

State of New York Executive Department
Office of General Services -Procurement Services Group
Corning Tower - 37th Floor
Empire State Plaza
Albany, NY 12242

REQUEST FOR PROPOSAL

IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS
(E-Mail or Fax Bid Submissions are NOT Acceptable)

BID OPENING DATE: April 23, 2009 TIME: 11:00 AM	TITLE: Group 77200 – Public Safety Ancillary Equipment and Accessories Classification Code(s): 32, 43, 46, 92
REQUEST FOR PROPOSALS NUMBER: <p style="text-align: center;">21390</p>	SPECIFICATION REFERENCE: <p style="text-align: center;">As Incorporated Herein</p>

CONTRACT PERIOD: Ten (10) years commencing on the date of approval by the New York State Comptroller with an allowance for annual termination after an initial five-year period.

PERIODIC RECRUITMENT

DESIGNATED CONTACTS: Team # 7

Percy Wilson Purchasing Officer Telephone No. (518) 474-6727 E-mail address: Percy.Wilson@ogs.state.ny.us	Larry Klein Team Leader Telephone No. (518) 474-1350 E-mail address: Larry.Klein@ogs.state.ny.us
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The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this REQUEST FOR PROPOSALS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), 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.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

Name of Company Bidding:	Bidder's Federal Tax Identification No.:
Street City State Zip County	

Cash Discounts will not be considered in determining low bid, but cash discounts of any size may be considered in awarding tie bids.

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

If you are not bidding, place an "x" in the box and return this page only.
 WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____

Bidder's Signature:	Printed or Typed Name:
Title:	Date:
Phone : () - ext ()	Toll Free Phone : () - ext ()
Fax : () - ext ()	Toll Free Fax : () - ext ()
E-mail Address:	Company Web Site:

FOR PROCUREMENT SERVICES GROUP USE ONLY

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SECTION I

INTRODUCTION

ATTENTION: BIDDERS SUBMITTING PROPOSALS IN RESPONSE TO RFP 21390 ARE ADVISED THAT ALL BID SUBMISSIONS WILL UNDERGO A REVIEW FOR COMPLETENESS. THIS WILL BE A PASS OR FAIL REVIEW. IN ORDER FOR BIDS TO BE EVALUATED THEY MUST BE 100% COMPLETE. ALL REQUIRED INFORMATION, FORMS, SIGNATURES ETC. MUST BE INCLUDED. ADDITIONALLY BIDDERS AND ANY SUBCONTRACTORS, VARS OR SERVICE PROVIDERS MUST COMPLY WITH ALL INSURANCE REQUIREMENTS REFLECTED IN APPENDIX C.

I.1 SCOPE

The New York State Office of General Services (OGS), Procurement Services Group (PSG) is seeking responses to this RFP for the purpose of establishing comprehensive catalog contracts for Public Safety Ancillary Equipment and Accessories. PSG intends to establish catalog contracts for communications equipment including but not limited to: radio dispatch consoles, dispatch console furniture, interoperability systems, in-building communications system, and other supplemental systems for public safety and public service agencies to support their critical missions. **Bidders may submit proposals for separate LOTS, any combination of LOTS or all LOTS, for potential award Statewide or by Region.**

Multiple Contracts for the purchase and installation of equipment may be awarded to two (2) or more responsive, responsible and compliant Bidders within each LOT for separate LOTS, any combination of LOTS or all LOTS, Statewide or by Region. These awards will be determined on the basis of best value. These awards may be made to bidders offering the same manufacturers and or different manufacturers. However, the State reserves the right to establish only one contract in any LOT that fails to receive multiple responsive, responsible, and compliant bids. **It is not mandatory for a bidder to submit a bid that reflects all of the LOTS and Regions or Statewide.**

The original term of this Contract will be ten (10) years commencing on the date of approval by the New York State Comptroller effective upon mailing by OGS (see Appendix B, Clause 38) with an allowance for annual termination after an initial five-year period. The State shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The contract term related to equipment maintenance will be in effect for five (5) years after the original equipment contract termination. Periodic Recruitment provisions apply to this RFP. See Section III.20, page 47.

