

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

# REQUEST FOR PROPOSALS

**IMPORTANT:**  
**BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY**  
**(Email or Facsimile Bid Submissions Are NOT Acceptable)**

<b>BID OPENING</b> <b>DATE:</b> August 12, 2014 <b>TIME:</b> 11:00 AM EST	<b>TITLE: Group 72002 – Fleet Maintenance Services (Statewide)</b> Classification Code: 25
<b>REQUEST FOR PROPOSAL NUMBER:</b> <b>22752</b>	<b>SPECIFICATION REFERENCE:</b> As Incorporated in the Request For Proposal
<b>CONTRACT PERIOD: Three (3) years plus renewal options for two (2) additional one (1) year terms</b>	
<b>DESIGNATED CONTACTS:</b>	
RFP PRIMARY CONTACT: Wendy Reitzel Email address: <b>PS_SW_FleetMaintenan@ogs.ny.gov</b>	RFP SECONDARY CONTACT: Marcos Ortiz Email address: <b>PS_SW_FleetMaintenan@ogs.ny.gov</b>
MWBE PRIMARY CONTACT: Anuola Surgick Email address: <b>Anuola.surgick@ogs.ny.gov</b>	MWBE SECONDARY CONTACT: Tryphina Ramsey Email address: <b>Tryphina.ramsey@ogs.ny.gov</b>

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 REQUEST FOR PROPOSALS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

Procurement Lobbying: [http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <i>(See "New York State Vendor File Registration" clause)</i>			
If applicable, place an "x" in the appropriate box <input type="checkbox"/> Small Business <input type="checkbox"/> Minority Owned <input type="checkbox"/> Women Owned <i>(check all that apply):</i> _____ #Employees Business 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 <input type="checkbox"/> Manufactured Within New York State <input type="checkbox"/> Manufactured Outside New York State <i>(check all that apply):</i>				
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: Title:	Printed or Typed Name: Date:			
Phone : ( ) - ext ( )	Toll Free Phone : ( ) - ext ( )			
Fax : ( ) - ext ( )	Toll Free Fax : ( ) - ext ( )			
<b>Authorized Bidder Representative's Contact Email Address for this RFP:</b>				
<b>P.R. # 22752-T LIT <input type="checkbox"/> MEMO <input type="checkbox"/> LET <input type="checkbox"/> OTHER <input type="checkbox"/> MISSING PAGES</b>				

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
: Sworn Statement:  
COUNTY OF \_\_\_\_\_ }

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

**[Check One]**

- If an individual):** \_he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** \_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company):** \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Signature of Notary Public

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APPENDIX A: *Standard Clauses for New York State Contracts (January 2014)*

APPENDIX B: *General Specifications (June 2014)*

## ATTACHMENTS

ATTACHMENT 1: *Administrative Submittal (Paper)*

- A. *Cover Sheet & Acknowledgement*
- B. *New York State Required Certifications*
- C. *Encouraging Use of New York State Businesses*

ATTACHMENT 2: *Administrative Submittal (Electronic)*

- A. *Bid Submittal Checklist*
- B. *General Questions*
- C. *References*

ATTACHMENT 3: *Technical Submittal*

- A. *Cover Sheet & Acknowledgement*
- B. *Bidder Response to Technical Requirements*

ATTACHMENT 4: *Financial Submittal*

- A. *Cover Sheet & Acknowledgement*
- B. *Price Sheet Instructions*
- C. *Price Sheet (Monthly)*
- D. *Price Sheet (Per Occurrence)*
- E. *Price Sheet (Other)*

ATTACHMENT 5: *Insurance Requirements*

ATTACHMENT 6: *Inquiries Template*

ATTACHMENT 7: *Report of Contract Usage*

ATTACHMENT 8: *Data Export Requirements*

ATTACHMENT 9: *Contract Modification Procedure*

## SECTION I: INTRODUCTION AND GENERAL INFORMATION

### I.1 OVERVIEW

This Request for Proposals (RFP) is issued by the New York State Office of General Services (OGS or State), New York State Procurement (NYSPro). This RFP does not constitute an offer. OGS may, at its sole discretion, award a Contract as a result of this solicitation. The State intends to award one (1) centralized contract as a result of this RFP for Fleet Maintenance Services. The centralized contract awarded as a result of this solicitation is for use by Authorized Users, which 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. See Section III.12 *Non-State Agencies Participation in Centralized Contracts*. If State Agencies are acquiring Fleet Maintenance Services, they must do so using the Contract awarded as a result of this RFP. Agencies must obtain a written waiver from the Governor's Office if they are unable to meet this requirement.

This RFP outlines the terms and conditions, and all applicable information required for submitting a Bid. A Bidder should pay strict attention to the Bid submission date and time to prevent disqualification. To ensure compliance with Bid requirements and prevent possible disqualification, Bidder must follow the format and instructions in Section V, *Bid Submittal*. A Bidder is strongly encouraged to read the language of this RFP thoroughly and to precisely follow the instructions included in the appendix and attachment pages.

### I.2 RFP SCOPE AND OBJECTIVES

The scope of this RFP is to provide Authorized Users with Fleet Maintenance Services, as defined in Section I.3 *Definitions*, from a qualified provider, for Vehicles operated in New York State, and nationwide. The objectives of the resultant Contract are to provide Authorized Users with Fleet Maintenance Services, including, but not limited to:

- The administration and systematized tracking of Light Duty Vehicle and Medium to Heavy Duty Vehicle maintenance, repairs, roadside assistance and towing, using Automotive Repair Shops (to include both National Account Vendors and Independent Vendors), to ensure that proper maintenance and warranty repairs are being performed, control authorizations for unscheduled maintenance, ensure cost is competitive and reasonable, and avoid duplicate or unnecessary repairs;
- Monthly Enrollment Plans and Per Occurrence Plans for Fleet Maintenance Services, available to Authorized Users;
- Consolidated monthly billing to each Authorized User, for Vehicle maintenance and repair from a network of reliable and reputable Automotive Repair Shops located in New York State, and nationwide;
- A tiered pricing structure for Monthly Enrollment Plans and Per Occurrence Plans for Fleet Maintenance Services, calculated by statewide New York State Authorized User monthly volume. The Contractor shall apply the tiered pricing as specified in Section II.9 *Billing and Payments (Mandatory)*, Paragraph B *Tiered Pricing Structure*;
- Cost negotiation with Automotive Repair Shops;
- Deduction of all applicable federal, state and local government taxes, due to the government's tax-exempt nature, from the Fleet Maintenance Services prior to invoicing/billing the Authorized User, as specified in Section II.9 *Billing and Payments (Mandatory)*, Paragraph A *Taxes*;
- Comprehensive Fleet Maintenance Services reporting capabilities, as specified in Section II.6 *Reporting (Mandatory)*; and
- A Vehicle expense management process that includes a procedure to contain Vehicle repair costs without compromising effectiveness, including, but not limited to, negotiating the cost of repairs with Independent Vendors, implementing National Account Vendor discounts, authorizing services that are necessary for Preventive Maintenance and Vehicle repairs, and ensuring that authorization procedures for repairs are followed.

### I.3 DEFINITIONS

Terms used in the RFP documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. In addition, the following definitions shall apply:

“**Aftermarket Product Additions**” shall mean the installation of non-OEM equipment (e.g., law enforcement Vehicle accessories, lighting systems, computers, radios, storage systems, and wheelchair lifts) to a Vehicle by a business other than the Vehicle OEM.

“**ASE**” shall mean the National Institute for Automotive Service Excellence.

“**ATA**” shall mean the American Trucking Association.

“**Authorized User(s)**” as defined in Appendix B.

“**Automotive Repair Shop(s)**” shall mean a business that is registered with the State, and licensed, if applicable, that provides: (1) diagnosis and repair of Vehicle malfunctions or damage; (2) maintenance of Vehicles; (3) repair to Vehicle bodies; (4) Vehicle glass replacement and repair; (5) Aftermarket Product Additions, or (6) Vehicle roadside assistance and towing.

“**Best Value**” refers to the basis for awarding all service and technology contracts to the Bidder that optimizes quality, cost and efficiency, among responsive and responsible Bidders. (State Finance Law §163 (1) (j)).

“**Bid**” shall mean a response submitted to this RFP. The terms Bid and Proposal shall be used interchangeably for purposes of this solicitation.

“**Bidder**” shall refer to any business entity who submits a response to this RFP. At the time that the Bidder executes a contract with the State for their services, a Bidder shall become a “Contractor.” See also “Contractor.”

“**Contract**” as defined in Appendix B.

“**Contractor**” shall refer to a responsive and responsible Bidder who has attained the lowest Grand Total Score for the RFP, and is working under an executed Contract with New York State. Contractor is a general term.

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

“**Fleet Maintenance Services (FMS)**” shall mean the administration and systematized tracking of Light Duty Vehicle and Medium to Heavy Duty Vehicle maintenance, repairs, roadside assistance and towing, using Automotive Repair Shops (to include both National Account Vendors and Independent Vendors), to ensure that proper maintenance and warranty repairs are being performed, control authorizations for unscheduled maintenance, and avoid duplicate or unnecessary repairs.

“**Fleet Manager**” shall mean a designated Authorized User employee who is the point person for the Authorized User’s fleet maintenance and shall be consulted first for approvals of repairs over a designated value, and for service, accident repair and general maintenance service concerns.

“**Grand Total Score**” shall mean the total sum of the Grand Total Financial Bid and the Total Technical Bid.

“**Grand Total Financial Bid**” shall mean the total sum of the Total Financial Bid (Monthly) and the Total Financial Bid (Per Occurrence).

“**GVWR**” shall refer to Gross Vehicle Weight Rating, which means the maximum total vehicle weight, measured at the tire-ground interfaces, for which the Vehicle possesses components adequately rated to safely carry.

“**Independent Vendor**” shall mean an Automotive Repair Shop that has either a single location or multiple locations in New York, and possibly in other states, with which the Contractor has a formal business relationship, and does not meet the definition of National Account Vendor.

“**Light Duty Vehicle(s)**” shall mean an Authorized User Vehicle with a GVWR less than or equal to 16,000 pounds, (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation), that is primarily meant for passenger transport.

**“Medium to Heavy Duty Vehicle(s)”** shall mean an Authorized User Vehicle with a GVWR equal to or greater than 16,001 pounds, (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation), that is primarily meant for transporting materials. For the purposes of this RFP, “Medium to Heavy Duty Vehicle(s)” shall include Off Road Equipment.

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

**“Mandatory”** shall refer 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.

**“May”** denotes the permissive in a Contract clause or specification. “May” does not mean “required.”

**“Monthly Enrollment Plan”** shall refer to a plan for Fleet Maintenance Services pursuant to which one flat administrative fee is charged for each monthly period (e.g., calendar month or other thirty day period), that an Authorized User Light Duty Vehicle or Medium to Heavy Duty Vehicle is enrolled. This flat administrative fee is in addition to the actual charges for the repair, maintenance, roadside assistance or towing.

**“Must”** denotes the imperative in a Contract clause or specification. “Must” is synonymous with “required.” Also see “Shall.”

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

**“National Account Vendor”** shall mean an Automotive Repair Shop that operates facilities throughout the United States or in multi-state region(s) with which the Contractor has established a formal business relationship involving discounted and/or standardized fees or other arrangements that benefit the Contractor’s customers. Examples of such vendors include Goodyear®, Firestone®, and Pep Boys.

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

**“NYS Contract Price”** shall mean the fee charged to the Authorized User for a Fleet Maintenance Service.

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

**“OEM”** shall mean Original Equipment Manufacturer.

**“Off Road Equipment”** shall mean non-vehicular assets that do not operate on public roadways, as defined by NYS Motor Vehicle Law, and which are not required to be licensed by the NYS Department of Motor Vehicles. Such equipment may include, but is not limited to, those assets commonly referred to as manlifts, forklifts, backhoes, front end loaders, and golf carts.

**“OGS”** shall mean the New York State Office of General Services.

**“Per Occurrence Plan”** shall refer to a plan for Fleet Maintenance Services pursuant to which one flat administrative fee is charged each time the Authorized User uses a Fleet Maintenance Service for a Light Duty Vehicle or Medium to Heavy Duty Vehicle. This flat administrative fee is in addition to the actual charges for the repair, maintenance, roadside assistance or towing.

**“Preventive Maintenance”** shall mean maintenance performed on a Vehicle component when it has exceeded its wear limits, or when it has exceeded its life expectancy, in order to prevent the failure of equipment before it actually occurs. Preventive Maintenance activities include, but are not limited to, equipment checks, partial or complete overhauls at specified periods, oil changes, lubrication and replacing worn parts.

**“Request for Proposals (RFP)”** shall refer to this document, and its appendices and attachments.

“**SFTP**” shall mean Secure File Transfer Protocol, a network protocol that provides file access, file transfer, and file management functionalities over any reliable data stream.

“**Shall**” denotes the imperative in a Contract clause or specification. “Shall” is synonymous with “required.” Also see “Must”.

“**Small Business**” as defined in Executive Law Section 310(20).

“**State Agency(ies)**” shall refer to all New York State departments, offices or institutions, including Executive Agencies.

“**Total Financial Bid (Monthly)**” shall mean the totals calculated on Attachment 4: *Financial Submittal*, Section C: *Price Sheet (Monthly)*, to be used in the evaluation of Part 1: Financial, for Monthly Enrollment Plans.

“**Total Financial Bid (Per Occurrence)**” shall mean the totals calculated on Attachment 4: *Financial Submittal*, Section D: *Price Sheet (Per Occurrence)*, to be used in the evaluation of Part 1: Financial, for Per Occurrence Plans.

“**Total Technical Bid**” shall mean the total Bidder score calculated by NYSPRO, based on responses provided by the Bidder on Attachment 3: *Technical Submittal*, Section B: *Bidder Response to Technical Requirements*, to be used in the evaluation of Part 2: *Technical*.

“**Varchar**” shall mean a variable character field in a database management system which may hold letters and/or numbers.

“**Vehicle(s)**” shall mean a mobile machine that may be used to transport passengers or cargo (e.g., cars, vans, SUVs, pickup trucks, chassis cab trucks and associated bodies, and Off Road Equipment). Light Duty Vehicles and Medium to Heavy Duty Vehicles are collectively referred to as “Vehicles” in this RFP.

“**VMRS**” shall mean Vehicle Maintenance Reporting Standards, developed by and for equipment users under the auspices of the ATA.

