



# Invitation For Bids

**IMPORTANT: SEE “NOTICE TO BIDDERS” CLAUSES HEREIN  
BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY  
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

<b>BID OPENING:</b> <b>DATE:</b> 02/23/16 <b>TIME:</b> 11:00 AM	<b>TITLE: Group 31503 – BITUMINOUS CONCRETE HOT MIX ASPHALT - VPP (2016 NYSDOT Specific Projects) (Federal &amp; State Funds) Classification Codes: 30</b>	
<b>INVITATION FOR BIDS NO:</b> <b>23003</b>	<b>SPECIFICATION REFERENCE:</b> SPEC-934 dated October 8, 2015 (Supersedes SPEC-932 dated September 8, 2014); and as amended in the IFB	
<b>CONTRACT PERIOD: April 1, 2016 to December 31, 2016</b>		
<b>DESIGNATED CONTACTS:</b>		
<b>PRIMARY CONTACT: Jose DeAndres</b> <b>Phone: 518-474-3024 Email: <a href="mailto:jose.deandres@ogs.ny.gov">jose.deandres@ogs.ny.gov</a></b>		
<b>SECONDARY CONTACT</b> Joseph Hodder Ph.: 518-474-3668 <a href="mailto:joseph.hodder@ogs.ny.gov">joseph.hodder@ogs.ny.gov</a>	<b>SECONDARY CONTACT</b> Hasib Khan Ph.: 518-457-1572 <a href="mailto:hasibul.khan@dot.ny.gov">hasibul.khan@dot.ny.gov</a>	<b>TERTIARY CONTACT</b> Leighann Y Brown / Robert Marriott <a href="mailto:ogs.sm.insrev@ogs.ny.gov">ogs.sm.insrev@ogs.ny.gov</a>

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

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

<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 <i>(check all that apply):</i>		<input type="checkbox"/> NYS Small Business _____ #Employees	<input type="checkbox"/> Minority Owned Business <input type="checkbox"/> Women Owned Business
Legal Business Name of Company Bidding:			
D/B/A - Doing Business As (if applicable):			
Street	City	State	Zip County
If applicable, place an "x" in the appropriate box <i>(check all that apply):</i>		<input type="checkbox"/> Manufactured Within New York State	<input type="checkbox"/> Manufactured Outside New York State
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____.			
Bidder's Signature:		Printed or Typed Name:	
Title:		Date:	
Phone : ( ) - ext ( )	Toll Free Phone : ( ) - ext ( )		
Fax : ( ) - ext ( )	Toll Free Fax : ( ) - ext ( )		
E-mail Address:		Company Web Site:	

**FOR PROCUREMENT SERVICES USE ONLY**

P.R. # 23003	LIT <input type="checkbox"/>	MEMO <input type="checkbox"/>	LET <input type="checkbox"/>	OTHER <input type="checkbox"/>	MISSING PAGES
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**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
: SS.:  
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 resides 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.

**Notary Public Signature** \_\_\_\_\_

**Notary Public**  
**Registration No.** \_\_\_\_\_

**State of** \_\_\_\_\_

## Table of Contents

APPENDICES AND ATTACHMENTS .....	7
Appendices .....	7
Attachments.....	7
SECTION 1: INTRODUCTION .....	8
1.1 Overview .....	8
1.2 Estimated Quantities.....	8
1.3 Key Events/Dates .....	8
1.4 Inquiries .....	9
1.4.1 Summary of Policy and Prohibitions on Procurement Lobbying .....	9
1.4.2 IFB Inquiries .....	9
1.5 Contract Reporter .....	9
SECTION 2: QUALIFICATIONS AND REQUIREMENTS .....	10
2.1 Qualification of Bidder.....	10
2.2 Financial Stability.....	10
2.3 Materials .....	10
SECTION 3: BID SUBMITTAL.....	11
3.1 Notice to Potential Bidders.....	11
3.2 Notice to Bidders.....	11
3.3 Bid Deviations .....	11
3.4 Responsiveness.....	11
3.5 Incorporation .....	11
3.6 Proposal Liability .....	11
3.7 Prevailing Wage Rates – State and Federally Funded Public Works Contracts .....	12
3.8 References .....	13
3.9 Electronic Bid Opening Results .....	13
3.10 Format and Content of Bid Submittal .....	14
3.11 Debriefing.....	16
3.12 New York State Procurement Services Rights.....	16
SECTION 4: METHOD OF AWARD .....	17
4.1 Method of Award .....	17
4.2 Product Requirements .....	17
SECTION 5: CONTRACT ADMINISTRATION.....	18
5.1 Contract Amendment Process .....	18

5.2 Contract Administrator .....18

SECTION 6: TERMS AND CONDITIONS .....19

6.1 Contract Term and Extension .....19

    6.1.1 Contract Term .....19

    6.1.2 Short Term Extension .....19

6.2 Disposition of Settlements.....19

6.3 Delivery .....19

    6.3.1 Delivery Ticket.....19

6.4 Quantity Received .....19

6.5 Pricing Information .....20

    6.5.1 General .....20

    6.5.2 Insurance .....20

6.6 Asphalt Price Adjustments .....21

    6.6.1 General .....21

    6.6.2 Asphalt Price Adjustment for Hot Mix Asphalt: Example .....23

    6.6.3 Asphalt Price Adjustment for Tack Coat: Example.....24

6.7 Payment .....25

6.8 Site Visit .....25

6.9 Report of Contract Purchases .....25

6.10 Appendix A .....26

6.11 Appendix B.....26

    6.11.1 Appendix B Amendments .....26

6.12 NYSDOT Standard Specifications .....27

6.13 NYSDOT Chapter 12 Appendices - "Package A" .....27

6.14 Mercury Added Consumer Products .....27

6.15 Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women .....28

    6.15.1 Policy Statement .....28

    6.15.2 General Provisions .....28

    6.15.3 Equal Employment Opportunity (EEO).....28

    6.15.4 Contract Goals.....29

6.16 New York State Vendor Responsibility Questionnaire For-Profit Business Entity.....30

6.17 New York State Vendor File Registration.....31

6.18 Tax Law §5-A .....31

---

6.19	Use of Recycled or Remanufactured Materials .....	32
6.20	Environmental Attributes and NYS Executive Order 4 .....	32
6.21	Emergency Purchasing .....	32
6.22	Poor Performance .....	32
6.23	New York State Required Certifications .....	32
6.24	Bulk Delivery and Alternate Packaging .....	33
6.25	New York State Financial System (SFS) .....	33
6.26	Surplus/Take-Back/Recycling .....	33
<b>SECTION 7: HOT MIX ASPHALT – (SPECIFIC CLAUSES) .....</b>		<b>34</b>
7.1	Material Descriptions .....	34
7.2	Pre-Paving Conference .....	34
7.3	Supervision .....	34
7.4	Work Hours .....	35
7.4.1	Special Note - Overtime Dispensation Requests .....	35
7.5	Restoration of Disturbed Areas .....	35
7.6	Tack Coat .....	35
7.6.1	Tack Coat Plant Number Requirements .....	35
7.7	Construction Details .....	35
7.8	Attention: Special Note - Conditioning .....	35
7.9	Work Zone Traffic Control .....	36
7.9.1	Special Note - Temporary Pavement Markings .....	38
7.9.2	Hot Mix Asphalt Overlay Splice (Rebate) .....	38
7.9.3	Special Note: Work Zone Intrusion Initiative .....	38
7.9.4	Temporary Rumble Strips .....	40
7.10	Contract Bonds .....	42
7.10.1	Labor and Material Bond .....	42
7.10.2	Labor and Material Bond Example .....	42
<b>SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS) .....</b>		<b>45</b>
8.1	Funding Source .....	45
8.2	Special Note - Coordination with Cold Recycling Projects .....	45
8.3	Special Note – PG Binder and Mix Design Level .....	45
8.3.1	PG 64S-22 .....	45
8.3.2	PG 64V-22 .....	46
8.3.3	PG 64H-22 .....	46

---

8.4	Special Note – Optional Use of Warm Mix Asphalt (WMA) Technologies .....	47
8.5	Special Note - Rail Road Involvement in Federal Funded Projects .....	48
SECTION 9: PROJECTS - SPECIAL NOTES (NYSDOT REGION 1) .....		49
9.1	Holiday Restrictions – Region 1 Projects.....	49
9.2	Pilot Vehicle – Region 1 Projects.....	49
9.3	Paving Operations – Region 1 Projects .....	49
9.4	Moisture Susceptibility Testing – Region 1 Projects .....	49
9.5	Paving Markings – Region 1 Projects .....	50
9.6	Non-Vibratory Rolling – Region 1 Projects.....	50
9.7	Project 1V1631 – Rt. 32 Greene County RM 1104 to 1155 .....	50
9.8	Project 1V1651 – Rt. 67 Saratoga County RM 1035 to 1097 .....	51
9.9	Project 1V1681- Rt. 40 Washington County RM 1222 to 1182 .....	51
SECTION 10: PROJECTS - SPECIAL NOTES (NYSDOT REGION 3) .....		52
10.1	Holiday Restrictions – Region 3 Projects.....	52
10.2	Project 360337 - Rte. 31; West village of Port Byron to Weedsport .....	52
10.3	Project 360338 - Rte. 38; Rte. 13/38 Intersection to Rte. 366 .....	52
10.4	Project 360339 - Rte. 13; Schuyler Co. Line to Trumbells Corners Rd Intersection.....	52
10.5	Project 360340 - Rte. 392, Rte. 11 to S. Hill Rd.....	52
10.6	Project 360341 - Rte. 41; Baker School House Rd. to East Village of McGraw .....	52
10.7	Project 360352 – Rte. 41A; Mandana to Rte. 20.....	53
SECTION 11: PROJECTS - SPECIAL NOTES (NYSDOT REGION 5) .....		54
11.1	General Special Notes – Region 5 Projects.....	54
11.2	Special Note for Hot Mix Asphalt – Region 5 Projects .....	54
11.3	Moisture Susceptibility Testing – Region 5 Projects .....	54
11.4	Dust (Minus 0.075 mm Aggregate) to Effective PG Binder Content Ratio – Region 5 Projects .....	54
11.5	Polymer Modified PG Binder – Region 5 Projects .....	54
11.6	Pavement Markings – Region 5 Projects .....	54
11.7	Time Restrictions – Region 5 Projects .....	54
11.8	Project 5V1547 .....	55
11.9	Project 5V1642.....	55
11.10	Project 5V1622.....	55
11.11	Project 5V1624.....	55
11.12	Project 5V1654.....	55
11.13	Project 5V1655.....	55

11.14 Project 5V1657 .....55

SECTION 12: PROJECTS - SPECIAL NOTES (NYSDOT REGION 6) .....56

12.1 Coordination with other Projects – Region 6 Projects .....56

12.2 Special Notes – Region 6 Projects .....56

12.3 HMA Overlay Splices (Rebates) – Region 6 Projects.....56

SECTION 13: PROJECTS - SPECIAL NOTES (NYSDOT REGION 7) .....57

13.1 Special Work Zone Traffic Control – Pilot Vehicle – Region 7 Projects .....57

13.2 Exposed Longitudinal Joints – Region 7 Projects.....57

13.3 Moisture Susceptibility Testing for Projects Requiring the Use of 64S-22 PGB – Region 7  
Projects.....57

13.4 Project 7V1631 (Rte. 177, Rodman to Lewis Co. Line) and Project 7V1633 (Rte. 37, Rte. 11 to  
Rte. 342).....58

SECTION 14: PROJECTS - SPECIAL NOTES (NYSDOT REGION 9) .....59

14.1 Project 903626 - Route 17B - VPP.....59

14.2 Project 9HW511 - Route 41 .....59

SECTION 15: SUPERPAVE HOT MIX ASPHALT .....60

15.1 Superpave Hot Mix Asphalt Design Criteria .....60

15.2 Project Dimensions.....62

15.3 Rebates Table .....64

APPENDIX A .....71

APPENDIX B .....6

APPENDIX C .....28

## APPENDICES AND ATTACHMENTS

### Appendices

- Appendix A - Standard Clauses for New York State Contracts (January 2014)
- Appendix B - General Specifications (May 2015)
- Appendix C – Contract Modification Procedure

### Attachments

- Attachment 01 –Price Pages**
- Attachment 02 - General Questions**
- Attachment 03 - New York State Required Certifications**
- Attachment 04 - Insurance Requirements
- Attachment 05 – Inquiries Template
- Attachment 06 – Service-Disabled Veteran-Owned Business (SDVOB)**
- Attachment 07 – Group Specifications #934
- Attachment 08 – NYSDOT Work Zone Traffic Control Drawings
- Attachment 09 - Chapter 12 - Appendices - “Package A” (May 2012)**

## SECTION 1: INTRODUCTION

### 1.1 Overview

This Invitation for Bids (IFB) outlines the terms and conditions, and all applicable information required for submitting a bid. A Bidder should pay strict attention to the bid opening 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 “*Format and Content of Bid Submittal*”.

Note, that this IFB is for specific NYS Department of Transportation projects ONLY. For other bidding opportunities, including centralized contracts for other State agencies or municipalities, please visit the OGS website or NYS Contract Reporter.

Detailed information on the procurement process is set forth in Section “*Method of Award*”.

Bituminous Concrete is a mixture of stone of various sizes and liquid material. The mixture is heated and proportioned in a bituminous concrete plant and compacted on a road in a heated state. Once the material cools, it becomes a hard durable material. Bituminous concrete is used for roads, parking lots, tennis courts, sidewalks, bike paths, and for patching same. This IFB and ensuing contract provide an avenue for preventive maintenance activities which ensure that highways and bridges meet or exceed their optimum useful life

### 1.2 Estimated Quantities

The quantities or dollar values listed in this IFB are estimated only. The Contracts resulting from this bid shall be estimated quantities Contracts.

The Contractor(s) must furnish all quantities or dollar values actually ordered. The individual value of each resultant Contract is indeterminate and will depend upon the competitiveness of the pricing offered. See Appendix B, Sections 29, *Estimated/Specific Quantity Contracts*.

Numerous factors could cause the actual value of the Contracts resulting from this IFB to vary substantially. Such factors include, but are not limited to, the following:

- The individual value of each Contract is indeterminate and will depend upon actual quantities ordered during the contract period; and,
- 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.

By submitting its Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the values provided in this IFB

### 1.3 Key Events/Dates

Event	Date	Time
IFB Release	01/28/2016	n/a
Closing Date for Inquiries	01/16/2016	3:00 PM ET
Posting Answers to Inquiries	01/17/2016 (tentative)	n/a
Submission of IFB and Bid Opening	02/23/2016	11:00 AM ET

## 1.4 Inquiries

### 1.4.1 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this IFB includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this IFB. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four (4) year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

### 1.4.2 IFB Inquiries

Bidders are encouraged to submit inquiries about the IFB at any point up to the closing date for inquires as listed in Section “*Key Events/Dates*”.

A Bidder should raise any potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements of this IFB during the inquiry period of the procurement. OGS will not entertain any exceptions to Appendix A. OGS will also not entertain exceptions to this IFB and Appendix B that are of a material and substantive nature.

A Bidder should note that all clarifications and exceptions including those relating to the terms and conditions of the Contract are to be resolved prior to the submission of a bid. Bids that contain material changes to the terms and conditions, specifications, and requirements set forth throughout this IFB may be disqualified as non-responsive.

All inquiries concerning this IFB should be submitted to the official e-mail address listed as the designated contact on the front page of this IFB using the template (“*Inquiries Template*”) by the date and time listed in Section “*Key Events/Dates*”. When e-mailing the *Inquiries Template* to the designated contacts, a Bidder should annotate the subject of its submissions as follows: “Inquiry for Bituminous Concrete – HMA DOT Spec Proj.’ IFB.”

Responses to all questions of a substantive nature will be provided electronically on the OGS website and released through the NYS Contract Reporter as a formal addendum which will become part of the ensuing Contract.

## 1.5 Contract Reporter

You must register with the New York State Contract Reporter (NYSCR) 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. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must choose the option “send me notification updates on this,” located in the lower right hand corner of the particular ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR. If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents. Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

## SECTION 2: QUALIFICATIONS AND REQUIREMENTS

### 2.1 Qualification of Bidder

Upon request a Bidder shall submit satisfactory evidence that it possesses sufficient previous experience, financial resources and organization to perform the type, magnitude, and quality of work specified herein.

No bid will be considered unless the bidder submitting same can meet the following conditions:

- a. Material furnished under these contracts shall be produced in an approved bituminous mixing plant meeting the requirements outlined in Section 401 of the NYSDOT Standard Specifications most current version and all current addenda at the time of bid opening. An approved plant shall be in operation at the location indicated by bidder herein within the twelve (12) month period prior to the bid opening date
- b. Bidder should indicate in their bids the plant locations and the approved NYSDOT Facility number(s) from which material will be supplied in the event of award for both, the hot mix asphalt and the tack coat.
- c. A Bidder must certify its commitment to obtain all necessary proof of insurance with its proposal via Attachment 02– *General Questions*. Upon tentative award, Bidder shall be required to procure all required insurance. If awarded a Contract, Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term if requested by OGS. See Attachment 04– *Insurance Requirements* for detailed insurance requirements.

A Bidder is advised that the State's intent in having the requirements listed above is to ensure that a responsive and responsible Bidder is awarded a Contract. OGS reserves the right to request any additional information regarding a Bidder's abilities, qualifications and procedures as it deems necessary to ensure safe and satisfactory performance under a Contract.

OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

Note: Failure by a Bidder to provide any of the above information as requested by OGS or to meet any of the above qualifications in whole or in part may result in a rejection of that Bidder's bid.

### 2.2 Financial Stability

If requested, bidder must document its ability to service a contract with dollar sales volume similar to scope of this bid through submission of financial statements documenting past sales history. The bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five business days. The State reserves the right to request additional documentation from the bidder and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any bidder who does not demonstrate financial stability sufficient for the scope of this bid.

### 2.3 Materials

Materials offered must be from a NYS Dept. of Transportation approved location. Materials offered from other than approved locations will not be considered for award and will be sufficient cause for rejection of all or part of a bid.

## SECTION 3: BID SUBMITTAL

### 3.1 Notice to Potential Bidders

Receipt of these bid documents does not indicate that OGS has pre-determined a company's qualifications to receive a Contract award. Such determination shall be made after the bid opening and shall be based on the evaluation of a bid submission compared to the specific requirements and qualifications contained in these bid documents.

### 3.2 Notice to Bidders

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

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.

### 3.3 Bid Deviations

In accordance with the requirements set forth in Appendix B, §6 *Extraneous Terms*, a Bidder shall explain any deviation(s) or qualification(s) in Attachment 02 – *General Questions*.

### 3.4 Responsiveness

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

### 3.5 Incorporation

Portions of the successful Bidder's proposal and of this IFB shall be incorporated into a final Contract. Therefore, the proposal must be signed by a partner, corporate officer, or other person authorized to commit the Bidder to all provisions of the IFB and the proposal as submitted.

