier appearing on the Department's Approved List. All shipments shall arrive at the project with certification prepared in accordance with Materials Bureau procedural directives. Shipments arriving without certification, or with improper certification, shall be rejected.

Gauge shall be measured at the project by project inspectors. If the gauge is less than required, the pipe shall be rejected. Equipment required to measure gauge shall be supplied by the contractor as detailed in ' 603-3.02H, Thickness Measuring Equipment.

Acceptance requirements including thickness measurements, visual inspection instructions, certification format, and fabrication shop approval shall be in accordance with Materials Bureau procedural directives. At the option of the Department, this material may be subjected to shop inspection. Corrugated connecting angles will be accepted provided an approved Materials Detail appears on the Department's Approved List from that supplier.

707-14 CORRUGATED ALUMINUM STRUCTURAL PLATE FOR PIPE AND PIPE ARCHES

SCOPE. This specification covers corrugated aluminum structural plates for use in the construction of pipe and pipe arches.

MATERIAL REQUIREMENTS. Structural plate, nuts and bolts shall conform to the requirements of AASHTO M219 except as herein specified, and shall be of the thickness and shape shown on the plans. When a gauge number is specified in the contract documents, it shall conform to Table 707-2-1.

The corrugations shall run at right angles to the longitudinal axis of the structure. Plates shall have approximately a 1 3/4 inch lip beyond each end crest, which will result in the actual length of a given structure being approximately 3 1/2 inches longer than the nominal length, except where skewed or beveled.

All sections which are damaged from any cause, including handling, or where any dimension varies from that specified, shall be replaced at the Contractor's expense in a manner approved by the Engineer.

BASIS OF ACCEPTANCE. This material will be accepted on the basis of certification by the fabricator. Each fabricator shall furnish upon request by the Materials Bureau a certified analysis and guarantee executed by the manufacturer of the base metal as described in AASHTO M219.

At the option of the Department, structural plates may be subjected to shop inspection or may be shipped to the project site accompanied by certified documentation executed in a form prescribed by the Department.

707-20 ANCHOR BOLTS FOR CORRUGATED CULVERTS

SCOPE. This specification covers the material details and quality requirements for the anchorage system securing the ends of corrugated metal pipe, arch pipe, and structural plate to reinforced or plain concrete headwalls.

MATERIAL REQUIREMENTS. Anchor bolts shall be 3/4 inch diameter heavy hex bolts, ASTM A307. Grip shall be 5 1/2 inches threaded over at least the first 2 1/2 inches. The bolts shall be fitted with two nuts, ASTM A563 heavy hex. Nuts shall be chamfered on at least one face using a 1 inch spherical radii. The nuts and bolts shall be so assembled that in the final assembly, the bolt and one of the nuts is embedded in concrete that the chamfered faces of the nuts face each other, and secure the pipe between them. Nuts and bolts shall be galvanized as per ASTM A153 after all machining operations are completed. Following galvanization, threads shall be cleaned to produce a free running fit.

When 19 inch hook bolts are used as anchor bolts they shall be detailed on the plans and shall conform to the requirements of ASTM A36.

Anchor bolts shall be spaced around the periphery of the pipe at intervals not exceeding 18 inches. At least two anchor bolts shall be provided.

BASIS OF ACCEPTANCE. Anchor bolts and nuts for corrugated metal pipes, pipe arches, and structural plate pipe will be accepted on the Manufacturer's Certification that they conform with these specifications.

(Continued)

SUPPLEMENTAL SPECIFICATION 1 - HDPE POLYETHYLENE PLASTIC LINER PIPE:

SCOPE - These specifications cover the requirements for polyethylene plastic pipe liner for lining existing culvert pipes.

Material Requirements - The liner pipe shall be made of high density polyethylene resin in accordance with the requirements of ASTM D-3350-98a with a cell classification of PE 345464C and shall have a Plastic Pipe Institute designation of PE 3408. The liner pipe shall comply with the dimension of ASTM F-714 with a minimum DR of 32.5. The liner shall have a smooth, non-corrugated interior and exterior capable of maintaining a minimum flow rate equivalent to 100% of the original existing culvert. Liner size is also dependent upon condition of existing culvert. A liner with lower flow will be used if the condition of the culvert does not permit the use of a larger liner. The liner shall be resistant to the effects of UV rays. The material from which the pipe and fittings are extruded or molded will not contain any reclaimed, recycled, reground or reworked material and will be comprised of virgin material only.

Liner Pipe Joints or Couplings: The liner pipe shall be capable of being joined into continuous lengths by an approved method. The joints shall not create an increase in the outside diameter of the liner pipe to eliminate coupling hang-ups. The joints must contain a gasket and be water-tight and meet ASTM D-3212. The joining for the liner pipe shall be Snap-Tite or equal with either a straight or bell shaped end.

Specific diameter and lengths are to be shown in the catalog per the chart listed on page 24.

Basis of Acceptance - The supplier shall furnish a Manufacturer's Certification stating that the material in the pipe meets the requirements of ASTM -3350-98a with a cell classification of PE 345464C with the physical properties indicated above.

The supplier shall certify the dimensions meet the requirements of ASTM F-714 or as indicated in these specifications or drawings.

HDPE Resin Specifications:

Property	Specification	Unit	Nominal Value
Material Designation	PPI/ASTM		PE3408
Material Classification	ASTM D- 1248		III C 5 P34
Cell Classification	ASTM D- 3350-98A		345464C
Density	ASTM D- 1505	gm/cm ³	0.955
Melt Index	ASTM D- 1238	gm/10 min.	0.11
Flex Modus	ASTM D- 790	psi	135,000
Tensile Strength	ASTM D- 638	psi	3200
Slow Crack Growth			
ESCR	ASTM D- 1693	Hours in 100% igepal	>5000
PENT	ASTM F- 1473	hours	>100
HDB @73°F	ASTM D- 2837	psi	1600
U-V Stabilizer	ASTM D- 1603	% C	2.5%

(Continued)

SUPPLEMENTAL SPECIFICATION 2 – Steel Culvert Rehabilitation System

Standard for arc welded copper bearing corrosion resistant straight seam steel pipe (Round, Arch, Elliptical, and Special Shapes)

Scope - This specification covers arc welded straight seam steel pipe with .20 minimum copper for improved corrosion resistance for use in culvert rehab under roadways.

The pipe may be round, elliptical, arch shaped or other special section as specified by the purchaser. Unless otherwise specified below, the requirements of this specification apply to both round pipe sections and the non-round pipe sections.

Manufacture -

All pipe must be compliant with Federal Buy America/Buy American requirements.

All pipe shall be made from new unused steel plates.

All pipe shall be straight seam pipe.

Straight seams welded after rolling must be automatic DSAW (Double Submerged Arc Weld) welds.

Midwelds done after rolling may be done by automatic or semi-automatic DSAW, FCAW (Flux-cored Arc Weld), or GMAW (Gas Metal Arc Weld) welding.

Splices done before rolling, and repair welds may be done by automatic, semi-automatic or manual DSAW, FCAW, or GMAW welding.

Specified Wall Thickness -

The wall thickness and structural design is the responsibility of the purchaser.

The purchaser shall specify the wall thickness required for his project as required by his design calculations, applicable specifications and pipe size.

The minimum thicknesses below are based on the pipe manufacture; a thicker wall thickness shall be specified by the purchaser if needed to meet his requirements.

- 1. Round Pipe:** The minimum specified wall to be used for round pipe made to this specification shall be .500 nominal wall, and the wall thickness at any one point shall not be more than 12.5% under the specified nominal wall thickness. (i.e.: Min wall = .875 x specified wall thickness).
- 2. Elliptical Pipe, Arch Pipe, and other non-round pipe sections:** The minimum specified wall thickness to be used for these sections shall be .500", and the wall thickness at any point shall not be thinner than .015" under the specified wall thickness. (i.e. Min wall = specified wall thickness minus .015").

Chemical Composition -

Each heat number of steel used for this product shall be tested for chemistry and shall conform to the following:

Carbon:	0.26 max
Manganese:	1.65 max (see note below)
Phosphorus:	0.035 max
Sulfur:	0.035 max
Copper:	0.20 min

Note: For each reduction of .01% carbon below the specified maximum concentration of carbon given above, an increase of .05% over the specified maximum concentration of manganese given above is permissible up to a maximum of 2.00% manganese.

Tensile Requirements for the Steel -

Tensile strength: 60000 psi min.

Yield strength: 36000 psi min.

Each heat number used shall be tested for tensile and yield strength, and the results must meet the tensile and yield requirements above.

At the option of the purchaser, the Tensile test may be done on only one random sample taken from each 100 ft. of each pipe size on each purchase order and must meet the above tensile and yield requirements.