#### **I.4 BACKGROUND**

In an effort to increase efficiency and identify savings opportunities, NYSPRO completed a comprehensive data analysis of the current State Contract for Fleet Maintenance Services, Vehicle maintenance and repair spend with Automotive Repair Shops, and the cost of maintenance and repairs at Authorized User-owned facilities. Current and anticipated future operations include the following:

- The number of Executive Agency Vehicles is estimated at approximately 23,800. Total statewide Vehicles for all Authorized Users cannot be estimated. Under the current Fleet Maintenance Services contract, in February 2014, approximately 32,000 Authorized User Vehicles were enrolled in a Monthly Enrollment Plan, and approximately 12,300 instances of accident repair, roadside assistance and towing Per Occurrence Plan services were utilized from April 2013 through February 2014;
- Authorized User spend for maintenance and repair services from Automotive Repair Shops via the current Fleet Maintenance Services Contractor was approximately \$19,700,000 during the fiscal year from April 1, 2012 to March 31, 2013;
- Vehicle ownership and management are decentralized and are located throughout the State. Each participating Authorized User will have its own Fleet Manager and may have differing authorization levels for various services;
- Payments shall be made by individual Authorized Users. OGS shall not receive centralized billings and shall not make centralized payments on behalf of Authorized Users;
- The State has existing contracts for automotive parts, tires, and towing for selected highways, (e.g., The New York State Thruway, Bridge Authorities (MTA), and Long Island Parkway); and
- The State has an existing fuel card services contract. Currently this is a separate contract that is not part of the Fleet Maintenance Services contract.

## I.5 ESTIMATED QUANTITIES

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

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

- Such Contracts will be nonexclusive Contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the 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 Contract.

In NYSPro's experience, depending on the price of a particular service, the actual volume of purchases for that service could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical 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 Contract could vary substantially from the estimates provided in this RFP.

Spend for maintenance and repair services identified in Section I.4 *Background*, is based on Statewide purchases by Authorized Users from the Automotive Rentals, Inc. Fleet Maintenance Services Contract (No. PS63512) during the time period from April 1, 2012 to March 31, 2013. Contract enrollment quantities identified in Section I.4 *Background* and in Attachment 4: *Financial Submittal*, are based on enrollment in the OGS statewide Fleet Maintenance Services contract as of February 2014.

## I.6 INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACTS

All inquiries concerning this RFP shall be addressed to the following NYSPro Designated Contact(s) and issuing office:

PRIMARY CONTACT	SECONDARY CONTACT
Wendy Reitzel	Marcos Ortiz
New York State Procurement	New York State Procurement
NYS Office of General Services	NYS Office of General Services
Corning Tower - 38th Floor	Corning Tower - 38th Floor
Empire State Plaza	Empire State Plaza
Albany, New York 12242	Albany, New York 12242
Email: PS_SW_FleetMaintenan@ogs.ny.gov	Email: PS_SW_FleetMaintenan@ogs.ny.gov

For inquires related specifically to Minority and Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contacts are:

Primary Contact: Anuola Surgick	Secondary Contact: Tryphina Ramsey
MWBE and Community Relations	MWBE and Community Relations
NYS Office of General Services	NYS Office of General Services
Corning Tower - 40th Floor	Corning Tower - 40th Floor
Empire State Plaza	Empire State Plaza
Albany, NY 12242	Albany, NY 12242
Email: Anuola.Surgick@ogs.ny.gov	Email: Tryphina.Ramsey@ogs.ny.gov

All questions must be submitted in writing using Attachment 6: *Inquiries Template*, citing the applicable RFP document name and document section. The completed Attachment 6: *Inquiries Template* must be emailed to [PS\\_SW\\_FleetMaintenan@ogs.ny.gov](mailto:PS_SW_FleetMaintenan@ogs.ny.gov) by the “Closing date for vendor Inquiries” indicated in Section I.7, *Key Events/Dates* for consideration prior to the pre-Bid conference. A vendor may also submit additional questions by the “Closing Date for post pre-Bid conference vendor inquiries” indicated in Section I.7, *Key Events/Dates*. A Bidder is strongly encouraged to submit questions at the earliest convenience. OGS reserves the right to also consider questions and requests for changes received after the official question and answer period has ended.

You must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications about this solicitation. Navigate to the “I want to find contracts to Bid on” page to register for your free account. Answers to all questions of a substantive nature will be provided to all registered vendors in the form of a question and answer document which will be posted and released through the New York State Contract Reporter site. Notifications about this solicitation will no longer be issued through OGS’s Bidder Notification System (BNS) as of September 30, 2014.

## I.7 KEY EVENTS/DATES

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
RFP Release	July 8, 2014	
Closing date for vendor inquiries	July 21, 2014	5:00 PM
Pre-Bid Conference registration due	July 21, 2014	5:00 PM
Discretionary Pre-Bid Conference	July 25, 2014	TBD
Closing Date for post pre-Bid conference vendor inquiries	July 29, 2014	5:00 PM
OGS response to vendor inquiries (estimated)	August 1, 2014	5:00 PM
Discretionary Intent to Bid Deadline	August 8, 2014	5:00 PM
Submission of Bid and Bid Opening	August 12, 2014	11:00 AM
Tentative Awardee Notification (estimated)	September 16, 2014	
Contract start (estimated)	November 3, 2014	

## I.8 PRE-BID CONFERENCE

A pre-Bid Conference will be held at the Empire State Plaza in Albany, New York on the “Discretionary Pre-Bid Conference” date indicated in Section I.7 *Key Events/Dates*. The room location and time will be provided to registered Bidders prior to the conference. Attendance at the pre-Bid conference is not mandatory but it is strongly recommended that all Bidders attend.

A vendor must register for the pre-Bid conference by sending an email to [PS\\_SW\\_FleetMaintenan@ogs.ny.gov](mailto:PS_SW_FleetMaintenan@ogs.ny.gov). Registration should be submitted on or before the “Pre-Bid conference registration due” date indicated in Section I.7 *Key Events/Dates*. The email should indicate the vendor’s legal business name, and the name and title of pre-Bid conference attendees. Each interested vendor is requested to limit the number of representatives attending the pre-Bid conference to two (2).

The purpose of the pre-Bid conference is to review Bid submittal procedures and to discuss vendor questions related to the RFP. Questions will be permitted and may be answered verbally at the pre-Bid conference. However, answers may be deferred and included in the written OGS response to vendor inquiries, which will include answers to all submitted questions, and be posted on the OGS website in accordance with Section I.6 *Inquiries/Issuing Office/Designated Contacts*. A vendor who attends the pre-Bid conference may submit additional questions by the “Closing Date for post pre-Bid conference vendor inquiries” indicated in Section I.7 *Key Events/Dates*. Only those answers provided in writing are effective and binding.

## I.9 INTENT TO BID

A vendor is requested to indicate its intent to Bid by emailing [PS\\_SW\\_FleetMaintenan@ogs.ny.gov](mailto:PS_SW_FleetMaintenan@ogs.ny.gov) on or before the “Discretionary Intent to Bid deadline” indicated in Section I.7 *Key Events/Dates*, indicating the vendor’s full legal business name and contact information. The intent to Bid is discretionary; however, it is highly recommended.

## I.10 QUALIFICATION OF BIDDER

A Bidder shall describe on Attachment 3: *Technical Submittal*, Section B: *Bidder Response to Technical Requirements*, how their organization meets the Bidder qualification requirements of the RFP listed below. A Bidder is advised that the State's intent in having the requirements listed below is to ensure that only a qualified and reliable Contractor perform the work of the Contract. A Bidder shall have the burden of demonstrating to NYSPRO's satisfaction that it can in fact perform the work. In order for a response to a mandatory RFP requirement to be acceptable, a Bidder must provide sufficient information for OGS to assess the Bidder's ability to perform the requested services. A general response to any mandatory RFP requirement that is merely a non-specific statement that the requirement can be met (e.g., "will meet requirement") ~~shall be deemed non-responsive and~~ may subject the Bidder to disqualification of its proposal. Notwithstanding the previous sentence, a mandatory requirement specifically asking the Bidder to affirm that it meets the requirement does not require a detailed description or explanation. NYSPRO retains the right to request any additional information pertaining to the Bidder's ability, qualifications, and procedures used to accomplish the proposed work as it deems necessary to ensure safe and satisfactory work.

- A. **Executive Summary (Mandatory)**. A Bidder shall provide an executive summary including profiles of its operations and qualifications. These profiles shall outline the Bidder's:
1. Operations. Provide business locations (e.g., primary location, additional processing centers, backup sites), and corporate structure using organizational charts;
  2. Technical qualifications. Provide an overview, preferably including diagrams, to Bidder's approach to providing Fleet Maintenance Services, highlighting the strengths and capabilities of the Bidder to provide such services; and
  3. Experience. Provide details regarding areas of expertise and overall experience with Fleet Maintenance Services.
- B. **Staffing Plan for Contract (Mandatory)**. A Bidder shall provide a staffing plan that will identify the numbers and types of staff employed by the Bidder (excluding Automotive Repair Shops staff) that will implement the Contract. The staffing plan shall include:
1. Titles of employees;
  2. Job descriptions for titles;
  3. Minimum qualifications for each job title;
  4. Number of employees currently employed for each title;
  5. Notarized statement from the head of Bidder's human resources department, or equivalent, certifying the total number of employees currently in the titles identified by Bidder above, and that the employees currently meet or exceed the minimum qualifications for each of the titles; and
  6. Notarized statement from the head of Bidder's human resources department, or equivalent, certifying that personnel responding to maintenance and repair calls have a minimum of three (3) years' experience in the automotive industry as a technician or service writer, and are ASE Certified Mechanics and/or ASE Certified Master Mechanics.

If awarded a Contract, the Contractor must maintain adequate staffing throughout the Contract term, and shall notify NYSPRO of substantive staffing changes. The Contractor must maintain or improve the described level of experience and expertise of the titles that interact directly with the Authorized Users and/or Automotive Repair Shops, and that service any other technical, financial and customer service related needs of the Contract.

- C. **Relevant Work Experience (Mandatory)**. The Bidder shall demonstrate a minimum of three (3) years providing Fleet Maintenance Services to one (1) government (i.e., federal or state governments or their subdivisions) or private entity fleet equaling 5,000 or more Vehicles enrolled in Bidder programs. The work experience must include either a current contract, or one that has expired no more than (1) calendar year from the "Submission of Bid and Bid Opening" date indicated in Section I.7 *Key Events/Dates*. The proposal must list and describe the Bidder's relevant work experience providing Fleet Maintenance

Services to the entity identified. Descriptions should include the size, scope and duration of the contract, specifying the time period the work was performed.

- D. **Relevant Work Experience (Desired).** The Bidder shall demonstrate experience providing Fleet Maintenance Services to additional government (i.e., federal or state governments or their subdivisions) or private entity fleets. The proposal must list and describe the Bidder's relevant work experience providing Fleet Maintenance Services to the entities identified. Descriptions should include the size, scope and duration of each contract, specifying the time period the work was performed.
- E. **References (Mandatory).** A Bidder shall provide a minimum of three business (3) references. References shall be provided on Attachment 2: *Administrative Submittal (Electronic)*, Section C: *References*. One (1) of the three (3) references shall be from the government or private entity identified by the Bidder in response to Paragraph C *Relevant Work Experience (Mandatory)*. The other two (2) references shall preferably be governmental accounts and should demonstrate the ability of the Contractor to perform jobs similar in scope to the size, nature and complexity of the outlined Bid. Each reference shall include the following information:
1. Entity name;
  2. Entity address;
  3. Contact Person name;
  4. Contact Person telephone number;
  5. Contact Person email address;
  6. Contract Number (if applicable)
  7. Number of years Bidder has serviced the referenced entity's account;
  8. Types of programs under contract with the Bidder;
  9. The number of Vehicles enrolled in contract programs; and
  10. Additional information (if applicable).
- F. **Insurance (Mandatory).** A Bidder must provide proof of insurance coverage requirements, as described in Attachment 5: *Insurance Requirements*, with their Bid or upon notification of tentative award. If awarded a Contract, the Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term, if requested by NYSPro.
- G. **NYS DOS Registration (Mandatory).** A Bidder shall be registered with the NYS Department of State as an entity authorized to conduct business in New York State (registration may be confirmed at [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html)).

## SECTION II: FLEET MAINTENANCE SERVICES

The Bidder must provide a detailed narrative response on Attachment 3: *Technical Submittal*, Section B: *Bidder Response to Technical Requirements*, which fully discusses and describes the manner in which it meets or exceeds the following service requirements for Fleet Maintenance Services. The Bidder's response must specifically address the unique needs of the State. **Note: If a Bidder does not currently have an established process that meets a mandatory requirement, the Bidder may submit a plan for how that requirement will be met under the resultant contract, that includes a timeframe for implementation of no longer than three (3) calendar weeks after notice of tentative award. Upon notice of tentative award, a Bidder must implement such plan(s), and provide evidence that the required process is in place and fully functional prior to Contract execution by OGS. Failure to provide evidence by the deadline stated by OGS in the tentative award notification letter that the process is in place and fully functional will delay award of the resultant contract, and may render the Bid non-responsive and result in the disqualification of the Bid.**

## II.1 AUTOMOTIVE REPAIR SHOPS (MANDATORY)

A Contractor must provide, for the life of the Contract, Automotive Repair Shops that participate in the Contract that allow Authorized Users to receive: (1) diagnosis and repair of Vehicle malfunctions or damage; (2) maintenance of Vehicles; (3) repair to Vehicle bodies; (4) Vehicle glass replacement and repair; (5) Aftermarket Product Additions; and (6) Vehicle roadside assistance and towing, for Light Duty Vehicles and Medium to Heavy Duty Vehicles in all counties in New York State, and locations nationwide. Fleet Maintenance Services provided in relation to Automotive Repair Shops shall include:

- A. A list of Automotive Repair Shops in New York State available for use with the Contract, to be maintained by the Contractor and available on the Contractor's website in a ~~searchable~~-database searchable by ZIP code, and available to Authorized Users via that can be downloaded in Excel format (Microsoft Excel 2003, or newer), and/or via email from the Contractor when requested. ~~for participants of the Contract to view.~~ At a minimum, the list shall be updated monthly, and shall include the following data fields for each Automotive Repair Shop:

1. Business name;
2. Business address (physical location);
3. County where the business is located;
4. Phone number;
5. Type of Automotive Repair Shop (i.e., National Account or Independent Vendor) and
6. Type of service available (i.e., inspection, general maintenance and repair, body repair, glass repair, emergency vehicle repair, and roadside assistance/towing).