### 3.6 Proposal Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a proposal or for any work performed prior to the formal execution of a Contract. Proposals must be received at the specified location on or before the date and time listed in Section "*Key Events/Dates*". Bidder assumes all risks for timely, properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date/time of the bid opening. Late bids shall be rejected except as provided in Appendix B, §5 *Late Bids* (as amended below in Section 6.12.1). E-mail or faxed bids are not acceptable and shall not be considered. The received time of proposals will be determined by OGS by the clock at the final receiving location.

Bids must remain open and valid for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the proposal in writing by Bidder. Tentative award of the Contract shall consist of written notice to that effect by OGS to a successful Bidder.

### 3.7 Prevailing Wage Rates – State and Federally Funded Public Works Contracts

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of bid, suspension or termination of Contract.

Any provisions of NYS Labor Law that are in conflict with mandatory Federal-Aid construction contract compliance requirements are superseded. Any provisions of NYS Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements or the Davis-Bacon Act but are more restrictive shall apply.

For bidding purposes, the applicable Prevailing Wage Rate Schedule for this solicitation is **PRC # 2015011922**

**IMPORTANT NOTE: NYSDOT will provide a separate PRC # for each purchase from this contract where prevailing wage rates apply. The PRC # provided in this bid is for information and evaluation purposes only.**

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:

<http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showIt>

For Prevailing Wage Updates, use the following DOL link:

<http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>

Links to schedule updates appear in the table at the bottom of the web page.

The Federal Wage Rate Charts are located on the web at <http://www.wdol.gov/dba.aspx>.

Referring to the next page's tables, enter the applicable WD# in the "Select DBA by number" field on the web page and click "Search".

#### Worker Notification

Labor Law § 220(3-a)(a)(ii) requires Contractors and subcontractors to provide written notice to all laborers, workers or mechanics of the *prevailing wage rate* for their particular job classification *on each pay stub*\*. It also requires Contractors and subcontractors to *post a notice* at the beginning of the performance of every public work Contract *on each job site* that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule, may be downloaded from [www.labor.state.ny.us](http://www.labor.state.ny.us) or made available upon request by contacting the Bureau of Public Work at 518-457-5589.

\* In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.

#### OSHA 10-Hour Construction Safety and Health Course

Labor Law § 220-h requires that on all public work contracts of at least \$250,000, all laborers, workers, and mechanics working on site be certified as having successfully completed the OSHA 10-hour construction safety and health course. It further requires that the advertised bids and contracts for every public work contract of at least \$250,000 contain a provision of the requirement AND only applies to workers on a public work project that are required under Article 8 to receive the prevailing wage.

Further information may be found at: [www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm](http://www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm)

#### Living Wage

An Authorized User subject to a local law establishing a "living wage", such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) as set forth in Appendices 7 through 13 – Price Pages is less than the local law "living wage," then the Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS contract.

**3.7 Prevailing Wage Rates – State and Federally Funded Public Works Contracts (Cont'd)**

COUNTY	WD #	COUNTY	WD #	COUNTY	WD #
Albany	HWY-NY2	Herkimer	HWY-NY31	Richmond	HWY-NY3
Allegany	HWY-NY47	Jefferson	HWY-NY9	Rockland	HWY-NY20
Bronx	HWY-NY3	Kings	HWY-NY3	Saratoga	HWY-NY2
Broome	HWY-NY4	Lewis	HWY-NY9	Schenectady	HWY-NY2
Cattaraugus	HWY-NY8	Livingston	HWY-NY30	Schoharie	HWY-NY2
Cayuga	HWY-NY36	Madison	HWY-NY15	Schuyler	HWY-NY5
Chautauqua	HWY-NY8	Monroe	HWY-NY10	Seneca	HWY-NY40
Chemung	HWY-NY5	Montgomery	HWY-NY2	St Lawrence	HWY-NY9
Chenango	HWY-NY4	Nassau	HWY-NY12	Steuben	HWY-NY18
Clinton	HWY-NY6	New York	HWY-NY3	Suffolk	HWY-NY12
Columbia	HWY-NY2	Niagara	HWY-NY11	Sullivan	HWY-NY7
Cortland	HWY-NY42	Oneida	HWY-NY14	Tioga	HWY-NY45
Delaware	HWY-NY21	Onondaga	HWY-NY16	Tompkins	HWY-NY24
Dutchess	HWY-NY7	Ontario	HWY-NY32	Ulster	HWY-NY7
Erie	HWY-NY8	Orange	HWY-NY7	Warren	HWY-NY39
Essex	HWY-NY6	Orleans	HWY-NY34	Washington	HWY-NY2
Franklin	HWY-NY35	Oswego	HWY-NY38	Wayne	HWY-NY44
Fulton	HWY-NY2	Otsego	HWY-NY37	Westchester	HWY-NY17
Genesee	HWY-NY29	Putnam	HWY-NY25	Wyoming	HWY-NY41
Greene	HWY-NY2	Queens	HWY-NY3	Yates	HWY-NY33
Hamilton	HWY-NY46	Rensselaer	HWY-NY2		

**3.8 References**

References are made herein to New York State Department of Transportation, Standard Specifications, Construction and Materials, most current version and all current addenda at the time of bid opening. A copy may be obtained through the Department’s publication unit. Call 518-457-2124 for information or use the following link:  
<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>.

**3.9 Electronic Bid Opening Results**

NYS OGS Procurement Services posts bid information on the OGS/Procurement Services web page. The web page makes available information about the list of Bidders that responded to this IFB. The Bid Opening Results Page is available at:  
<http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>

### 3.10 Format and Content of Bid Submittal

The following files pertain to this Invitation for Bids:

Name	Format
Invitation for Bids # 23003	PDF
Attachment 01 – Price Pages	Microsoft Excel
Attachment 02 – General Questions	Microsoft Excel
Attachment 03 – New York State Required Certifications	PDF
Attachment 04 – Insurance Requirements	PDF
Attachment 05 – Inquiries Template	PDF
Attachment 06 – Service-Disabled Veteran-Owned Business (SDVOB)	Microsoft Excel
Attachment 07 – Group Specifications #934	PDF
Attachment 08 – NYSDOT Work Zone Traffic Control Drawings	PDF
Attachment 09 – Chapter 12 - Appendices - “Package A”	PDF

It is recommended that the bidder open, review and save/download all electronic files to the bidder’s hard drive and/or to a secure back-up. Do not return copies of Appendix A and B with your bid. Please note that submitting a bid by fax or e-mail is not acceptable.

Only completed files (in the specified format) should be saved to portable electronic media.

**Bidder should note that any paper copy submission of Price Pages will be rejected. Only electronic copies of Price Pages will be accepted. Price pages in PDF format will also be rejected (see below).**

It is required that each Bidder submit the offering on portable electronic media (CD, DVD, memory stick, etc.; preferably in a USB memory stick) in accordance with the instructions below.

A complete bid proposal should consist of the following:

1. **Two (2) sets of portable electronic media 2 separate memory sticks (preferably), 2 separate CD’s or 2 separate DVD’s. Each of the two (2) memory sticks, CD’s or DVD’s to be sent should contain the following files:**
  - a. **Completed Price Pages**  
Any or all of the OGS Items (projects) that are being bid.  
These price pages must be saved to the portable electronic media in **Microsoft Excel format** and they must be sent as part of the bid proposal before the bid opening.  
**Important: Any price pages submitted in a different format than Excel will be rejected. Price pages in PDF format will also be rejected.**
  - b. **Completed Attachment 02 – General Questions (all tabs)**  
Attachment 02 – *General Questions* must be saved to the portable electronic media in **Microsoft Excel format**.  
**Important: Any Attachment 02 – General Questions submitted in a different format than Excel will be rejected and it will have to be submitted again as an Excel spreadsheet (Attachment 02 – General Questions in PDF format will also be rejected).**
2. **One (1) three-ring binder**  
The **three-ring binder** to be submitted should contain:
  - a. **Original pages 1 and 2 of the IFB with original ink signatures**  
**Originals are required. Copies will be rejected;**
  - b. **Completed Attachment 03 – New York State Required Certifications with original ink signatures**  
**Originals are required. Copies will be rejected;**
  - c. **Completed Attachment 06 – Service-Disabled Veteran-Owned Business (SDVOB)**  
This is a new attachment that should to be completed and submitted;
  - d. **Completed, notarized and signed Contractor Certification, ST-220-CA**  
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)  
**A signed and notarized original ST-220-CA form is required. Copies will be rejected;**  
  
(continues next page)

- e. **All necessary proof of insurance: General, Workers Compensation and Disability Insurance or Certification**  
A Bidder must either provide all required proofs of insurance or certify its commitment to obtain all necessary proof of insurance with its proposal via Attachment 02 – *General Questions*. Upon tentative award, Bidder shall be required to procure all required insurance. If awarded a Contract, Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term if requested by OGS. See Attachment 04 – *Insurance Requirements* for detailed insurance requirements;
- f. **Attachment 09 - “Chapter 12 - Appendices - Package A”**  
Pages 12.A.4, 12.A.5, 12.A.9, 12.A.10 and 12.A.11 of this attachment (if the project(s) that is/are being bid are Federal Funded projects).
3. **Completed Certified/Recertified New York State Vendor Responsibility Questionnaire (OSC website)**  
Note to Bidders: The bidder needs to have a **completed certified/recertified Questionnaire no older than six (6) months prior to the bid opening date**. (Please see “New York State Vendor Responsibility Questionnaire For-Profit Business Entity” Clause within this Invitation for Bids)

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

**Reminder: Bidder should note that any paper copy submission of Price Pages will be rejected. Only electronic copies of Price Pages will be accepted.**

A Bidder should also note that any indicators or messages that have been built into Attachment 02 – *General Questions* are informational only and provided solely for the purpose of assisting Bidders in completing the Attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the Attachments with respect to the IFB requirements. Bidders remain responsible for reviewing the Attachments to ensure compliance with the IFB requirements.

**Note to Bidders: a Bidder planning to drop off a hand delivered bid needs to pre-register for building access by contacting the Procurement Services’ Receptionist at (518) 474-6262 at least 24 hours prior to the bid opening.**

Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services’ Receptionist. The Receptionist will register the visitor at that time but delays may occur. Vendors who intend to deliver bids or conduct Procurement Services business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time.

**All bids should have a label on the outside of the box or package** itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Bid number (IFB #23003)
3. Bid Opening Date and Time
4. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

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 - Bid Submission.

**Bids shall be delivered to:**

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

**Bidders assume all risk for timely, properly submitted bids. Bids received after the time and date specified by OGS will be considered late and may be rejected.**

### 3.11 Debriefing

Unsuccessful Bidders shall be notified upon Notification of 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. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. 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. The debriefing prior to Contract award should be requested in writing within 5 days of notification that the bid or proposal was disqualified from further consideration or the Bidder was a non-awardee. After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such Bidder was not selected for a Contract award. The post-award debriefing should be requested in writing within 30 days of posting of the Contract award on the OGS website.

### 3.12 New York State Procurement Services Rights

New York State reserves the right to:

- A. Reject any or all proposals received in response to the IFB;
- B. Withdraw the IFB at any time at the sole discretion of the Agency;
- C. Make an award under the IFB in whole or in part;
- D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- E. Seek clarifications and revisions of the IFB;
- F. Amend the IFB specifications prior to the bid opening to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Direct Bidders, prior to the bid opening, to submit proposal modifications addressing subsequent IFB amendments;
- H. Change any of the schedule dates with notification through the Bidder Notification System;
- 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 bids 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 IFB within the IFB 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 IFB;
- O. 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 IFB requirements;
- P. If an incorrect reference/parameter/component/product/etc. is stated by the State or by the Bidder, the evident parameter/component/product shall prevail; the proper alternative or corrected parameter/model/code number(s) shall be considered;
- Q. 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 IFB. 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;
- R. Reject an obviously unbalanced bid as determined by the State; and
- S. Make "NO AWARD" for any item, Sub-Lot, or Lot for reasons including, but not limited to unbalanced or excessive Bidder pricing, a change in Authorized User requirements and/or product(s), or an error in the bid solicitation (i.e., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of bids may be made on the remaining items, Sub-Lots, or Lots unless as result of a NO AWARD Bidder fails to provide the minimum number of items required for the Sub-Lot or Lot.

For the purposes of paragraphs R and S, an unbalanced bid is one based on bid prices that are significantly understated for some items and/or significantly overstated for other items such that there is a reasonable doubt that the bid will result in the lowest overall cost to the State.

## SECTION 4: METHOD OF AWARD

### 4.1 Method of Award

There is to be one award for each project. Bidders may bid on one or more projects

Award shall be by GRAND TOTAL for the project to the lowest responsive and responsible bidder submitting bids on all materials included in the project.

The State reserves the right to reject an obviously unbalanced bid for an individual project or to make "NO AWARD" on an individual project if individual bid prices for a project are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. The determination of an unbalanced bid shall be at the sole discretion of the State. Options contained in this paragraph shall also be at the State's sole discretion.

Only timely bids will be considered in the awarding of a contract except where it may be proven there is no NYSDOT approved source of supply within a reasonable distance and/or that it would create a hardship to require travel to secure products. Bid prices will be evaluated at the time of bid opening as specified in Section "Evaluation Process".

### 4.2 Product Requirements

Group Specifications for each material item included in this contract are set forth in the Attachment 07 "Group Specifications #934". Bidder shall comply with the specifications set forth in that Attachment.

## SECTION 5: CONTRACT ADMINISTRATION

### 5.1 Contract Amendment Process

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the 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 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 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 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 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 Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure.  
The form contained within Appendix C 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 Contract and Appendix B, §27. Contract Amendments may require approval by the New York State Office of the Attorney General and Office of the State Comptroller as required by law.

### 5.2 Contract Administrator

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Contract Administrator shall be set forth in Attachment 02 – *General Questions*. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Contractor may submit a Contract Administrator change by submission of a revised Contractor and Authorized Reseller Information form to the OGS Contract Administrator.

Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail through the submission of a revised Contractor and Authorized Reseller Information form to the OGS Contract Administrator.

## SECTION 6: TERMS AND CONDITIONS

### 6.1 Contract Term and Extension

#### 6.1.1 Contract Term

It is the intention of the State to enter into a contract for the term as stated on the Invitation for Bids except that the commencement and termination dates appearing on the Invitation for Bids may be adjusted forward unilaterally by the State for any resulting contract for up to two calendar months, by indicating such change on the Contract Award Notification.

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

#### 6.1.2 Short Term Extension

If mutually agreed upon between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to three (3) additional periods of up to one (1) year each. Extensions may be exercised on a continuing basis such as an additional three (3) month, six (6) month or twelve (12) month period. In the event a replacement Contract has not been issued at the time of Contract expiration, 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 (1) month extension), pricing, 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 the replacement Contract be issued in the interim

### 6.2 Disposition of Settlements

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

### 6.3 Delivery

Delivery shall be made in accordance with instructions on Purchase Order from agency. If there is a discrepancy between the purchase order and what is listed on the contract, it is the contractor's obligation to seek clarification from the ordering agency and, if applicable, from the Office of General Services, Procurement Services.

#### 6.3.1 Delivery Ticket

A delivery ticket shall be provided with each load of bituminous material and filler for joints stating the following:

- a. Storage facility identification
- b. Ticket Number
- c. Date/time
- d. Item Number and Type
- e. Quantity ticket printed by machine
- f. Quantity in 60° F gallons for emulsions and PG binder

### 6.4 Quantity Received

It is the responsibility of the agency to ascertain quantities shipped are accurate to the delivery ticket. Each vehicle should be checked for product upon arrival and prior to departure.

## 6.5 Pricing Information

### 6.5.1 General

Clause 15(b) of Appendix B has been modified to read:

Price quoted shall be net per ton, furnished, delivered, dumped into approved spreading machines, placed, and compacted totally by the Contractor. The existing bituminous concrete surface (and any surfaces included in this contract that will be overlaid by this contract) shall be treated with tack coat.

**Tack coat shall be paid under its own item.** The price quoted for the tack coat shall include furnishing, delivering, and applying the tack coat as indicated. Price adjustments, if any, will be calculated on the basis of the material actually furnished.

The vendor is to furnish all necessary labor and equipment to complete the indicated projects except that the State will supervise and control the operation. Permanent pavement striping will be the responsibility of the State upon completion of the paving after the vendor has vacated the project site. The equipment supplied to place the hot mix asphalt shall meet the requirements of Section 402 of the New York State Department of Transportation Standard Specifications. The equipment supplied to place the tack coat shall meet the requirements of Section 407 of the New York State Department of Transportation Standard Specifications.

Hot mix asphalt pavers shall meet the requirements of Sub-Section 402-3.02, Hot Mix Pavers, of the New York Department of Transportation Standard Specifications. Compaction equipment shall meet the requirements of Sub-Section 402-3.04, Rollers of the Specification. All necessary operators shall be supplied along with the hot mix asphalt paver, rollers and distributor.

The approved hot mix asphalt pavers shall be capable of simultaneously paving the travel lanes and the shoulders as indicated in the Project Dimensions Table. All personnel supplied for the paving shall be qualified and experienced in hot mix asphalt paving.

### 6.5.2 Insurance

Price bid shall include all required insurance coverage costs. In particular, price shall include:

- a. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence;
- b. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident;
- c. Owners and Contractors Protective Insurance Coverage (OCP) with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Each requirement should be reviewed carefully. (Please see the Attachment 04 – Insurance Requirements for detailed insurance requirements.)

Owners and Contractors Protective Insurance Coverage (OCP). - **The contractor must supply the OCP Insurance to the Resident Engineer at the Pre-Paving Conference.**

## 6.6 Asphalt Price Adjustments

### 6.6.1 General

- a. Asphalt price adjustments allowed will be based on the **November 1, 2014** average of the F.O.B. terminal price **per ton** of unmodified PG 64S-22 binder without anti-stripping agent (base average F.O.B. terminal price) **for the hot mix asphalt and tack coat.**

**The September 1, 2015 average is \$521.000 per ton.**

The new monthly average terminal price will be determined by the New York State Department of Transportation based on prices of pre-approved primary sources of performance graded binder in accordance with the New York State Department of Transportation Standard Specification.

**NOTE:** The same grade of asphalt cement used in establishing the base average F.O.B. terminal price shall be used in establishing the new average F.O.B. terminal price.

In the event that one or more of the New York State Department of Transportation pre-approved sources discontinue posting a price for asphalt cement, the base average F.O.B. terminal **price shall not be recalculated**

- b. The new average F.O.B. terminal price will be determined based on the above F.O.B. terminal prices posted on the 20th of each month, hereafter known as the “Adjustment Date”, during the contract period. However, asphalt price adjustments, in accordance with the formula below, will be effective for deliveries made on and after the first of the month following the adjustment date.
- c. The unit prices per ton of hot mix asphalt (HMA) and per gallon of tack coat purchased from any award based on this specification will be subject to adjustment based on the following formulae::

#### Hot Mix

Price Adjustment (per ton)	=	(	New Monthly Average FOB Terminal Price	–	Base Average FOB Terminal Price	)	X	Total % Asphalt Plus Fuel Allowance
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#### Tack Coat

Price Adjustment (per gallon)	=		New Monthly Average FOB Terminal Price	–	Base Average FOB Terminal Price		X	Total % Asphalt Plus Fuel Allowance
			235					

Positive Price Adjustment number shall be added to original per ton/gallon Bid Price.