(Continued)

Test Report Requirements - A Pipe Material Test Report (MTR) shall be furnished by the pipe mill producing the pipe. The Pipe MTR shall provide the chemical test results of each heat number used in each pipe for the elements listed in section 5 above.

Chemical test results must conform to section 5 of this specification.

The Pipe MTR shall also provide tensile and yield properties for each heat number used in each pipe; or if the purchaser specifies random sampling for tensile testing in accordance with section 2.6 of this specification, the Pipe MTR will show random tensile test results as required by section 2.6 of this specification.

The tensile test results shall conform to section 6 of this specification.

All pipe must be manufactured in the USA.

All pipe must be made from steel plates that were produced in the USA, and the Pipe Material Test Report shall certify that pipe was made from domestic steel.

If MMU pipe is specified by the purchaser, all plates used shall be "melted and manufactured in the USA", and the Pipe Material Test Report will list all of the heat numbers or plate id numbers used for each pipe and will certify that pipe was "melted and manufactured in USA".

Back up papers from the plate mill will be supplied to show that the plate was "melted and manufactured in the USA".

Pipe Dimensional Tolerances -

- Length: The length of each pipe shall be within $\pm 1/2$ " of the specified ordered length.
- Circumference: The outside circumference at any point in the length of the pipe shall be within 1% of the nominal circumference or within $\pm 1/2$ ", whichever is less.
- Straightness: The maximum allowable straightness deviation in any 10 ft. length shall be $1/8$ ". For lengths over 10 ft the maximum deviation of the entire length may be equal to $[1/8" \times (\text{total length in ft.}/10 \text{ ft.})]$.
- Roundness (for round pipe sections): The difference between the major and minor outside diameters at each end of each pipe shall not exceed $1/4$ " for diameters up to and including 48" OD and $1/2$ " for diameters greater than 48" OD.
- Wall Thickness:
 - Round Pipe: For round pipe sections the minimum wall thickness at any point shall be not less than 12.5% of the specified wall thickness.
 - Elliptical, Arch Pipe, and other non-round sections: For Elliptical, Arch Pipe, and other non-round sections, the minimum wall thickness at any point shall not be less than .015" below the specified wall thickness.

Ends - Pipe ends shall be square cut or shall have a 30 degree bevel on OD or ID as specified by purchaser.

Basis of Acceptance - Welded steel pipe (non-pressure) will be accepted on the basis of the manufacturer's certification that the materials conform to ASTM A-36 Grade B specifications. Certification shall also accompany material delivered to all delivery locations. Shipments arriving without certification or with improper certification will be rejected. The State reserves the right to sample and test this material subsequent to delivery at any location.

(Continued)

V.7 ADDITIONAL CATALOG REQUIREMENTS:

Catalogs applying to supply items covered by specifications 706-12, 706-13, and 706-14 should contain the following available for sale. All Connectors, joints, & capping accessories should be available to support the pipe diameters (Ø) contained in the product line :

Split Coupler - Connectors
T Joints
Straight Inside Connectors
Straight Outside Connectors
45° Connectors
End Caps
Underdrain Pipe – 4" Ø - 20' Lengths
Underdrain Pipe – 6" Ø - 20' Lengths
Underdrain Pipe – 8" Ø - 20' Lengths
Underdrain Pipe – 10" Ø - 20' Lengths
Underdrain Pipe – 12" Ø - 20'
Storm Drain Pipe - 12" Ø, M294
Storm Drain Pipe - 15" Ø - M294
Storm Drain Pipe - 18" Ø - M294
Storm Drain Pipe - 24" Ø - M294
Storm Drain Pipe - 30" Ø - M294
Storm Drain Pipe - 36"Ø - M294
Storm Drain Pipe - 42" Ø - M294
Storm Drain Pipe - 48" Ø - M294

Catalogs applying to supply items specified to cover the HD Polyethylene Plastic Liner Pipe requirement should contain liner and accessories to support the following dimensional requirements:

Existing Pipe Size (ID) in.	Liner		
	Clearance* OD of the Liner Pipe		Clearance* ID
	Minimum (in.)	Maximum (in.)	Minimum ** (in.)
12	1.25	1.25	1.910
15	1.61	2.25	3.034
18	2.00	4.00	4.872
21	2.00	3.00	4.108
24	2.40	4.00	5.230
27	2.70	3.00	4.476
30	3.00	6.00	7.476
33	3.30	5.00	6.724
36	3.60	4.00	5.970
42	4.20	6.00	8.216
46	4.60	4.00	6.584
48	4.00	6.00	8.584
54	5.00	6.00	9.664
60	6.00	6.00	9.324

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

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

(Continued)

V.8 NYSDOT Materials Bureau - Approved Products List - as of January 14, 2015**REINFORCED CONCRETE PIPE, (Machine Made Pipe) (706-02 and 706-03)**

MANUFACTURER	LOCATION(s)
Coastal Pipeline Products Corporation	Calverton, NY
Husted Concrete Products, Inc.	New York Mills, NY
Modern Concrete	Easton, PA
Oldcastle Pipe	Croydon, PA, Farmingdale, NJ, Folsom, NJ, Montrose, PA
Vianini Pipe, Inc.	Somerville, NJ

NOTES:

1. Approved Manufacturers of Wet Cast Pipe (706-02 and 706-03) and Reinforced Concrete Pipe End Sections (706-07) are identified under the Precast, Concrete section for Precast Concrete Manufacturers Approved for QC/QA Production (704-03).
2. All above-listed Manufacturers are currently approved suppliers for Dry Cast Pipe (706-02 and 706-03).
3. Contact Michael Mathioudakis of the Materials Bureau at (518) 457-9800 for additional information.

Pipe, Metal**A. CORRUGATED STEEL PIPE (707-02); and GALVANIZED STEEL END SECTIONS (707-10)**

SUPPLIER	ZINC GALV. COATED	ALUMINUM COATED (TYPE 2)	BITUMINOUS COATED	POLYMER COATED	PORTLAND CEMENT CONCRETE LINED	GALV. STEEL END SECTIONS
LOCATION(s)						
Burtco, Inc.						
Westminster Station, VT	X	---	---	---	---	X
Contech Construction Products, Inc.						
Ashland, KY	X	X	X	X	---	X
Canfield, OH	X	X	X	X	---	X
Conyers, GA	X	X	X	X	---	X
Greencastle, PA	X	X	X	X	X	X
Mitchell, IN	X	X	X	X	---	X
New Castle, DE	X	X	X	X	---	X
Palmer, MA	X	X	X	X	---	X
Shakopee, MN	---	---	---	---	---	X
J & J Drainage Products						
Hutchinson, KS	---	---	---	---	---	X
Jensen Bridge & Supply Company						
Sandusky, MI	---	---	---	---	---	X
Lane Enterprises, Inc.						
Ballston Spa, NY	X	X	X	X	---	X
Bath, NY	X	X	X	X	---	X
Bealton, VA	---	---	---	---	---	X
Bedford, PA	X	X	X	X	---	X
King of Prussia, PA	X	X	X	X	---	X

(Continued)

B. CORRUGATED STRUCTURAL STEEL PLATE FOR PIPE, PIPE ARCHES, UNDERPASSES (707-09); CORRUGATED ALUMINUM STRUCTURAL PLATE FOR PIPE AND PIPE ARCHES (707-14); and TUNNEL LINER PLATE (relining) (707-05)

SUPPLIER	CORRUGATED STRUCTURAL STEEL PLATE	CORRUGATED STRUCTURAL ALUMINUM PLATE	TUNNEL LINER PLATE (relining)	
			STEEL	ALUMINUM
Contech Construction Products, Inc.				
Winchester, KY	X	X	X	X
Lane Enterprises, Inc.				
Pulaski, PA	X	X	---	---

C. CORRUGATED ALUMINUM PIPE (707-13); and ALUMINUM END SECTIONS (707-11)

SUPPLIER	CORRUGATED ALUMINUM PIPE	ALUMINUM END SECTIONS
LOCATION(s)		
Burtco, Inc.		
Westminster Station, VT	X	X
Contech Construction Products, Inc.		
Canfield, OH	X	X
Greencastle, PA	X	X
Mitchell, IN	X	X
New Castle, DE	X	X
Palmer, MA	X	X
J & J Drainage Products		
Hutchinson, KS	---	X
Lane Enterprises, Inc.		
Ballston Spa, NY	X	X
Bath, NY	X	X
Bealton, VA	---	X
Bedford, PA	X	X
King of Prussia, PA	X	X

D. BAND ANGLES FOR CORRUGATED STEEL PIPE, (U.S. CUSTOMARY)

SUPPLIER / LOCATION	MATERIALS DETAIL NO.	APPROVAL DATE
Burtco, Inc. Westminster Station, VT	BA-7, 7" Band Angle	1/20/87