In addition, maintenance services for systems/equipment not purchased from contracts established for Public Safety Ancillary Equipment as a result of RFP 21390 may be purchased under the conditions described in Section II.9.2.

Upon termination of the Contract, all rights and obligations set forth herein will survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination. Additionally, all contracts awarded based upon this RFP will terminate simultaneously on the future anniversary date of the Office of the State Comptroller's approval of the first contract(s) resulting from this RFP.

Eventual contracts will contain provisions for the addition of new products and emerging technologies. The State reserves the right to make additional awards to ensure that there are a variety of manufacturers represented, and that installation and service requirements are adequately addressed. The State reserves the right to award future contracts to the next best value qualified Bidder in the event of default or cancellation of a previously awarded contract.

To be eligible for awards Bidders must submit overall company qualifications along with technical and price information for each LOT being bid. Bidders must submit all LOTS being bid in a single proposal. OGS reserves the right to request references. Additionally Authorized Users of any contracts issued as a result of RFP 21390 may request references at time of purchase (see Section II.10, page 31). Awards under this contract will not provide for separate purchases of labor or installation only.

This RFP outlines the terms and conditions and all applicable information required for submitting a bid. Bidders should pay strict attention to the bid submission date and time to prevent disqualification. **To insure compliance with bid requirements and prevent possible disqualification, Bidders should follow the format and instructions in the PROPOSAL FORMAT AND CONTENT, Section VI, Page 57 and Appendix C of this RFP and complete the Bidder Proposal Checklist located in Appendix D of the RFP.**

NOTE: The initial review will be for completeness. This will be a pass or fail. Submissions that do not meet all requirements as outlined on page 57 will not receive any further evaluation and will be deemed non-responsive.

The RFP contains **mandatory** requirements. Any description of **mandatory** requirements will include the word "mandatory" or "must" in bold type. Submitting a proposal that does not meet the **mandatory** requirements indicated in the RFP may be cause to disqualify a Bidder's bid or a portion of the Bidder's bid. Bidders are responsible for providing verifiable documentation for any requirements set forth in RFP 21390. Such documentation must be submitted with the bid submission. Bidders should use the Bidder Proposal Checklist on page 181 to identify the sections that describe the documentation required.

Catalog contracts will be awarded based on the following LOTS:

LOTS:

- LOT 1: **Interoperability Systems**
- LOT 2: **Radio Dispatch Consoles**
- LOT 3: **Dispatch Console Furniture**
- LOT 4: **Fire Station Alerting Systems**
- LOT 5: **Logging Recorders and Instant Recall Recorders**
- LOT 6: **In-Building Communications Systems**
- LOT 7: **Portable Repeaters**
- LOT 8: **Vehicular Repeaters**

Contracts established as a result of this RFP will be for Authorized Users of New York State contracts, which include New York State Agencies and others authorized by law (see NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS in Section I.5). Accordingly, references to the State and its Agencies as users under this Request For Proposals and the ensuing contracts encompass and include other users such as these entities.

SEE SECTION VI FOR PROPOSAL FORMAT REQUIREMENTS, APPENDIX C FOR PROPOSAL GENERAL REQUIREMENTS AND APPENDIX D FOR PROPOSAL COMPLETENESS CHECK LIST

I.2 PROCUREMENT LOBBYING TERMINATION

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

I.3 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

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

I.4 CIO/OFT PLAN TO PURCHASE POLICY

New York State agencies are reminded that they **must** submit a Notification of Plan to Procure Technology Form (PTP) to the Office For Technology (OFT) for approval prior to purchasing Public Safety Ancillary Equipment. For additional information about the CIO/OFT’s PTP process, please visit their website at:

<http://www.oft.state.ny.us/policy/NYS-P08-001.pdf>

I.5 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

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

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<http://www.ogs.state.ny.us/>). Point to "Procurement Contracting Services" for the dropdown listing, then click on "Procurement Law, Guidelines and Procedures", then "Non-State Agency Legal References" for a list of the categories. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Group's Customer Services at (518) 474-6717.