Negative Price Adjustment number shall be subtracted from original per ton/gallon Bid Price.

#### New Monthly Average F.O.B. Terminal Price

The average F.O.B. terminal price for unmodified PG 64S-22 binder without anti-stripping agent is as determined by the New York State Department of Transportation per New York State Department of Transportation Standard Specification.

#### Base Average F.O.B. Terminal Price

The average F.O.B. terminal price of unmodified PG 64S-22 binder without anti-stripping agent is as determined by the New York State Department of Transportation as of September 1, 2015.

**Total % Asphalt Plus Fuel**

The percentage of total allowable asphalt and fuel for each item is as follows:

Material Designation	Asphalt %	+Fuel Allowance %	Total % Asphalt Plus Fuel
402.017902	****	1	****
402.018902	****	1	****
402.058902	8.25	1	9.25%
402.068X0318	6.70	1	7.70%
402.09XX02	6.20	1	7.20%
402.12XX02	5.50	1	6.50%
402.19XX02	4.90	1	5.90%
407.0102 Diluted Tack Coat	40.00	0.2	40.20%
407.0103 Straight Tack Coat	55.00	0.2	55.20%

\*\*\*\*The conversion factor for Truing & Leveling will be computed separately using the conversion factors for the individual mixtures used

**+Fuel Allowance represents allowance for energy (fuel, electricity, natural gas) used in the production of asphalt. It is a cost associated with the product and not intended to represent any trucking or hauling of product**

- d. Work performed after the expiration of the contract, where no extension has been granted, resultant from purchase orders placed prior to expiration of the contract will receive the asphalt price adjustments applicable in effect during the last month of the contract.  
  
Asphalt Price Adjustments for any contracts that are extended will be based on the new average for the month in which the work is done applying the same base established for that contract.
- e. Asphalt price adjustments allowed by this contract shall be calculated and applied to the original prices. There will not be asphalt price adjustments unless the change amounts to more than \$0.10 per ton from the original price for the hot mix and \$0.0150 per gallon for the tack coat. In these instances, prices will revert back to the original prices.
- f. All asphalt price adjustments will be computed to three decimal places.
- g. Should these provisions result in a price structure which becomes unworkable, detrimental or injurious to the State or in prices which are not truly reflective of market conditions or which are deemed by the Commissioner to be unreasonable or excessive, and no adjustment in price is mutually agreeable, the Commissioner reserves the sole right upon ten days written notice mailed to the Contractor to terminate any contract resulting from this bid opening.
- h. All asphalt price adjustments shall be published by the State and issued to all contract holders whose responsibility will be to attach the appropriate State notification (based on when the work was performed) to the payment invoice submitted to agency.

6.6.2 Asphalt Price Adjustment for Hot Mix Asphalt: Example

**(Example of Positive Price Adjustment - Hot Mix Asphalt)**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

Item 402.09XX02

Item 402.09XX02 Bid Price = \$70.000 (example)

Contract Base Average Price = \$521.000 (fixed for the duration of the contract)

Monthly New Average Price = \$531.000 (example, it changes each month)

Total % Asphalt plus Fuel for Item 402.09XX02 = 7.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 402.09XX02 (example):

$\text{Price Adjustment} = \left( \begin{array}{cc} \text{New Monthly Average} & \text{Base Average F.O.B.} \\ \text{F.O.B. Terminal Price} & \text{Terminal Price} \end{array} \right) \times \begin{array}{l} \text{Total \% Asphalt} \\ \text{(Per Ton)} \\ \text{Plus Fuel Allowance} \end{array}$
--

$$(\$531.000 - \$521.000) \times 0.072 = \$10.000 \times 0.072 = +\$0.720 \text{ per ton}$$

Positive Price Adjustment number shall be added to original per ton Bid Price.

Contract price for Item 402.09XX02 including the new Price Adjustment for that month (example):

Contract Price = Bid Price + Monthly Price Adjustment

Contract Price = \$70.000 + \$0.720 = **\$70.720 per ton**

**(Example of Negative Price Adjustment- Hot Mix Asphalt)**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

Item 402.09XX02

Item 402.09XX02 Bid Price = \$70.000 (example)

Contract Base Average Price = \$521.000 (fixed for the duration of the contract)

Monthly New Average Price = \$511.000 (example, it changes each month)

Total % Asphalt plus Fuel for Item 402.09XX02 = 7.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 402.09XX02 (example):

$\text{Price Adjustment} = \left( \begin{array}{cc} \text{New Monthly Average} & \text{Base Average F.O.B.} \\ \text{F.O.B. Terminal Price} & \text{Terminal Price} \end{array} \right) \times \begin{array}{l} \text{Total \% Asphalt} \\ \text{(Per Ton)} \\ \text{Plus Fuel Allowance} \end{array}$
--

$$(\$619.000 - \$629.000) \times 0.0720 = -\$10.000 \times 0.0720 = -\$0.720 \text{ per ton}$$

Negative Price Adjustment number shall be subtracted from original per ton Bid Price.

Contract price for Item 402.09XX02 including the new Price Adjustment for that month (example):

Contract Price = Bid Price - Monthly Price Adjustment

Contract Price = \$70.000 - \$0.720 = **\$69.280 per ton**

**6.6.3 Asphalt Price Adjustment for Tack Coat: Example**

**(Example of Positive Price Adjustment – Tack Coat)**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

*Item 407.0102 Diluted Tack Coat*

Item 407.0102 Bid Price = \$2.000 (example)

Contract Base Average Price = \$521.000 (fixed for the duration of the contract)

Monthly New Average Price = \$531.000 (example, it changes each month)

Total % Asphalt plus Fuel for Item 407.0102 = 40.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 407.0102 Diluted Tack Coat (example):

<b>Tack Coat</b>				
Price Adjustment (per gallon)	=	$\left( \frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right)$	X	Total % Asphalt Plus Fuel Allowance

$$(\$531.000 - \$521.000) / 235 \times 0.402 = \$10.000 / 235 \times 0.402 = \mathbf{+\$0.003 \text{ per gallon}}$$

Positive Price Adjustment number shall be added to original per ton Bid Price.

Contract price for Item 407.0102 Diluted Tack Coat including the new Price Adjustment for that month (example):

Contract Price = Bid Price + Monthly Price Adjustment

Contract Price = \$2.000 + \$0.003 = **\$2.003 per ton**

**(Example of Negative Price Adjustment- Tack Coat)**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

*Item 407.0102 Diluted Tack Coat*

Item 407.0102 Bid Price = \$2.000 (example)

Contract Base Average Price = \$521.000 (fixed for the duration of the contract)

Monthly New Average Price = \$511.000 (example, it changes each month)

Total % Asphalt plus Fuel for Item 407.0102 = 40.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 407.0102 Diluted Tack Coat (example):

<b>Tack Coat</b>				
Price Adjustment (per gallon)	=	$\left( \frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right)$	X	Total % Asphalt Plus Fuel Allowance

$$(\$511.000 - \$521.000) / 235 \times 0.402 = -\$10.000 / 235 \times 0.402 = \mathbf{-\$0.003 \text{ per gallon}}$$

Negative Price Adjustment number shall be subtracted from original per ton Bid Price.

Contract price for Item 402.09XX02 including the new Price Adjustment for that month (example):

Contract Price = Bid Price - Monthly Price Adjustment

Contract Price = \$2.000 - \$0.003 = **\$1.997 per ton**

## 6.7 Payment

Payment shall be made at contract prices per net ton for the actual quantity of material placed by the Contractor. Payment shall be made at the contract price per gallon for the actual quantity of tack coat placed by the Contractor.

Payment adjustments will be applied in Quality Units for all applicable mixes as described in Sub-Section 401-4 and 402-4 of the NYSDOT Standard Specifications. Please refer to that document for a more detailed explanation.

The following Index Prices shall be used for all projects contained in this contract:

QUALITY UNIT INDEX PRICES	
<u>Region</u>	<u>Index Price (\$/Quality Unit)</u>
1	\$75
2	\$75
3	\$75
4	\$75
5	\$80
6	\$75
7	\$80
8	\$90
9	\$75
10	\$100
11	\$105

## 6.8 Site Visit

Vendors intending to submit bids shall examine the sites of the projects and become fully knowledgeable of the quantities, character, location and other conditions affecting the work to be performed; including the existence of poles, wires, ducts, conduits, and other facilities and structures of municipal and other public service corporations on, over, or under the site. No claim will be made against the State due to reliance upon any estimates, test or other representations made by an officer or agent of the State with respect to the work to be performed.

## 6.9 Report of Contract Purchases

Contractor shall furnish a one-time final report containing total sales for the authorized state agency contract purchases no later than thirty (30) days after the end of the contract.

In addition to Contractor direct sales, Contractor shall submit sales information for all Authorized Resellers where such Contract sales are provided by other than the Contractor. Contractors shall specify if any Authorized Resellers are NYS Certified Minority and/or Women Owned Businesses Enterprises (MWBEs). Contractor shall verify such status through the Empire State Development directory of Minority and Women Owned Businesses at:

<http://www.esd.ny.gov/MWBE/directorySearch.html>

The report is to be submitted electronically via e-mail in Microsoft Excel to the Office of General Services, NYS Procurement, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number and Contractor's name.

The form "Report of Contract Purchases" is the **minimum** information required (it will be provided by OGS to the vendor after award). Additional related sales information, such as monthly reports, and/or detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis shall be considered poor performance in accordance with Section "Poor Performance" and may result in Contract cancellation and designation of Contractor as non-responsible.

## 6.10 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.**

## 6.11 Appendix B

Appendix B, Office of General Services General Specifications, dated May 2015, 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.**

### 6.11.1 Appendix B Amendments

- a) **Section “Definitions”** is amended as follows: “Authorized User shall mean the New York State Department of Transportation ONLY.”
- b) **Section “Conflict of Terms”** is added with the following language:  
**Conflict of Terms and Conditions**  
The following shall be incorporated into the resulting Contract. Other documents may be identified for inclusion during the course of the IFB process.  
  
Conflicts among the documents shall be resolved in the following order or precedence:
  - a. Appendix A (January 2014), Standard Clauses for New York State Contracts;
  - b. Invitation for Bids #23003
  - c. The resulting Contract, including Group Specifications (SPEC 934)
  - d. NYSDOT Standard Specifications, Construction and Materials, most current version and all current addenda at the time of bid opening.
  - e. Appendix B (May 2015), General Specifications;
  - f. Other Appendices and attachments as deemed necessary.
  - g. The Bidder’s Bid
- c) **Section “Late Bids”** is hereby deleted and replaced with the following:  
Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.  
  
Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner’s sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event will the Commissioner be under any obligation to accept a Late Bid.  
  
The basis for any determination to accept a Late Bid shall be documented in the procurement record.
- d) **Section “Modification of Contract Terms”**, the first paragraph is hereby deleted and replaced with the following:  
  
The terms and conditions set forth in the Contract shall govern all transactions under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor, subject to the approval of the New York State Office of the Attorney General and Office of the State Comptroller as required by law.
- e) **Section “Scope Changes”** is hereby amended to include the following sentence  
  
All scope changes are subject to the approval of the New York State Office of the Attorney General and Office of the State Comptroller as required by law.

- f) **Section “Indemnification”** is hereby deleted and replaced with the following:

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 is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (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. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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.

## 6.12 NYSDOT Standard Specifications

NYSDOT Standard Specifications, most current version and all current addenda at the time of bid opening are 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, Package A or Appendix B including, but not limited to, provisions relative to "Buy America", "Stopping Work", "Dispute Resolution and Disputed Work", "Damages", "Extension of Time", "Extra Work, Force Account Work, Dispute Compensation and Recordkeeping", "Time Related Dispute Compensation" and "Changed Conditions and Delay Provisions". The referenced provisions supplement the Bid Document, Package A and Appendix B establishing specific standardized parameters for contract administration and project management by NYSDOT.

## 6.13 NYSDOT Chapter 12 Appendices - "Package A"

Package A consisting of Appendices Nos. 12-1, 12-1.1, 12-1.2, 12-1.3, 12-1.4 and 12-1.5 setting forth certain federally required contract provisions dated May 2012, 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.**

## 6.14 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.

## **6.15 Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

### **6.15.1 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 Disparity Study 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 establish 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.

### **6.15.2 General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

### **6.15.3 Equal Employment Opportunity (EEO)**

- A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - a. Contractor and Subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer,

layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to:  
(i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

- b. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.
- B. Form EEO 100 – Staffing Plan  
To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories
- C. Form EEO 101 - Workforce Employment Utilization Report (“Workforce Report”)
  - a. If Contractor's Form EEO 100- Staffing Plan provides that Contractor is able to report the actual workforce utilized in the performance of this Contract, the following clause shall apply: Contractor agrees it will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.
  - b. If Contractor's EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract
- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, 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 and conviction and prior arrest.

#### 6.15.4 Contract Goals

- A. **For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor.** Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>  
Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts  
Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
  - a. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
  - b. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
  - c. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
  - d. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

- e. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
- f. Other information deemed relevant to the request

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

## 6.16 New York State Vendor Responsibility Questionnaire For-Profit Business Entity

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

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at OSC’s website, [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](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>.

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

The Bidder agrees that if it is 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, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when 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.

## 6.17 New York State Vendor File Registration

Prior to being awarded a Contract pursuant to this IFB, the Bidder(s) and any 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, unique New York State ten-digit vendor identification numbers will be assigned to your company and 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 all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the vendor must enter the vendor's ten-digit Vendor Id number on the first page of this bid document. Authorized Resellers already registered should list the ten-digit Vendor Id number along with the Authorized Reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor Id number from OGS.

Complete the OSC Substitute W-9 Form [http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form to OGS. Please send this document to the Designated Contact in the IFB. In addition, if an Authorized Reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form [http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) should be completed by each designated Authorized Reseller and submitted to OGS.

The OGS will initiate the vendor registration process for all Bidders and their Authorized Resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website: [http://www.osc.state.ny.us/vendor\\_management](http://www.osc.state.ny.us/vendor_management)

## 6.18 Tax Law §5-A

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

A 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 DTF. **Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA.** Form ST-220-CA must be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. 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 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 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 DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

## 6.19 Use of Recycled or Remanufactured Materials

New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this IFB. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specification.

## 6.20 Environmental Attributes and NYS Executive Order 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) (EO4), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://www.ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

## 6.21 Emergency Purchasing

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

## 6.22 Poor Performance

Authorized Users should notify Procurement Services's Customer Services promptly if the Contractor fails to meet the requirements of this Contract. 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  
Procurement Services  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242

Customer Services E-mail: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)  
Telephone: (518) 474-6717 / Fax: (518) 474-2437

## 6.23 New York State Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 03 – *New York State Required Certifications*) with its bid. Failure to submit these documents may result in bid being considered non-responsive and may result in bid being REJECTED.

## 6.24 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

## 6.25 New York State Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with centralized contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

## 6.26 Surplus/Take-Back/Recycling

- a. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- b. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- c. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- d. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**SECTION 7: HOT MIX ASPHALT – (SPECIFIC CLAUSES)**

**7.1 Material Descriptions**

The following are the material descriptions of Superpave HMA items that may be included in this contract:

<b>Materials Designation</b>	<b>Description</b>
402.017902	Truing & Leveling F9, 70 Series Compaction
402.018902	Truing & Leveling F9, 80 Series Compaction
402.058902	Shim Course F9
402.096102	9.5 F1, 60 Series Compaction
402.096202	9.5 F2, 60 Series Compaction
402.096302	9.5 F3, 60 Series Compaction
402.097102	9.5 F1, 70 Series Compaction
402.097202	9.5 F2, 70 Series Compaction
402.097302	9.5 F3, 70 Series Compaction
402.098302	9.5 F3, 80 Series Compaction
402.098902	9.5 F9, Shoulder Course, 80 Series Compaction
402.126102	12.5 F1, 60 Series Compaction
402.126202	12.5 F2, 60 Series Compaction
402.126302	12.5 F3, 60 Series Compaction
402.127102	12.5 F1, 70 Series Compaction
402.127202	12.5 F2, 70 Series Compaction
402.127302	12.5 F3, 70 Series Compaction
402.128902	12.5 F9, Shoulder Course, 80 Series Compaction
402.196902	19 F9, 60 Series Compaction
402.197902	19 F9, 70 Series Compaction
402.256902	25 F9, 60 Series Compaction
402.257902	25 F9, 70 Series Compaction
402.06810318	6.3 F1, Superthin HMA, 80 Series Compaction
402.06820318	6.3 F2, Superthin HMA, 80 Series Compaction
402.06830318	6.3 F3, Superthin HMA, 80 Series Compaction

**7.2 Pre-Paving Conference**

The vendor shall schedule a Pre-Paving Conference with the affected Resident Engineer within one month after the award of the Contract and at least two weeks prior to the start of paving. At this conference the vendor shall present Certificates of Insurance evidencing compliance with the additional insurance requirements, their proposed paving schedule, equipment, proposed tack coat application procedure and paving procedure, and Work Zone Traffic Control Plan to the State for approval. At least one week prior to the start of paving, the vendor shall coordinate the details of the paving with the Resident Engineer.

**7.3 Supervision**

The Department of Transportation shall provide supervision for the paving operation. The Resident Engineer shall designate a Paving Supervisor and that person shall be in responsible charge of the operation. The following portions of Section 105 - CONTROL OF WORK of the Standard Specifications shall apply to these projects: 105-01 STOPPING WORK, 105-08 COOPERATION BY THE CONTRACTOR, 105-15 CONTRACTOR'S RESPONSIBILITY FOR WORK.

## 7.4 Work Hours

Work shall not be permitted on Sundays and NYS Legal Holidays. If the contractors desire to work overtime on other days, dispensation from NYS Labor Department must be obtained using Department of Labor Form PW-30 (5/93). Night work is prohibited unless agreed to by the Contractor and NYS Department of Transportation.

### 7.4.1 Special Note - Overtime Dispensation Requests

All Overtime Dispensations will be sent to:

**Hasib H. Khan**

Pavement Program Engineer  
Office of Transportation Maintenance, POD 54  
NYS Department of Transportation  
50 Wolf Road, Albany, NY 12232  
Email: [Hasibul.Khan@dot.ny.gov](mailto:Hasibul.Khan@dot.ny.gov)  
Phone: 518-457-1572  
Fax: 518-457-4203

The dispensations will be submitted for the entire contract period for 5-10hr days (with rain day Saturday) to cover all the project numbers awarded to the contractor within the resulting contract. Should a contractor needs additional dispensation beyond the one described above, they shall submit it to the Regional Director of Operations or the Regional designee as determined at the preconstruction meeting, for the Region they wish to submit special additional dispensation for.