(Continued)

D. BAND ANGLES FOR CORRUGATED STEEL PIPE₁ (METRIC)

SUPPLIER / LOCATION	MATERIALS DETAIL NO.	APPROVAL DATE
J & J Drainage Products Hutchinson, KS	1BA07-M 175 mm	2/95
	1BA12-M 300 mm	
	1BA18-M 450 mm	
	1BA24-M 600 mm	
Scafco Corporation Spokane, WA	110101-175 mm	8/94
	110103-300 mm	6/02
	110109-450 mm	12/98
	110104-600 mm	2/01

NOTE:

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

BITUMINOUS COATING REPAIR MATERIALS FOR CORRUGATED STEEL PIPE

BRAND NAME	SUPPLIER AND LOCATION
Grundy 5X Brush	Grundy Industries Inc. Joliet, IL

POLYMER COATINGS, COATING APPLICATORS, AND POLYMER REPAIR MATERIALS FOR STRUCTURAL SHEETS USED FOR CORRUGATED STEEL PIPE**A. POLYMER COATINGS**

BRAND NAME	MANUFACTURER AND LOCATION
Denflex Coating	Dennis Chemical Company St. Louis, MO
DOW DAF 625 Protective Film	DOW Chemical USA Granville, OH
DOW Trenchcoat Protective Film	

B. COATING APPLICATORS

APPLICATOR	LOCATION
Advanced Coil Industries, Division of Chempower, Inc.	Washington, PA
E.G. Smith Construction Products, Inc.	Pittsburgh, PA
Pre-Finish Metals, Inc.	Elk Grove Village, IL

C. POLYMER REPAIR MATERIALS

BRAND NAME	MANUFACTURER AND LOCATION
Denflex Coating	Dennis Chemical Company St. Louis, MO
Scotch-Clad 1706 Protective Coating	3M Company St. Paul, MN

(Continued)

GALVANIZED REPAIR MATERIALS (719-01)**A. ZINC SOLDER (STICK OR PASTE)**

BRAND NAME	SUPPLIER AND LOCATION	STICK	PASTE
All-State Galvover	All-State Welding Products Taneytown, MD	X	
AMCO 322 Galvanizing Stick	American Solder and Flux Company, Inc.	X	
AMCO 3017 Galvanized Coating Repair Bar	Force Industries Division Paoli, PA	X	
Galva-Guard	Cominco Limited Mississauga, ON, Canada	X	

B. ZINC PAINT

BRAND NAME	SUPPLIER AND LOCATION	AEROSOL	LIQUID
Aervoe Zinc Rich Galvanize	AERVOE Industries Inc. Gardnerville, NV	X	X
Carbo Zinc D11 VOC	Carboline St. Louis, MO		X
Carbo Zinc D12 VOC			X
Crown Cold Galvanizing Compound	AERVOE Industries Inc. Gardnerville, NV	X	X
TRU-GALV Silver Galvanizing Compound	HUB Industrial Supply Lake City, FL	X	
TRU-GALV Zinc Rich		X	
Zinc Clad 5 Organic Zinc-Rich Primer B69A45	Sherwin-Williams Company Cleveland, OH		X
ZINGA	CARWELL PRODUCTS INC. Cheektowaga, NY		X
ZINGASPRAY		X	
ZRC Cold Galvanizing Compound	ZRC WORLDWIDE Marshfield, MA	X	X
ZRC GALVILITE Galvanizing Compound		X	X

(Continued)

Pipe, Plastic

SMOOTH INTERIOR CORRUGATED POLYETHYLENE PIPE (706-12)₁

MANUFACTURER	PRODUCTION LOCATION	PRODUCT NAME (CONNECTION TYPE)	DIAMETER (inch)[Converted]	MATERIALS DETAILS NO. (APPROVAL DATE)
ADS/Hancor ₂	Findlay, OH	Blue Seal (watertight) SureLok (bell spigot) (split coupler)	12, 15, 18, 24, 30, 36, 42, 48, 60	NY A/H 3/08 (03/08)
	N. Springfield, Vt. ³			
	Logan Township, NJ Ludlow, MA	N-12(split coupler) N-12 ST IB(bell & spigot) N-12 WT IB(watertight)	12, 15, 18, 24, 30, 36, 42	
	Muncy, PA	N-12(split coupler)N-12 ST IB(bell & spigot) N-12 WT IB(watertight)	12, 15, 18, 24, 30, 36, 42, 48, 60	
	Wooster, OH	N-12(split coupler)N-12 ST IB(bell & spigot) N-12 WT IB(watertight)	12, 15, 18, 24, 30	
Baughman Tile Company, Inc.	Paulding, OH	Poly Smooth-Line (bell spigot) (double bell coupler) (split coupler)	12, 15, 18, 24, 30, 36, 42, 48,	NYSDOT DW08M (03/08)
JM Eagle	Meadville, PA	Inline Bell (bell spigot)	12, 15, 18, 24, 30, 36, 42, 48,	NYMD (06/11)
Lane Enterprises	Ballston Spa, NY Bath, NY Shippensburg, PA Wytheville, VA	LokTite (bell) (bell watertight joint)	12, 15, 18, 24	Lane-NYSDOT- TYPE S METRIC (04/09)
		Inline Bell (bell spigot)	12, 15, 18, 24, 30, 36, 42, 48	
		Split Coupler (split coupler)	12, 15, 18, 24, 30, 36	
Soleno, Inc.	Iberville, QC, Canada Macadam, NB, Canada	Unimax (bell spigot)(split coupler)	12, 15, 18, 24, 30, 36, 42, 48	MD SOLENO (07/05)

NOTES:

- The Supplier must submit two copies of the approved Materials Details through the Contractor to the Engineer as part of the evidence of acceptability for the material at least 10 days prior to use of the product.
- ADS/Hancor pipe is marked **A/H**.
ADS Brand pipe is identified with a **green** stripe.
Hancor Brand pipe is identified with a **blue** stripe.
- Location only approved up to 30" Diameter.

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SECTION VI ADMINISTRATIVE REQUIREMENTS**VI.1 MANDATORY AGREEMENTS AND CERTIFICATIONS**

In order to be eligible for consideration under this solicitation, a Bidder must affirm its agreement to comply with the following requirements and Qualifications of Prospective Bidders clause. Such affirmations are set forth in Attachment 2 –“General Questions, Bidder Agreements & Certifications” and includes among others: Agreement to obtain all necessary Insurance as outlined in “Appendix D – INSURANCE REQUIREMENTS”, Agreement to all reporting requirements in accordance with Section VII.6 “ADMINISTRATIVE AND REPORTING REQUIREMENTS” and Certification of its intent to undertake good faith efforts to meet the participation goals by certified minority owned business enterprises and certified women owned business enterprises (M/WBE) in accordance with the “M.WBE Participation and Goals sub clause as found below in Section VI.10

VI.2 NEW YORK STATE VENDOR FILE REGISTRATION

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

If Bidder is already registered in the Vendor File, the Bidder must enter its ten-digit Vendor ID number on the first page of this IFB. In addition, dealers who will be authorized as subcontractors who are already registered in the Vendor File, should provide the Bidder with their Vendor ID, for it to be entered in the space provided in Attachment 1 Bidder Information, Tab A - Identification, which authorizes the dealer to act as a subcontractor on behalf of the bidder.

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

VI.3 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

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

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

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

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

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

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

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

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

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

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

Contractor agrees it shall recertify its Questionnaire no later than the end of the eleventh month of each contract year.

BIDDERS NOTES:

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

VI.4 TAX LAW §5-A

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

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

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Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at:

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf.

Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS Procurement Services. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at:

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

VI.5 QUALIFICATIONS OF PROSPECTIVE BIDDERS

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

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

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

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

- Bidder must be authorized to do business in New York State.
 - a. Domestic corporations (or LLC's) shall be registered and in good standing with the New York State Department of State's Bureau of Corporations
 - b. Foreign corporations (or LLC's) may bid provided they are either:
 1. Registered and are in good standing with the NYS Department of State's Bureau of Corporations, or are
 2. Able to provide, preferably with its bid, but otherwise within a time frame specified by the OGS Procurement Services Contract Management Specialist upon request, a Certificate of Good Standing from their jurisdiction of record.
 - c. Sole Proprietors or Partnerships (regardless of location) must provide a certified copy of your legal business certificate which is on file with the County Clerk in your jurisdiction of record, preferably with its bid, but otherwise within a time frame specified by the OGS Procurement Services Contract Management Specialist upon request.
- Bids will be accepted only from established manufacturers or members of their established distribution network of authorized dealers. See Section I.16, and Attachment 2 for additional information.
- A Bidder shall certify its commitment to fulfill and maintain all requirements including items specifically detailed in Attachment 2 – "General Questions, Bidder Agreements & Certifications".