I.6 OVERLAPPING CONTRACT ITEMS

Products/services available in the resulting contract may also be available from other New York State contracts. Contract users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

I.7 CONTRACT DUPLICATION

Contractors holding contracts for items offered under this solicitation must offer the same or better pricing on those items if they are offered for inclusion in any award resulting from this solicitation. If awarded, the items may be purchased under the already existing contract number or under this award.

I.8 ESTIMATED QUANTITIES

Eligible users of the contracts will include not only State Agencies but also include political subdivisions, school districts and others authorized by law to use OGS centralized contracts. The projected total estimated contract sales are \$25,000,000 for State government agencies and \$75,000,000 for Non-State government agencies. No sales estimates are available for purchase by authorized users by law. Estimated quantity contracts are expressly agreed and understood to be made for only the quantities actually ordered during the contract term. There is no guarantee that particular quantities will be purchased under these contracts nor is there any guarantee that any particular contractor under the RFP in any LOT will receive any minimum or maximum number of orders under the contract.

It should be noted that the availability of this contract to political subdivisions, and others authorized by law, as indicated in Section IV, USE OF CONTRACT BY STATE AGENCIES, POLITICAL SUBDIVISIONS AND OTHER AUTHORIZED BY LAW clause, might cause the estimated quantities to vary considerably. However, the Contractor must furnish all quantities actually ordered.

I.9 INQUIRIES/ISSUING OFFICE

All inquiries concerning this specification will be addressed to the following:

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

Phone No.: (518) 474-6727
FAX No. (518) 486-6867
E-mail: percy.wilson@ogs.state.ny.us

All questions must be submitted in writing, citing the particular proposal section and paragraph number. Facsimile and/or e-mail will be accepted. OGS recommends that Bidders indentify all clarifications and exceptions, including those relating to the terms and conditions of the contract and any questions that they have relative to provisions of the RFP, prior to the closing date for inquiries as shown in Section I.10. Answers to all questions of a substantive nature will be given to all bidders in the form of a formal addendum, which will be annexed to and become part of the ensuing contract. Verbal answers to questions about the RFP will not be considered official.

I.10 KEY EVENTS/DATES

Refer to Section V.2 for location of the proposal submission.

<u>Event</u>	<u>Date</u>	<u>Time</u>
RFP Release	January 30, 2009	
Closing Date for Inquiries	March 4, 2009	
Response to Inquiries Issued	March 25, 2009	
Bid Opening	April 23, 2009	11:00 AM

I.11 DEFINITIONS

The following defined terms are used throughout this RFP.

Completeness Check: This is the initial review of a proposal submitted in response to RFP 21390. This is a pass or fail component of the evaluation process. Bid submissions not containing all required signatures, documents, attachments etc. will be considered incomplete and will not receive any further evaluation. **See Section VI, Page 57, for Required Proposal Format and Content information.**

Catalog Contracts

Defined as a compilation of products offered by a manufacturer or a distributor of manufacturers products. For purposes of RFP 21390, Lots 1-8, it is required that 80% of a manufacturers officially published catalog be offered to be considered a complete offering.

In the case of Distributors submitting proposals for Lots 1-8, the 80% requirement must also be met (i.e. 80% of the product lines they distribute that meet the requirements/scope of RFP 21390.) If a distributor has an officially published catalog, 80% of the Distributor's officially published catalog must be offered.