## 7.5 Restoration of Disturbed Areas

During the course of the work the vendor shall take reasonable care not to disturb areas outside the existing pavement. Any areas disturbed by the vendor shall be returned to their original condition at no expense to the State. Any and all debris generated as part of the work shall be removed by the vendor upon completion of the project.

## 7.6 Tack Coat

The vendor shall provide and apply bituminous tack coat to all existing hot mix asphalt pavement surfaces to be overlaid in this contract (and to all hot mix asphalt pavement surfaces included in this contract that will be overlaid by this contract). Tack coat shall meet the material requirements in Section 407-2 of the Standard Specifications. The application of tack coat shall comply with Section 407-3 of the Standard Specifications. **Tack coat shall be paid under its own item in gallons.**

### 7.6.1 Tack Coat Plant Number Requirements

Approved Plant Numbers for Tack Coat, Items 407.0102 and 407.0103, must be listed in the appropriate locations on the bid pages for each project bid. Failure to do so may result in non-award of the affected projects.

## 7.7 Construction Details

The construction details shall comply with the requirements specified in Subsections 401-3.01, 402-3 and 407-3 of the Standard Specifications. The Paving Supervisor shall have sole responsibility for determining compliance with the specifications. All orders given to the vendor regarding construction details shall be considered final. The pavement thicknesses and lane and shoulder widths shall be as specified elsewhere in this Invitation for Bids.

## 7.8 Attention: Special Note - Conditioning

The vendor will not be responsible for the initial conditioning of the existing pavement and shoulder surfaces as described in Section 402-3.05 of the NYSDOT Standard Specifications. Patching, joint repair, crack filling and the initial surface cleaning will be done by NYSDOT forces prior to the VPP project. However, once the VPP overlay placement begins, the vendor is responsible for keeping the pavement and shoulders clean until the overlay operations are completed, as per Section 633-3.01 of the NYSDOT Standard Specifications.

## 7.9 Work Zone Traffic Control

The vendor shall be responsible for Work Zone Traffic Control. Traffic shall be controlled in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and Sections 619-1 through 619-3 of the Standard Specifications as described herein including modifications to the Standard Specifications. The vendor shall submit a Work Zone Traffic Control Plan for approval to the Resident Engineer at the Pre-Paving Conference. For two-way roadways, Figures TAST-C1R, TAST-C2R, TAST-C3R, TAST-C4R, TAST-C5R, TAST-C7R, TAST-C1UL, TAST-C2UL, TAST-C3UL, TAST-C4U, TAST-C7UL, TAST-C1UH, TAST-C2UH, TAST-C3UH, and TAST-C7UH included in this document may be used as a basis for development of a Work Zone Traffic Control Plan. For one-way roadways, Figures TAST-C5UL, TAST-C6UL, TAST-C8UL, TAST-C5UH, TAST-C6UH, and TAST-C8UH may be used as a basis for development of a Work Zone Traffic Control Plan. For one-way Freeways or Expressways, Figures TAST-E1, TAST-E2, TAST-E3, TAST-E4, TAST-E5, TAST-E6, and TAST-E7 may be used as a basis for development of a Work Zone Traffic Control Plan.

All necessary flaggers for Work Zone Traffic Control shall be provided by the vendor. For two-way roadways, a minimum of three flaggers shall be provided while the paving operation is underway. One shall be stationed at each end of the operation and one shall be stationed with the paver. For one-way roadways, a minimum of two flaggers shall be provided while the paving operation is underway. One shall be stationed at the beginning of the operation and one shall be stationed with the paver. The vendor shall station flaggers such that communication is maintained between the flaggers. Hand signals, radios, pilot vehicles or some other means of communication may be used subject to the approval of the Resident Engineer.

All costs for Work Zone Traffic Control including flagging, temporary pavement marking and/or delineation, and construction signs are included in the price per ton. No separate payment shall be made.

Major intersecting roads are defined as through State, County, Town, Village, or City roads. The Contractor may provide Portable signs as shown in Figure 6F-2 of the MUTCD and meeting the requirements of Section 619 of the Standard Specifications for lane closures during work hours. Signs left active at night shall be rigid and reflectorized in accordance with the Standard Specifications.

With prior permission of the State's Resident Engineer, the contractor may provide portable signs as shown in Figure 6F-2 of the MUTCD for the DO NOT PASS and NO CENTER LINE signs referenced in Section 7.9.1. The contractor shall be responsible for assuring that these signs will be in their upright, visible positions twenty-four hours a day, seven days a week while 2' x 4" temporary yellow markings are used instead of full barrier pavement markings.

(Continues next page)

The Contractor shall provide construction signs as specified in Section 619-1 through 619-3 of the Standard Specifications and in the MUTCD. At a minimum the Contractor shall install the following permanent construction signs

<b>SIGN</b>	<b>MINIMUM SIZE</b>	<b>LOCATION</b>
ROAD WORK NEXT _____ MILES	<u>G20-1</u> Conventional 36" x 18"  Freeways 48" x 24"	On main line upstream of project in each direction
END ROAD WORK	<u>G20-2</u> Conventional 36" x 18"  Freeways 48" x 24"	On main line after end of project in each direction
ROAD WORK AHEAD	<u>W20-1</u> Conventional 36" x 36"  Freeways 48" x 48"	On main line in advance of the affected highway segment in each direction and on major intersecting roads 300 -500 feet in advance of main line. Sign should be covered if it conflicts with temporary signing in the vicinity. (Place between the G20-1 and the first warning sign that states condition- i.e. W8-12, W8-9 or W8-15)
DO NOT PASS	<u>R4-1</u> Conventional 24" x 30"	If 2' x 4" temporary yellow markings are used instead of full barrier centerline pavement markings, place the first sign at or within 100 feet of the beginning of the unmarked area, second within 1,000 feet and subsequent signs, spaced every ½ mile along project in each direction
NO CENTER LINE	<u>W8-12</u> Conventional 36" x 36"	If 2' x 4" temporary yellow markings are used instead of full barrier centerline pavement markings, place the first sign in advance of the condition and the first "DO NOT PASS" sign: 300' urban is preferred (100' minimum), 500' rural is preferred (200' minimum). Place additional signs spaced every 2 miles on mainline in each direction and after every major intersecting road.
LOW SHOULDER	<u>W8-9</u> Conventional 36" x 36"  Freeways 48" x 48"	Place on mainline spaced every 2 miles along project in each direction and after every major intersecting road until shoulder back-up is installed (if conditions warrant use, place between the W8-12 and R4-1, maintaining a minimum of 200' between signs for rural roads and 100' on urban. The W8-12 can be moved upstream to accommodate the required spacing.)
GROOVED PAVEMENT	<u>W8-15</u> Conventional 36" x 36"  Freeways 48" x 48"	On any roadway 500 feet in advance of rebates milled under this contract, but not paved. Remove or cover after paving rebate.

\*\*All signs should maintain an absolute minimum spacing of 200' rural or 100' urban. 500' is preferred on rural and 300' is preferred on urban. Double stacking of any of the above signs, or combination thereof, will NOT be permitted.

**7.9.1 Special Note - Temporary Pavement Markings**

The contractor shall install and maintain temporary pavement markings on any paved surface without permanent pavement markings before opening it to traffic, before nightfall or before the end of the work day, whichever comes soonest except for areas that are open during the work shift with channelizing devices or flaggers. Temporary pavement markings shall meet the requirements of Section 619 of the Standard Specifications except that two-lane, two-way highways may be left without full barrier centerlines in no passing zones for a maximum of 7 calendar days provided that NO CENTER LINE (W8-12, black on orange), NO PASSING ZONE (W14-3, black on orange pennant shaped sign), and DO NOT PASS (R4-1) signs are used consistent with the MUTCD and in conjunction with yellow 2 foot by 4 inch pavement markings consisting of retro-reflective removable pavement marking tape, paint or yellow temporary overlay markers installed on a 40 ft. cycle to delineate the centerline location.

The State is responsible for the final pavement markings unless otherwise indicated in the contract. If the vendor chooses to install NO CENTER LINE and DO NOT PASS signs and temporary yellow 2 foot by 4 inch pavement markings in lieu of full barrier centerline markings, the signs shall be left in place until the state has completed installing the final pavement markings. The state will normally complete final pavement markings within 7 days of the project completion. However, if unavoidable situations delay the pavement marking installation the signs shall remain in place for 14 calendar days after the project has been completed or until the state has completed installing the final pavement markings, whichever comes first. If permanent pavement marking cannot be installed within 14 days of the project completion, state must install interim pavement marking including center lines, edge lines, stop bars, and simple crosswalks with no hatching before the end of 14 days after project completion.

**7.9.2 Hot Mix Asphalt Overlay Splice (Rebate)**

The vendor shall install hot mix asphalt overlay splices (pavement terminations) as per the Detail of Hot Mix Asphalt Overlay Splice (see next page). Hot mix asphalt overlay splices shall be installed at the areas indicated in the Location Table for Hot Mix Asphalt Overlay Splices. The cost for sawcutting, milling rebates and cleaning pavement in the splice area shall be included in the price bid per ton of bituminous concrete. Tack coat shall be paid under its own item as specified elsewhere. No separate payments shall be made for hot mix asphalt overlay splices.

Immediately after the hot mix asphalt overlay splices are milled, a temporary asphalt ramp shall be constructed. A cone or drum shall be installed at the ramp. If the rebate is left in place at night a drum equipped with a Type A flashing warning light shall be used and the ramp sloped in accordance with Table 619-1. No separate payment shall be made for the ramps. The cost shall be included in the price bid per ton of bituminous concrete.

Where rebates are milled and ramps are constructed and traffic is to ride on the milled pavement for more than the one work day in which the rebate is milled, GROOVED PAVEMENT signs (W8-15) shall be installed on the right side of the roadway, 500 feet upstream of the rebate location. No separate payment shall be made for the GROOVED PAVEMENT sign. The cost shall be included in the price bid per ton of bituminous concrete.

**7.9.3 Special Note: Work Zone Intrusion Initiative**

As part of the Department of Transportation's Work Zone Intrusion Initiative, the following countermeasures shall apply to this Invitation for Bids.

**Channelizing Device Spacing Reduction**

A maximum channelizing device spacing of 40 feet shall be provided at stationary work sites where workers are exposed to traffic. This spacing shall be maintained a reasonable distance upstream of workers, and shall be used throughout the work zone.

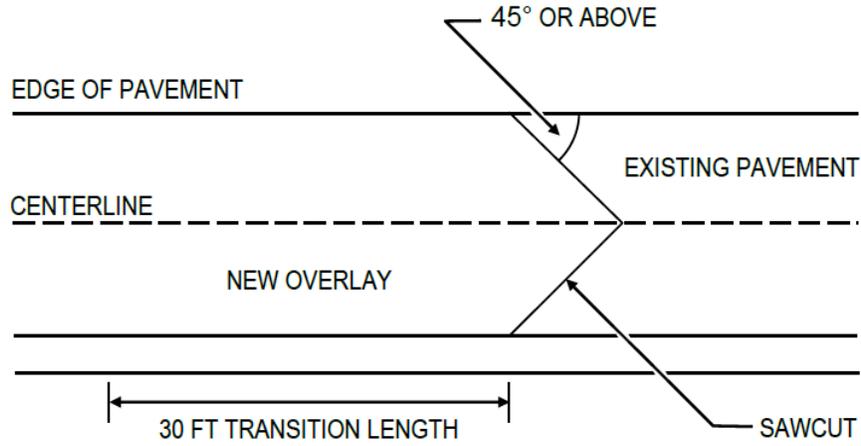
Where tapers are located less than 500 feet from the work site, the 40 foot spacing shall be used in the taper as well.

Drums or vertical panels are preferred for long-term stationary and intermediate-term stationary work zones, and at any locations where the risk of intrusion is high. Traffic cones are normally adequate for work zones set up and removed on a daily basis.

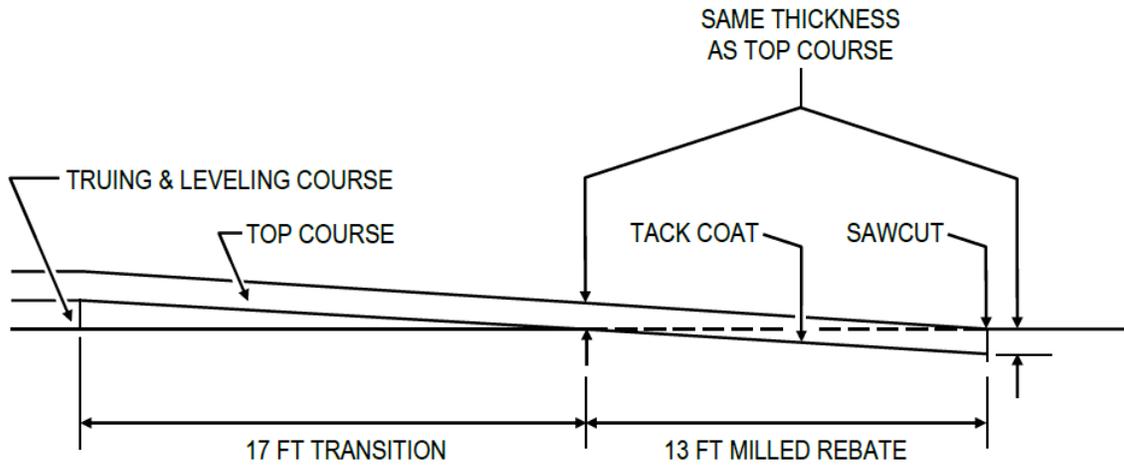
In long lane or shoulder closures, at least two channelizing devices shall be placed transversely at maximum 800 foot intervals to discourage traffic from driving through the closed lane. Transversely placed devices are not required where pilot vehicles are in used.

Frequent checks shall be made to reset channelizing devices dislodged by traffic.

DETAIL OF HOT MIX ASPHALT OVERLAY SPLICE



PLAN



SECTION

**Flagger Station Enhanced Setups**

Additional cones and a flag tree meeting section 6F.62 of the MUTCD shall be used upstream of flagger stations to provide added warning to drivers. These devices shall be used for flagger stations except those that are constantly moving or are in use at one location for no more than a few minutes. If the W20-7a Flagger sign is required, the additional cones and flag tree shall also be used. If the flaggers move with the paving operation, the vendor shall ensure that appropriate distances are maintained between the flagger sign series, flag tree and the flaggers. The W20-7 flagger sign shall be a minimum of 300 feet and a maximum of 2,000 feet in advance of the flagger. If two or more sets of signs on an approach are used to maintain appropriate distances, when the operation progresses to the point where the next set of flagger warning signs is activated, the original signs shall be deactivated by removal, turning away from traffic or laying them down in a manner that does not pose a roadside hazard for passing vehicles. Only one series of flagger warning signs per approach shall normally be visible to traffic.

For additional details on Flagger Station Enhanced Setups, see Work Zone Traffic Control drawings in this Invitation for Bids.

**7.9.4 Temporary Rumble Strips**

**Description**

This work shall consist of the installation, maintenance and subsequent removal of temporary rumble strips in paving work zones where indicated in the Invitation for Bids or as directed by the Engineer.

**Materials**

Rumble strips shall be either constructed in place from a raised strip of asphalt concrete or constructed in place with removable pavement marking tape.

Raised removable tape rumble strips shall be formed by applying four layers of removable black non-reflectORIZED removable pavement marking tape. The tape shall be applied to a clean, dry pavement surface in accordance with the manufacturer's recommendations. The pavement surface shall be cleaned with compressed air just prior to application of the tape.

Raised asphalt rumble strips shall be formed from hot mix asphalt meeting the requirements of Items 402.058902 or 402.098902. Tack coat meeting the requirements of Materials Designation 702-XXXXT Diluted Tack Coat shall be used to adhere the rumble strip to the existing pavement. Temporary rumble strips shall be formed using a specially constructed rumble strip paver (drag box) pulled transversely across the pavement, or by hand placement between forms fixed to the pavement. If forms are used, they shall be removed prior to compaction of the asphalt mixture. Compaction shall be accomplished using a plate tamper or a static roller. The roadway surface on which the rumble strips are to be attached shall be dry, free of surface contaminants such as dust or oil, and shall be 45°F or greater unless otherwise authorized by the Engineer. The pavement surface shall be cleaned with compressed air just prior to tack coating and subsequent installation of rumble strips.

Temporary rumble strips shall be placed in a succession of three 6 Strip Patterns according to the attached "Suggested Layout Details - Temporary Rumble Strips". Each strip shall be placed on 10 foot centers and traversing the full width of each travel lane. On curbed roadways, rumble strips shall end a minimum of 3 feet from the curb so as to not interfere with drainage. Rumble strips shall be between 6 inches and 9 inches in width and have a final compacted thickness of 0.4 inches ± 0.1 inches.

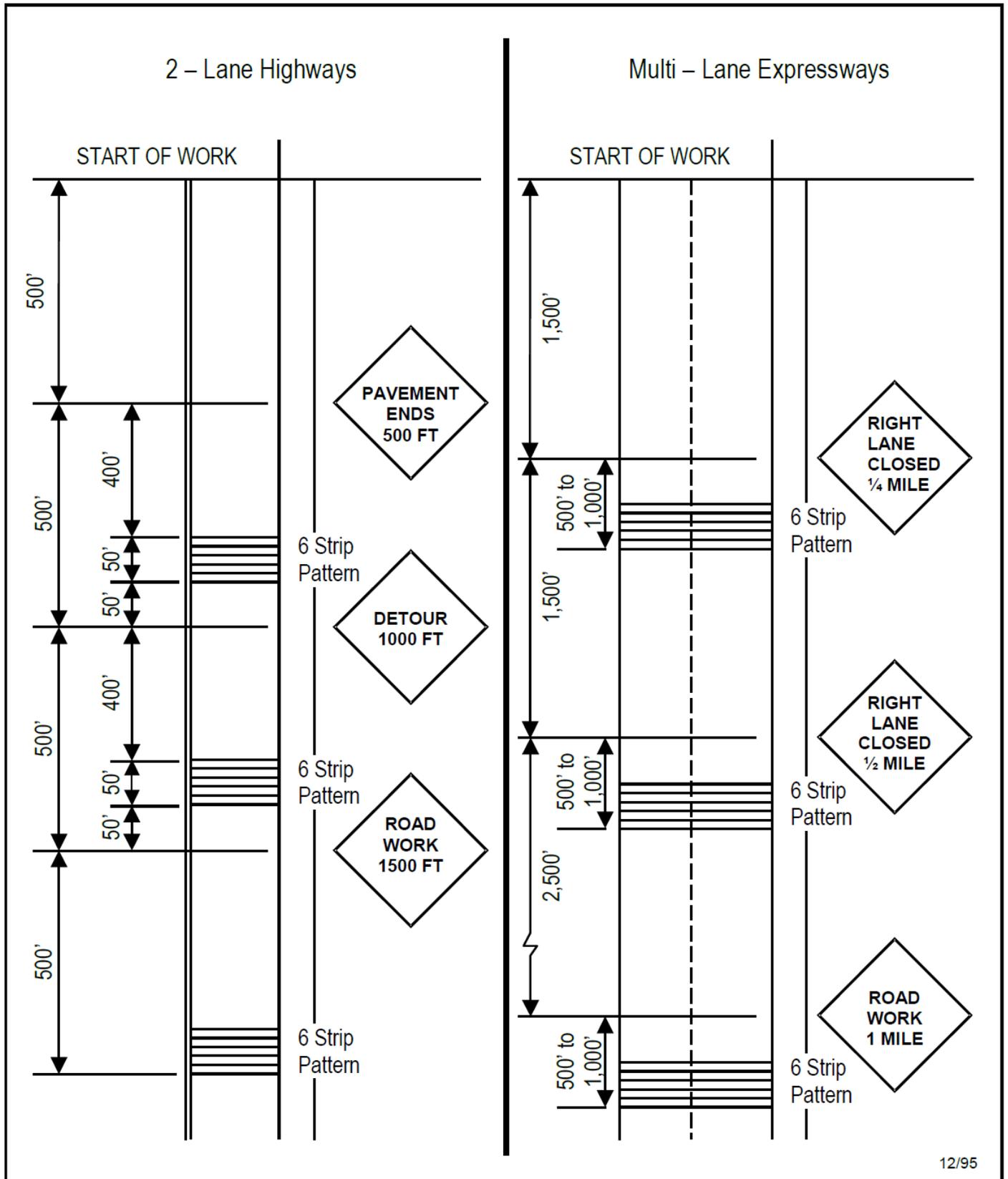
Any raised rumble strips that fail to adhere to the pavement, or become damaged or flattened such that, in the opinion of the Engineer, they are no longer performing their intended function, shall be replaced or repaired by the Contractor to the satisfaction of the Engineer. Any associated damage to the pavement shall also be repaired by the Contractor to the satisfaction of the Engineer. These replacements or repairs shall be made at no additional expense to the Purchasing Agency.