A Bidder shall provide a complete listing, in Excel format (Microsoft Excel 2003, or newer) or via a link to the Bidder's website, with its Bid submission, of Automotive Repair Shops that will participate in the resultant Contract.

- B. A process for the Authorized User to request an addition to the list of Automotive Repair Shops available for use with the Contract.
- C. A process for the Authorized User to report an Automotive Repair Shop that is not performing work that is considered satisfactory by the Authorized User, and a response process to such reports;
- D. A process for collecting a valid odometer reading for each Vehicle at the time of service with an Automotive Repair Shop, and for verifying that the odometer reading is obtained by the Automotive Repair Shop through a visual check of the Vehicle rather than one reported by the vehicle driver.
- E. The processing, ~~auditing~~ and payment for all charges associated with Automotive Repair Shops performing maintenance and repair of participating Authorized User Vehicles, and billing the Authorized User in accordance with Section II.9 *Billing and Payments (Mandatory)*. Services provided shall include, but not be limited to:
1. A process to minimize Authorized User Vehicle repair costs that includes the review of all Automotive Repair Shop invoices to ensure cost is consistent with approved repair estimates, and that price is competitive and reasonable;
  2. Negotiation with Automotive Repair Shops, to provide the lowest rate possible on individual repairs and for overall labor and parts rates on behalf of New York State, prior to authorizing a service;
  3. An audit process to review and audit of Automotive Repair Shop costs and invoices utilizing a nationally recognized guide, (e.g., Chilton Labor Time Guide Manual and Mitchell Mechanical Labor Estimating Guide), and verification that all Automotive Repair Shops are using a nationally recognized guide in estimating repair costs. The Contractor shall have a process for accepting exceptions to nationally recognized guide(s);
  4. Disclosure of any agreements made with Automotive Repair Shop where the Contractor receives revenue rebates, volume discounts, or rewards, so the State has a better understanding of these potential service concerns. Any Automotive Repair Shop such rebates, discounts or rewards that will

be applied to Authorized User costs shall be disclosed by the Bidder on Attachment 4: *Financial Submittal*, Section E: *Price Sheet (Other)*; and

5. Contractor processes that do not include “short paying” of Automotive Repair Shops for their services, merchant function charges, fees, percentage rebates and/or bank fees for EFT payments related to Fleet Maintenance Services provided under the Contract. These processes shall not be endorsed or accepted by the State.
- F. A process for coordinating the resolution of any disputes related to the Contract that occur between the Automotive Repair Shops and Authorized Users, and shall implement this process if requested by an Authorized User.

## II.2 MONTHLY ENROLLMENT PLANS (MANDATORY)

The Contractor shall offer a minimum of two (2) Monthly Enrollment Plans for Fleet Maintenance Services: one (1) plan for Light Duty Vehicles; and one (1) plan for Medium to Heavy Duty Vehicles (see Section II.11 *Additional Fleet Maintenance Services (Desirable)*, Paragraph J *Bidder-Proposed Fleet Maintenance Services and Products*, if offering additional Monthly Enrollment Plans). All services listed under Section II.1 *Automotive Repair Shops (Mandatory)* shall be applicable to all Monthly Enrollment Plans offered under the Contract.

A Vehicle’s enrollment in a Monthly Enrollment Plan does not preclude usage of a Per Occurrence Plan by an Authorized User for that same Vehicle, or other Authorized User Vehicles (see Section II.3 *Per Occurrence Plans (Mandatory)*). An Authorized User may independently obtain and be invoiced for a service, (e.g., body repair, roadside assistance, and towing), for a Vehicle that is enrolled in a Monthly Enrollment Plan, from an Automotive Repair Shop that participates in the Contract, and be invoiced only for the services provided and not incur a Per Occurrence Plan administrative fee.

The Contractor shall further provide the following additional services with each Monthly Enrollment Plan:

- A. Ongoing Fleet Maintenance Services, for each Vehicle enrolled, for one (1) flat administrative fee, invoiced monthly in arrears. There shall be one (1) flat administrative fee for Light Duty Vehicles and one (1) for Medium to Heavy Duty Vehicles. Authorized Users shall not be invoiced a monthly fee that has not been specified on Attachment 4: *Financial Submittal* (e.g., Independent Vendor fee) for the Monthly Enrollment Plans. *A Bidder shall indicate if an Independent Vendor fee is included in the monthly fees, and provide an explanation for the use of an Independent Vendor fee;*
- B. Service technicians to review and pre-approve each Vehicle maintenance and repair service twenty-four (24) hours a day, seven (7) days a week, and 365 days a year. The Authorized User shall have the ability to designate a dollar amount limit for Vehicle maintenance and repair costs that require prior approval from the Authorized User before work may begin. The Contractor shall obtain written, (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), approval from the Fleet Manager for all services estimated to exceed the designated dollar amount limit prior to authorizing the service. If an Authorized User has not pre-designated a dollar amount limit for Vehicle maintenance and repair costs that require prior written approval before work may begin, then the dollar amount shall be \$750. If the Fleet Manager is not immediately available to give approval, Contractor shall obtain approval from the designated alternate contact and provide email notification to the Fleet Manager;
- C. Respond to an Authorized User request for routine and emergency services within one (1) hour of the request, via telephone and/or email exchange, as specified by the Authorized User;
- D. A process to monitor Vehicle repairs to ensure the repairs are completed quickly, and that includes notification of an expected repair completion date/time to the Authorized User;
- E. A process for tracking and auditing performance standards and requirements for Automotive Repair Shops. These performance standards and requirements, established by the Contractor, shall include, at a minimum, price, quality assurance, vendor competence, cooperation and problem resolution methods, compliance to repair authorization procedures and invoicing dispute procedures. A list of Automotive Repair Shops that are unable to meet the established performance standards and requirements shall be posted on the Contractor’s website and updated at least weekly;

- F. Assistance with selection of an Automotive Repair Shop from those available for use with the Contract, when requested by an Authorized User;
- G. A list of Authorized User Vehicles currently enrolled in the Monthly Enrollment Plans, that is available for download from the Contractor's website, and updated at least daily;
- H. The ability for Authorized Users to enroll or remove Vehicles from a Monthly Enrollment Plan at any time during a Monthly Enrollment Plan period, online, via email, and via phone. Cancellation shall include: (1) removal from the Contract website; (2) a statement issued to the Authorized User that the Vehicle has been removed from the Monthly Enrollment Plan; and (3) a definitive cancellation code or other indicator included on the Contract website and Contract reports. The monthly fee for a partial enrollment period shall be prorated so that the Authorized User is invoiced only for the number of days that a Vehicle is enrolled in the Monthly Enrollment Plan;
- I. A process for ensuring that all Vehicles enrolled in a Monthly Enrollment Plan are screened by the Contractor's system to ensure that the VINs entered are correct, (i.e. correspond to the basic identifying information about the Vehicle, including the make, model and year). The Contractor must also provide an online VIN decoder program to assist the Authorized User with this process;
- J. Standardized pricing with at least one (1) National Account Vendor that provides Vehicle glass replacement and repair. The standardized pricing must include ~~– a method for determining,~~ for each Vehicle glass part number available from the vendor, a flat rate for glass replacement that includes the price of the glass, the labor charges for the removal of the old glass, the installation of the new glass, glass cleanup and any sealants needed for the replacement. The standardized pricing must also include a flat rate for glass repair that includes labor charges for removal of debris from the impact area and repair of the glass, and the price of materials needed for the repair. In addition, the Contractor shall negotiate with Automotive Repair Shops that provide glass replacement and repair, for a not-to-exceed fee for glass replacement or repair, prior to Contractor authorizing each glass replacement or repair requested by an Authorized User;
- K. A negotiated storage rate for Authorized User Vehicles to be stored at each Automotive Repair Shop for the first twenty-four (24) consecutive hours, and for each twenty-four (24) hour period thereafter. Maximum reimbursable storage rate time will be for five (5) days, including weekend days, unless previously agreed upon in writing by the Authorized User. The Contractor shall negotiate the rate for storage beyond five (5) days, and receive written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), approval from the Authorized User, prior to approving continued storage of a Vehicle by an Automotive Repair Shop. Storage charges shall only be invoiced provided that the Contractor has been notified by the Automotive Repair Shop and that the Contractor has notified the Authorized User that such charges are being initiated;
- L. A Vehicle Preventive Maintenance program which, at a minimum, is consistent with OEM specifications and warranty requirements, State inspection schedule implementation, government regulations that apply, and generally accepted fleet practices for all Vehicles enrolled in a Monthly Enrollment Plan. The Preventive Maintenance program shall provide:
  - 1. Preventive Maintenance schedules and maintenance activities for all Authorized Users;
  - 2. Preventive Maintenance services, based on Vehicle mileage, that include, at a minimum, oil and filter changes, engine tune-ups, tire rotation, tire pressure check and adjustment, and check and fill of all fluid levels. Such services must be consistent with the OEM guidelines as detailed in the Vehicle's owner's manual. Annual New York State inspection service shall also be included in the Preventive Maintenance schedule;
  - 3. Email notification to the Authorized User, via the Fleet Manager, or other individual designated by the Authorized User, of due and overdue Preventive Maintenance services for each Vehicle, within forty-eight (48) hours of notification to the Contractor that the mileage marker for the Preventive Maintenance service has been reached;
  - 4. The ability for the Authorized User to designate a Preventive Maintenance schedule that is above and beyond what is recommended by an OEM;

5. A coupon book, or email notification to the Authorized User, that includes, at a minimum, each Preventive Maintenance service required, and the recommended or Authorized User-designated mileage increment(s) or time interval(s) for completion of the service, for each Vehicle; and
  6. A sample Preventive Maintenance schedule, provided at the Authorized User's request, for programs currently being used by other customers.
- M. Participation in quarterly account review meetings with participating Authorized Users, if requested, for the full duration of the contract, including any renewal period(s). If requested by the Authorized User, the Contractor shall provide a report of the actual attainment of Authorized User cost savings for services listed in this section. Such meetings shall be conducted via conference call or webcast, as specified by the Authorized User;
- N. Participation in bi-annual Contract review meetings with OGS, if requested, for the full duration of the contract, including any renewal period(s), to provide Fleet Maintenance Services program updates and other maintenance-related or accident-related issues identified by OGS or the Contractor. Such meetings shall be conducted via conference call or webcast, as specified by OGS;
- O. A process for tracking all existing warranties for Vehicles enrolled in a Monthly Enrollment Plan and recouping warranty reimbursements on behalf of the Authorized User, and a process for recovery of post-and out-of warranty repairs which includes, at a minimum:
1. Identification of OEM warranty repair opportunities for Vehicles and notification to the Authorized User(s) affected;
  2. Monitoring of repair activities and notifying Authorized Users of repairs eligible for warranty reimbursement; and
  3. Seeking reimbursement from OEMs on behalf of the Authorized User for out-of-warranty repairs or service when circumstances so warrant.
- P. A process for monitoring OEM recalls that affect Vehicles enrolled in a Monthly Enrollment Plan, and notifying the applicable Authorized User in writing of all recalls, which includes, at a minimum:
1. Notifying the OGS Contract Administrator and Authorized User Fleet Managers via email of all OEM recalls within twenty-four (24) hours of the Contractor receiving notification from the OEM;
  2. Creating or scheduling work orders in response to recalls only with prior authorization from the Authorized User;
  3. Recall notification that includes all Vehicle makes and models enrolled in a Monthly Enrollment Plan; and
  4. Inclusion of the status of recalls (e.g., open or closed) in the Vehicle data available for Authorized User enrollment and transaction reports at the Contract website (see Section II.6 *Reporting (Mandatory)*).

### II.3 PER OCCURRENCE PLANS (MANDATORY)

A Contractor shall offer the following Per Occurrence Plans for Fleet Maintenance Services that will provide service for Authorized Users of Light Duty Vehicles and Medium to Heavy Duty Vehicles. Per Occurrence Plans shall provide a per-incident Fleet Maintenance Service for a Vehicle for one flat administrative fee each time the Per Occurrence Plan service is used. This flat administrative fee is in addition to the actual charges for the repair or service. All services listed under Section II.1 *Automotive Repair Shops (Mandatory)* shall be applicable to the Per Occurrence Plans offered under the Contract.

For all Per Occurrence Plans, the Contractor must provide the ability for Authorized Users to enroll or remove Vehicles from services daily, online, via email, and via phone. Removal from the Per Occurrence Plan shall include: (1) removal from the Contractor's website; (2) a statement issued to the Authorized User that the Vehicle has been removed from the program to prevent service and billing under a program; and (3) a definitive cancellation code or other indicator included on the Contract website and Contract reports.

Usage by an Authorized User of a Per Occurrence Plan for a Vehicle does not preclude enrollment of that same Vehicle, or other Authorized User Vehicles, in a Monthly Enrollment Plan (see Section II.2 *Monthly Enrollment*

*Plans (Mandatory)*). An Authorized User may independently obtain and be invoiced for a service, (e.g., body repair, roadside assistance, and towing), for a Vehicle that is enrolled in a Monthly Enrollment Plan, from an Automotive Repair Shop that participates in the Contract, and not incur a Per Occurrence Plan administrative fee.