Catalog:

- This may be an electronic or hard copy listing of all products and/or specific product subsets.
- Electronic versions are preferred.
- It may be a distributors catalog, comprised of multiple manufacturers.
- For Manufacturers or Distributors offering specific product subsets of a particular manufacture's catalog, the entire manufacturer's product catalog containing the specific product subset must be submitted with a bidder's proposal.
- It must be dated or cover a defined period of time.
- For NYS requirements, it must reflect the MSRP and be able to be independently verified. OGS reserves the right to request the Bidder to provide officially published price catalogs from the original product manufacturer for third party products offered on the Bidder's NYS Net Price Sheets.

MSRP: Manufacturers Suggested Retail Price

SECTION II PROCUREMENT SPECIFIC REQUIREMENTS

II.1 EXAMINATION OF CONTRACT DOCUMENTS

This Request for Proposal is comprised of the Cover Sheet as the first page and 194 pages numbered sequentially in the header, for a total of 195 pages. It is the bidder's responsibility to ensure that all pages have been included in the RFP received. If it is determined that a page(s) is missing or otherwise defective, the bidder must contact the PSG Associate identified in Section I.9 immediately so that a corrected copy can be issued to the bidder. Incomplete proposals, which may be a result of a defective or incomplete RFP, may be subject to disqualification.

Each bidder shall examine specifications and all other data or instruction pertaining to the RFP. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the RFP in the execution of the associated work will be accepted by the OGS Procurement Services Group as an excuse for any failure or omission on the part of the bidder to fulfill every detail of all the requirements of the documents governing the work. If awarded a contract, the bidder will not be allowed any compensation for any circumstance for which the bidder did not obtain full information prior to bidding.

Any bidder in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit a written request for an interpretation as indicated and to the individual identified in Section I.9 (see Section I.10 for applicable dates). If a major change is involved on which all bidders must be informed, such request for interpretation shall be delivered, in writing by the closing date for inquiries as given in Section I.10 of this RFP. Any interpretation of the proposed documents will be made by the issuance of an addendum. A copy of any addendum(s) will be distributed via the New York State/PSG **Bidder Notification System** to all potential bidders registered in the following classification codes 32, 43, 46, 92.

Any addenda issued prior to Bid Opening are to be considered part of RFP 21390.

Any verbal information obtained from or statements made by representatives of the Office of General Services at the time of examination of the documents or site shall not be construed as in any way amending contract documents. Only such corrections or addenda issued in writing to all bidders shall become a part of the RFP and contract. The Office of General Services will not be responsible for verbal instructions.

II.2 GENERAL CONSIDERATIONS

Prospective bidders should note that the Appendix A – Standard Clauses for New York State Contracts and Appendix B General Specifications shall apply to this RFP.

NOTE: Appendix B was revised and updated in July 2006, no changes to Appendix B will be considered. Listing extraneous terms that conflict with Appendix B will delay the evaluation of your proposal and may delay a recommendation for contract award or cause the proposal to be deemed non-responsive and ineligible for contract award.

Bidders should pay particular attention to the following clauses in Appendix B General Specification:

- Clause 8 Bid Submission
- Clause 11 Late Bids
- Clause 13 Extraneous Terms
- Clause 14 Confidential/Trade Secret Materials
- Clause 17 Prevailing Wage Rates
- Clause 26 Site Inspection
- Clause 27 Procurement Card
- Clause 72 Additional Warranties

- A. No drug use of any type, nor consumption of alcoholic beverages by the Contractor or its personnel shall be permitted on the premises.
- B. The Authorized User will not be liable for any expense incurred by the Contractor as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
- C. It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.