When directed by the Engineer, (e.g., prior to the start of the winter plowing season), or prior to the placement of successive pavement courses, the Contractor shall completely remove the rumble strips from the pavement. Rumble strips shall be removed upon completion of work and concurrently with the removal of other temporary traffic control signs and devices. Any pavement that is damaged in the process of removing the rumble strips shall be repaired by the Contractor to the satisfaction of the Engineer at no additional expense to the Purchasing Agency.

**Basis of Payment**

All costs for the installation, maintenance and removal of temporary rumble strips are included in the price per ton. No separate payment shall be made.

Suggested Layout Details -- Temporary Rumble Strips



## 7.10 Contract Bonds

The Contractor shall provide the State with a Labor and Materials Bond from a Surety Company listed on the U.S. Department of the Treasury listing of Approved Sureties (Treasury Department Circular 570) and licensed to do business in New York State, and with a minimum rating by A.M. Best of (A-) in the “best’s Key Rating Guide”. Treasury Department Circular 570 can be found on the U.S. Department of the Treasury website at [www.fms.treas.gov/c570/index.html](http://www.fms.treas.gov/c570/index.html).

**The Contractor shall procure and deliver the bond to the State at the Pre-Paving meeting** and shall maintain it at its own expense and without expense to the State during the Contract and until three months after the OGS contract ending date. If the contract is extended, the Labor and Materials Bond shall be extended until three months after the new contract ending date. The Surety Company shall append a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by the officers of the Company to the bond.

### 7.10.1 Labor and Material Bond

The Contractor shall provide a bond in the form prescribed by the Commissioner of the New York State Department of Transportation (NYSDOT), shown in the NYSDOT Standard Specification for Design and Construction, Sub-Section 103-08 Sample Form of Labor and Material Bond, with sufficient sureties, approved by said Commissioner, guaranteeing prompt payment of monies due all persons supplying the Contractor with labor and materials employed and used in carrying out the contract, which bond shall inure to the benefit of the persons supplying such labor and materials. The amount of the Labor and Material Bond shall be 100% of the amount of the total contract bid price.

### 7.10.2 Labor and Material Bond Example

(See the following two pages)

S A M P L E (page 1 of 2)

103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address)  
(hereinafter called the "Principal") and the

\_\_\_\_\_ a corporation created and existing under the laws of the State of \_\_\_\_\_ having its principal office in the City of \_\_\_\_\_ (hereinafter called the "Surety"), are held and firmly bound unto the People of the State of New York (hereinafter called the "State") by and through its Department of Transportation (hereinafter called the "Department"), in the full and just sum of [Total Contract Bid Price or the "A Portion" of Total Contract Bid Price Dollars (\$.....)] good and lawful money of the United States of America, for payment of which said sum of money, well and truly to be made and done, the said Principal binds itself, its heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

WHEREAS, said Principal has entered into a certain written contract, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ with the Department of Transportation, 50 Wolf Road, Albany, New York 12232.

(Project Description)

In the county/counties of which constitutes Contract No. NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall promptly pay all monies due to all persons furnishing labor or materials to it or its SubContractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect; Provided, however, that the Comptroller of the State of New York having required the said Principal to furnish this bond in order to comply with the provisions of Section 137 of the State Finance Law, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Section to the same extent as if they were copied at length herein; and Further, provided, that the place of trial of any action on this bond shall be in the county in which the said contract was to be performed, or if said contract was to be performed in more than one county then in any such county, and not elsewhere.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and the said Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ in the presence of

\_\_\_\_\_) )  
(Company)  
By \_\_\_\_\_ ) Principal  
(Signature)

\_\_\_\_\_) )  
(Title)  
\_\_\_\_\_) )  
(Company)  
By \_\_\_\_\_ ) Surety  
(Signature)

\_\_\_\_\_) )  
(Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).

S A M P L E (page 2 of 2)

103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND

(Acknowledgment of principal, unless it be a corporation)

STATE OF NEW YORK ss. :

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public

(Acknowledgment of principal, if a corporation)

STATE OF NEW YORK ss. :

COUNTY \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, before me personally came \_\_\_\_\_ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in \_\_\_\_\_ that he/she is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

\_\_\_\_\_  
Notary Public

(Acknowledgment of Surety Company)

STATE OF NEW YORK ss. :

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, before me personally came \_\_\_\_\_ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in \_\_\_\_\_ that he/she is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

\_\_\_\_\_  
Notary Public

State Of New York Office of the Attorney General

I hereby approve the foregoing contract and bond as to form and manner of execution.

## SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS)

### 8.1 Funding Source

The following projects will be funded by **Federal Aid**:

Projects 360337, 360338, 360339, 360340, 360341, 360346, 360352, 5V1547, 5V1622, 5V1624, 5V1633, 5V1642, 5V1654, 5V1655, 5V1656, 5V1657, 5V1658, 6V1614, 6V1644, 7V1612, 7V1614, 7V1621, 7V1622, 7V1623, 7V1624, 7V1625, 7V1626, 7V1630, 7V1631, 7V1632, 7V1633, 7V1634, 7V1635, 7V1641, 7V1642, 7V1651, 7V1652, 7V1653, 7V1654, 7V1655, 901873, 903626, 909597, 909599, 911133, 930719 and 930720.

The following projects will be 100% **State funded**:

Projects 1V1631, 1V1651, 1V1681, 6V1654, 7V1613, 7V1616, 7V1656 and 9HW511.

### 8.2 Special Note - Coordination with Cold Recycling Projects

Prior to HMA overlay, Projects 1V1631, 1V1681, 360338, 360340, 360352, 6V1614, and 6V1654 involve cold recycling through separate contractor(s). These VPP overlay projects require that the paving contractor coordinates their work with corresponding cold recycling contractor to allow required curing period before placing the HMA overlay as well as to minimize disruption to the traveling public and the time traffic is running over a recycled surface.

### 8.3 Special Note – PG Binder and Mix Design Level

#### 8.3.1 PG 64S-22

Requirements of this note apply to all Section 402 and Section 404 Asphalt (HMA and WMA) items in this contract as outlined in Section 15.1 Superpave Hot Mix Asphalt Design Criteria table.

#### **PG Binder**

Use a **PG 64S-22** (Standard) meeting the requirements of AASHTO M 332, *Standard Specification for Performance Graded Asphalt Binder using Multiple Stress Creep Recovery (MSCR)*, for the production of hot mix asphalt mixtures for this project. Terminal Blend Crumb Rubber modifier may be used for this PG binder.

When terminal blend CRM PG binder is used, the following shall apply:

- Crumb rubber particles shall be finer than #30 sieve size.
- The CRM PG binder shall be storage-stable and homogeneous.
- The Dynamic Shear Rheometer (DSR) shall be set at 2-mm gap.
- The CRM PG binder shall be 99% free of particles retained on the 600 µm sieve as tested in accordance with Section 5.4 of M 332.

Use of polyphosphoric acid (PPA) to modify the PG binder properties is prohibited for mixtures under this contract. This prohibition also applies to the use of PPA as a cross-linking agent for polymer modification.

#### **Mix Design**

The mixture designs must be developed in accordance with the criteria specified in the HMA items that are appropriate for an Estimated Traffic Level of <30 Million ESALs.

**Note:** The PG binder for this project may be modified with CRM additives to meet the requirements stated above. Handling of the HMA shall be discussed at the pre-paving meetings

(Continues next page)

SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS) (Cont'd)

8.3.2 PG 64V-22

Requirements of this note apply to all Section 402 and Section 404 Asphalt (HMA and WMA) items in this contract as outlined in Section 15.1 Superpave Hot Mix Asphalt Design Criteria table.

**PG Binder**

Use polymer or Terminal Blend Crumb Rubber modified **PG 64V-22** (Very High) meeting the requirements of AASHTO M 332, *Standard Specification for Performance Graded Asphalt Binder using Multiple Stress Creep Recovery (MSCR)*, for the production of hot mix asphalt mixtures for this project. In addition, the binder grade must also meet the **elastomeric** properties as indicated by one of the following equations for %R<sub>3.2</sub>:

1. For  $J_{nr3.2} \geq 0.1$ ,  $\%R_{3.2} > 29.371 * J_{nr3.2}^{-0.2633}$
2. For  $J_{nr3.2} < 0.1$ ,  $\%R_{3.2} > 55$

Where: R<sub>3.2</sub> is % recovery at 3.2 kPa

J<sub>nr 3.2</sub> is the average non-recoverable creep compliance at 3.2 kPa.

When terminal blend CRM PG binder is used, the following shall apply:

- Crumb rubber particles shall be finer than #30 sieve size.
- The CRM PG binder shall be storage-stable and homogeneous.
- The Dynamic Shear Rheometer (DSR) shall be set at 2-mm gap.
- The CRM PG binder shall be 99% free of particles retained on the 600 µm sieve as tested in accordance with Section 5.4 of M 332.

Use of polyphosphoric acid (PPA) to modify the PG binder properties is prohibited for mixtures under this contract. This prohibition also applies to the use of PPA as a cross-linking agent for polymer modification.

**Mix Design**

The mixture designs must be developed in accordance with the criteria specified in the HMA items that are appropriate for an Estimated Traffic Level of <30 Million ESALs.

**Note:** The PG binder for this project will be modified with polymer or CRM additives to meet the requirements stated above. Handling of the HMA shall be discussed at the pre-paving meetings.

8.3.3 PG 64H-22

Requirements of this note apply to all Section 402 and Section 404 Asphalt (HMA and WMA) items in this contract as outlined in Section 15.1 Superpave Hot Mix Asphalt Design Criteria table.

**PG Binder**

Use a **PG 64H-22** (High) meeting the requirements of AASHTO M 332, *Standard Specification for Performance Graded Asphalt Binder using Multiple Stress Creep Recovery (MSCR)*, for the production of hot mix asphalt mixtures for this project. Terminal Blend Crumb Rubber modifier may be used for this PG binder.

When terminal blend CRM PG binder is used, the following shall apply:

- Crumb rubber particles shall be finer than #30 sieve size.
- The CRM PG binder shall be storage-stable and homogeneous.
- The Dynamic Shear Rheometer (DSR) shall be set at 2-mm gap.
- The CRM PG binder shall be 99% free of particles retained on the 600 µm sieve as tested in accordance with Section 5.4 of M 332.

Use of poly-phosphoric acid (PPA) to modify the PG binder properties is prohibited for mixtures containing limestone, limestone as an aggregate blend component, limestone as a constituent in crushed gravel aggregate, or recycled asphalt pavement (RAP) that includes any limestone. This prohibition also applies to the use of PPA as a cross-linking agent for polymer modification.

**Mix Design**

The mixture designs must be developed in accordance with the criteria specified in the HMA items that are appropriate for an Estimated Traffic Level of <30 Million ESALs.

**Note:** The PG binder for this project may be modified with CRM additives to meet the requirements stated above. Handling of the HMA shall be discussed at the pre-paving meetings.

SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS) (Cont'd)

**8.4 Special Note – Optional Use of Warm Mix Asphalt (WMA) Technologies**

The contractor has the option of using an Approved WMA Technology in the production of all 402, *Hot Mix Asphalt (HMA)* items, except *SUPERPAVE HMA with Ice Retardant items, Waterproofing Bridge Deck HMA items, and Paver-Placed Surface Treatment* items, at no additional cost to the State.

If the contractor chooses to use a WMA technology, the provisions of §401 and §402 shall apply including the following:

1. Use an approved technology appearing on the Approved List for *Technologies for Warm Mix Asphalt*. Design a mixture using a WMA Technology in accordance with MM 5.16, *Superpave Hot Mix Asphalt Mixture Design and Mixture Verification Procedure*. At a minimum, a one point verification of the mixture's volumetric properties is acceptable for the following situations:
  - When the WMA mix design is based on an existing Production Status HMA mix design.
  - When the WMA mix design is based on, and utilizes a different WMA technology than, an existing Production Status WMA mix design.
2. Comply with the latest manufacturer's "Production, Testing, and Compaction Details" from the Approved List for incorporating the WMA technology. Test specimens may be made from plant produced or laboratory prepared WMA. Test specimens must be made from plant produced WMA if adding the WMA technology in the lab does not simulate the production process. The Regional Materials Engineer (RME) may require a State representative be present during the fabrication and testing. Submit the WMA design to the RME for review and verification at least 14 calendar days before production, including:
  - Name of WMA technology and the target dosage rate.
  - If using an additive other than water,
    - Submit a MSDS for the additive.
    - Submit either enough of the additive for the laboratory mix design verification, or the additive pre-blended in the PG Binder at the correct dosage. If the additive is not pre-blended into the PG Binder, include directions for properly incorporating the additive into the laboratory made mixture.
  - Prior to the submission of any mix design, contact the RME to determine if there is an increased concern regarding the mixture's moisture susceptibility based on the WMA technology and/or the type of aggregate being used, or the performance of similar mixes. The RME may require AASHTO T 283 moisture susceptibility test results, meeting a minimum Tensile Strength Ratio (TSR) of 80%, as part of the mix design submission.
3. Submit Production Quality Control Plan revisions incorporating the WMA technology if not previously submitted.
4. For 80 Series Compaction Method, complete all breakdown roller passes before the mat temperature falls below 230° F, unless approved by the Director, Materials Bureau.
5. When the asphalt mixture is being placed over a Sheet-Applied Waterproofing Membrane, maintain a minimum delivery temperature in accordance with the Material Detail Sheets prepared by the membrane manufacturer.

**SECTION 8: PROJECTS - SPECIAL NOTES (ALL NYSDOT REGIONS) (Cont'd)**

**8.5 Special Note - Rail Road Involvement in Federal Funded Projects**

Bidders are advised that there may be active at-grade railroad crossings within the limits of projects in this Invitation for Bids. The following at-grade railroad crossings have been identified, but there may be others within the limits of these projects that have not been identified:

<b>Project Number</b>	<b>County</b>	<b>Route</b>	<b>Rail Road Name</b>	<b>Location</b>
360340	Cortland	Rte. 392	New York Susquehanna & Western Railway (NYS&W), Syracuse Branch.	RM 90-3201-1002
5V1642	Erie	Rte. 39	Buffalo Southern Railroad	RM 39-5303-1030
5V1655	Niagara	Rte. 93	CSX Transportation (Lockport Sub)	RM 270- 5402-1063
7V1642	St. Lawrence	Rte. 812	CSXT – Balmat Industrial	RM 812-7502-1091
7V1653	St. Lawrence	Rte. 33	NY Vermont Line Servicing OBPA	RM 33-7502-1306

At the identified at-grade crossings, and any other active at grade railroad crossings encountered on the projects in this Invitation for Bids, the contractor shall conduct its work and handle the equipment such that no part of any material or equipment shall foul a track, catenary, electrical facility or signal facility. A track is fouled when any object is brought within 7.62 M (25') of the centerline of the track or the nearest point of a rail road's catenary, electrical facility or signal facility.

SECTION 9: PROJECTS - SPECIAL NOTES (NYSDOT REGION 1)

9.1 Holiday Restrictions – Region 1 Projects

All Region 1 Projects shall follow the following holiday restrictions:

There shall be no temporary lane closures permitted on the following dates:

- 6:00 AM May 27 to 6:00 AM May 31
- 6:00 AM July 1 to 6:00 AM July 5
- 6:00 AM Sept 2 to 6:00 AM Sept 6
- 6:00 AM Oct 7 to 6:00 AM Oct 11
- 6:00 AM Nov 23 to 6:00 AM Nov 28
- 6:00 AM Dec 23 to 6:00 AM Jan 3 (2017)

9.2 Pilot Vehicle – Region 1 Projects

Unless otherwise specified, the highway shall be kept open to traffic at all times. Traffic shall be discontinued on the lanes where work is being performed on these projects; and as soon as paving is done and rolled, controlled traffic may be permitted thereon. For Region 1 projects in this Invitation for Bids, the Contractors shall provide sufficient two-way radio equipped pilot vehicles to guide traffic around recycling work at a speed not to exceed 15 mph. The pilot vehicles shall be equipped with construction signs meeting the requirements of Section 6F.58 of the Manual of Uniform Traffic Control Devices and a rotating amber beacon:

SIGN	MINIMUM SIZE	LOCATION
PILOT VEHICLE FOLLOW ME	G20-4 CONVENTIONAL 36"x 18"	ON BACK OF PILOT VEHICLES

The pilot vehicle shall have the name of the Contractor prominently displayed.

All cost for Work Zone Traffic Control including flagging, temporary pavement markings, channelizing devices, construction signs, and pilot vehicles shall be included in the prices per ton of bituminous concrete. No separate payment shall be made. **The use of the pilot shall be as ordered by the resident engineer.**

9.3 Paving Operations – Region 1 Projects

Paving operations shall progress in the opposite direction of traffic when paving on Cold Recycled roadways. This provision may only be waived by the Region 1 Materials Engineer, and this waiver will be rescinded if damage to the top course occurs

9.4 Moisture Susceptibility Testing – Region 1 Projects

Any HMA mix design where the primary aggregate component by weight is granite or crushed gravel will be subject to moisture susceptibility testing by the producer during design, unless this requirement is waived by the RME. TSR testing may be required by the RME when there is a change to the asphalt binder source.