At a minimum, the following Per Occurrence Plans shall be offered under the Contract (see Section II.11 *Additional Fleet Maintenance Services (Desirable)*, Paragraph J *Bidder-Proposed Fleet Maintenance Services and Products*, if offering additional Per Occurrence Plans):

- A. Maintenance and Repair Service. A Contractor shall offer Maintenance and Repair Services, as described in Section II.2 *Monthly Enrollment Plans (Mandatory)*, on a Per Occurrence basis, for Light Duty Vehicles and for Medium to Heavy Duty Vehicles. These Per Occurrence Plans shall include all aspects of the Monthly Enrollment Plans, except Preventive Maintenance (see Section II.2 *Monthly Enrollment Plans (Mandatory)*, Paragraph L).
- B. Accident Management. A Contractor shall offer the following Accident Management program options for Authorized Users of Light Duty Vehicles and Medium to Heavy Duty Vehicles. A Contractor shall have a flat administrative fee for each of the Accident Management program options listed below. An Authorized User shall have the ability to choose the All-In program, or one or more individual programs, at the time of the incident. *Note: State Agencies are instructed to follow the accident reporting procedures posted by the OGS Risk Insurance and Fleet Management office: <http://ogs.ny.gov/BU/SS/RIFM/ARP.asp>.* Accident Management Programs shall be provided under the Contract according to the following terms:
  1. All-In. The All-In Accident Management Program offered shall include all aspects of accident management, including the individual services listed below (i.e., Documentation Only, Repair Estimates Only, Appraisal Only, and Subrogation Only). Accident management services provided shall include administering all collision and other-than-collision (e.g., glass breakage, theft, and vandalism) claims and repairs on Vehicles including, but not limited to:
    - a) Receiving reports of accidents via a toll-free number, twenty-four (24) hours a day, seven (7) days a week, 365 days a year;
    - b) Taking comprehensive accident reports from Authorized Users, completing Association for Cooperative Operations Research and Development (ACORD) Automobile Loss Notice forms and forwarding via email the forms to the OGS Risk Insurance and Fleet Management office, the Authorized User's Fleet Manager and the Authorized User employee involved in the accident, or as otherwise instructed by the Authorized User;
    - c) Creating a file in the Contractor's internal information system for each accident, to track Accident Management services;
    - d) Providing the ability for an Authorized User to report and view the status of Accident Management services online through the Contractor's website;
    - e) Providing a database, available online through the Contractor's website and accessible twenty-four (24) hours a day, seven (7) days a week, 365 days a year, to OGS to track and report all Contract Vehicle accident volume and expenses by Authorized User. Individual accident occurrences shall be identified by, at a minimum, Authorized User agency, Vehicle, accident type and cost;
    - f) Obtaining and evaluating every damage repair estimate for accuracy and consistency with industry standards;
    - g) Arranging for towing and negotiating the cost, when necessary;
    - h) Arranging for repairs with an Automotive Repair Shop, including obtaining Authorized User authorization for the repair;
    - i) Monitoring repairs to ensure that the repair is timely, of high quality and performed at the least cost to the State;
    - j) Consolidating payment and billing of collision repairs and tracking of collision repair costs; and
    - k) Providing the Fleet Manager, and Authorized User employee permanently assigned the Vehicle, with status updates daily regarding repair status either via email or telephone.

2. Documentation Only. A Documentation Only Accident Management program shall be offered. Services offered shall include, at a minimum, obtaining accident reports, claim reporting, and obtaining pictures of vehicle damage.
  3. Repair Estimates Only. A Repair Estimates Only Accident Management program shall be offered. Services offered shall include, at a minimum, securing repair estimates for Vehicles from an Automotive Repair Shop.
  4. Appraisal Only. An Appraisal Only Accident Management program shall be offered. Services offered shall include, at a minimum, providing appraisal service for the Vehicle, in order to assess and determine the estimated value of a Vehicle involved in an accident.
  5. Subrogation Only. A Subrogation Only Accident Management program shall be offered. A Contractor shall track and follow up on subrogation incidents on behalf of the Authorized User. A Contractor shall offer this service for either one flat administrative fee or for a percentage of the dollar amount recovered by the Contractor, as specified by the Authorized User at the time the service is requested. Services offered under the Contract shall include:
    - a) A review of all accident or vandalism claims for the opportunity to collect damages from a responsible (negligent) third party;
    - b) Filing a subrogation claim notice on behalf of the Authorized User, if requested, with the other party involved in the accident, or their insurance carrier;
    - c) If requested by the Authorized User, a sample report demonstrating how the subrogation claims will be tracked and followed up on; and
    - d) A quarterly accident subrogation status report, provided to the Authorized User, that identifies resolved and outstanding claims for the applicable quarter.
- C. Roadside Assistance. A Contractor shall offer administration of roadside assistance service provided by Automotive Repair Shops, twenty-four (24) hours a day, seven (7) days a week, 365 days a year, for Light Duty Vehicles and Medium to Heavy Duty Vehicles. Administrative fees for Per Occurrence Plan calls to Automotive Repair Shops that provide roadside assistance, and arranging for service, shall not exceed the Per Occurrence Plan Administrative fee Bid. Roadside assistance shall be provided under the Contract according to the following terms:
1. Contractor shall contact Automotive Repair Shops that provide roadside assistance when contacted by Authorized Users, in order to provide roadside repair services in the State of New York, and locations nationwide, within reasonable response times that include, but are not limited to:
    - a) Battery jumpstarts and engine service;
    - b) Driver lock out service;
    - c) Flat tire assistance; and
    - d) Fuel/oil/engine fluids and water service.
  2. Upon Authorized User request, Contractor shall provide detailed, itemized invoice(s) for roadside assistance provided under the Contract. The Contractor will be responsible for providing detailed information to the Authorized User, including explanations regarding miscellaneous charges; and
  3. Payment to Contractor for emergency roadside assistance shall not be made prior to Authorized User receipt and review of Contractor's supporting details regarding the invoiced charges.
- D. Towing. A Contractor shall offer administration of towing service provided by Automotive Repair Shops, twenty-four (24) hours a day, seven (7) days a week, 365 days a year, for Light Duty Vehicles and Medium to Heavy Duty Vehicles. Towing service shall be provided under the Contract according to the following terms:
1. Contractor shall contact an Automotive Repair Shop that provides towing service within fifteen (15) minutes of notification from an Authorized User that towing service is required, and provide the Authorized User with an estimated response time from the Automotive Repair Shop. A response time

- of no more than one (1) hour for the service to arrive at the scene after the call is initiated is desired. If this cannot be provided by the Automotive Repair Shop, the Contractor shall contact other area Automotive Repair Shops to determine if a shorter response time can be provided;
2. The Contractor shall negotiate with the Automotive Repair Shops that provide towing services, for a not-to-exceed hookup fee, plus mileage, prior to Contractor authorizing dispatch for each towing service requested by an Authorized User;
  3. Priority shall be given to existing State, and other applicable Authorized User-contracted towing vendors for towing services. The State currently has existing towing service contracts for limited access highways and bridges (e.g., New York State Thruway, and bridges and tunnels operated by the Metropolitan Transportation Authority), and the City of New York currently has existing towing service contracts for towing from NYC highways. If towing service is not available from a State or other applicable Authorized User-contracted towing vendor, the Contractor may contact other towing vendors in order to provide towing service for an Authorized User Vehicle;
  4. Calls placed to an Automotive Repair Shop that provides towing service shall be considered the same as a call placed for a Per Occurrence Plan event and shall not exceed the Bid Per Occurrence Plan price for towing; and
  5. Upon Authorized User request, Contractor shall provide detailed, itemized invoice(s) for towing service(s) provided under the Contract. The Contractor will be responsible for providing detailed information to the Authorized User, including explanations regarding miscellaneous charges.

#### **II.4 CUSTOMER SERVICE SUPPORT CENTER (MANDATORY)**

A Contractor must provide a customer service support center to support all services required in this RFP for no additional administrative fees. The customer service support center shall be available for Authorized Users twenty-four (24) hours a day, seven (7) days a week, 365 days a year. Contractor retains all liabilities should this service be transferred or assigned to a subcontractor. Services shall include, but not be limited to:

- A. Toll-free telephone access with average hold time of no more than one (1) minute; and
- B. Authorized User assistance with initial and ongoing enrollment in Contractor programs, including but not limited to:
  1. Requesting, from each Authorized User at the time of enrollment, a key entry code or other specific identifier for its fleet, which shall be incorporated into the Contractor's internal information technology system, if provided by the Authorized User;
  2. Assignment of a code that will be used in the Contractor's internal information technology system to identify the Authorized User as a State Agency or non-State Agency. Unless otherwise agreed upon by OGS, a State Agency shall be coded as "1" and a non-State Agency shall be coded as "2";
  3. Identifying each Authorized User in the Contractor's internal information technology system by either the specific complete name and agency abbreviation of the State Agency (e.g., Department of Transportation, DOT), or the specific complete name of the non-State Agency, (e.g., Onondaga County Water Authority), that the Authorized User represents; and
  4. Identifying each Authorized User in the Contractor's internal information technology system by the Agency Statewide Financial System (SFS) code, if applicable.
- C. Personnel responding to maintenance and repair calls that have a minimum of three (3) years' experience in the automotive industry as a technician or service writer, and are ASE Certified Mechanics and/or ASE Certified Master Mechanics. See Section I.10 *Qualification of Bidder*, Paragraph B *Staffing Plan for Contract (Mandatory)*.

## II.5 CONTRACT WEBSITE (MANDATORY)

A Contractor shall provide a Contract website, for no additional administrative fees, with at least the following capabilities and services:

- A. Access. Online access must be available twenty-four (24) hours a day, seven (7) days a week, 365 days a year. Information technology customer service shall be available through a toll-free number, and through email, during standard business hours, 8:00 AM to 5:00 PM EST, Monday through Friday;
- B. Enrollment/Cancellation. The Authorized User shall have the ability to enroll or remove a Vehicle from Contractor programs online at the Contract website, at any time;
- C. Itemization. The Contract website shall include itemized Vehicle Fleet Maintenance Services data for each Authorized User that includes, for each enrolled Vehicle, at a minimum, the data required under Section II.6 *Reporting*. Costs for Fleet Maintenance Services, including Vehicle maintenance and repair shall be posted online within one (1) hour of implementation or completion of the service;
- D. Training. The Contractor shall provide online tutorials, webcast training and other remotely provided training requested by the Authorized User, in the use of the Contract website, at no additional fee. In-person training shall be provided only at the request of an Authorized User. Reimbursement to the Contractor for travel, meals and lodging expenses for in-person training conducted by Contractor employees who do not reside in the local commuting area for the work site, shall be made in accordance with the State's Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.
- E. Restricted Access. The Contract website shall include security features capable of providing tiered, restricted account access for individuals within the Authorized User's organization, as designated by the Fleet Manager. Contractor shall also have a security plan that will be utilized to ensure the protection of Authorized User information and that access to such information is controlled and restricted to authorized Contractor personnel only;
- F. Data Backup. Contractor must demonstrate that the information included in the Contract website is backed up and stored in more than one (1) location to prevent loss of data in the event of disasters, (e.g., fires, hurricanes, tornadoes or theft). Data must be recoverable within forty-eight (48) hours; and
- G. Performance. The Contract website shall be available 99% of the time, measured quarterly. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. Availability shall not include scheduled maintenance. Contractor's failure to satisfy performance standards, requirements or other service levels set forth in the Contract for the Contract website shall result in a credit as follows:

If Contractor fails to meet a Contract website performance standard as set forth in the Contract for a period of three (3) consecutive months, a 10% service credit will be deducted from each Authorized User's invoice in the month immediately following the third month.

## II.6 REPORTING (MANDATORY)

The Contractor shall provide standard and ad-hoc OGS and Authorized User reports including, at a minimum, the following types of reports:

- A. Authorized User online Vehicle enrollment and transaction reports. To exercise control over programs, each Authorized User requires on-demand, online reports, based on Authorized User input criteria, of Vehicle enrollment and Automotive Repair Shop data. It is anticipated that in most cases daily and monthly reporting will be necessary to provide the information needed to reconcile payments and to monitor Automotive Repair Shop usage. The Contractor shall provide a website that OGS and the Authorized User may access to produce Authorized User transaction reports in both Excel (Microsoft Excel 2003, or newer), and text formats. OGS shall require access to all Authorized User Vehicle enrollment and transaction data collected under the contract, and the ability to produce reports that include such data for multiple Authorized Users, and for statewide reports. The reports and the data collected to produce the reports are

confidential and may only be shared with parties other than OGS with the prior approval of the Authorized User. Unless otherwise specified by an Authorized User, the report types that are required, include:

1. Number of Vehicles enrolled in each Contractor program;
2. Contractor program(s) each Vehicle is enrolled in;
3. Automotive Repair Shops used by each Authorized User, monthly and annually, organized by provider type (e.g., maintenance vendor, towing);
4. Authorized User spend on each type of maintenance or repair service, listed by Authorized User account, division, sub-division and Vehicle;
5. Itemized maintenance and repair services and parts provided for each Vehicle, and by each Automotive Repair Shop;
6. Identification of “reworks” (i.e., repeat performance of service or repair because problem has not been resolved, same problem still exists, repair or service was not satisfactory, etc.);
7. Post- and out-of warranty servicing and repair reports that include repair activities and post-warranty adjustment credit;
8. Manufacturer recalls affecting Vehicles enrolled in Monthly Enrollment Plans, including the status of the recall (e.g., open or closed); and
9. Accident management data that includes VIN, date and time of accident, location and cause of accident, and itemized Vehicle service and repair costs.

In addition to the report types listed above, the Authorized User shall have the ability to produce customized ad-hoc reports, based on Authorized User input criteria, on-demand, online. If requested by the Authorized User, the Contractor shall produce these customized ad-hoc reports for the Authorized User, in the format required by the Authorized User, for no additional fee.

- B. Authorized User data export. At the Authorized User’s written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request, the Contractor shall export Vehicle enrollment and transaction reports into a data file that may be imported by the Authorized User. Data shall be provided in a tab-delimited or similar text file, (a fixed width text file, not comma or tab-delimited, is preferred), or Microsoft Office (2003 or newer) compatible file format that can be imported directly to Microsoft Excel or Access. At a minimum, Contractor shall have the ability to provide Authorized Users with the data inputs identified as “Mandatory” in Attachment 8: *Data Export Requirements*. Data shall be provided at the frequency specified by the Authorized User (e.g., monthly or daily). At the written request of the Authorized User, Contractor shall provide details of applicable coding structures such as an update task code list with codes and descriptions where applicable. See also Section II.7 *Data Import and Export (Mandatory)*.
- C. Authorized User Account Review Report. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, Contractor must provide an emailed and/or webcast report that provides a review of the Authorized User’s account, at no additional cost. The report shall be made in-person only at the request of the Authorized User. Reimbursement to the Contractor for travel, meals and lodging expenses for an in-person report for employees who do not reside in the local commuting area for the report site, shall be made in accordance with the State’s Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.