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

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

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

2. Ability to Perform and Reasonableness of Price: Upon request and within a timeframe determined by the Contract Management Specialist, bidder must document its ability to service a contract with sales volume similar in scope of the lot(s) bid and that the pricing set forth in the bid is reasonable. This would be accomplished through submission of financial statements documenting past sales history. Bidders should provide information for up to 5 Federal contracts, any other NY State contracts, contracts with other States or groups of States or any local government contracts (population of 75,000 or more) which are either currently held for public sector procurements or have been recently completed for products offered in this bid, along with the discounts offered under those contracts.

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

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

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

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

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

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

VI.6 INSURANCE

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

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

After notification of tentative award, Bidder shall be required to procure all required contract-specific insurance (see Appendix C – Insurance Requirements) within five (5) business days. .

Bidder shall affirm its agreement to obtain all required contract-specific insurance and maintain proper proof of coverage in Attachment 2 – General Questions.

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

VI.7 MANUFACTURER'S STATEMENT of AUTHORIZATION & COMMITMENT

Bidders who are bidding products which are being offered as a resale of goods manufactured by others must obtain verification from the products actual manufacturer of their right to sell. This is done through the completion and submission of a completed Manufacturer's Statement of Authorization & Commitment for the catalog(s) and

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products the bid is based on. The bidder completes the Identity block at the top of the form and forwards the form to the manufacturer(s). If the bidder is using more than one manufacturer as their product source, a Manufacturer's Statement of Authorization & Commitment is required from each manufacturer being used.

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

The "Manufacturer's Statement of Authorization & Commitment " found in Attachment 2, Tab#3, is to be forwarded by the Bidder to its proposed supplier(s) for completion, and returned to the Bidder for submission, either with their bid or within the time frame set forth request from the Contract Management Specialist of record.

VI.8 JOINT VENTURE OR PARTNERSHIP BIDS

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

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

VI.9 M/WBE PARTICIPATION AND GOALS

Contractor Requirements & Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority & 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" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establishes goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises ("M/WBE") and the employment of minority groups members and women in the performance of New York State contracts.

VI.9.1 - 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 the Contract; or (ii) employment outside New York State.

Bidder further agrees to submit either with the bid or upon request by the Contract Management Specialist of record, a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report on Form EEO 101 identifying the workforce actually utilized on the Contract if known. Form EEO 100 is available on line at <http://www.ogs.ny.gov/MWBE/Forms.asp>.

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Further, pursuant to Article 15 of the Executive Law (also known as the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (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.

VI.9.2 - Business Participation Opportunities for M/WBEs

For purposes of this procurement, OGS hereby establishes a goal of 0% for Minority-owned Business Enterprises (MBE) participation and 5% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total contract MWBE goal of 5%. The total contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this contract. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newycontracts.com/frontend/diversityusers.asp>.

Pursuant to 5 NYCRR § 142.8, a Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract and ensure that the MWBEs utilized under the Contract perform commercially useful functions. Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation.

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

- (1) the amount of work subcontracted;
- (2) industry practices;
- (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
- (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
- (5) any other relevant factors.

In accordance with 5 NYCRR §142.13, Bidder/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OGS may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to M/WBEs had the Contractor achieved the contractual M/WBE goals; and (2) all sums actually paid to M/WBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, Bidder/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a M/WBE Utilization Plan on Form MWBE 100. This form is mandatory and may be submitted with the bid, or it may be deferred and submitted upon request of the Contract Management Specialist. The form is available on line at <http://www.ogs.ny.gov/MWBE/Forms.asp>. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State contract and a description of the Commercially Useful Function the Contractor intends the MWBE to perform to meet the goals on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that the utilization of MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of the Contract; and, that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified M/WBEs set forth in the Utilization Plan submitted with the bid or proposal, after the Contract award and during the term of the Contract, must be reported on a revised M/WBE Utilization Plan and submitted to OGS.

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- B. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of M/WBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. OGS may disqualify a Bidder as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit a MWBE Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If OGS determines that the Bidder has failed to document good faith efforts.

A Bidder who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver on Form BDC 333, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses B-D above, will apply.

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

E. Monthly MWBE Contractor Compliance Report

Contractors are required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (NYSCS) to report subcontractor and supplier payments made by Contractor to MWBEs performing commercially useful functions under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State. If a Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS. More information about the NYSCS will be provided if Bidder is awarded a Contract.

Bidders Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

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SECTION VII CONTRACT ADMINISTRATION

VII.1 SERVICE REQUIREMENTS

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

VII.1.1 – Product Delivery: Appendix B, § 33, Product Delivery, is hereby deleted and replaced with the following:

Product will be required as soon as possible and delivery time may be considered by an Authorized User when issuing a purchase order. Estimated delivery shall be expressed by the average (or usual) number of calendar days required to ship and complete the product delivery after receipt of a purchase order (ARO) which shall be indicated on the ‘General Questions’ tab in Attachment 2 – Administrative Items, General Questions & Bidder Agreements. The decision of the Commissioner as to compliance with delivery terms shall be final. If deliveries cannot be achieved within the stated time after receipt of order, the Authorized User must be advised immediately to facilitate possible use of an alternate source of supply. Deliveries must be made to the using Authorized User within sixty (60) days of the Contractor’s receipt of order.

There will be NO backordering of any items.

VII.1.1.1 - Purchase Order Instructions: Delivery shall be made in accordance with instructions on purchase order from each Authorized User. If there is a discrepancy between the purchase order and what is listed on the contracts, it is the Contractor’s obligation to seek clarification from the ordering party and, if applicable, from OGS Procurement Services [See also: Section VII.3.6].

VII.1.1.2 - Shipping Dates and Delivery Time: Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order which will include an anticipated shipping date of each order. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. The Contractor must notify the Authorized User at least forty-eight (48) hours in advance of shipment so that necessary receiving arrangements can be made.

If shipment will not be made within the delivery time, the Contractor is required to notify the Authorized User and the Contract Management Specialist of record in writing at least two weeks prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the product will be shipped. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such a delivery time schedule may be grounds for cancellation of the order or, in the Commissioner’s discretion, the Contract. Contractor must take appropriate action to avoid any subsequent late deliveries.

Should the delay not be acceptable to the Authorized User, appropriate contract default proceedings may be initiated. Failure to supply timely written notification of delay may be cause for default proceedings. All correspondence on shipping dates and delivery time shall be directed to the ordering Authorized User’s contact person.

VII.1.1.3 - Delivery Condition: The product delivered must be strictly in accordance with the one awarded. Contractor shall be responsible to make no shipment of the product that will be exposed to conditions during transit, detrimental to the product. Product must be delivered strictly in accordance with specifications and shall be “Ready for Use.”

VII.1.1.4 Delivery Certification: Contractor shall secure a signed receipt from Authorized User certifying to physical delivery of product. In the event deficiencies are later noted and a properly signed receipt is not available, Contractor will be responsible to ship adequate additional product, as soon as possible, to resolve the deficiency. Such certification does not imply acceptance of product. Acceptance shall be made only after the inspection of goods by the Authorized User, typically performed within five (5) business days of delivery.

VII.1.1.5 - Expansion of Delivery Points: Upon mutual agreement, delivery locations may be expanded per the “Non-State Agencies Participation in Centralized Contracts” and “Extension of Use” clauses incorporated herein.

VII.1.2 – Commercial Price Lists and Catalogs: Contractor shall be required to furnish, without charge, catalogs and commercial price lists identical to those accepted with their bid, including any changes (additions, deletions, modifications etc.) pursuant to the contract, to all Authorized Users which request them. Such changes may be shown by including copies of the Final Offered Product List with your response.

VII.1.2.1 – Format Requirements: The Contractor shall provide, upon request and at no charge, sufficient awarded price lists and catalog(s) to service all Authorized Users. The publications may be

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furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. Upon request the Contractor shall assist Authorized Users in the use of catalogs and price lists. Contractor may refer the Authorized User to appropriate web locations containing the digital information.

VII.1.2.2 – Preferred Source Requirement - The Contractor shall also identify products available from Preferred Sources by placing a letter code in a column next to the Products on the Contractor's Net Price List(s) (hard copy and electronic media) distributed to customers.

VII.1.2.3 – Optional Dedicated Contract Website: If offering a dedicated NYS Contract Website (*per Section VIII*), the Contractor shall provide, on this supplemental website (and if applicable their web based ordering system), separate and distinct price lists for the NYS Net prices. It shall also provide on its website an electronic version of the supplier's catalog. Such lists shall be maintained at separate locations within the Contractor's website or web-based ordering system, either on separate pages, or at separate URLs. See VIII.16 - INTERNET WEBSITES for additional information.