Moisture susceptibility will be determined by calculating the tensile strength ratio (TSR) of each specimen according to AASHTO T 283, Resistance of Compacted Asphalt Mixtures to Moisture-Induced Damage, except as modified in Section VI.D. of NYSDOT Materials Method 5.16.

If the TSR of the HMA gyratory specimens is less than 80%, as required in AASHTO M 323, corrective action is required. Corrective action to improve the moisture susceptibility of the HMA mixture can include the use of anti-strip additives or blending of other aggregate materials to reduce the proportion of granite or gravel aggregates in the mix. When corrective action is necessary, any changes made to the design must be noted on the JMF, and all other volumetric and mechanical properties must be evaluated for compliance with NYSDOT Materials Method 5.16 using a one-point design. The results must be reported to the RME prior to production.

**SECTION 9: PROJECTS - SPECIAL NOTES (NYSDOT REGION 1) (Cont'd)**

**9.5 Paving Markings – Region 1 Projects**

It shall be the contractor’s responsibility to inventory and document the existing pavement marking patterns prior to milling and/or resurfacing and submit to the Engineer a copy of the inventory prior to beginning work. The contractor shall be responsible for completing all layout work necessary for the installation of all final pavement markings. If the original markings are obliterated, the contractor shall contact the resident engineer for guidance on their location.

**9.6 Non-Vibratory Rolling – Region 1 Projects**

Contractor shall use non-vibratory rolling over any bridge structure, large culvert or known utility within the project limits or as ordered by the engineer in charge.

**9.7 Project 1V1631 – Rt. 32 Greene County RM 1104 to 1155**

Item **402.058902 (Shim Course)** is being utilized at an average thickness of ½”. Region 1 is requiring the use of either:

- 6.3 HMA mix meeting the requirements of 402.068302, but meeting F9 Friction requirements, and PG 64S-22 may be utilized in lieu of PG 64V-22. (This applies only as a substitution to Item 402.058902 for this contract only)
- Misc. Patching HMA mix meeting the requirements of Item 402.03890118 in the NYS OGS Comprehensive Bituminous Concrete Hot Mix Asphalt and Cold Patch contract Group 31502 – Award #22897.

Bridge BIN 1022390 will be paved with 2 inch thick layer of HMA over a sheet membrane. The work will have to be coordinated with Bridge Maintenance to allow for the installation of the water proof membrane immediately prior to paving. The coordination will be discussed at the pre-pave meeting.

The following intersections shall be paved approximately 75 feet from the edge of the mainline in each direction:

Location	Roadway Width
Halfmoon Drive	30
Frank Hitchcock Road	40
Caniff Road	30
Whites Farm Loop	30
Whites Farm Loop	30
Rolling Meadow Road	30
Meadow Lane	30
East Morehouse Road	25
Evergreen Drive	25
Huntington Drive	25
County Road 67	40
Sunny Hill Road	30

**SECTION 9: PROJECTS - SPECIAL NOTES (NYSDOT REGION 1) (Cont'd)**

**9.8 Project 1V1651 – Rt. 67 Saratoga County RM 1035 to 1097**

Item **402.058902 (Shim Course)** is being utilized at an average thickness of 1/2". Region 1 is requiring the use of either:

- 6.3 HMA mix meeting the requirements of 402.068302, but meeting F9 Friction requirements, and PG 64S-22 may be utilized in lieu of PG 64V-22. (This applies only as a substitution to Item 402.058902 for this contract only)
- Misc. Patching HMA mix meeting the requirements of Item 402.03890118 in the NYS OGS Comprehensive Bituminous Concrete Hot Mix Asphalt and Cold Patch contract Group 31502 – Award #22897.

Intersections shall be paved following the mainline edge of pavement. Rebates shall be cut based upon the estimated intersecting road width below

Location	Roadway Width
RM 67-15031035	30
Division St.	65x2
Cook Rd.	75x2
Jockey St.	75x2
Maple Ave./Featherbed Lane	60x2
Peaceable St.	60x2
Sweetman Rd.	70x2
Finley Rd.	65
Hop City Rd. ( C.R. 56)	75
Paisley Rd.	75
RM 67-15031097	30

**9.9 Project 1V1681- Rt. 40 Washington County RM 1222 to 1182**

Item **402.058902 (Shim Course)** is being utilized at an average thickness of 1/2". Region 1 is requiring the use of either:

- 6.3 HMA mix meeting the requirements of 402.068302, but meeting F9 Friction requirements, and PG 64S-22 may be utilized in lieu of PG 64V-22. (This applies only as a substitution to Item 402.058902 for this contract only)
- Misc. Patching HMA mix meeting the requirements of Item 402.03890118 in the NYS OGS Comprehensive Bituminous Concrete Hot Mix Asphalt and Cold Patch contract Group 31502 – Award #22897.

There shall be no temporary lane closures permitted on Saturday May 21, 2016 (Tour of the Battenkill – Bicycle Race).

The following intersections shall be paved approximately 50 feet from the edge of the mainline in each direction:

Location	Roadway Width
Hannaford Entrance Road	30
Galesville Drive (South)	30
Galesville Drive (North)	30
CR 77/Bald Mountain Road	30
Spraguetown Road	30
Cottrell Road	30
Edie Road	30
Sullivan Road	30
Coon Road	30
North Greenwich Road	30
McNeil Road	30
CR 49	34

**SECTION 10: PROJECTS - SPECIAL NOTES (NYSDOT REGION 3)**

**10.1 Holiday Restrictions – Region 3 Projects**

**All Region 3 Projects shall follow the following holiday restrictions (if not already included in this Invitation for Bids):**

There shall be no temporary lane closures permitted on the following dates:

May 27 – 30

July 1 – 4

Sept. 2 – Sept. 5

Nov. 23 – Nov. 27

**10.2 Project 360337 - Rte. 31; West village of Port Byron to Weedsport**

The State will production mill the pavement within the Village of Port Byron and will mill village intersections accordingly. Coordination will be required between the paving contractor and the milling contractor. Rebates outside the Village of Port Byron shall be milled by the VPP contractor as listed in the rebate table.

There is a major waterline improvement project that will be progressing in the Village of Port Byron during the 2016 season. This VPP project shall not commence until completion of the water line work and may require it to be carried over to the following construction season.

**10.3 Project 360338 - Rte. 38; Rte. 13/38 Intersection to Rte. 366**

This project requires cold recycling; coordination will be required between the CIPR and VPP contractors.

To maintain smooth transitions, rebates on all side roads as listed in the contract rebate table will be cut at a distance of 50 feet as measured from the edge of the mainline shoulder. The contractor should anticipate paving intersections separately from mainline, payment to be included in the price bid for Item 402.096302.

**10.4 Project 360339 - Rte. 13; Schuyler Co. Line to Trumbells Corners Rd Intersection**

This project requires production cold milling prior to paving, coordination will be required between the paving contractor and the milling contractor.

The State anticipates progressing a bridge work contract within the limits of this project, coordination between the VPP contractor and the bridge contractor will be required.

**10.5 Project 360340 - Rte. 392, Rte. 11 to S. Hill Rd**

This project requires cold recycling prior to paving, coordination will be required between the paving contractor and the recycling contractor.

**10.6 Project 360341 - Rte. 41; Baker School House Rd. to East Village of McGraw**

This project requires production cold milling prior to paving, coordination will be required between the paving contractor and the milling contractor.

**SECTION 10: PROJECTS - SPECIAL NOTES (NYSDOT REGION 3) (Cont'd)**

**10.7 Project 360352 – Rte. 41A; Mandana to Rte. 20**

This project requires cold in place recycling, coordination will be required between the CIPR and VPP contractors.

This project requires production cold milling prior to paving, coordination will be required between the paving contractor and the milling contractor.

No CIPR or paving work shall be performed at RM 41A3303-1101 until the culvert at that location is replaced.

Contractor is to provide all WZTC. Sequence of operations is as follows: CIPR work on the southern segment of the project, milling on the northern segment of the project, T&L and top course paving. Paving operations shall begin at Route 20 and proceed to the south.

## SECTION 11: PROJECTS - SPECIAL NOTES (NYSDOT REGION 5)

### 11.1 General Special Notes – Region 5 Projects

The paving operations shall be progressed in a segment by segment basis. No longitudinal paving joints shall be allowed at the end of the work day. The segments shall be based on the contractor's daily work capacity and shall not end within an intersection.

### 11.2 Special Note for Hot Mix Asphalt – Region 5 Projects

All HMA production will require the use of anti-strip agent to prevent moisture induced damage to the HMA. The minimum dosage for anti-strip is 0.3% of the PG binder content. This requirement will be waived by the Regional Director if the contractor provides proof the HMA is not susceptible to moisture induced damage by providing test results as described below or if there is no history of moisture induced damage from the aggregates and production facilities used to make the HMA.

### 11.3 Moisture Susceptibility Testing – Region 5 Projects

The Contractor will be required to submit to the Regional Material Engineer (RME) AASHTO T-283 moisture susceptibility test results prior to production of HMA Top Course. The results shall be a minimum Tensile Strength Ratio (TSR) of 80%. If the asphalt binder source is changed after being tested for moisture susceptibility, the mixture may require testing again at the RME's discretion.

The Department may sample and test the above mixture during production to verify the moisture susceptibility requirement is met. If the results do not meet the production requirement (minimum TSR of 80%), the producer will need to take corrective action. If during production, the TSR test results fall below 70%, the RME will immediately suspend production for this project according to Section 105, Control of Work, and Section 106, Control of Material, of the Standard Specifications.

### 11.4 Dust (Minus 0.075 mm Aggregate) to Effective PG Binder Content Ratio – Region 5 Projects

In addition to AASHTO T283 testing, the Department will verify the Contractor's Dust (Minus 0.075 mm Aggregate) to Effective PG Binder Content Ratio during production. The minus 0.075 mm material will be determined using washed aggregate analysis and the ratio result shall be within the limits of 0.8 to 1.6.

### 11.5 Polymer Modified PG Binder – Region 5 Projects

All Region 5 require the use of Polymer Modified (64V-22) PG Binder.

### 11.6 Pavement Markings – Region 5 Projects

It shall be the contractor's responsibility to inventory and document the existing pavement marking patterns prior to milling and/or resurfacing and submit to the Engineer a copy of the inventory prior to beginning work. The contractor shall be responsible for completing all layout work necessary for the installation of all final pavement markings. If the original markings are obliterated, the contractor shall contact the resident engineer for guidance on their location.

### 11.7 Time Restrictions – Region 5 Projects

All Region 5 Projects shall follow the time restrictions outlined in the "Work Zone Traffic Control - for Design/Construction on State Highways in Region 5" available on the NYSDOT website or through the Regional Transportation Systems Operations group excepting those projects listed on the Region 5 project specific special notes.

SECTION 11: PROJECTS - SPECIAL NOTES (NYSDOT REGION 5) (Cont'd)

**11.8 Project 5V1547**

The traveled way and shoulders will be production milled at full width prior to HMA overlay.

**11.9 Project 5V1642**

The traveled way and shoulders will be production milled at full width prior to HMA overlay.

**11.10 Project 5V1622**

Single course overlay of travel way and shoulders. Surface will be milled prior to overlay.

In the Village of Cassadaga, High Street will be paved 30' into the intersection and Maple St. 15' into the intersection. In addition to Rte. 60 paving, included in quantity is the James A. France Memorial Parking area at RM 60 5201 3151 and ramp to CR 66 at RM 60 5201 3100.

**11.11 Project 5V1624**

Single course overlay of travel way and shoulders. Surface will be milled prior to overlay.

**11.12 Project 5V1654**

The pavement will be milled at full width prior to overlay, for the entirety of the project limits.

**11.13 Project 5V1655**

**Railroad at-grade crossing information:** CSX Transportation (Lockport Sub), RM 270-5402-1063, crossing number 520813X.

**11.14 Project 5V1657**

The pavement will be milled at full width, prior to the HMA inlay, for the entirety of the project limits *with the following exception*: 8' of the outside shoulders and 3' of the inside shoulders between NY 270 (RM 31-5401-2149) and Upper Mountain Road (RM 31-5401-2166). Following the VPP the untreated shoulder width will be fog sealed.

## SECTION 12: PROJECTS - SPECIAL NOTES (NYSDOT REGION 6)

### 12.1 Coordination with other Projects – Region 6 Projects

Prior to HMA overlay, Project 6V1614 and 6V1654 involve cold recycling through separate contract(or(s)). Prior to HMA overlay, Project 6V1644 involves heater scarify and milling through separate contract(or(s)). Project 6V1614 involves a segment of milling through separate contract(or(s)).

### 12.2 Special Notes – Region 6 Projects

No work shall be permitted, to minimize travel delays associated with major holidays, during the following periods:

Friday, May 27, 2016-sunrise, Tuesday, May, 31, 2016.

Friday, July 1, 2016- sunrise, Tuesday, July 5, 2016.

Friday, September 2, 2016- sunrise, Tuesday, September 6, 2016.

The Region requests all Preconstruction paperwork be submitted electronically as pdf files to Stacey.Forenz@dot.ny.gov prior to the preconstruction meeting (but not before the bid opening date for this Invitation for Bids), or all documentation be brought to the Preconstruction meeting electronically as .pdf files on a CD or USB “thumb” drive that will not be returned to the contractor.

Paint is the only option permitted in Region 6 for temporary and interim pavement markings, unless approved on a case by case basis by the Resident Engineer. Offset the centerline temporary/interim pavement markings so that the permanent markings will cover up the temporary/interim markings, as follows: 8” centerline offset for 2 lane roads, 6” centerline offset for multi-lane roadways.

A reminder that per Code Rule 753, a “Dig Safe” ticket shall be submitted for each project notifying of “...the movement or removal...of pavement...”. Some of these utilities may request “no vibratory rolling” for a distance up to 100’ over interstate/intercontinental gas/petroleum transverse crossings. Contractors can visit the following website to view whether there is a likelihood for these utilities in the project limits:

<https://www.npms.phmsa.dot.gov/> and then click the npms public map viewer link and follow the instructions.

Polymer Modified Additive, at no additional cost to the State, is to be used for PIN 6V1644 for the 12.5mm HMA.

All Region 6 HMA projects shall be completed no later than October 31, 2016. A schedule reflecting this shall be submitted before start of work to the Region’s ARDO, Stacey Forenz, for approval.

### 12.3 HMA Overlay Splices (Rebates) – Region 6 Projects

All Region 6 hot mix asphalt overlay splices (pavement terminations) shall be installed as per NYSDOT Standard Sheet 402-01 issued under EB 08-036.

**SECTION 13: PROJECTS - SPECIAL NOTES (NYSDOT REGION 7)**

The following Special Notes for Region 7 Projects shall supersede any other sections of this IFB/Award or the Standard Specifications referenced herein.

**13.1 Special Work Zone Traffic Control – Pilot Vehicle – Region 7 Projects**

Unless otherwise specified, the highway shall be kept open to traffic at all times. Traffic shall be discontinued on the lanes where work is being performed on these projects; and as soon as HMA is applied and rolled, controlled traffic may be permitted thereon. For Region 7 VPP projects in this Contract Award Notification, the Contractors shall provide sufficient two-way radio equipped pilot vehicles to guide traffic around paving work at a speed not to exceed 15 mph. The pilot vehicles shall be equipped with construction signs meeting the requirements of Section 6F.58 of the Manual of Uniform Traffic Control Devices. The requirement for delineation of the closed lane (cone placement), as defined in Section 6F.58 of the MUTCD, shall be evaluated by the Resident Engineer at the Preconstruction conference based on the traffic control plan presented by the Contractor and a determination will be made at that time whether it will be required on the project. **Daytime lane closures may be used in lieu of pilot vehicles on controlled access highways as deemed appropriate by the Resident Engineer at the time of preconstruction conference.**

SIGN	MINIMUM SIZE	LOCATION
PILOT VEHICLE FOLLOW ME	G20-4 CONVENTIONAL 36"x18"	ON BACK OF PILOT VEHICLES

The pilot vehicle shall have the name of the Contractor prominently displayed. All cost for Work Zone Traffic Control including flagging, temporary pavement markings, channelizing devices, construction signs, and pilot vehicles shall be included in the prices bid per ton for bituminous concrete. No separate payment shall be made.

**13.2 Exposed Longitudinal Joints – Region 7 Projects**

Exposed Longitudinal Centerline Joints on any asphalt material placed by the Contractor under this award will not be permitted overnight. All centerline joints and/or abutting travel lane joints shall be required to be closed by the end of each work day.

**13.3 Moisture Susceptibility Testing for Projects Requiring the Use of 64S-22 PGB – Region 7 Projects**

Any HMA mix design where the primary aggregate component by weight is granite or crushed gravel will be subject to moisture susceptibility testing by the producer during design, unless this requirement is waived by the RME. TSR testing may be required by the RME when there is a change to the asphalt binder source.

Moisture susceptibility will be determined by calculating the tensile strength ratio (TSR) of each specimen according to AASHTO T 283, Resistance of Compacted Asphalt Mixtures to Moisture-Induced Damage, except as modified in Section VI.D. of NYSDOT Materials Method 5.16.

If the TSR of the HMA gyratory specimens is less than 80%, as required in AASHTO M 323, corrective action is required. Corrective action to improve the moisture susceptibility of the HMA mixture can include the use of anti-strip additives or blending of other aggregate materials to reduce the proportion of granite or gravel aggregates in the mix. When corrective action is necessary, any changes made to the design must be noted on the JMF, and all other volumetric and mechanical properties must be evaluated for compliance with NYSDOT Materials Method 5.16 using a one-point design. The results must be reported to the RME prior to production.

SECTION 13: PROJECTS - SPECIAL NOTES (NYSDOT REGION 7) (Cont'd)

**13.4 Project 7V1631 (Rte. 177, Rodman to Lewis Co. Line)  
and Project 7V1633 (Rte. 37, Rte. 11 to Rte. 342)**

The Department of Transportation is conducting research on the performance of the mixture with recycled asphalt pavement (RAP) by accepting a portion of the asphalt contributed by the RAP. This project will be designated as experimental.

When greater than 10% of recycled asphalt pavement (RAP) is utilized in the production of Hot Mix Asphalt (HMA) or Warm Mix Asphalt (WMA) Top Course for this contract, the following minimum asphalt content will be utilized in the final mixture design calculation for optimum asphalt content:

HMA Mixture	Minimum Asphalt Content (%)
6.3 HMA	6.0
9.5 HMA	6.0
12.5 HMA	5.4

The mixture design will be formulated such that all the volumetric properties are within the criteria specified in the latest Material Method 5.16. The total targeted asphalt content of virgin binder and the accepted RAP asphalt contribution shall not be less than the minimum asphalt content of the mix design during production indicated in the above table.

SECTION 14: PROJECTS - SPECIAL NOTES (NYSDOT REGION 9)

**14.1 Project 903626 - Route 17B - VPP**

The pavement is preferred to be milled prior to overlay if the milling contract is available. Contractor will coordinate with the residency and the milling contractor prior to placing the VPP material. In case it's mill prior to overlay, rebates will not be required.