Unless otherwise agreed upon by the Authorized User, the Account Review Report shall include, but not be limited to:

1. Vehicle service and repair account activity, summarized by Vehicle class and repair code;
2. Repair trends by vendor, agency, region, and Vehicle type;
3. Number of roadside assistance and tow occurrences, including the average response time;
4. List of overdue, scheduled Preventive Maintenance;

5. Subrogation summary that includes completed actions and recovery amounts, and those over 120 days old;
  6. Cost comparisons of items 1 through 5 above, described in detail, with other similar-sized fleets; and
  7. Other information as may be deemed necessary by the Fleet Manager.
- D. Report of Contract Usage. The Contractor shall furnish a report of all Fleet Maintenance Services provided under the Contract during each quarterly period, no later than fifteen (15) days following the close of the quarterly period. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. If the Contract period begins or ends in a fractional portion of a reporting period only the actual Contract sales for this fractional period should be reported in that quarterly report. Purchases by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. A template for such report is included In Attachment 7: *Report of Contract Usage*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.
- E. Monthly MWBE Contractor Compliance Report. See Section III.19 *Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises*.

## II.7 DATA IMPORT AND EXPORT (MANDATORY)

The Contractor shall import Vehicle data from previous State Fleet Maintenance Services vendors' databases into the Contractor's internal information system upon Contract execution, and shall export Vehicle data collected under the Contract to OGS and Authorized Users during the full term of the Contract, for no additional administrative fee. The Contractor shall provide the following import and export services:

- A. Historical data collected under OGS centralized State Contract PS63512, (Group 72002, Award 20108, Fleet Management Services), held by Automotive Rentals Inc. (ARI), shall be imported into the Contractor's internal information technology system. At the request of OGS or an Authorized User, historical data shall also be imported from contracts held by Authorized Users;
- B. At the request of OGS or an Authorized User, the Contractor shall import Vehicle service and repair history from fleet management information systems that may be in use by an Authorized User;
- C. At the request of OGS or an Authorized User, the Contractor shall export Authorized User data as described above in Section II.6 *Reporting (Mandatory)*, Paragraph B, *Authorized User Data Export*;
- D. Data for all Authorized Users of the Contract shall be exported to OGS, as directed by OGS. Failure to timely provide the OGS data files in accordance with this section shall be considered a breach of contract, and may result in cancellation of the contract in accordance with Appendix B §47 *Termination*. The following data files shall be exported:
  1. Daily Transaction File. The following terms and conditions apply to the OGS Daily Transaction File:
    - a. The data shall be provided in a tab-delimited or similar text file, (a fixed width text file, not comma or tab-delimited, is preferred) or Microsoft Office (2003 or newer) compatible file format that can be imported directly to Microsoft Excel or Access;
    - b. The data file shall have a standard name with the date created appended (e.g., "VendorName[YYYYMMDD].txt");
    - c. The data file must be received by OGS electronically via an encrypted automated file transfer process. The file may either be exported to an OGS SFTP server (preferred method), or OGS can retrieve the file from the Contractor's SFTP server via an automated process. *Note: in order for*

OGS to retrieve the file from the Contractor's SFTP server, the folder shall be secure and not shared with other Contractor customers;

- d. At a minimum, the Contractor shall have the ability to provide the data inputs identified as "Mandatory" in Attachment 8: *Data Export Requirements*.
  - e. No later than four (4) calendar weeks after Contract execution, the Contractor shall provide an initial data file for all Fleet Maintenance Services provided from the Contract term start date to the date the file is created, and work with OGS to establish a file transfer process. The file transfer process must be established and in place no later than eight (8) calendar weeks after Contract execution;
  - f. Upon approval by OGS of the data file and file transfer process, Contractor shall provide a data file on a daily basis. Data export shall be automated and sent at the same time each day. The daily data file shall include only new transactional data that has not been included in previously exported files;
  - g. Data for new Contract users must automatically be included in the data files, without OGS or Authorized User initiation;
  - h. Data shall be provided only after the transaction has a "completed/closed" status. Transactions "in process" shall not be included in the data file;
  - i. Data shall contain a valid VIN (Vehicle Identification Number) for all Vehicles enrolled in Contractor Fleet Maintenance Services programs which are owned by a State Agency.
  - j. The data file shall include standard ATA and VMRS codes, and a description of the codes, used by the Contractor to identify Vehicle maintenance and repair services provided under the Contract. No later than four (4) calendar weeks after contract execution, the Contractor must provide a list of the standard ATA and VMRS codes used, and a description of the maintenance services and repairs that the codes apply to. The list shall include codes that will be used to identify incoming transactions as "preventive maintenance service" and "inspection related". A list of the VMRS codes currently used is included on Attachment 8: *Data Export Requirements*.
2. Post-Warranty Data File. The Contractor shall provide OGS with a monthly file that includes data for the recovery of post-warranty repair charges on Authorized User Vehicles enrolled in a Monthly Enrollment Plan. The format of delivery to OGS, and a timeframe for implementation, shall be mutually agreed upon by OGS and the Contractor upon tentative award notification. At a minimum, the warranty data file shall include:
- a. Date range of the post-warranty data file (e.g., April 1, 2014 to April 30, 2014);
  - b. OGS Contract number;
  - c. Contractor name, address, and telephone number;
  - d. Authorized User agency name, address, and Fleet Manager name;
  - e. Authorized User Purchase Order number and date;
  - f. Post-warranty claim number;
  - g. Post-warranty claim date;
  - h. Recovered date;
  - i. Automotive Repair Shop name;
  - j. Status of warranty recovery;
  - k. Dollar amount pursued; and
  - l. Dollar amount recovered.
3. Internal Shop Management Data File. OGS reserves the right to require data collected from Authorized User-owned Automotive Repair Shops, if Internal Shop Management is provided under the contract (see Section II.11 *Additional Fleet Maintenance Services (Desirable)*, Paragraph G *Internal Shop*

*Management System*). Data fields exported to OGS, and a timeframe for implementation shall be mutually agreed upon by OGS and the Contractor upon an Authorized User's utilization of the Internal Shop Management System.

## II.8 FLEET VEHICLE IDENTIFICATION CARD (MANDATORY)

The Contractor shall provide a Vehicle identification card for every Vehicle enrolled in a Fleet Maintenance Services program. This card will be connected with the service authorization and history of the vehicle, and shall be presented by the Authorized User at the start of every interaction between the Authorized User and Automotive Repair Shop. The card shall include:

- A. Model year, make and model name of the Vehicle;
- B. Identification number assigned to the Vehicle by the Contractor;
- C. Authorized User code, assigned by the Contractor;
- D. Vehicle Identification Number (VIN);
- E. Toll-free number to contact Contractor's customer service support center; and
- F. Directions for the Authorized User to follow in the case of an accident/emergency.

## II.9 BILLING AND PAYMENTS (MANDATORY)

Unless otherwise agreed upon in writing between the Authorized User and the Contractor, Fleet Maintenance Services administrative fees and associated Vehicle maintenance and repair costs must be separately invoiced monthly in arrears to each participating Authorized User. In order to allow for the tiered pricing structure, all Authorized Users of the Contract shall be invoiced on the same billing cycle. See also Appendix B §49 *Contract Invoicing* and §51 *Prompt Payments*. The following billing and payment services shall be provided by the Contractor:

- A. Tax Deduction. The Contractor shall deduct all applicable federal, state and local government taxes for Fleet Maintenance Services administrative fees and associated Vehicle maintenance and repair costs prior to invoicing the Authorized User, if the Authorized User is a tax exempt organization. The Authorized User shall certify tax exempt status, if required by the Contractor.
- B. Tiered Pricing Structure. The Contractor shall invoice Authorized Users in accordance with the tiered pricing indicated by the Bidder on Attachment 4: *Financial Submittal*. The tiered NYS Contract Price shall be calculated monthly, based on the aggregate volume of all Authorized Users made during the applicable billing cycle at the time of invoicing, and be applied to the monthly invoice for the applicable billing cycle for each Authorized User. The tiered NYS Contract Price for each Monthly Enrollment Plan shall be based on the aggregate volume of all Authorized User Vehicles enrolled in a Monthly Enrollment Plan. The tiered NYS Contract Price for each Per Occurrence Plan shall be based on the aggregate volume of the number of incidents for all Authorized Users.
- C. Monthly Summary Invoice. Each monthly invoice shall include a summary of monthly fees, including, but not limited to, the following level of detail:
  1. Contract number;
  2. Contractor name, address and telephone number;
  3. Authorized User agency name, address, and Fleet Manager name;
  4. Authorized User code, assigned by the Contractor;
  5. Due date;
  6. Invoice number;
  7. Invoice date;
  8. Fleet Maintenance Services program fees (i.e., Monthly Enrollment Plan and Per Occurrence Plan program fees);
  9. Summary total for Vehicle maintenance and repair costs; and

10. Payment Instructions including Contractor's third party billing name, address, etc.

D. Monthly Transaction Detail Report. In addition to the monthly summary invoice described above in Section II.9 *Billing and Payments*, Paragraph C *Monthly Summary Invoice*, a transaction detail report for each Authorized User must be available for download from a secure location at the Contractor's website or submitted directly to the Authorized User in Excel format (Microsoft Excel 2003, or newer). The transaction detail report must match the billing cycle of the invoice, and include data for all Vehicles included in the billing cycle. Unless otherwise directed by the Authorized User, the Contractor shall include, at a minimum, the information listed below on the monthly transaction detail report.

1. Date range of the transaction detail report (e.g., April 1, 2014 to April 30, 2014);
2. OGS Contract number;
3. Contractor name, address, and telephone number
4. Authorized User agency name, address, and Fleet Manager name;
5. Authorized User code, assigned by the Contractor;
6. Invoice creation date;
7. Invoice due date;
8. Invoice number;
9. Monthly Enrollment Plan fees invoiced, if applicable;
10. Per Occurrence Plan(s) fee(s), and related transaction details, if applicable;
11. The following transaction details for each maintenance and repair service included in the report:
  - a) Automotive Repair Shop business name;
  - b) Vehicle number, assigned by Contractor;
  - c) Vehicle Identification Number (VIN);
  - d) Odometer reading at the start of service;
  - e) Vehicle license plate number;
  - f) Per Occurrence Plan(s) fee(s), if applicable;
  - g) Labor rate;
  - h) Quantity of hours for work performed;
  - i) Total cost of Labor;
  - j) Description of part(s);
  - k) Total cost of parts;
  - l) Credits, if applicable;
  - m) Discounts applied;
  - n) Description of maintenance and/or repair service performed;
  - o) ATA code(s) for maintenance and/or repair service performed;
  - p) Charges for work completed for each visit, even if such work is warranty work that will eventually be paid by OEM; and
  - q) Any other associated fees with the monthly invoice should be described in detail and are contingent upon Authorized User review and approval.

E. Authorized User Invoice. The Contractor shall ensure that Automotive Repair Shops provide the Authorized User with a customer copy of the invoice for the service performed that includes the Contractor approval number, for each transaction at the time of service;

F. Archiving. The Contractor shall maintain service, repair, billing and payment histories for each Vehicle in the Contractor's programs in accordance with Appendix A §10 *Records*. Archived records shall include all data collected under the full Contract term. At the request of an Authorized User, the Contractor shall provide the report types specified in Section II.6 *Reporting*, from archived data;

- G. Payment to Automotive Repair Shops. The Contractor shall make payment to Automotive Repair Shops within thirty (30) days of receipt of invoice for services performed under the Contract. No payment shall be made for unauthorized invoices;
- H. Original Invoicing. The original Automotive Repair Shop invoice that corresponds with each Vehicle repair or service provided under the Contract must be available and provided to OGS or the applicable Authorized User upon written request. OGS reserves the right to request a copy of any invoice, repair order, or technician's notes related to services performed under the Contract.

## II.10 CONTRACT EXIT STRATEGY (MANDATORY)

Upon Contract expiration or cancellation, the Contractor must provide the following items to OGS, Authorized Users, and the replacement Contractor, if applicable. Data shall be provided within sixty (60) days after the end of the Contract term, and the Contractor shall bear the cost of providing the reports.

- A. All Authorized User and Vehicle data acquired under the full term of the Contract to OGS, in a format, or formats, agreed upon by OGS and the Contractor
- B. If requested by an Authorized User, all of that Authorized User's data acquired under the full term of the Contract, in a format, or formats, agreed upon by the Authorized User and the Contractor; and
- C. Export of all Authorized User and Vehicle data acquired under the full term of the Contract to the replacement Contractor, in a format, or formats, agreed upon by OGS, the Contractor and the replacement Contractor.

## II.11 ADDITIONAL FLEET MAINTENANCE SERVICES (DESIRABLE)

The following Fleet Maintenance Services are desired by the State. Additional technical points shall be granted to a Bidder who provides evidence with their Bid of the ability to provide the following desirable services. Desirable Fleet Maintenance Services listed herein shall not be included in the Financial evaluation. See also Section II.12 *Excluded Fleet Maintenance Services*.