VII.1.3 - Customer Service: The Contractor shall provide a sufficient number of employees who are knowledgeable and responsive to customer needs and who can effectively service the contract. The Contractor shall also designate a customer service representative for Authorized Users. Bidders shall indicate the contact information for the customer service representative in Attachment 1 – "Bidder Information and Bid" Tab A – Identification.

VII.1.3.1 - Technical Assistance: Generalized instruction and technical assistance for the offered products in the normal course of doing business, via a customer or technical service website or telephone hotline is to be available to Authorized Users on an as needed basis at no charge.

VII.1.4 - Instruction Manuals: Simultaneous with delivery, the Contractor shall furnish to the Authorized User, at no charge, a complete instruction manual for the product and for each component supplied. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

VII.1.5 - New Accounts: Contractor may ask State agencies and other Authorized Users to provide information, such as documentation of eligibility to use New York State contracts, agency code, name, address and contact person in order to facilitate the opening of a customer account. An Authorized User shall not be required to provide credit references.

VII.1.6 – Purchase Orders and Invoicing: Appendix B, § 32, Purchase Orders, is hereby deleted and replaced with the following:

All orders and invoices/vouchers should include the contract number and a line by line listing of separate items and charges. Orders must be accepted by the Contractor between the hours of 8:00 a.m. through 5:00 p.m. ET, Monday through Friday, except NYS Holidays. Contractor shall be capable of accepting orders: (1) verbally via toll-free number; (2) manually, via e-mail, facsimile or postal delivery; and, (3) if the bidder exercises their option to provide a personal computer web-based system, electronically. (See Section VII.2.1 for more information.)

VII.16.1 – Purchase Order Acceptance – A purchase order shall be deemed to be received by the Contractor four (4) calendar days after placement of order by mail, or the same as day sent if submitted by electronic transmission. All purchase orders shall be confirmed as received by the Contractor, as noted above in VII.2.1.2.

VII.1.6.2 – Purchase Order Contents – All orders (verbal, hard copied or electronic) shall reference contract number, requisition and/or purchase order number as required. Purchase Orders should include the detailed information stated as follows along with any delivery requirements, personnel contact numbers or additional information a contractor and shipping carrier may need to properly process and deliver the product in a timely manner.

- Contractor Name and Address
- Contract Award Description: [Group #37700 – Award 22719: Culvert & Underdrain Pipe & Tubing (w/Arches, Bands, Culverts & Accessories) - Metal & Plastic Based (Statewide)]
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)

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- Delivery Location
- Delivery Instructions
- Anticipated Delivery Date
- Item or Stock Number
- Manufacturer Item Description
- Unit of Measure
- List Price (unit)
- NYS Net Price (unit),
- Extended and Total Amounts

VII.1.6.3 - Invoices - Authorized Users are instructed not to process invoices without needed information. Invoices must be detailed and include all of the following:

- Contract Number
- Purchase Order Number
- NYS Vendor ID Number
- Manufacturer's Item Number
- Should not be something that is "unique" to dealer or distributor.
- Should be something that can be tracked by a third party.
- Line item breakdown of all charges
- Line item breakdown of any deletion
- Shipped Date
- Shipping Company & Bill of Lading Number
- Any Agreed to, Applicable or Contracted Shipping Charges

Failure to comply may result in lengthy payment delays.

If the Contractor is using subcontractors (authorized dealer/distributors) to service Authorized Users and allows the subcontractor to directly invoice and receive payment, dealer invoices must clearly identify their standing as a subcontractor and indicate the actual Contractor along with their contact information.

VII.1.7 – Minimum Order: *Minimum order shall be \$500.00 Contractor may elect to honor orders for less than the minimum order.*

VII.1.8 - Method of Payment: Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users.

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, §49, Contract Invoicing, contained within this document.

VII.1.9 – Discrepancies: The Contractor shall resolve all order and invoice discrepancies (e.g., shortages, incorrect item received, etc.) within seven (7) business days from notification.

VII.1.10 - Settlements: OGS has the right to determine the disposition of any rebate, settlement, restitution, liquidated damage, etc. which arise from the administration of these contracts.

VII.1.11 - Acceptance of Product: As noted above in *VII.1.1.4 Delivery Certification* – the receipt of goods does not constitute acceptance of product. Within five (5) business days of delivery of a shipment, the Authorized User will conduct an inspection of the goods received, confirming quantities received, accuracy of the shipment compared to the purchase order or requisition, and verify items received are as specified and suitable for use. If a shipment is in proper order, acceptance shall be indicated by the Authorized User's approving the order for payment. If there are discrepancies or product issues the Authorized User shall notify the Contractor immediately so as to facilitate the proper corrective action.

VII.1.12 - Product Returns Because of Quality Problems: Upon written notification by the Authorized User to the Contractor and the Contract Management Specialist of record, products determined to have quality problems, outdated product, damage, etc., shall be picked up by the Contractor within ten business days after notification with no restocking charge.

Understanding that there is the potential for defects which may not become evident until a product is being unpacked and prepared for deployment. Product defects may not be identified until long after product

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acceptance. In the event that an item has been paid for prior to the discovery of a defect, the Authorized User shall elect whether to receive a replacement product or a credit/refund for the full purchase price.

VII.1.12 - Product Returns Due To Authorized User Error: Products ordered in error by an Authorized User shall be returned by Authorized User at its expense for credit within fifteen business days of delivery. Standard stock products must be in resalable condition (original container, unused). The Contractor may charge a restocking fee--not to exceed ten percent--for opened product returns due to Authorized User error. There shall be no restocking fee if returned products remain factory sealed.

VII.1.13 - Warranties: See Appendix B, §59, Warranties.

Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty.

At time of bid opening, product offered must meet all requirements of this solicitation including full commercial/retail availability. Product literature and specifications must also be available.

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

VII.1.14 - Recalls: The Contractor must notify the Office of General Services' OGS Procurement Services of any recalls pertaining to a product on contract within seven (7) business days of the determination or manufacturer's notification of the recall.

VII.1.15 - E-Mail & Telephone Contacts: Contractors will provide active e-mail addresses and telephone numbers for all personnel assigned by the Contractor to directly service the contract. Unless specifically designated as an emergency or after-hours contact the information should be adequate for the State to contact the party during normal working hours between 9:00 am and 4:30 pm EST, Monday through Friday. The information shall be entered in the spaces provided on Attachment 1 – Bidder Information and Bid, Tab A – Identification and submitted with your bid. If the bidder does not currently maintain an e-mail communication system, the bidder must be willing to establish one prior to award of contract. In such an instance, the bidder may supply the e-mail information after set-up, at the request of the Contract Management Specialist of record. If opting to offer a NYS Contract Website per Section VII.1, The Information should also be posted and accessible on line on the website.

VII.1.16 – Toll-Free Number: A Bidder must provide (and note in Bidder Information and Bid, Tab A – Identification), a toll-free telephone number for the Authorized User usage. Bidder must staff this toll-free number at a minimum from 9:00 am to 4:30 pm ET Monday through Friday. If Bidder does not currently maintain a toll-free number, the Bidder must certify in Attachment 2 – Tab 1, its willingness to establish one prior to award of contracts.

VII.1.17 - Emergency Service Number & Contact Information: The Contractor will provide a toll free - emergency service, available seven days a week, twenty-four hours a day. Given the nature of the products, an emergency contact including name, number, cell number, fax, and email must be provided.

VII.2 CONTRACT MODIFICATION (INCLUDING CONTRACT UPDATE) GUIDELINES

Product Catalogs and Commercial Price Lists submitted with the bid shall remain in effect for a minimum of one year from the contract start date. Following the first year of the contract, the Contractor may update these listings twice (2x) annually through the remaining term of the contract to reflect manufacturer's price changes and to facilitate the possible addition of new products as established by the manufacturer in their normal course of business.

The Contract Modification Guidelines found herein and in chapters VII.4 and VII.5 classifies a number of different types of modifications available to the contractor, and requires a separate application for each. As only two modifications are allowed annually, the submission of multiple applications at a single time will constitute one request for modification.

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

The Contractor shall submit all requests for price adjustments to add Products in accordance with the Contract Modification Procedures below. In connection with any contract modification, OGS reserves the right to: request additional information, reject Contract Modifications and Updates, remove Products from Contract Modifications and Updates, and request additional discounts for new or existing products. The following guidelines are subject to change at the discretion of OGS. The Contract Modification Form to be used in connection with this process is included at tab 2 of Attachment 8, and is subject to change at the sole discretion of OGS.