Contractor shall NOT work on this site on any day of a Bethel Woods concert.

**14.2 Project 9HW511 - Route 41**

The pavement will be milled full width prior to overlay, for the entirety of the project limits. Contractor will coordinate with the residency and the milling contractor prior to placing the VPP material.

**SECTION 15: SUPERPAVE HOT MIX ASPHALT**

**15.1 Superpave Hot Mix Asphalt Design Criteria**

The following are design criteria for SUPERPAVE Hot Mix Asphalt Items for projects contained in this Invitation for Bids (please see the Special Notes – PG Binder and Mix Design Level):

Project Number	Item	80kN EAL's	Aggregate Size	PG Binder
1V1631	402.096202	<30.0 Mil	9.5	PG 64S-22
	402.058902	N/A	Type 5 Shim	PG 64S-22
1V1651	402.06820318	<30.0 Mil	6.3	PG 64V-22
	402.058902	N/A	Type 5 Shim	PG 64S-22
1V1681	402.096202	<30.0 Mil	9.5	PG 64S-22
	402.058902	N/A	Type 5 Shim	PG 64S-22
360337	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.018902	<30.0 Mil	9.5	PG 64S-22
360338	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.017902	<30.0 Mil	9.5	PG 64S-22
360339	402.096202	<30.0 Mil	9.5	PG 64S-22
	402.017902	<30.0 Mil	9.5	PG 64S-22
360340	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.017902	<30.0 Mil	9.5	PG 64S-22
360341	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.017902	<30.0 Mil	9.5	PG 64S-22
360346	402.096202	<30.0 Mil	9.5	PG 64S-22
	402.017902	<30.0 Mil	9.5	PG 64S-22
360352	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.017902	<30.0 Mil	9.5	PG 64S-22
5V1547	402.096202	<30.0 Mil	9.5	PG 64V-22
5V1622	402.096202	<30.0Mil	9.5	PG64V-22
5V1624	402.096202	<30.0Mil	9.5	PG64V-22
5V1633	402.06820318	<30.0 Mil	6.3	PG 64V-22
5V1642	402.096202	<30.0 Mil	9.5	PG 64V-22
5V1654	402.096202	<30.0 Mil	9.5	PG 64V-22
5V1655	402.096202	<30.0 Mil	9.5	PG 64V-22
5V1656	402.06820318	<30.0 Mil	6.3	PG 64V-22
5V1657	402.096202	<30.0 Mil	9.5	PG 64V-22
5V1658	402.06820318	<30.0 Mil	6.3	PG 64V-22
6V1614	402.06830318	<30.0 Mil	6.3	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
6V1644	402.126202	<30.0 Mil	12.5	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
6V1654	402.06830318	<30.0 Mil	6.3	PG 64V-22
7V1612	402.06830318	<30.0 Mil	6.3	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1613	402.06830318	<30.0 Mil	6.3	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1614	402.06820318	<30.0 Mil	6.3	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1616	402.126302	<30.0 Mil	12.5	PG 64S-22
	402.018902	<30.0 Mil	9.5	PG 64S-22
7V1621	402.06830318	<30.0 Mil	6.3	PG 64V-22
7V1622	402.126302	<30.0 Mil	12.5	PG 64V-22
7V1623	402.126302	<30.0 Mil	12.5	PG 64V-22
7V1624	402.126302	<30.0 Mil	12.5	PG 64V-22

Project Number	Item	80kN EAL's	Aggregate Size	PG Binder
7V1625	402.126302	<30.0 Mil	12.5	PG 64V-22
7V1626	402.126302	<30.0 Mil	12.5	PG 64V-22
7V1630	402.06820318	<30.0 Mil	6.3	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1631	402.096302	<30.0 Mil	9.5	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1632	402.096302	<30.0 Mil	9.5	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1633	402.096302	<30.0 Mil	9.5	PG 64V-22
7V1634	402.06820318	<30.0 Mil	6.3	PG 64V-22
7V1635	402.096202	<30.0 Mil	9.5	PG 64V-22
7V1641	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.018902	<30.0 Mil	9.5	PG 64S-22
7V1642	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.018902	<30.0 Mil	9.5	PG 64S-22
7V1651	402.096302	<30.0 Mil	9.5	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1652	402.126202	<30.0 Mil	12.5	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1653	402.126202	<30.0 Mil	12.5	PG 64V-22
	402.018902	<30.0 Mil	9.5	PG 64V-22
7V1654	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.018902	<30.0 Mil	9.5	PG 64S-22
7V1655	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.018902	<30.0 Mil	9.5	PG 64S-22
7V1656	402.096302	<30.0 Mil	9.5	PG 64S-22
	402.018902	<30.0 Mil	9.5	PG 64S-22
9HW511	402.097302	<0.3 Mil	9.5	PG 64S-22
901873	402.06830318	<30.0 Mil	6.3	PG 64V-22
903626	402.126202	<30.0 Mil	12.5	PG 64H-22
	402.128902	<30.0 Mil	12.5	PG 64H-22
909597	402.06830318	<30.0 Mil	6.3	PG 64V-22
909599	402.06830318	<30.0 Mil	6.3	PG 64V-22
911133	402.06830318	<30.0 Mil	6.3	PG 64V-22
930719	402.097202	<30.0 Mil	9.5	PG 64S-22
930720	402.097202	<30.0Mil	9.5	PG 64S-22

**Note: Please see the Special Notes – PG Binder and Mix Design Level**

15.2 Project Dimensions

Project Number	Items	Resurfacing Depth (in)	Travel Lanes Width (ft.) (total)	Lane Width (ft.) (one lane)	Shoulder Width (ft.) (one shldr)	Number Lanes
1V1631	402.096202	1.5	24	12	4	2
	402.058902	0.5	24	12	4	2
1V1651	402.06820318	0.75	22	11	4	2
	402.058902	0.5	22	11	4	2
1V1681	402.096202	1.5	24	12	8	2
	402.058902	0.5	24	12	8	2
360337	402.096302	1.5	22	11	8 to 10	2
	402.018902	Varies	22	11	8 to 10	2
360338	402.096302	1.5	22	11	5	2
	402.017902	0.75	22	11	5	2
360339	402.096202	1.5	24	12	5	2
	402.017902	1	24	12	5	2
360340	402.096302	1.5	22	11	4	2
	402.017902	0.75	22	11	4	2
360341	402.096302	1.5	22	11	5	2
	402.017902	1	22	11	5	2
360346	402.096202	1.5	22 to 48	11 to 12	4 to 10	2 to 4
	402.017902	1	22 to 48	11 to 12	4 to 10	2 to 4
360352	402.096302	1.5	18 to 22	9 to 11	4 to 10	2
	402.017902	0.75	18 to 22	9 to 11	4 to 10	2
5V1547	402.096202	1.5	24	12	6 to 8	2
5V1622	402.096202	1.5	24 to 37	12 to 13	6 to 8	2 to 3
5V1624	402.096202	1.5	22 to 36	11 to 12	6 to 8	2 to 3
5V1633	402.06820318	0.75	51 to 84	12.0	0	4 to 6
5V1642	402.096202	1.5	24	12	10	2
5V1654	402.096202	1.5	24 to 48	12	6	2 to 4
5V1655	402.096202	1.5	24	12	8	2
5V1656	402.06820318	0.75	24	12	6	2
5V1657	402.096202	1.5	24 to 54	12	4 to 9	2 to 4
5V1658	402.06820318	0.75	24 to 48	12	0 to 8	2 to 4
6V1614	402.06830318	1	24	12	6.5	2
	402.018902	0.75	24	12	6.5	2
6V1644	402.126202	1.5	24	12	7.5	2
	402.018902	0.75	24	12	7.5	2
6V1654	402.06830318	1	21	11	4.2	2
7V1612	402.06830318	1	22	11	7	2
	402.018902	0.5	22	11	7	2
7V1613	402.06830318	1	20	10	3	2
	402.018902	0.5	20	10	3	2
7V1614	402.06820318	1	24	12	8	2
	402.018902	0.5	24	12	8	2
7V1616	402.126302	1.5	24	12	10	2
	402.018902	0.5	24	12	10	2
7V1621	402.06830318	0.75	22	11	4 to 10	2
7V1622	402.126302	1.5	22	11	4 to 7	2
7V1623	402.126302	1.5	22	11	4	2
7V1624	402.126302	1.5	24 to 30	12 to 15	6 to 7	2
7V1625	402.126302	1.5	22 to 24	11 to 12	4 to 14	2
7V1626	402.126302	1.5	24	12	8	2
7V1630	402.06820318	1	48	12	4 to 8	4
	402.018902	0.5	48	12	4 to 8	4

<b>Project Number</b>	<b>Items</b>	<b>Resurfacing Depth (in)</b>	<b>Travel Lanes Width (ft.) (total)</b>	<b>Lane Width (ft.) (one lane)</b>	<b>Shoulder Width (ft.) (one shldr)</b>	<b>Number Lanes</b>
7V1631	402.096302	1.5	24	12	4	2
	402.018902	0.5	24	12	4	2
7V1632	402.096302	1	24	12	6 to 12	2
	402.018902	0.5	24	12	6 to 12	2
7V1633	402.096302	1.5	24	12	3 to 8	2
7V1634	402.06820318	1	24	12	4 to 7	2
7V1635	402.096202	1.5	24 to 38	12 to 19	0 to 8	2
7V1641	402.096302	1.5	20 to 22	10 to 11	4 to 10	2
	402.018902	0.5	20 to 22	10 to 11	4 to 10	2
7V1642	402.096302	1.5	24	12	6 to 8	2
	402.018902	0.5	24	12	6 to 8	2
7V1651	402.096302	1.5	24	12	8	2
	402.018902	0.5	24	12	8	2
7V1652	402.126202	1.5	24	12	8 to 10	2
	402.018902	0.5	24	12	8 to 10	2
7V1653	402.126202	1.5	24	12	8 to 10	2
	402.018902	0.5	24	12	8 to 10	2
7V1654	402.096302	1.5	24	12	6	2
	402.018902	0.5	24	12	6	2
7V1655	402.096302	1.5	24	12	6	2
	402.018902	0.5	24	12	6	2
7V1656	402.096302	1.5	24	12	6	2
	402.018902	0.5	24	12	6	2
9HW511	402.097302	1.5	22	11	2	2
901873	402.06830318	1	24	12	10	2
903626	402.126202	1.5	48	12	-	4
	402.128902	1.5	-	-	10	2
909597	402.06830318	1	22	11	5	2
909599	402.06830318	1	22	11	8	2
911133	402.06830318	1	36	12	2 to 12	2 to 4
930719	402.097202	1.5	24 to 36	12	4 to 10	2 to 3
930720	402.097202	1.5	24 to 48	12	4 to 8	2 to 4

15.3 Rebates Table

Project Number	Rebate Location	Rebate Width (ft.)
1V1631	Beginning of Job	44
	Halfmoon Drive	30
	Frank Hitchcock Road	50
	Gutter NB RM 1114 +400	905
	Gutter SB RM 1114 +450	130
	Canniff Road	40
	Whites Farm Loop	30
	Whites Farm Loop	30
	Rolling Meadow Road	30
	Meadow Lane	30
	East Morehouse Road	25
	Evergreen Drive	25
	Huntington Drive	25
	County Road 67 (north bound)	40
	County Road 67 (south bound)	40
	Sunny Hill Road	30
	End Of Job	30
1V1651	RM 67-1503-1035	30
	Division St.	65
	Division St.	65
	Cook Rd	75
	Cook Rd	75
	Jockey St	75
	Jockey St	75
	Maple Ave.	60
	Featherbed Lane	60
	Peaceable St.	60
	Peaceable St.	60
	Sweetman Rd.	70
	Sweetman Rd.	70
	Finley Rd.	65
	Hop City Rd. ( C.R. 56)	75
Paisley Rd.	75	
RM 67-1503-1097	30	
1V1681	RM 40-1802-1122	36
	Hannaford Entrance	36
	Galesville Drive (S)	36
	Galesville Drive (N)	36
	CR 77	36
	Spraguetown Road	36
	Cottrell Road	36
	Eddie Road	36
	North Greenwich Road	36
	McNiel Road	36
	CR 49	36
	RM 40-1802-1182	36

Project Number	Rebate Location	Rebate Width (ft.)
360337	Centerport Road	25
	Townline Road	25
	Cold Spring Bridge Start	38
	Cold Spring Bridge End	38
	Brutus Street	30
	Hawley Street	25
	Watson Street	25
	RM 31-3108-1082, End of Project	38
360338	RM 38-3603-1050 Project Begin	42
	Lewis St (Lt)	34
	Lewis St (Rt)	32
	Spring House Rd (Lt)	28
	Hart Rd (Rt)	28
	Irish Settlement Rd. (Lt)	31
	Necarsulmer Dr. (Lt)	34
	George Jr. Republic (Rt)	70
	Necarsulmer Dr. (Lt)	34
	George Rd (Rt)	45
	George Rd (Rt)	45
	Cook St	35
	Factory St (Lt)	28
	RM 38-3603-1081 Project End	50
360339	No rebates required	
360340	Rte 11 RM 90-3201-1000	30
	Bridge East RM 1001	30
	Bridge West RM 1001	30
	Frances Rd	30
	RR tracks East RM 1003	30
	RR tracks West RM 1003	30
	Snyder Hill Rd.	30
	Muckey Rd	25
	Bridge East RM 1016	30
	Bridge West RM 1016	30
	Parker St.	30
	Bridge East RM 1119	30
	Bridge West RM 1119	30
	Carson Rd.	30
	Woodchuckhill Rd.	25
	Alpha Circle	20
	Clute Rd.	30
End Project 90-3201-1053	30	
360341	No rebates required	
360346	No rebates required	
360352	Project Begin 41A-3303-1010	26
	Rte 359	50
5V1547	West Project Limit	40
	BIN 1046510 (west approach)	40
	BIN 1046510 (east approach)	40

Project Number	Rebate Location	Rebate Width (ft.)
5V1547 (Cont'd)	East Project Limit	40
5V1622	BIN 1027860 BIN 1027840 BIN 1027830	2 @48' 2 @ 40' 2 @ 40'
5V1624	No rebates required	
5V1633	West Project Limit Dick Rd intersection (north leg) East Project Limit	68 164 59
5V1642	West Project Limit RR Crossing (west - RM 39-5303-1030) RR Crossing (east - RM 39-5303-1030) BIN 1024490 (west approach) BIN 1024490 (east approach) East Project Limit	120 30 30 40 40 44
5V1654	No rebates necessary; will be WOC milled prior to VPP overlay	
5V1655	West Project Limit CSX Transportation, Lockport Sub at-grade crossing begin approach, RM 270-5402-1063 CSX Transportation, Lockport Sub at-grade crossing end approach, RM 270-5402-1063 East Project Limit	100 40 40 120
5V1656	South Project Limit North Project Limit	40 40
5V1657	No rebates necessary; will be WOC milled prior to VPP overlay	
5V1658	South Project Limit (From US 62) South Project Limit (To US 62) BIN 1039580 (west approach), RM 182-5401-2023 BIN 1039580 (east approach), RM 182-5401-2023 North Project Limit	22 105 40 40 140
6V1614	17-6103-1141 project begin 17-6103-1160- C610270 17-6103-1165- C610271 17-6103-1178 project end	36 2@37 2@37 40
6V1644	36-6401-3090 project begin 36-6401-1043- BIN 1023580- South Approach 36-6401-3150 project end	40 1@23 32
6V1654	364-6601-1126 project begin 364-6601-1164 project end	32 29
7V1612	Project Begin RM 1057 Lower Rd. Int. RM 1059 Cold Spring Rd. Int. RM 1070 Project End RM 1102	50 66 54 50
7V1613	Project Begin RM 1000 Lagree Rd. RM 1016 Clinton Mills Rd. RM 1026 Looby Rd. RM 1026 Broad St. RM 1028 Merchia Rd. RM 1035	175 48 70 90 50 80

Project Number	Rebate Location	Rebate Width (ft.)
7V1613 (Cont'd)	Liberty Pole Rd. RM 1050	95
	Frontier Rd. RM 1050	70
	Project End RM 1057	36
7V1614	Project Begin RM 1241	56
	Recore Rd. RM 1242	90
	Gails Trl. RM 1243	35
	LaPlante Rd. RM 1246	80
	Seymour Rd. RM 1254	60
	Dupuette Rd. RM 1261	80
	Dawn Dr. LT RM 1270	40
	Dawn Dr. RT RM 1270	40
	Jersey Swamp Rd. LT RM 1273	90
	Jersey Swamp Rd. RT RM 1273	90
	Townline Rd. RM 1286	85
	Bradford Rd. RM 1288	80
	Pellerin Rd. RM 1290	86
	Robinson Rd. RM 1298	80
	Rte. 374 RT RM 1300	200
	Rte. 374 LT RM 1300	200
	Wallace Hill Rd. RM 1306	62
	Tom Miller Rd. RT RM 1310	175
	Tom Miller Rd. LT RM 1310	175
	Independence Drive RM 1313	66
Della Drive RM 1314	60	
Project End Rte. 3 RM 1317	195	
7V1616	Project Begin RM 1000	62
	Derringer Dr. RT RM 1005	180
	Derringer Dr. LT RM 1005	85
	Derringer Dr. RT RM 1006	85
	Kira Dr. RT RM 1006	115
	Affiliated Dr. LT (2 ea.) RM 1006	100
	Fedex Dr. LT 2 ea.) RM 1007	100
Project End RM 1008	62	
7V1621	Project Begin RM 1000	60
	Project End RM 1007	42
7V1622	Project Begin RM 1000	54
	Project End RM 1025	48
7V1623	Project Begin RM 1140	42
	Project End RM 1200	42
7V1624	Project Begin RM 1439	50
	Rte. 458 Intersection	54
	Project End RM 1475	56
7V1625	Project Begin RM 1000	62
	Project End RM 1042	60
7V1626	Project Begin RM 1106	56
	Project End RM 1136	56
7V1630	Project Begin RM 1385 (2)	56
	Exit 49 Ramps RM 1390 (4)	30