- A. Automotive Repair Shop Pricing. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of NYSPRO or an Authorized User, the Contractor shall provide, for no additional fee, a list of pricing that Automotive Repair Shops would ordinarily charge the public at large (e.g., "posted prices" to any customer walking in off the street), and pricing they charge for the same products and services if provided as part of the State Contract;
- B. Integration of Other New York State Contract Pricing. The Contractor shall have the ability for Authorized Users to receive contract pricing and benefits for Vehicle parts and services from other contracts held by OGS or Authorized Users, without the need for separate transactions, Purchase Orders, invoices, etc. The Contractor must honor the specific pricing from other NYS contracts and list the pricing/discount on the Fleet Maintenance Services Contract invoices. This service shall be provided for no additional fee. The State currently has the following contracts for Vehicle parts and services:
  1. OGS Group 30600, Award 21716, Tires and Related Services, (Goodyear Tire), <http://www.ogs.ny.gov/purchase/spg/awards/3060021716CAN.HTM>;
  2. OGS Group 30310, Award 22523, Automotive Parts and Supplies – Filters, (United Auto Supply of Syracuse West Inc. and Uni-Select USA Inc.), <http://www.ogs.ny.gov/purchase/spg/awards/3031022523CAN.HTM>;
  3. Towing/roadside assistance on limited access highways and bridges (e.g., New York State Thruway, and bridges and tunnels operated by the Metropolitan Transportation Authority).
- C. Fuel Card Services Integration. The Contractor shall provide the following integration of fuel card services contract data.
  1. OGS Contract. Integration with the OGS Statewide fuel card services program (OGS Group 79008, Award 22445, Fuel Card Services (WEX),

<http://www.ogs.ny.gov/purchase/snt/awardnotes/7900822445can.HTM>) to track Vehicle mileage and communicate mileage markers for Preventive Maintenance. The Contractor shall track Vehicle mileage status, via data that is either supplied by OGS, or directly from the fuel card services provider, for each Vehicle that participates in the OGS fuel card services contract that is also enrolled in a Monthly Enrollment Plan on the Fleet Maintenance Services Contract. The Contractor shall contact Authorized Users (via the Fleet Manager, or other individual as directed by the Authorized User) via email within forty-eight (48) hours of notification to the Contractor that a mileage marker for Preventive Maintenance Service has been reached, and provide notification that a Vehicle has reached or exceeded the Preventive Maintenance mileage marker. The cost of this service may be included in the Monthly Enrollment Plans fee; and

2. Authorized User Contracts. The Contractor, at the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, shall provide integration of Authorized User fuel card services contracts. Authorized User fuel card services data shall be provided to the Contractor via either the Authorized User or directly from the fuel card services provider. Required services to be provided in relation to such integration, and pricing, shall be mutually agreed upon between the Authorized User and the Contractor before implementation of the integration.
- D. Telematics. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of a Fleet Manager, the Contractor shall provide a Vehicle tracking system capable of monitoring the location, movements, status and behavior of Authorized User Vehicles. The Contractor shall offer a discount from MSRP for the Vehicle tracking system devices and related services, and list the discounts in the Contract;
- E. Telematics/GPS Data Capture. The Contractor, at the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, shall provide integration of telematics/GPS data for individual Authorized User accounts. Integration shall be provided for individual Authorized User contracts. Authorized User telematics/GPS data shall be provided to the Contractor via either the Authorized User or directly from the telematics/GPS provider. Required services to be provided in relation to such integration, and pricing, shall be mutually agreed upon between the Authorized User and the Contractor before implementation of the integration.
- F. Internal Shop Data Storage. At the written (including, but not limited to mailed letter, facsimile, email, or electronic entry at the Contract website), request of an Authorized User, the Contractor shall designate the Authorized User-owned maintenance and repair facility(ies) as an Automotive Repair Shop for use with the Contract, so that Authorized Users may utilize data storage services for these facilities in conjunction with the Contract. Contractor shall provide Authorized Users who utilize this service with data capture or record keeping of Vehicle maintenance and repairs provided at these Authorized User-owned maintenance and repair facilities, with data entered by the Authorized User. There may be a monthly rate per Vehicle enrolled for this service, or the Contractor may allow an Authorized User to enter repair/service history and other Vehicle data for no additional fee for this data tracking. Participation in this program by Authorized Users shall be voluntary, and these Vehicles shall not participate in the Preventive Maintenance program offered by the Contractor. This service shall be identified on the Authorized User's monthly invoice as "Data Storage Service." Participating Authorized Users with Authorized User-owned maintenance and repair facilities will manage their own parts inventory, mechanic productivity, overhead, etc.
- G. Internal Shop Management System. The Contractor shall offer software, or an internet-based system, that an Authorized User may use to track Vehicle maintenance and repairs performed at an Authorized User-owned Automotive Repair Shop. The internal shop management system should include data capture, reporting and scheduling capabilities. The Contractor may charge a monthly fee, and/or other fees that are invoiced in the Contractor's usual course of business, for use of the internal shop management system. See also Section II.7 *Data Import and Export (Mandatory)*, Paragraph D, Subparagraph 3 *Internal Shop Management Data File*;

- H. Driver Training Services. The Contractor shall offer driver training services (e.g., safety programs, online driver training programs, defensive driving courses, and post-accident awareness). The Contractor shall specify the courses offered, the certification(s) that a participant will receive at the end of the course, and the applicable fees for such programs, in the Contract. Reimbursement to the Contractor for travel, meals and lodging expenses for in-person training conducted by Contractor employees who do not reside in the local commuting area for the work site, shall be made in accordance with the State's Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.
- I. Driver Risk Assessment. The Contractor shall have a program for providing the Fleet Manager, if requested in writing, with a driver risk assessment report and recommending specialized online training, based on a comprehensive risk assessment (including, but not limited to, driver behavior, performed by the Contractor, of driver behavior, incident types, Vehicle and job function. The Contractor may charge a per-driver fee for this service;
- J. Bidder-Proposed Fleet Maintenance Services and Products. The Contractor may offer additional Fleet Maintenance Services and Products not specified herein, with prior approval from OGS. Information on additional proposed services and Product may be included with the Bidder's Bid, and will be considered for inclusion in the resultant contract. Additional services shall only receive approval if determined, at the sole discretion of OGS, that such services or Product fall under the scope of Fleet Maintenance Services as defined herein. Additional services or Product proposed after Contract execution may be submitted in accordance with Section III.22 *Centralized Contract Modifications*,

## II.12 EXCLUDED FLEET MAINTENANCE SERVICES

The following Fleet Maintenance Services are excluded from the scope of this solicitation and the resultant contract. The State reserves the right to exclude additional services not listed herein.

- A. Credit Card Services. The ability for an Authorized User to acquire Product or services via the addition of credit card services to the Vehicle identification card provided to Authorized Users (see Section II.8 *Fleet Vehicle Identification Card (Mandatory)*), or with any other Fleet Maintenance Service provided under the contract;
- B. Vehicle Rental. Coordinating with a Vehicle rental service, or providing the actual Vehicle rental service, for an Authorized User while a Vehicle is undergoing maintenance or repair at an Automotive Repair Shop; and
- C. Auction Services. Facilitating auctions or providing other auction-related services, for decommissioned Authorized User Vehicles.

## SECTION III: GENERAL TERMS AND CONDITIONS

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

### III.1 APPENDIX A

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.**

### III.2 APPENDIX B

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 to OGS as part of the Bid submission.**

### III.2.1 APPENDIX B MODIFICATIONS

The following Appendix B clause is hereby modified for the purposes of this solicitation:

A. Section 23, *Tie Bids*, is deleted and replaced with the following language:

In the event two Bids are found to be substantially equivalent, the lowest Total Financial Bid (Monthly) for Tier #2 on Attachment 4: *Financial Submittal, Section C Price Sheet (Monthly)*, 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.

B. Section 64, *Disputes* is deleted and replaced with the following language:

**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. Interested parties shall only file formal written disputes in accordance with the provisions of this section. The Dispute Resolution Procedures for Vendors located on the OGS website (www.ogs.ny.gov) shall not apply.
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 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 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.
- c. 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.
- d. 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.
- e. 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.
- f. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

## **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 (NYSPPro) at the following address:

### **New York State Office of General Services**

**Director, NYSPPro**

38th Floor, Corning Tower

Empire State Plaza

Albany, NY 12242

Facsimile: (518) 474-2437

Disputes concerning a solicitation shall be filed by an Interested Party (see b(1)(c)) 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 document shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

Disputes concerning a pending or awarded contract must be filed within ten (10) business days by an Interested Party (see b(1)(d)) after the disputing party knows or should have known of the facts which form the basis of the dispute; however, a dispute may not be filed later than 10 days after issuance of the award.

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by an Interested Party (see b(1)(e)) after the Authorized User and the Interested Party (see b(1)(e) fails to reach resolution through the Informal Dispute Resolution Process as set forth in paragraphs 2 through 5 of subdivision (a) of this section.

#### **4. Agency Response**

- a. 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.
- b. 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.
- c. 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.
- d. OGS reserves the right to consider or reject the merits of any 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 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) 474-2437

- 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.

f. 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.

### III.3 CONFLICT OF TERMS

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

- A. Appendix A, *Standard Clauses for New York State Contracts*;
- B. The Request for Proposals;
- C. Appendix B, *General Specifications*; and
- D. Other Appendices and attachments as deemed necessary.

### III.4 RESERVATION OF RIGHTS

New York State hereby reserves the right to:

- A. Reject any or all proposals received in response to this RFP;
- B. Withdraw the RFP at any time, at the Agency's sole discretion;
- C. Make an award under the RFP in whole or in part;
- D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
- E. Seek clarifications and revisions of proposals;
- F. Prior to the Bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Prior to the Bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the proposals received;
- L. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration.
- M. Negotiate with the Bidder responding to this RFP within the RFP requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' proposals;
- N. 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;
- O. Should the State of New York be unsuccessful in negotiating a Contract with the selected Contractor within 90 days of Contract award, the State may begin Contract negotiations with the next best value Bidder in order to serve the best interests of the State of New York;
- P. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the RFP requirements;
- Q. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of ninety (90) calendar days from the Bid opening; and
- R. Use proposal information obtained through site visits, management interviews, and the state's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP.

### III.5 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/Bidder during the procurement process. An Offerer/Bidder is

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

[http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp).

### **III.6 MERCURY ADDED CONSUMER PRODUCTS**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

### **III.7 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://ogs.ny.gov/EO/4/Default.asp>. The Executive Order No. 4 specification for lubricating oil, high detergent, adopted in February 2009, for example, specifies that where lubricating oil with post-consumer material content is available at a competitive cost and meets the entity’s form, function and utility requirements, all affected state entities shall, to the maximum extent practicable, purchase lubricating oil that meets or exceeds a minimum percentage of post-consumer material content by weight of 55 percent. 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.

### **III.8 NEW YORK STATE VENDOR FILE REGISTRATION**

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) and any designated authorized resellers who 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 resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the Vendor File, Bidder must enter its ten-digit Vendor ID on the first page of the solicitation. Authorized resellers already registered should list the ten-digit Vendor ID along with authorized reseller information.

If the Bidder is not currently registered in the Vendor File, Bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of your Bid. Please send this document to the Designated Contact in the solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) should be completed by each designated authorized reseller and submitted to OGS. The OGS will initiate the vendor registration process for all Bidders and their authorized resellers. Once the process is initiated, registrants will receive an email 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/](http://www.osc.state.ny.us/vendor_management/).

### **III.9 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 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](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](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

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

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

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.

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 her designee at the Contractor’s expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS 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.

### **III.10 TAX LAW §5-A**

Section 5-a of the Tax Law requires certain contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to the 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 Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with NYS Department of Taxation and Finance (DTF). Note: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](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. 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](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 website at: <http://www.tax.ny.gov/>.

### III.11 PROCUREMENT INSTRUCTIONS

The following procurement instructions shall apply to the resultant contract.

- A. An Authorized User will review the Fleet Maintenance Services and associated pricing listed on the OGS website under the resultant Contract Award. OGS reserves the right to add additional procurement instructions on the OGS website, in addition to the general instructions contained in this RFP.
- B. An Authorized User shall seek to engage the services of the Contractor by submitting a request to the Contractor by means of the contact information provided in Attachment 2: *Administrative Submittal (Electronic)*, Section B: *General Questions*, or other acceptable means established between the Contractor and OGS. At a minimum, the request shall consist of:
  1. Contract number;
  2. Contractor name;
  3. Authorized User name and contact information; and
  4. A description of the Fleet Maintenance Services that will be required.
- C. When utilizing the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - A statement of need and associated requirements;
  - Obtaining all necessary prior approvals;
  - A summary of the Contract alternatives considered for the purchase, if any; and

- The reason(s) supporting the resulting purchase.

D. An Authorized User reserves the right to secure through separate procurement methods all or part of the Fleet Maintenance Services from any other contract sources.

### **III.12 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS**

New York State political subdivisions and others authorized by New York State law may participate in centralized contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B §27 *Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish Contractors 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 NYSPRO Customer Services at 518-474-6717.

### **III.13 EXTENSION OF USE**

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

### **III.14 EXTENSION OF USE COMMITMENT**

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section III.13 *Extension of Use*) which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

Any unilateral limitations/restrictions imposed by the Contractor on eligible Authorized Users will be grounds for rejection of the Bid or cancellation of the Contract.

### **III.15 CONTRACT PERIOD AND RENEWALS**

The Contract(s) shall commence after all necessary approvals by the parties, and shall become effective upon Contract execution by OGS. The Contract(s) shall be in effect for three (3) years, unless terminated in accordance with the contractual provisions. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional one (1) year terms. The Contract renewal may be exercised on a month to month basis such as an additional three month, six month, twelve month, or 24 month period.

#### **III.15.1 SHORT TERM EXTENSION**

In the event a 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 (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

### **III.16 POOR PERFORMANCE**

Authorized Users should notify NYSPRO Customer Services promptly if the Contractor fails to meet the requirements of the contracts resulting from this solicitation. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services  
New York State Procurement  
Customer Services  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242

Tel: 518-474-6717  
Fax: 518-474-2437  
Email: customer.services@ogs.ny.gov

### **III.17 CONTRACT ADVERTISING**

In addition to the requirements set forth in Appendix B §13 *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by NYSPro prior to issuance.

### **III.18 OVERLAPPING CONTRACT ITEMS**

Products/services 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.

### **III.19 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES**

#### **POLICY STATEMENT**

The New York State Office of General Services (OGS), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("the Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. 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 ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

#### **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

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

Bidder further agrees to submit with the bid a staffing plan 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 the Authorized User, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)**

For purposes of this procurement, OGS hereby establishes a goal of 10% for Minority-owned Business Enterprises (MBE) participation and 10% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total Contract MWBE goal of 20%. 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.newnycontracts.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 MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OGS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

- A. Bidders are required to submit a Utilization Plan on Form MWBE 100 with their bid or proposal. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State Contract, a description of the Commercially Useful Function the Contractor intends the MWBE to perform to meet the

goals on the State Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE 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 MWBEs after the Contract Award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

- B. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (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 of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. OGS may disqualify a Bidder as being non-responsive under the following circumstances:
  - 1. If a Bidder fails to submit a MWBE Utilization Plan;
  - 2. If a Bidder fails to submit a written remedy to a notice of deficiency;
  - 3. If a Bidder fails to submit a request for waiver; or
  - 4. 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.

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

**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.

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

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

### III.20 NEW YORK STATE REQUIRED CERTIFICATIONS

A Bidder is required to submit the signed New York State Required Certifications (Attachment 1: *Administrative Submittal (Paper)*, Section B: *New York State Required Certifications*). Failure to submit this document may result in a Bid being considered non-responsive and may result in a Bid being rejected.

### III.21 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. Contractor shall 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 any Contract resulting from this solicitation, 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. Also see Attachment 1: *Administrative Submittal (Paper)*, Section B: *New York State Required Certifications*.