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

VII.2.1 - Types of Contract Modifications: In order to expedite processing of a contract modification, where proposed changes involve more than one category below, and each change should be submitted to OGS as a separate request.

VII.2.1.1 - Updates: "Updates" are changes that do not require a change to the established centralized contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products within the scope of the contract and within the established, previously approved pricing structure; lowering pricing of products already on contract, deleting products available through the centralized contract, adding products that do not fall under the previously established price structure or discounts under the contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established centralized contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.

VII.2.1.2 – Amendments: "Amendments" are changes that are not specifically covered by the terms and conditions of the centralized contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the centralized contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.

VII.2.2 - Contractor's Submission of Contract Modifications: In connection with any contract modification, OGS reserves the right to:

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

VII.2.2.1 - Price Level Justification – Format: Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

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

VII.2.2.2 - Supporting Documentation: Each modification request must include the current contract pricing discount relevant to the products included in the update.

VII.2.2.3 - Submittal of Modification Requests: A contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall within the scope of the contract). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

VII. 3 PRICE ADJUSTMENTS & UPDATES

All percentage discounts bid shall remain firm (unchanged) or they may be increased by the Contractor for the duration of the resulting contract. Commercial Price Lists submitted with the bid shall remain in effect for a minimum of one year from the contract start date. Following the first year of the contract, the Contractor may update their Commercial Price List twice (2x) annually to reflect manufacturer's price changes and to facilitate the possible addition of new products as established by the manufacturer in their normal course of business.

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

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

VII.3.1 - Changes in Core List Item Pricing: Per the above, changes in the list price of core list prices may be requested twice annually, at the same time as any other catalog or price list update, and will be addressed as follows:

1. Change of the list price shall be reviewed per the above paragraph for reasonableness.
2. Should the change be deemed acceptable by OGS Procurement Services, the new list price shall be applied to the original bid formula to determine the new price structure.

VII.3.2 - Changes in Core List Shipping Pricing: Per the above, changes in the shipping price of core list prices may be requested twice annually by the contractor, at the same time as any other catalog, price list or core list pricing update, and will be addressed as follows:

- A contractor may request an update in the core list shipping price. Requesting a pricing update for a Core List Item will not automatically result in OGS Procurement Services updating the shipping component.
 - The State reserves the right to independently implement a change in Core List Shipping Prices at any time that there is evidence indicating a significant change in freight or fuel pricing which would be in the best interests of the State. The State will notify contractors of any intent to exercise this provision 7 to 10 business days prior to implementation of any adjustment.
3. Change of the shipping price shall be calculated by OGS Procurement Services by calculating an adjustment rate to be applied to the originally bid rates by computing the percentage of change between the most recently published U. S. Department of Labor's Bureau of Labor Statistics Producer Price List Index for General Freight Trucking-Long Distance LTL Primary Services – Index number PCU484122484122P as compared to the index rate at the date and time of the bid opening ($\text{New Rate}/\text{Original Rate} = \text{Adjustment Percentage}$) which will be recorded at that time (whether or not noted as preliminary) and published in the Contract Award Notification.
 4. The adjustment percentage shall be applied (as either an increase or a decrease in rate depending upon the comparison) to the shipping rates bid. Increases to the shipping rates are capped and shall not exceed 10% for any adjustment period.
 5. The new shipping rates shall be inserted into the original bid formula to determine the new core list line item price and the updated award price will be calculated and posted in a notification to Authorized Users and Contractor published on the OGS Procurement Services contract website via a Purchasing Memorandum.

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

(Continued)

VII.3.3 Lower Pricing: The State reserves the right to negotiate lower pricing, or to advertise for bids, whichever is in the State's best interest as determined by the Commissioner, in the event of a significant decrease in market price of any product listed. In addition, if the Contractor's normal pricing to the public or to the trade in general is less than the net/contract pricing with the application of a contract discount, etc., then the normal pricing to the public or to the trade in general shall also be granted to Authorized Users.

VII.4 PRODUCE LINE CATALOG UPDATES - ADDITION & DELETION of PRODUCTS

The product catalog submitted in the bid shall remain firm for 12 months from contract start date. Following the first year of the contract, the Contractor may update the catalog (and/or Commercial Price List) twice (2x) annually to reflect manufacturer's addition or discontinuation of products as established in their normal course of business. Contractor shall follow the Contract Modification Procedures above, and complete and submit a Contract Modification Form. This form will be supplied to contract awardees post award. Any new products added to pricelists or catalogs should have a discount structure consistent with existing products on the pricelist or catalog that are comparable in scope. Contractors shall submit their updated pricelist or catalog to OGS Procurement Services for review and written approval prior to publicly releasing any update to Authorized Users. OGS Procurement Services reserves the right to accept or reject any or all products included in the Contractor's pricelist or catalog update.

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

VII.4.1 - Product Deletion, Discontinuation And Substitution: In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a product deemed in writing by OGS Procurement Services to be equal to or better than the specified product should be substituted by the Contractor at no additional cost or expense to the Authorized User. Contractor shall follow the Contract Modification Procedures above, and complete and submit a Contract Modification Form (which will be supplied post award). The Contractor shall provide to OGS Procurement Services, complete information on the replacement product including, but not limited to a Specification List, Function and Feature list and Comparison of Performance between the new and old product.

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

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

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

VII.4.2 - Interim Government Program Adjustment: OGS Procurement Services **may** permit a change in product, catalog or price outside of the time frames and conditions, or in excess of annual limitations for change set up by this IFB if a federal government program, such as the United States Department of Transportation, The Federal Highway Administration, National Transportation Research Board, National Transportation Product Evaluation Program (NTPEP), The American Association of State Highway Transportation Officials (AASHTO), (or other similar entity) were to issue a Regulation, Specification, Standard, Engineering Recommendation or an amendment to The Manual for Uniform Traffic Control Devices (MUTCD) that failing to rapidly integrate could impact public safety.

(Continued)

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

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

VII.5 ADMINISTRATIVE REPORTING REQUIREMENTS

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

With respect to any reporting requirements set forth in this IFB, prospective bidders are hereby advised that the State reserves the right to implement and maintain specific on-line reporting modules and databases, in addition to those mentioned in this IFB, for reporting purposes, and to require Contractors to use such on-line functionality beginning with the earliest reporting period after notification of implementation. Should such functionality be implemented prior to the awarding of contracts, the requirement to report using such functionality will be reflected herein and/or in the contract document. After award, notification will be made via a Purchasing Memorandum

VII.5.1 - Report of Contract Purchases: Contractor shall furnish quarterly reports containing total sales for All Authorized Users contract purchases no later than fifteen (15) calendar days after the close of each calendar quarter.

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

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

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

VII.5.2 - M/WBE Contractor Compliance & Payment Reports: See Section VI.9 (E) for Contractor's reporting obligations with respect to Monthly MWBE Contractor Compliance.

VII.5.3 - Authorized User Sales Reports: Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a quarterly basis, a report listing the following: name of Products purchased, quantity purchased, unit price and total dollar volume of purchases.

VII.5.4 - Updated Certification of Required Insurances: As insurance coverage is traditionally of a term nature, it is the Contractor's responsibility to maintain not just the appropriate insurance coverages, but also their filed certifications with **OGS Procurement Services** Contract Management Specialist. The Contractor shall furnish to the State up to date certifications of coverages for all insurance requirements per Appendix D – Insurance Requirements.

(Continued)

VII.6 CONTRACT PERIOD AND RENEWALS

It is the intention of the State to enter into contracts for the term as stated on the first page of this Invitation for Bids, a period of four (4) years, commencing on the first business day following the execution of the contracts

VII.6.1 - Contract Renewals: If mutually agreed between the OGS and the Contractor, contracts may be renewed under the same terms and conditions for one (1) additional one (1) year period(s), provided that in no event shall the term of the contract exceed five (5) years.

VII.6.2 - Short Term Extensions: In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three months in addition to the unilateral one month extension.. However, this extension terminates should the replacement contract be issued in the interim.