<b>Project Number</b>	<b>Rebate Location</b>	<b>Rebate Width (ft.)</b>
7V1630 (Cont'd)	Rte. 411 Bridge RM 1390 (2)	56
	CR 15 Bridge Underpass (2)	300
	Project End RM 1435 (2)	56
7V1631	Project Begin RM 1069	45
	Project End RM 1099	45
7V1632	Project Begin RM 1218	68
	Bridge @ RM 1239 (2)	68
	Project End RM 1272	68
7V1633	Project Begin RM 1001	56
	Project End RM 1026	56
7V1634	No Rebates Required	
7V1635	Project Begin RM 1097	68
	Project End: No Rebate Required	
7V1641	Project Begin RM 1000	48
	Rte. 294 RM 1007	42
	Golden Rd. RM 1018	75
	Esche Rd. RM 1033	50
	George Kraeger Rd. RM 1046	40
	Croneiser Rd. RM 1054	60
	Zimmer Rd. RM 1061	50
	Kessler Rd. RM 1062	50
	Rector Rd. RM 1070	40
	Adam Rd. RM 1079	65
	Adam Rd. RM 1081	65
	John St. RM 1086	70
	W. Main St. RM 1086	70
	James St. RM 1090	70
	James St. RM 1090	70
Project End RM 1093	48	
7V1642	Project Begin RM 1083	56
	Co. Rd. 24 RM 1083	130
	Co. Rd. 24 RM 1083	100
	Office Rd. RM 1087	100
	Dead End RM 1089	70
	RR Crossing RM 1091 (2)	80
	Sylvia Lake Rd. RM 1102	80
	Project End Rte. 58 RM 1105	140
7V1651	No Rebates Required	
7V1652	Project Begin RM 1262	56
	Bridge Over Oswegatchie River RM 1280 (2)	62
	Rte. 812 Overpass RM 1283 (2)	62
	Ramp Termini @ Rte. 812 RM 1284	100
	Ramp Termini @ Fine St. RM 1281	85
	Ramp Termini @ Rte. 68 West RM 1287	40
	New York Ave./Black Lake Rd. RM 1278 (2)	80
	Rte. 68 East RM 1263 (2)	80
Project End RM 1292	56	

<b>Project Number</b>	<b>Rebate Location</b>	<b>Rebate Width (ft.)</b>
7V1653	Project Begin RM 1292	56
	RR Crossing RM 1306 (2)	56
	Linden St. Int. RM 1295	100
	Champlain St. Int. RM 1297	100
	Ford St. Int. RM 1302	100
	International Bridge Approach RM 1309	150
	Entrance to Prison & Psych Center RM 1311 (2)	100
	Acco Drive Int. RM 1318	85
	County Rd. 28 Int.	100
	Project End RM 1322	56
7V1654	Project Begin RM 1032	50
	Hollywood Rd. Int.	75
	Project End EM 1100	50
7V1655	Project Begin RM 1190	50
	Bridge in Colton RM 1228 (2)	50
	Project End RM 1242	50
7V1656	Project Begin RM 1067	50
	Project End RM 1088	50
9HW511	(No rebates necessary; roadway will be WOC milled prior to VPP overlay)	0
901873	Begin Rebate @ RM 28 9302/1081 (-30')	45
	Fair Street (S/B)	90
	Fair Street (N/B)	100
	C.R. 3 Spur/State Police (N/B)	100
	Rt 30 (S/B)	135
	Reservoir Rd (N/B)	90
	1 Room School House (N/B)	45
	DEP Treatment D/W #1 (S/B)	77
	DEP Treatment D/W #2 (S/B)	82
	End Rebate @ RM 28 9302/1116	45
903626	RM 17B 9601/1207	60
	RM 17B 9601/1218	60
909597	Begin Rebate @ RM 10 9502/1293	45
	Markley Rd	115
	Rhinebeck Rd	84
	Bush Street	125
	Rt 165	85
	Gardinerville Rd	80
	Gardinerville Rd	105
	Loonenbergh Turnpike	205
	C.R. 5/Slate Hill Rd/Beekman Corners	60
	C.R. 5/Slate Hill Rd/Beekman Corners	75
End Rebate @ RM 10 9502/1333	45	
909599	Begin Rebate @ RM 10 9301/1387	46
	Hamden Hill Rd	70
	1st Commercial Driveway	85
	2nd Commercial Driveway	90
	3rd Commercial Driveway	85
	C.R. 16 (Treadwell)	70

Project Number	Rebate Location	Rebate Width (ft.)
909599 (Cont'd)	Clark's Driveway (south)	60
	Clark's Driveway (north)	150
	Peakes Brook Rd	50
	End @ RM 10 9301/1416 (+200')	60
911133	Begin, E/B @ RM 20 9518/1017	40
	Begin, W/B- RM 20 9518/1023	40
	Chestnut Str. / C.R. 55	125
	School Driveway	25
	Beechwood Rd	35
	Stewarts to Rt 10 Intersection	225
	Rt 10 Intersection (North)	75
	Rt 10 Intersection (South)	60
	End, EB&WB @RM 20 9518/1023	53
930719	Start RM 7-9403-1000	36
	RM 7-9403-1001 left	50
	Start RM 8-9402-1000	48
	RM 8-9402-1002 left	60
	End RM 8-9402-1004	40
	Bridge over Unadilla River begin	44
	Bridge over Unadilla River end	44
	RM 7-9403-1012 right	50
	Main Street right	100
	End RM 7-9403-1013	34
930720	Start RM 7-9403-3000	34
	RM 7-9403-3001 left	50
	RM 7-9403-3002 right	50
	RM 7-9403-3003 right	60
	RM 7-9403-3006 right	80
	RM 7-9403-3008 right	70
	RM 7-9403-3009 right	70
	RM 7-9403-3009 right	60
	RM 7-9403-3010 right	60
	RM 7-9403-3011 right	90
	CR 47 right	110
	End RM 7-9403-3016	34

## APPENDIX A

### **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

STANDARD CLAUSES FOR NYS CONTRACTS

APPENDIX A

**TABLE OF CONTENTS**

	<b>Page</b>
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller’s Approval	3
4. Workers’ Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

STANDARD CLAUSES FOR NYS CONTRACTS

APPENDIX A

**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-

STANDARD CLAUSES FOR NYS CONTRACTS

APPENDIX A

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.

STANDARD CLAUSES FOR NYS CONTRACTS

APPENDIX A

**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

STANDARD CLAUSES FOR NYS CONTRACTS

APPENDIX A

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).

STANDARD CLAUSES FOR NYS CONTRACTS

APPENDIX A

**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.

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**GENERAL SPECIFICATIONS**

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**APPENDIX B**

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**APPENDIX B**

**GENERAL SPECIFICATIONS**



**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**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. AUTHORIZED USER** Authorized User shall have the meaning set forth in 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.

**b. BID** A response to the Solicitation submitted by a Bidder to provide Products.

**c. BIDDER** Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

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

**e. COMMISSIONER** The Commissioner of OGS or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

**f. CONTRACT** The writings that 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 written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.
- 2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope

of work is described and defined by OGS 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 Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

**3. Back-Drop Contracts** Multiple-award Centralized Contracts where OGS provides a written description 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 Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

**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 group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

**5. Contract Letter** A letter to the successful Bidder 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 the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

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

**h. CONTRACTOR** Any successful Bidder to whom a Contract has been awarded by the Commissioner.

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

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

**k. 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.

**l. 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.

**m. GROUP** A classification of a Product that is designated by OGS.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**n. INVITATION FOR BIDS (IFB)** A type of Solicitation that 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 or Bidders.

**o. LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

**p. LICENSEE** An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User 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.

**q. 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.

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

**s. MINI-BID** A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

**t. NEW LICENSED SOFTWARE RELEASES** (Licensed Software Revisions) Any commercially released revisions to the licensed version of Licensed Software as may be generally offered and available to Authorized Users who are current on technical support/maintenance. New Licensed Software Releases involve a substantial revision of functionality from a previously released version of the Licensed Software. Updates are provided when available, and Contractor is under no obligation to develop any future Product or functionality.

**u. OGS** The New York State Office of General Services.

**v. PRODUCTS** Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

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

**x. REQUEST FOR PROPOSALS (RFP)** A type of Solicitation 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).

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

**z. 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.

**aa. RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

**bb. 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.

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

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

**ee. SOLICITATION** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

**ff. 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.

**gg. STATE** State of New York.

**hh. STATE 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.

**ii. SUBCONTRACTOR** Any individual or 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.

**jj. 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**kk. 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 Bids, including 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 Bids 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. 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 Solicitation 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 Solicitation 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 Solicitation 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 the Solicitation. 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.

**6. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Solicitation. 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 terms 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;
- b. The writing must identify the particular Solicitation 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 Solicitation, and the reasons therefor.

No extraneous terms, 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 terms in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of extraneous terms.

**7. 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 to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**8. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS** If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

**a. PREVAILING WAGE RATE APPLICABLE TO BIDS** A copy of the applicable prevailing wage rate schedule is attached to the Solicitation and may also be obtained by visiting [www.labor.ny.gov](http://www.labor.ny.gov) and typing in the search box: Prevailing Wage Schedule Request. 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 for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor 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 the 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 Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. 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.

**9. TAXES**

**a.** Unless otherwise specified in the Solicitation, 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.

**10. EXPENSES PRIOR TO CONTRACT EXECUTION** The Commissioner and any Authorized User(s) are not liable for any costs incurred by a 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.

**11. ADVERTISING RESULTS** The prior written approval of the Commissioner is required in order for results of the Solicitation 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 Solicitation or Contract for press or other media releases.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**12. PRODUCT REFERENCES**

**a. "Or Equal"** In all Solicitations or 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 Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

**13. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS** Upon the conditions specified in the Solicitation 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 Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, 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.

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

**15. PRICING**

**a. Unit Pricing** If required by the Solicitation, 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 Solicitation. 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 Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Solicitation.

**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 net pricing under the Contract is 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 net pricing under the Contract is 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 pricing 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 net pricing 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 Solicitation, 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 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**16. DRAWINGS**

**a. Drawings Submitted With Bid** When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation 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, or carrying out any other requirements of the intended scope of work.

**17. SITE INSPECTION** Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that 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 that 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 provide the required Product.

**18. PURCHASING CARD** The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

**19. SAMPLES**

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

**b. 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.

**c. 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 Solicitation. 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 Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

**d. 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 Solicitation, 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.

**e. 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**

**20. 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.

**21. 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**22. 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 Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements 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.

**23. 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 Solicitation, 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 Solicitation, 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**

**24. 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 Solicitation, 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.

**25. OFFICIAL USE ONLY/NO PERSONAL USE** The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

**26. PARTICIPATION IN CENTRALIZED CONTRACTS**

**a. State Agencies** All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits 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 Contract 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.

**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 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.

**27. 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.

**28. SCOPE CHANGES** The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter 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 notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**29. 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.

**30. 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 for 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.

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

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor

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

**32. 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.

**33. WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Contract 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.

**34. 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 Contract, 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**35. 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 Contract 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 Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

**36. 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.

**37. PRODUCT SUBSTITUTION** In the event a specified 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.

**38. 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.

**39. 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.

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

**41. EMPLOYEES, SUBCONTRACTORS AND 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 Contract, 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 agent of the Contractor.

**42. ASSIGNMENT** In accordance with Section 138 of the State Finance Law, 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, any consent 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 assignments with the State 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 State 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**43. 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.

**44. 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.

**45. SUSPENSION OF WORK** The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under the 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.

**46. TERMINATION**

**a. For Cause** For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by 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. 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** This Contract may be terminated at any time by the Commissioner for convenience upon sixty (60) calendar days or other longer period as specified by written notice, 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 fulfill any outstanding Purchase Orders.

**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 or 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 or 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 at the Contractor's expense where the Contractor is determined by the Commissioner to be non-responsible. In such event, the Commissioner 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. Upon Conviction of Certain Crimes** The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

**47. 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 to the Contract

## GENERAL SPECIFICATIONS

## APPENDIX B (MAY 2015)

shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

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 or 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. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

### 48. CONTRACT INVOICING

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

terms and conditions of the Contract or where the billing was inaccurate.

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

**b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [HelpDesk@sfs.ny.gov](mailto:HelpDesk@sfs.ny.gov), or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

### 49. 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 provision of Products 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**d. Insufficient basis** If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

**50. 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 Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 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 (30) 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 State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency 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.

**51. 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 issuing a formal Solicitation: (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 replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement 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 to be resolved in accordance with the OGS Dispute Resolution Procedures.

**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 their 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 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, 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 replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

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

**52. 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.

**53. 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.

**54. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its Subcontractors, 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.

**55. 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**56. 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.

**57. 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 mutual agreement of the Commissioner and the Contractor for an additional period(s) of up to one year. Such extension may be exercised on a month-to-month basis or in other stated periods of time during the one year extension.

**58. WARRANTIES**

**a. Product Performance** Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer’s specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

**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) arising from any breach of Contractor’s warranties as set forth herein.

**c. Product Warranty** Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer’s standard commercial warranty period, if applicable, or for a minimum of one (1) year from the date of acceptance, whichever is longer (the “Product warranty period”).

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer’s standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Where Contractor, the independent software vendor (ISV), or other third-party manufacturer markets any Product 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 Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with ISV or other third-party manufacturers for warranty repair or replacement of ISV or other third-party manufacturer’s Product.

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

Unless recycled, recyclable, 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 component or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor’s approval.

**d. Virus Warranty** The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at Licensee’s Site.

**e. 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**f. 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.

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

**h. Prompt Notice of Breach** The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

**i. Additional Warranties** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

**j. No Limitation of Rights** 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.

**59. 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 Solicitation 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.

**60. 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 Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (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. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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.

**61. INDEMNIFICATION RELATING TO INFRINGEMENT**

The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: (a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, and (b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

The Authorized User shall give Contractor 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 an 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 User's 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

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 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 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.

**62. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement 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 forming the basis of the Authorized User's claim 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.

**63. DISPUTE RESOLUTION PROCEDURES**

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at:

<http://nyspro.ogs.ny.gov/content/dispute-resolution-procedures>.

OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

**THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS**

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

**a. License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

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

**c. Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (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 terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, fixes, upgrades and New Licensed Software 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 Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

without significant functional downtime to its ongoing business operations during the technical support/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: (i) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and (ii) 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 (iii) 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 that require Licensee to restore backups 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. The phrase “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; or (iii) export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

**65. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User 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 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 Authorized 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

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.

**66. 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 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 net pricing in effect under the Contract 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.

**67. 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 Solicitation 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 Products 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 purposes stated in the Solicitation 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

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

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 purchases 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.

**68. 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.

**69. 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.

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

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

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

**b. Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other customer, or (b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to

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**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

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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.

**71. 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.

**72. 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: (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) 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.

**GENERAL SPECIFICATIONS**

**APPENDIX B (MAY 2015)**

**INDEX**

	<u>Clause</u>		<u>Clause</u>
	<u>No.</u>		<u>No.</u>
<u>A</u>			
Advertising Results	11	Participation in Centralized Contracts	26
Assignment	42	Performance/Bid Bond	44
Assignment of Claim	52	Prevailing Wage Rates - Public Works and Building Services Contracts	8
Audit of Licensed Product Usage	66	Pricing	15
<u>B</u>			
Bid Evaluation	20	Purchasing Card	18
Bid Opening	4	Product Acceptance	65
<u>C</u>			
Changes to Product or Service Offerings	70	Product Delivery	32
Confidential/Trade Secret Materials	7	Product References	12
Contract Invoicing	48	Product Substitution	37
Contract Creation/Execution	24	Product Version	69
Contract Term - Renewal	57	Products Manufactured in Public Institutions	14
Cooperation with Third Parties	56	Prompt Payments	50
<u>D</u>			
Default - Authorized User	49	Proof of License	68
Definitions	2	Purchase Orders	31
Dispute Resolution Procedures	63	<u>Q</u>	
Drawings	16	Quantity Changes Prior to Award	22
<u>E</u>			
Emergency Contracts	30	<u>R</u>	
Employees, Subcontractors and Agents	41	Rejected Product	38
Estimated/Specific Quantity Contracts	29	Re-Weighing Product	36
Ethics Compliance	1	Remanufactured, Recycled, Recyclable or Recovered Materials	13
Expenses Prior to Contract Execution	10	Remedies for Breach	51
Extraneous Terms	6	Repaired or Replaced Products, Parts, or Components	40
<u>I</u>			
Indemnification	60	<u>S</u>	
Indemnification Relating to Infringement	61	Samples	19
Independent Contractor	54	Savings/Force Majeure	47
Installation	39	Scope Changes	28
International Bidding	3	Security	55
<u>L</u>			
Late Bids Rejected	5	Site Inspection	17
Legal Compliance	59	Shipping/Receipt of Product	34
Limitation of Liability	62	Software License Grant	64
<u>M</u>			
Modification of Contract Terms	27	Source Code Escrow for Licensed Product	72
<u>N</u>			
No Hardstop/Passive License Monitoring	71	Subcontractors and Suppliers	43
<u>O</u>			
Official Use Only/No Personal Use	25	Suspension of Work	45
Ownership/Title to Project Deliverables	67	<u>T</u>	
		Taxes	9
		Termination	46
		Tie Bids	21
		Timeframe for Offers	23
		Title and Risk of Loss	35
		Toxic Substances	53
		<u>W</u>	
		Warranties	58
		Weekend and Holiday Deliveries	33

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**CONTRACT MODIFICATION PROCEDURE**

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**APPENDIX C**

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**APPENDIX C**

**CONTRACT MODIFICATION PROCEDURE**

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**CONTRACT MODIFICATION PROCEDURE**

**APPENDIX C**

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The following guidelines are subject to change at the discretion of OGS. A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form.

- (1) **TYPES OF CONTRACT MODIFICATIONS:** In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.
  - a) **UPDATES:** “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.
  - b) **AMENDMENTS:** “Amendments” are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.
- (2) **CONTRACTOR’S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:
  - request additional information
  - reject Contract modifications
  - remove Products from Contract modification requests
  - request additional discounts for new or existing Products
- (3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):
  - Price level increases
  - Price level decreases
  - Products being added
- (4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.
- (5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

**CONTRACT MODIFICATION PROCEDURE**

**APPENDIX C**



*Serving New York*

STATE OF NEW YORK  
 EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES  
 Corning Tower – 38<sup>th</sup> Floor  
 Empire State Plaza  
 Albany, New York 12242

**CONTRACT MODIFICATION FORM**

<b>DATE OF THIS SUBMISSION:</b>	<b>DATE DOCUMENTATION EMAILED:</b>
<b>CONTRACTOR NAME:</b> _____ OGS GROUP #: _____ OGS AWARD #: _____ OGS CONTRACT #: _____	<b>CONTRACTOR CONTACT:</b> Name: _____ Phone #: _____ Email: _____

**NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).**

**INSTRUCTIONS:**

1. This form is to be used for all Contract modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price level information for the update electronically via e-mail in either an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request.
5. The Contract modification request must be accompanied by the relevant current contract pricing discount information.

**COMPLETE STATEMENTS 1 THROUGH 5 BELOW:**

1. This request is for an: <input type="checkbox"/> Update <input type="checkbox"/> Amendment  See Contract Modification Procedure for an explanation of these terms.	2. The intent of this submittal is to request: <input type="checkbox"/> Addition of new products or services <input type="checkbox"/> Deletion of products or services <input type="checkbox"/> Change in pricing level <input type="checkbox"/> Other Update <input type="checkbox"/> Other Amendment
3. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation* <input type="checkbox"/> Other (provide explanation) _____ _____ _____ _____ *Prices offered are the lowest offered to any similarly situated entity.	4. Attached documentation includes: <input type="checkbox"/> Current approved GSA (labeled "For information only") <input type="checkbox"/> Current relevant Price List (labeled "For information only") <input type="checkbox"/> Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract <input type="checkbox"/> Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)