### III.22 CENTRALIZED CONTRACT MODIFICATIONS

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. "Amendments" are any 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. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor, shall be processed in accordance with Attachment 9: *Contract Modification Procedure*. The Contractor shall submit all requests in the form and format contained in Attachment 9: *Contract Modification Procedure*.

The form contained within Attachment 9: *Contract Modification Procedure* is subject to change at the sole discretion of OGS.

- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B §28 *Modification of Contract Terms*.

### III.23 PRICE CHANGES

The Monthly Enrollment Plans and Per Occurrence Plans administrative fees set forth in Attachment 4: *Financial Submittal* shall not increase during the Contract term, except for the percentage (%) of the dollar amount recovered for Accident Management (Subrogation Only), which shall not decrease.

The NYS Contract Price for Fleet Maintenance Services and Products set forth in Attachment 4: *Financial Submittal*, Section E *Price Sheet (Other)*, if offered, shall not increase without the prior approval of OGS. In order to

request an increase in the NYS Contract Price, or a decrease in discount, a Contractor shall follow the procedures outlined in Section III.22 *Centralized Contract Modifications*.

Contractor may decrease administrative fees or the NYS Contract Price, or increase the Contract discounts offered at any time for Fleet Maintenance Services offered, without prior approval by OGS, provided that OGS be notified at the time of the price or discount change. Such notification shall be made by submittal of the form contained within Attachment 9: *Contract Modification Procedure*.

### **III.24 PERFORMANCE AND BID BONDS**

There are no bonds required for the Contract resulting from this RFP. 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 the resulting Contract.

### **III.25 WEB ACCESSABILITY**

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 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

### **III.26 DATA OWNERSHIP**

Contractor must process all Authorized User data in accordance with the resulting contract and shall acquire no rights in the Authorized User data and shall not use or disclose the Authorized User data except as provided under the resulting contract or as required by law. Authorized User data means all data that is provided to or prepared on behalf of OGS or an Authorized User.

### **III.27 ADDITIONAL REQUIREMENTS**

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

### **III.28 CONTRACTOR'S ABILITY TO CONDUCT CREDIT EVALUATIONS**

A. State Agency. The Contractor is precluded from conducting credit evaluations for State Agencies.

B. Non-State Agency. The Contractor may conduct credit evaluations for Non-State Agencies intending to use the Contract and deny services to Non-State Agencies that do not meet the Bidder's standard commercial risk qualifications. The successful Contractor shall notify the Non-State Agency in writing that their use of the Contract has been denied based on an unsatisfactory credit rating.

## **SECTION IV: METHOD OF AWARD/EVALUATION PROCESS**

This section sets forth the method of award and evaluation process for the RFP.

### **IV.1 STATE EVALUATION PHILOSOPHY**

New York State evaluates Bids for products and services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Through this process the State identifies Bidders who will best meet its needs and will be the most cost effective. All proposals will be evaluated uniformly and consistently, ensuring that each Bidder has an equal opportunity to be considered. The evaluation process will be conducted as described in this section.

## IV.2 METHOD OF AWARD

It is the State's intent to award one (1) Contract for all Fleet Maintenance Services described herein. The Contract shall be awarded on the basis of Best Value to a responsive and responsible Bidder as described in Section IV.3 *Evaluation Process*. For the purposes of this RFP, Best Value shall be equated to the Bidder meeting or exceeding the minimum qualifications and mandatory technical requirements of this RFP with the highest Grand Total Score.

## IV.3 EVALUATION PROCESS

Proposals will consist of three (3) separate parts: Part 1: *Administrative*, Part 2: *Technical* and Part 3: *Financial*. Each part will be evaluated separately and independently in accordance with the RFP requirements. Below is an overview of the evaluation process for each part. Each part shall be weighted according to the chart below to arrive at the selection of the proposal that offers the best value to the State of New York.

EVALUATION CRITERIA	POINT VALUE (100 total points)	WEIGHT
<b>Part 1: <i>Administrative</i></b>	<b>0</b>	<b>Pass/Fail</b>
<b>Part 2: <i>Technical</i></b>	<b>30</b>	<b>30%</b>
<b>Part 3: <i>Financial</i></b>	<b>70</b>	<b>70%</b>

### IV.3.1 ADMINISTRATIVE EVALUATION

Part 1: *Administrative* is pass/fail and will consist of a proposal screening for completeness and conformance with stated requirements for proposal submission as set forth in Section V.5 *Part 1: Administrative*. Any proposal not meeting these requirements or deemed to be materially incomplete may be denied further consideration.

### IV.3.2 TECHNICAL EVALUATION

Part 2: *Technical* will be valued at thirty (30) points (30%) of the overall RFP evaluation. One and a half (1.5) points (5% of the 30 Technical evaluation points) shall be awarded to a Bidder who meets one of the following criteria, (**NOTE: Although a Bidder may meet more than one of the criteria, points shall be awarded for only one category, not multiple categories**):

- A. The Bidder is a New York State Certified Minority **and** Women-owned Business Enterprise (MWBE). listed in the directory of New York State Certified MWBEs on the RFP's due date, (see <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>, and Attachment 2: *Administrative Submittal (Electronic)*, Section B: *General Questions*);

OR

- B. The Bidder is a Small Business as defined in Executive Law Section 310(20) (SBE), (see Attachment 1: *Administrative Submittal (Paper)*, Section B: *New York State Required Certifications*, and Attachment 2: *Administrative Submittal (Electronic)*, Section B: *General Questions*).

In addition, for the remaining points, the Technical evaluation will be based on the Bidder's ability to meet all mandatory requirements identified in the RFP as well as the ability to provide services identified as desired, as set forth by the Bidder in Attachment 3: *Technical Submittal*, Section B: *Bidder Response to Technical Requirements*. Any proposal not meeting the Mandatory requirements or deemed to be materially incomplete may be denied further consideration

OGS will use a technical evaluation committee and a technical evaluation packet (including guidelines and score sheets), established prior to the Bid opening, to conduct a technical evaluation of Part 2: *Technical*, and arrive at a Total Technical Score for each Bidder. The technical evaluation committee will be comprised of State employees representing Fleet Maintenance Services users and OGS. A representative of NYSPRO shall act as chairperson of the committee. The technical evaluation committee will not have access to the Financial Submittals prior to the completion of evaluation of all Technical Submittals and final scoring. The technical evaluation committee scoring will be conducted in the following manner:

- A. Each technical evaluation committee member will use separate score sheets and separately score the technical submittal of each of the Bid proposals.
- B. The technical evaluation committee will then tabulate and average those scores.

The technical evaluation committee shall document for the record the points awarded to each proposal and the specific reasons and rationale for awarding of such points and will develop a single narrative description of this process.

### IV.3.3 FINANCIAL EVALUATION

Part 3: *Financial* will be valued at seventy (70 points (70%) of the overall RFP evaluation. OGS will review the cost for each Mandatory service identified by the Bidder in Attachment 4: *Financial Submittal, Section C, Price Sheet (Monthly)*, and Attachment 4: *Financial Submittal, Section D, Price Sheet (Per Occurrence)*, then complete mathematical calculations using the Total Financial Bid (Monthly) and Total Financial Bid (Per Occurrence) for each administrative fee tier to determine the number of points to be awarded each Bidder. The State reserves the right to weigh each of the administrative fee tiers as it deems appropriate.

### IV.4 PROPOSAL RANKING

The Grand Total Score for each of the Bidders will be totaled and the Bidder having the highest score will be ranked number one; and, the Bidder with the second highest total will be ranked number two, and so on. The responsive and responsible Bidder with the highest total will be selected for contract award.

### IV.5 COST PROPOSAL REVISION

Prior to award, the State reserves the right to request a cost proposal revision, in accordance with State Finance Law §163(9)(c), from any Bidder determined by the State to be susceptible of being selected for contract award. For purposes of this RFP, “susceptible of being selected for contract award” shall mean the responsive Bidders that have the ~~lowest-highest~~ two (2) Grand Total Score. Any Bidder that is determined by the State to be insusceptible of being selected for contract award will receive no further consideration for award, and will not be asked to participate in the cost proposal revision process.

All Bidders are encouraged to propose the best possible offers at the onset of the initial Bid as there is no guarantee that any proposal will be allowed an opportunity to submit a revised cost proposal. Bidders are also advised that partially participating in the cost proposal revision process, or not participating at all, may result in a change in the Bidder’s rank if other Bidders choose to reduce pricing in the cost proposal revision process.

A Bidder who is selected to participate in a cost proposal revision process must submit the Attachment 4: *Financial Submittal* provided by NYSPRO, revised with the Bidder’s cost proposal revision, in accordance with the format described in Section V.7 Part 3: *Financial*, by the date required by NYSPRO in the cost proposal revision notice sent to the Bidder. The susceptible Bidder must also submit a notarized form provided by NYSPRO, by the date required, that certifies that the cost proposal revision has been submitted by an individual with the express authority to sign on behalf of the Bidder. The cost proposal revision process, including information sent to the Bidder and the Bidder’s submission of the revised Attachment 4: *Financial Submittal*, will be conducted via email to a susceptible Bidder’s designated point of contact, identified on Attachment 2: *Administrative Submittal (Electronic)*, Section B: *General Questions*, Question 8, unless otherwise instructed by NYSPRO. Information about the cost proposal revision process will be sent via email to susceptible Bidders prior to release of the cost proposal revision process, and susceptible Bidders will be given the opportunity to submit questions at that time. Answers to questions will be

provided to all susceptible Bidders. There will be no additional pre-Bid conference for the cost proposal revision process.

A cost proposal revision must be a lower price than the initial Bid. Bidders participating in the cost proposal revision process cannot add Fleet Maintenance Services that were not in the initial Bid, or remove Fleet Maintenance Services that were in the initial Bid. NYSPRO shall not consider a cost proposal revision for the following: (1) Fleet Maintenance Services not identified in the notice sent to the Bidder as being included in the cost proposal revision process; (2) where the cost proposal revision is higher than the initial Bid; or (3) for a Fleet Maintenance Services that was not included in the initial Bid. Pursuant to Appendix B §25 *Timeframe for Offers*, a Bid for an Item shall not be withdrawn during the cost proposal revision process.

The lowest Bid received for Total Financial Bid (Monthly) and Total Financial Bid (Per Occurrence) for each administrative fee tier included in the cost proposal revision process will be shared with participants in the cost proposal revision process. The company name of the Bidder with the lowest Bid will not be shared with participants in the cost proposal revision process.

Bids from susceptible Bidders participating in a cost proposal revision process will be reevaluated based on the results of the cost proposal revision process. If a susceptible Bidder participating in a cost proposal revision process does not respond to a cost proposal revision request for Fleet Maintenance Services it will be presumed that the susceptible Bidder elected not to participate in the cost proposal revision for the Fleet Maintenance Services and the susceptible Bidder will only be evaluated based on the pricing submitted in their initial Bid for the Fleet Maintenance Services or a prior revised Attachment 4: *Financial Submittal*, if there had been a previous cost proposal revision request in which the susceptible Bidder participated. Any susceptible Bidder who submits a revised Attachment 4: *Financial Submittal*, after the date required by NYSPRO in the cost proposal revision process notice sent to the susceptible Bidder, will only be evaluated based on the pricing submitted in their initial Bid, as applicable.

OGS reserves the right to conduct multiple rounds of the cost proposal revision process, if doing so is determined to be in the best interest of the State.

#### **IV.6 NOTIFICATION OF AWARD**

The successful Bidder shall be advised by OGS in accordance with Appendix B §26 *Contract Creation/Execution*. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder, who shall thereupon be obligated to execute a formal Contract. OGS also distributes email notification to registered Authorized Users announcing the resultant contract award(s). The email includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered Authorized Users. Authorized Users may register for the PNS at the following URL address: <http://ogs.ny.gov/PNS/default.asp> under classification code 25. All subsequent contract updates are also sent out via the PNS. Authorized Users of the contract submit purchase orders or other such order documents directly to the Contractor or reseller as appropriate. See Appendix B §32 *Purchase Orders*.

### **SECTION V: BID SUBMITTAL**

This section sets forth Bid submittal information and instructions for this solicitation. A Bidder must follow the instructions set forth below. The rules established for proposal content and format will be enforced and variations from the rules prescribed herein may subject the Bidder to disqualification.

#### **V.1 IMPORTANT NOTICE TO POTENTIAL BIDDERS**

A Bidder should take note of the following:

- A. Receipt of these Bid documents does not indicate that OGS NYSPRO 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 evaluation of Bid submissions compared to the specific requirements and qualifications contained in these Bid documents.

- B. To be considered responsive, a Bidder must submit a Bid that satisfies and addresses all requirements stated in this RFP. **EXCEPT AS OTHERWISE PROVIDED IN THIS RFP, A BID THAT FAILS TO CONFORM TO THE REQUIREMENTS OF THE RFP MAY BE CONSIDERED NON-RESPONSIVE AND MAY BE REJECTED.**
- C. The Commissioner of OGS will 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.
- D. If a Bidder wishes to make more than one Bid, such Bid(s) are to be submitted separately and are to be listed as "alternate" Bids. "Alternate" Bids must satisfy and address all requirements stated in this RFP, and will be evaluated as separate Bids.
- E. Portions of the successful Bidder's proposal and of this RFP shall be incorporated into a final Contract, with a separate document executed by the Contractor and OGS. Therefore, the proposal must be signed by a partner, corporate officer, or other person authorized to commit its firm to all provisions of the RFP and its proposal as submitted. Once the Contract resulting from this RFP is executed and approved, it will be posted on the OGS website.