VII.6.3 - Cancellation for Convenience by The State: By written notice, this Contract may be terminated at any time by the Commissioner for convenience upon sixty (60) calendar 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. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. (See Appendix B, OGS General Specifications, §47 for more information)

VII.7 EXTENSION OF USE

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

VII.8 NEW YORK STATE PROCUREMENT CARD

A Bidder shall indicate in Attachment 2, *Administrative Items, General Questions & Bidder Agreements*, Tab 1 if it will accept the NYS Purchasing Card for orders not to exceed \$15,000. No extraordinary paper work is to be required of the Authorized User. No additional processing fees shall be applied to any procurement card transaction. A Bidder may also opt to offer an additional discount for transactions using the procurement card in Attachment 1, *Bidder Information and Bid*, Tab J *Additional Discounts*. [see Appendix B, §20, *Procurement Card for additional terms and information.*]

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(Continued)

SECTION VIII ADDITIONAL TERMS AND CONDITIONS

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

VIII.1 APPENDICES

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

VIII.1.1 - Appendix A, Standard Clauses For New York State Contracts, dated January 2014, 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.**

VIII.1.2 - Appendix B, Office of General Services, General Specifications, dated June 2014, 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 it to OGS as part of the Bid submission.**

VIII.1.2.1 – Appendix B is amended within this IFB as follows:

- Section III.8 – Disputes: replaces Appendix B §64, Disputes
- Section IV.2.2.4 – Tie Bids: replaces Appendix B, §23, Tie Bids
- Section VII.1.1 - Product Delivery: replaces Appendix B, § 33, Product Delivery
- Section VII.1.6 – Purchase Orders and Invoicing: replaces Appendix B, § 32 Purchase

Orders

VIII 1.3 - Appendix C - Insurance Requirements – 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 situation not covered by this Bid Document or Appendix A

VIII.3 PERFORMANCE AND BID BONDS

There are no bonds for these contracts. In accordance with Appendix B, §45, Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract shall be required at any time during the initial term, or any renewal term, for this agreement.

VIII.4 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

http://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

VIII.5 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

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

State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

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VIII.6 USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this bid solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials." in Appendix B, §15.

The material, from which any plastic based / polyvinyl pipe and/or fitting to be supplied under a resulting contract used in the manufacturing, extrusion or molding of the products, shall not contain any reclaimed, recycled, reground or reworked material and shall be comprised of virgin material and resins only.

VIII.7 RECYCLED CERTIFICATION

If the offered products contain recycled material, the bidder must submit upon request within the time frame designated by the Contract Management Specialist of record the Manufacturer's Affidavit of Recycled Content (found in Attachment 2 - Tab 4) certifying the percentages of recycled material in the products being furnished for the contract. If the bidder is not the manufacturer they shall obtain the certification from the Manufacturer. Bidders may duplicate these forms as needed to supply a complete listing.

VIII.8 MERCURY-ADDED CONSUMER PRODUCTS

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

VIII.9 EPA ENERGY STAR PROGRAM

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

VIII.10 SURPLUS/TAKE-BACK/RECYCLING

I. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.

IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

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VIII.11 AMERICANS WITH DISABILITIES ACT (ADA)

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals.

Although it is not mandatory for bidders to have this equipment in order to receive an award, it is necessary to identify any such equipment they have which falls into the above category.

VIII.12 NEW YORK STATE STATEWIDE FINANCIAL SYSTEM

The New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host contract catalogs or to integrate Contractor-hosted punch-out catalogs. OGS reserves the right to integrate either of these future catalog functions with a Contractor during the contract period, and by submittal of a bid a Bidder agrees to coordinate with SFS, OGS and/or a third-party host, for integration, if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS, OGS and/or a third-party host during integration. Upon completion of integration and activation of an SFS-based catalog ordering system, State agencies shall process their orders through the SFS functionality and the other Authorized Users shall continue to process orders in accordance with contract terms and conditions, including through any Contractor-hosted web based ordering system; however, Contractor shall continue to be subject to provisions in Section VII.1 Internet Websites. For more information on SFS, its use, and its capabilities please visit the SFS website here: <http://www.sfs.ny.gov/>

VIII.13 ENCOURAGING USE of NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

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

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

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

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

Bidder certification of intent is found in Attachment 2 on Tab 1.

VIII.14 BULK DELIVERY & ALTERNATE PACKAGING

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

VIII.15 CONFLICT OF TERMS

Conflicts among the documents in the IFB shall be resolved in the following order of precedence:

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

(Continued)

VIII.16 INTERNET WEBSITES

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

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

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

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

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

VIII.16.1 - Web-Based Ordering System: The State suggests that successful Bidders having opted to offer a supplemental, designated NYS contract web site, provide access to a web based ordering system to facilitate and aid Authorized Users in the placement of orders. A resultant contractor may exercise the option to supply such a supplemental service at any time within the term of the contracts. However, once accepted by the State and implemented by the contractor the service must remain active and up to date for the remainder of the contracts term, including through any extensions or renewals. Should a Contractor opt to provide this type of service the State reserves the right to request a demonstration before implementation.

VIII.16.2 - Preferred Source Statement: A resultant Contractor shall clearly display on the home screen of any supplemental website the following information:

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

VIII.16.3 – Changes: All changes to products or pricing must be approved by the OGS Procurement Services in accordance with the terms of the resultant contracts prior to any change to the supplemental website by Contractor.

VIII.16.4 – Web Order Elements: If an optional web based ordering system is offered, the service must be capable of controlling, documenting and reporting the following minimum data elements:

- Contractor Name and Address
- Contract Award Description: [Group #37700 – Award 22719: Culvert & Underdrain Pipe & Tubing]
- Authorized User
- Authorized User's Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Anticipated Delivery Date
- Stock Number
- Manufacturer
- Item Description
- Unit of Measure
- List Price (unit)
- NYS Net Price (unit)
- Extended and Total Amounts
- Additional Shipping Charges (if applicable)

(Continued)

VIII.16.5 – AGENCY ACCESS TO WEB BASED ORDERING SYSTEM Each Authorized User will be responsible for obtaining the appropriate communication software, phone or cable lines, and/or modems necessary to access a vendor's web based ordering system if offered

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

IX.1 OVERLAPPING CONTRACT PRODUCTS

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

IX.2 PROCUREMENT INSTRUCTIONS

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

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

IX.2.1 – For Executive Agencies: An Executive Agency Authorized User shall first purchase all Culvert and Underdrain Pipe systems and materials from the appropriate Preferred Sources as required by State Finance Law §162. If the Preferred Sources do not provide a product that meets the form, function and utility of the Executive Agency Authorized User, it may then purchase products from the Contractor, first using the applicable "Core List" and then the applicable "Non-Core (discount off list) List". It is highly encouraged that the Executive Agency Authorized User utilize the appropriate Core List, as Core List products should provide the lowest prices.

IX.2.2 – For Non-Executive Agencies: A Non-Executive Agency Authorized User that is subject to the requirements of State Finance Law §162 (4) shall first purchase all Culvert and Underdrain Pipe systems and materials from the appropriate Preferred Sources as required by State Finance Law §162. If Preferred Source products do not meet the entity's form, function and utility (as required by State Finance Law §162) then it may purchase products from the "Core List" and "Non-Core (discount off list) List" offerings.

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

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair,

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

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

NYS Department of Economic Development

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND

NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

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

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

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

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

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

such action is in the best interest of the State.

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APPENDIX B

O. G. S. GENERAL SPECIFICATIONS

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GENERAL

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

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

a. 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.

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

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

d. 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:

- 1. 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).
- 2. 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.
- 3. 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.

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

5. 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).

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

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

g. 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.

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

i. 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(s).

j. 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.

k. 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.

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

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

n. 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).

o. LICENSEE(S) 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(s)" 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.

p. 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.

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

r. 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.

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

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

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

v. 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).

w. 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 award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

x. 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).

y. 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.

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

aa. 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.

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

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

dd. 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.

ee. STATE State of New York.

ff. 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.

gg. 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.

hh. 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

3. 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.

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

5. 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 Group Number, 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.

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).

6. LATE BIDS REJECTED 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.

7. 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.

8. 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, deletion, counter-offer, deviation, or modification 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).

9. 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. The State's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

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

10. 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. 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.

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

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

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

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in 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. Day's Labor No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary

emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS

In compliance with Article 9, Section 230 of the New York State Labor Law:

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

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

11. 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. 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.

12. 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, cost proposal revision, or for any work performed prior to Contract execution.

13. 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.

14. 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.

15. 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.

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

17. 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.

g. Specific price decreases:

(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing 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 having any obligation to comply on a global basis with, the terms of this clause.

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

18. 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.

19. 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.

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

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

21. 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 the 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 Samples 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 fail 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

22. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/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 Bid.

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

24. 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.

25. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty 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. Where an award is not made within the sixty 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.

TERMS & CONDITIONS

26. 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.

27. PARTICIPATION IN CENTRALIZED CONTRACTS

a. Agencies All State Agencies may utilize and purchase under any 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 Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the 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)(a)(iv) of the State Finance Law.

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

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products 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.

28. 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.

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

Estimated quantity contracts, also referred to as indefinite delivery / indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

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

31. 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 clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

32. 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 Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

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

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

34. 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.

35. SHIPPING/RECEIPT OF PRODUCT

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

b. Shipping Charges Unless otherwise stated in the 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.

36. 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.

37. 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.

38. 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 termination of Contract.