## V.2 PROPOSAL FORMAT

A Bidder's proposal shall be organized in three (3) separate parts: Part 1: *Administrative*, Part 2: *Technical* and Part 3: *Financial* (collectively referred to herein as "Submissions"). Each part will be evaluated separately. All three (3) parts shall be sealed in separate envelopes/packages, and should be included in the same box/package delivered to OGS, which shall be labeled in accordance with Section V.10 *Bid Delivery*, and be received by the "Submission of Bid and Bid opening" time and date specified in Section I.7 *Key Events/Dates*. Each of the Submissions shall include the following:

- A. Each submission shall be separately bound and sealed and should be labeled, as applicable: ADMINISTRATIVE, TECHNICAL or FINANCIAL. The full, legal business name of the Bidder's organization(s) as well as the number and name of the RFP (i.e., RFP 22752, Group 72002 – Fleet Maintenance Services), should be labeled on the outside of each Submission envelope/package;
- B. Each Submission (i.e., Part 1: *Administrative*, Part 2: *Technical* and Part 3: *Financial*), shall include separately bound original paper documents, and a CD containing electronic files of the required documents specified below in Sections V.5 *Part 1: Administrative*, V.6 *Part 2: Technical* and V.7 *Part 3: Financial*. Paper documents shall include original signatures and notary, where applicable, and are to be submitted as described in Section V.3, *Submission of Paper Documents*. Electronic files are to be submitted as described in Section V.4, *Submission of Electronic Media*. The paper documents and electronic files for each Submission shall be sealed together in the same envelope/package;
- C. Part 1: *Administrative*, and Part 2: *Technical*, shall NOT include any Bidder pricing information that is either included in Part 3: *Financial*, (e.g., Attachment 4: *Financial Submittal*), or otherwise references Bidder company pricing. Inclusion of such pricing information, in paper or electronic form, in Part 1: *Administrative*, and/or Part 2: *Technical*, may result in disqualification of the proposal;
- D. Part 3: *Financial*, shall NOT include any documentation that is included in, or applicable to, Part 1: *Administrative*, and/or Part 2: *Technical*. Inclusion of such information, in paper or electronic form, in Part 3: *Financial*, may result in disqualification of the proposal;
- E. A Bidder is responsible for ensuring that the most recently updated version of all required documents has been submitted. Updated versions released after the initial Bid release date will be posted at <http://www.ogs.ny.gov/purchase/Biddocument/22752BID.ASP> and announced via the New York State Contract Reporter (see RFP Section I.6 *Inquiries/Issuing Office/Designated Contacts*). Failure to submit the most recently updated version of Attachment 3: *Technical Submittal* and Attachment 4: *Financial Submittal* shall result in rejection of the Bid.

- F. A Bidder should not submit RFP documents that are not identified as documents that should be submitted. For example, Appendix A and B are not listed as a required Submission for Part 1: *Administrative*, Part 2: *Technical*, or Part 3: *Financial*, and therefore do not need to be submitted;
- G. In the event that a Bidder submits all three (3) parts of the proposal bound together (in the case of paper documents), or on a single CD (in the case of electronic files), the OGS Administrative evaluator will attempt to separate the documents before the Technical and Financial parts are reviewed. If separation of the documents is not possible, the proposal may be deemed non-responsive and may be disqualified;
- H. In the event that there are any inconsistencies between paper documents and electronic files, the electronic version will be deemed controlling by OGS; and
- I. A Bidder may only submit amendments to a previously submitted Proposal(s) prior to the “Submission of Bid and Bid opening” time and date specified in Section I.7 *Key Events/Dates*. Any amended pages submitted by a Bidder to be incorporated into the Proposal shall show the date of the revision and indicate the portion of the page(s) being changed.

### V.3 SUBMISSION OF PAPER DOCUMENTS

As stated in Section V.2, *Proposal Format*, a Bidder shall submit separately bound original paper documents of the required documents specified below in Sections V.5 *Part 1: Administrative*, V.6 *Part 2: Technical* and V.7 *Part 3: Financial* for each Submission. Paper copies shall include original signatures and notary, where applicable. Proposals should be submitted bound in a binder or by some other method (e.g., through the use of a three-hole report cover). Spiral binding is not desired by the State.

### V.4 SUBMISSION OF ELECTRONIC MEDIA

As stated in Section V.2, *Proposal Format*, a Bidder shall submit electronic files of the required documents specified below in Sections V.5 *Part 1: Administrative*, V.6 *Part 2: Technical* and V.7 *Part 3: Financial* for each Submission. Electronic media files shall be submitted on CD-ROM in Windows Vista format or later versions. Where the term “CD” or “CD-ROM” is used, it shall be understood that any of the following electronic media may be used: CD-ROM, DVD or flash drive. Each CD-ROM must be labeled on the outside with: (1) Full legal business name of Bidder and (2) The RFP Number, as indicated on page one (1) of this RFP. Flash Drives may have identification information attached as opposed to being ‘labeled’. It is the Bidder’s responsibility to ensure that the documents submitted on CD are readable; Bidder is advised to verify that all submitted documents can be opened and viewed from the CD. If documents submitted on the CD are not readable, the Bid may be deemed non-responsive and be disqualified.

### V.5 PART 1: ADMINISTRATIVE

The following documents shall be submitted for Part 1: *Administrative*. A complete Part 1: *Administrative* consists of one (1) Submission of the required documents listed below. Multiple copies of the documents listed below are not required. Documents shall be provided either in paper form or on CD, as specified below.

- A. **The following documents are required in PAPER form**, as described in Section V.3 *Submission of Paper Documents*:
  1. Page #1 of the RFP (cover page), completed and with original ink signature;
  2. Page #2 of the RFP (acknowledgement page), completed and with original ink signature, and notarized;
  3. Attachment 1: *Administrative Submittal (Paper)*, Section A: *Cover Sheet & Acknowledgement*, completed and with original ink signatures, and notarized;
  4. Standard Vendor Responsibility Questionnaire (SVRQ), as described in Section III.9 *New York State Vendor Responsibility Questionnaire for Profit Business Entity*. Bidder should provide either a print-out of the online certification page (if completed and certified online), or submit a paper version of the SVRQ, completed and with original ink signature and notary. Forms are available on the OSC website here: [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm);

5. NY State Taxation and Finance form ST-220-CA (available for download from the Tax Department website here: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), as described in Section III.10 *Tax Law §5-A*, completed and with original ink signature, and notarized. **Note: The ST-220-TD (available for download here: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)), completed and with original ink signature, and notarized, should be sent directly to the NYS Tax Department;**
  6. Form EEO-100, as described in Section III.19 *Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises*, completed and with original ink signature, and notarized. The form is available for download from the OGS website here: <http://www.ogs.ny.gov/MWBE/Docs/EEO100.docx>.
  7. Proof of compliance with NYS Workers Compensation (e.g, NYS form C-105-2) and Disability (e.g. NYS form DB-120.1) insurance requirements, as specified in Attachment 5: *Insurance Requirements*. Forms are available on the Workers' Compensation Board website here: <http://www.wcb.ny.gov>.
  8. Proof of compliance, (i.e., ACORD Certificate of Liability Insurance and endorsements), with other insurance requirements (e.g., general liability and business automobile liability) as specified in Attachment 5: *Insurance Requirements*.
  9. Attachment 1: *Administrative Submittal (Paper)*, Section B: *New York State Required Certifications*, with original ink signature; and
  10. Attachment 1: *Administrative Submittal (Paper)*, Section C: *Encouraging Use of New York State Businesses*, completed.
  11. Form MWBE 100, as described in Section III.19 *Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises*, completed and with original ink signature, and notarized. The form is available for download from the OGS website here: <http://www.ogs.ny.gov/MWBE/Docs/MWBE100.docx>.
- B. **The following documents are required in ELECTRONIC form on CD**, as described in Section V.4 *Submission of Electronic Media*. **Note: Submit Attachment 2: Administrative Submittal (Electronic) in Excel format, version 2003 or newer. Do not submit a PDF version of this document. Do not split the individual tabs contained in Attachment 2: Administrative Submittal (Electronic) into separate Excel documents for submittal.**
1. Attachment 2: *Administrative Submittal (Electronic)*, Section A: *Bid Submittal Checklist*, completed;
  2. Attachment 2: *Administrative Submittal (Electronic)*, Section B: *General Questions*, completed; and
  3. Attachment 2: *Administrative Submittal (Electronic)*, Section C: *References*, completed.
- C. **Bidders are required to submit the documents in subparagraphs 1 through 3 of Paragraph A above, in the paper form, as described in Section V.3 *Submission of Paper Documents*, by the “Submission of Bid and Bid opening” time and date specified in Section I.7 *Key Events/Dates*. Failure to do so may render the Bid non-responsive and the Bid may be disqualified.**
- D. Bidders are requested to submit the documents in subparagraphs 4 through 10 of Paragraph A above, and subparagraphs 1 through 3 of Paragraph B above by the “Submission of Bid and Bid opening” time and date specified in Section I.7 *Key Events/Dates*. If Bidder does not submit any of these documents by “Submission of Bid and Bid opening” time, Bidder is required to submit the documents upon NYSPRO’s written request for such document(s), within the timeframe specified by NYSPRO in the request. Failure to timely submit such documents will delay review of the Bid and award of the resultant contract, and may render the Bid non-responsive and result in the disqualification of the Bid.

## V.6 PART 2: TECHNICAL

The following documents shall be submitted for Part 2: *Technical*. All referenced forms are included in Attachment 3: *Technical Submittal*. A complete Part 2: *Technical* consists of the required documents listed below. Only one

submission of each document is required. Documents shall be provided either in paper form or on CD, as specified below.

- A. The following document is required in paper form, as described in Section V.3 *Submission of Paper Documents*: Attachment 3: *Technical Submittal*, Section A: *Cover Sheet & Acknowledgement*, completed and with original ink signatures, and notarized.
- B. The following document is required in electronic form on CD, as described in Section V.4 *Submission of Electronic Media*: Attachment 3: *Technical Submittal*, Section B: *Bidder Response to Technical Requirements*, completed. **Note: Failure to submit the most recently updated version of Attachment 3: Technical Submittal shall result in rejection of the Bid (see Section V.2 Proposal Format, Paragraph E).**
- C. **Bidders are required to submit the document in Paragraph A above in paper form, as described in Section V.3 *Submission of Paper Documents* by the “Submission of Bid and Bid opening” time and date specified in Section I.7, *Key Events/Dates*. Failure to do so may render the Bid non-responsive and the Bid may be disqualified.**
- D. **Bidders are required to submit the document in Paragraph B above in electronic form, as described in Section V.4 *Submission of Electronic Media*, by the “Submission of Bid and Bid opening” time and date specified in Section I.7, *Key Events/Dates*. Failure to do so will render the Bid non-responsive and the Bid shall be disqualified.**

## V.7 PART 3: FINANCIAL

The following documents shall be submitted for Part 3: *Financial*. All referenced forms are included in Attachment 4: *Financial Submittal*. A complete Part 3: *Financial* consists of the required documents listed below. Only one submission of each document is required. Documents shall be provided either in paper form or on CD, as specified below.

- A. The following document is required in paper form, as described in Section V.3 *Submission of Paper Documents*: Attachment 4: *Financial Submittal*, Section A, *Cover Sheet & Acknowledgement*, completed and with original ink signatures, and notarized.
- B. The following documents are required in electronic form on CD, as described in Section V.4 *Submission of Electronic Media*. **Note: Do not split the individual tabs contained in Attachment 4: Financial Submittal, into separate Excel documents for submittal. Failure to submit the most recently updated version of Attachment 4: Financial Submittal shall result in rejection of the Bid (see Section V.2 Proposal Format, Paragraph E).**
  - 1. Attachment 4: *Financial Submittal*, Section C, *Price Sheet (Monthly)*, completed;
  - 2. Attachment 4: *Financial Submittal*, Section D, *Price Sheet (Per Occurrence)*, completed; and
  - 3. Attachment 4: *Financial Submittal*, Section E, *Price Sheet (Other)*, completed if applicable.
- C. **Bidders are required to submit the document in Paragraph A above in paper form, as described in Section V.3 *Submission of Paper Documents* by the “Submission of Bid and Bid opening” time and date specified in Section I.7 *Key Events/Dates*. Failure to do so may render the Bid non-responsive and the Bid may be disqualified.**
- D. **Bidders are required to submit the documents in Paragraph B above in electronic form, as described in Section V.4 *Submission of Electronic Media*, by the “Submission of Bid and Bid opening” time and date specified in Section I.7 *Key Events/Dates*. Failure to do so will render the Bid non-responsive and the Bid shall be disqualified.**

## V.8 BID DEVIATIONS/MINOR TECHNICALITY

If your Bid differs from the specifications explain such deviation(s) or qualification(s); and if necessary, attach a separate sheet. See Appendix B §8 *Extraneous Terms*.

The State reserves the right to have the flexibility to consider Bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the solicitation. This

flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a Contract is threatened due to a minor technicality or a minor deviation.

## **V.9 VENDOR RESPONSIBILITY ON ACCURACY**

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submittal, as requests for Bid withdrawals of any type are not likely to be granted. All exceptions and deviations must be noted in Bids, otherwise the Bid will be considered in full compliance with requirements and no adjustments may be made after award is issued. Bidders should maintain complete and accurate calculation worksheets in the preparation of their Bids which clearly support their submissions.

## **V.10 BID DELIVERY**

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. LATE BIDS shall be considered in accordance with Appendix B §6 *Late Bids Rejected*. Email Bid submissions for items required at the time of Bid opening are not acceptable and shall not be considered.

### **Bid envelopes and packages**

An envelope and/or package containing a Bid shall be clearly marked "**BID ENCLOSED**" and must state the **Bid Number, Bid Opening Date, and Time**. Failure to complete all information on the Bid envelope and/or packages may necessitate the premature opening of the Bid and may compromise confidentiality. See Appendix B §5 *Bid Submission*. Bids shall be delivered to:

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

### **FAX transmittals**

Facsimile transmittals are NOT acceptable for this solicitation.

### **Hand deliveries**

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

## **V.11 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 NYSPRO receptionist at 518-474-6262 at least 24 hours prior to the Bid submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the NYSPRO Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver Bids or conduct NYSPRO business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. Note: Bids not received within NYSPRO, or the OGS Mailroom, by the time and date shown on the front page of the Bid document will be considered late.

## **V.12 ELECTRONIC BID OPENING RESULTS**

New York State Procurement (NYSPro) posts Bid results on the OGS/NYSPro web page. The web page makes available Bids (i.e.: photocopies of the Bid cover page) received by NYSPro for scheduled Bid openings. Previously only available through Freedom of Information, 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>

### **V.13 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 pre-award debriefing should be requested in writing within thirty (30) calendar days of notification of non-award, and post-award debriefing should be requested in writing within thirty (30) calendar days of posting of the Contract award on the OGS website.

**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](mailto: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](mailto: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.

**APPENDIX B**  
**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:

**i. 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  
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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, JUNE 2014

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  
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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.nv.us](http://www.osc.state.nv.us), by e-mail at [HelpDesk@sfs.nv.gov](mailto:HelpDesk@sfs.nv.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, uncured 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  
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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, JUNE 2014

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](http://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 JUNE 2014

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 JUNE 2014

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 JUNE 2014

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 JUNE 2014

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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