39. 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.

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

41. 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 Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

42. 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 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 any facility for cause any employee, Subcontractor, or agents of the Contractor.

43. 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); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. 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 for

assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

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

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

45. 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, 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.

46. 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 in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

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

47. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty calendar 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 respectively, 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 Commissioner for convenience upon sixty calendar 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 Sections 139-j and 139-k of the State Finance Law:

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

d. For Violation of Section 5-a of the New York State Tax Law:

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

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

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

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

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

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

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

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

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

b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

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

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

In addition, the Commissioner reserves the right, in his/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. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in

this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

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

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

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

50. DEFAULT – AUTHORIZED USER

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

b. **Failure to Make Payment.** In the event a participating Authorized User fails to make payment to the Contractor for Products delivered,

accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional 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 ten business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

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

51. PROMPT PAYMENTS

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

b. **By Non-State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of 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.

52. **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, uncorrected 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 service or Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of “materiality” in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

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

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable 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, including reasonable attorney’s fees awarded by a court of competent jurisdiction, shall be paid by the Contractor.

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

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

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

54. 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 representative.

55. 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.

56. 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.

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

58. 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.

59. WARRANTIES

a. Product Performance 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.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer (“Project warranty period”).

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

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

c. Product Warranty for Deliverables 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).

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, 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(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any Product or parts thereof 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 set forth under paragraph (a) above; or b) if a separate warranty for that Product or parts thereof is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

e. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

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

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

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

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

h. Miscellaneous The Authorized User shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

60. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any 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 terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold 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, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of 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, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General

in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS

The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

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

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action 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 and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their 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.

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

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

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

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

64. DISPUTES

a. Informal Dispute Resolution Process

1. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

2. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

3. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.

4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

5. The Contractor shall extend the dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

b. Formal Disputes

1. Definitions

a. Filed means the complete receipt of any document by OGS before its close of business.

b. Dispute means a written objection by Contractor to any of the following:

- i.** A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
- ii.** The cancellation of the solicitation or other request by OGS.
- iii.** An award or proposed award of the Contract by OGS.
- iv.** A termination or cancellation of an award of the Contract by OGS.
- v.** Changes in the Scope of the Centralized Contract by the Commissioner.
- vi.** Determination of "materiality" in an instance of nonperformance or contractual breach.
- vii.** An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Disputes

a. A formal dispute by Contractor must be filed in writing to OGS by mail, email or facsimile.

3. The dispute must include:

- a.** Name, address, e-mail address, fax and telephone numbers of the filer.
- b.** Solicitation or Contract number.
- c.** Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.
- d.** Copies of relevant documents.
- e.** Request for a ruling by the agency.
- f.** Statement as to the form of relief requested.
- g.** All information establishing that the filer is an interested party for the purpose of filing a dispute.
- h.** All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of OGS New York State Procurement (NYSPRO) at the following address:

New York State Office of General Services
Director, NYSPRO
 38th Floor, Corning Tower
 Empire State Plaza
 Albany, NY 12242

Facsimile: (518) 486-6099

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

4. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a formal dispute decision.

2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.

3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

4. OGS reserves the right to consider or reject the merits of any dispute.

5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

5. Appeals

a. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

Chief Procurement Officer
New York State Office of General Services
NYSPRO
 38th Floor, Corning Tower
 Empire State Plaza
 Albany, NY 12242
 Facsimile: (518) 486-9166

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

6. Legal Appeals Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

65. 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) 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.

66. 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. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(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. When Product is not accepted, it must be removed by the Contractor from the

premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

67. 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.

68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on 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 clause, "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 clause, "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 clause.

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

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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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 clause.

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.

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APPENDIX C

INSURANCE REQUIREMENTS

(Continued)

INSURANCE

Upon tentative award, a Bidder shall be required to procure, at its sole cost and expense, all required insurance. In addition, the Contractor shall procure and maintain in force at all times during the term of this Contract, at its sole cost and expense, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services ("OGS") and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve the Bidder/Contractor of any obligations, responsibilities or liabilities under any contract resulting from this solicitation.

General Conditions

A. *Conditions Applicable to Insurance.*

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

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B *Insurance Requirements* below.
- 2. Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.

Certificates of Insurance/Notices. The Contractor shall provide a Certificate or Certificates of Insurance, and all applicable endorsements in a form satisfactory to OGS, within five (5) business days of notification of tentative award, and thereafter, within five (5) business days of request (except, it is required that Workers' Compensation Coverage and Disability Benefits forms be submitted at the time of bid, or within three (3) business days of bid opening date). Certificates shall reference the Solicitation Number and Contract Number (upon subsequent award). As applicable, the requested forms must name the New York State Office of General Services, New York State Procurement, 38th Floor, Corning Tower, Albany, New York 12242 as the entity requesting proof of coverage (the entity being listed as the Certificate Holder) and should reference IFB 22719. Certificates shall be submitted to the Office of General Services, New York State Procurement, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Certificates shall be mailed to:

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

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

Certificates of Insurance shall:

- Be in the form approved by OGS;
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Solicitation/Contract;
- Specify the Additional Insured and Named Insured as required herein;
- Refer to this Contract by Solicitation Number and Contract number (when assigned) and any other attachments on the face of the certificate; and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance & other attachments) or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution or similar means, will be accepted.

(Continued)

General Conditions (Continued)

A. Conditions Applicable to Insurance (Continued)

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.
 5. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract. Provided, further, that Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance by this Contract constitutes a material breach of the Contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS or the Authorized Users. The Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS' immediate termination of this Contract, or an Authorized User's immediate termination of a procurement hereunder, subject only to a five (5) business day cure period. Any termination by OGS or Authorized User under this section shall in no event constitute or be deemed a breach of this Contract or any procurement hereunder and no liability shall be incurred by or arise against the OGS or any Authorized User, their officers, agents and employees therefore for lost profits or any other damages.
 6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self- insured retention.
 7. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Contract the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OGS.
 8. **Additional Insureds.** All insurance required by this solicitation and any contract resulting from this solicitation shall name The People of the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent). The additional insured requirement does not apply to Workers' Compensation and Disability coverage.
- a) **Insurance Requirements:**
- The Bidder, upon tentative award, and the Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):
- b. Commercial General Liability Insurance with a limit of not less than **\$2,000,000.00** each occurrence. Such liability shall be written on the ISO occurrence form **CG 00 01 01 96**, or a substitute form providing equivalent coverages and shall cover liability of the Bidder/Contractor arising from premises operations

(Continued)

liability, independent contractors, products-completed operations for a term of no less than three (3) years commencing upon acceptance of the products as required by any contract resulting from this solicitation, broad form property damage, personal & advertising injury, contractor means and methods, cross liability coverage, blanket contractual liability, including tort liability of another assumed in a contract (including the tort liability of another assumed in a contract), defense and/or indemnification obligations, including obligations assumed under this contract, cross liability for additional insureds, and explosion, collapse & underground coverage.

1. General Aggregate	\$2,000,000
2. Products – Completed Operations Aggregate	\$2,000,000
3. Personal and Advertising Injury	\$1,000,000
4. Damage to Rented Premises	\$50,000
5. Medical Expense	\$5,000
6. Each Occurrence	\$1,000,000

The following ISO forms must be endorsed to the policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
- Waiver of Subrogation Endorsement

- c. Comprehensive Business Automobile Liability Insurance covering liability arising out of the use of any motor vehicle in connection with the Contractor's obligations under any contract resulting from this solicitation, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least **\$2,000,000.00** and shall name The People of the State of New York, its officers, agents, and employees as additional insureds thereunder. The limits may be provided through a combination of primary and umbrella/excess liability policies.

Waiver of Subrogation. The Contractor shall cause to be included in each of the above referenced policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS. A Waiver of Subrogation Endorsement shall be provided upon tentative award, and thereafter, within three (3) days of request.

(Continued)

c. **WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS:**

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

• **Proof of Compliance with Workers' Compensation Coverage Requirements:**

An ACORD form is NOT acceptable proof of workers' compensation coverage.

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

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

A Contractor seeking to enter into a contract with the State of New York shall provide **one of the following forms** to the OGS at the time of bid submission or within three (3) business days of the bid opening date:

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

• **Proof of Compliance with Disability Benefits Coverage Requirements:**

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

- .1. Be legally exempt from obtaining disability benefits coverage; or
- .2. Obtain such coverage from an insurance carrier; or
- .3. Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York **shall provide one of the following forms** to the OGS at the time of the bid submission or within three (3) business days of the bid opening date:

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

(Continued)

The NYS SUPPLY DISTRICT MAP for IFB 22719

NYS Supply Districts	
A	RED
B	ORANGE
C	BLUE
D	GREEN