II.3 GENERAL CONDITIONS

- A. Refer to Appendix B, Section 74 for provisions regarding indemnification.
- B. It shall be mutually agreed that the Contractor has included cost to remedy all deficient items in their proposal and they will be responsible for satisfactory functioning of the equipment without extra compensation. The Contractor may, at their option, provide with their bid a detailed explanation of work intended to be performed according to the above requirement.
- C. The Office of General Services will make no allowance or concession to the Contractor for any alleged misunderstanding or deception because of quantity, quality, character, location, or other conditions.
- D. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality, or extent of work to be furnished, it shall be assumed that the Contractor has based the proposal on the specifications more favorable to the State. Final decision will rest with the Office of General Services.
- E. INSPECTION - The quality of service shall be subject to inspection by the State of New York at any time. Should it be found that quality of services being performed is not satisfactory, and that the requirements of the specifications are not being met, the Office of General Services acting on behalf of the Authorized User or on its own behalf, may terminate the contract, and employ another Contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.

- F. STOP WORK ORDER - The Office of General Services reserves the right to stop the work covered by this proposal and the contract at any time that it is deemed the successful Contractor is unable or incapable of performing the work to their satisfaction. In the event of such stoppage, the Office of General Services shall have the right to arrange for the completion of the work in such manner as it may deem advisable and, if the resulting cost exceeds the amount of the bid, the successful Contractor shall be liable to the State of New York for any increase in cost.
- G. The equipment to be supplied will be newly manufactured equipment and will be guaranteed to be standard new equipment, latest model of regular stock product and current production, with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Discontinued equipment or equipment not actively marketed by the manufacturer domestically for sale will not be accepted. All equipment delivered for installation will
- (1) conform to the testing standards at the time of purchase under this contract; and
 - (2) incorporate the most recent design changes from the manufacturer as of the scheduled delivery dates for that technology.
- Any equipment to be replaced must be new and manufactured by a reputable manufacturer. The equipment must be the same as or equal to the original equipment. All substitutes for the original manufacturers' equipment must be approved by the Authorized User before installation.
- H. For a period of one year from delivery, the products shall be represented and warranted to be free from defects in materials or workmanship, and shall substantially conform to the specifications, performance standards, and descriptions in the documentation, so as to provide use of the products in accordance with such documentation without significant functional downtime to the Authorized User's ongoing business operations during the warranty term. The products must also be currently installed and demonstrable in a user environment for a minimum of three months. Experimental or unannounced equipment will not be acceptable. All equipment shall be covered by the manufacturer's standard one (1) year warranty on hardware and software. If, during this period, such faults develop, the unit or component affected is to be replaced without any cost to the State. Where accessories are to be supplied, they must be compatible with the rest of the equipment.
- I. Any equipment replaced by the Contractor during the contract period shall be new, manufactured by a reputable manufacturer and guaranteed for one (1) year from the date of replacement and replaced at no cost if found defective during that time.
- J. Contractor will utilize equipment that is free of any liens or encumbrances.
- K. The Office of General Services' interpretation of specifications shall be final and binding upon the Contractor.
- L. The Contractor shall be completely responsible for their work, including any damages or breakdowns caused by their failure to take appropriate action.

- M. It is recommended that any technicians responsible for installation, maintenance, or repairs of any equipment/systems proposed in response to RFP 21390 complete any training offered by the equipment/system manufacturer. In the absence of formal factory training or certifications, bidders may be asked to demonstrate that technicians possess sufficient experience and training prior to the installation, maintenance, or repairs of any equipment/systems proposed. It is desirable that technicians performing the installation, maintenance, or repairs of any equipment/systems proposed have at least two (2) years' experience on equipment/systems that are similar to the equipment/systems contained in bids received in response to RFP 21390.
- N. Bidders are required to provide services and equipment that is compliant with the Americans with Disabilities Act of 1990, the Telecommunications Act of 1996, and all successor federal and related state legislation throughout the term of any contract resulting from this solicitation.
- O. All wiring and cabling shall be installed in a neat and professional manner and shall be compliant with the National Electrical Code, the State Code, and all Local electrical, building, and fire codes.

II.4 METHOD OF AWARD

Awards shall be made both Statewide and/or by region. Because of the varied nature of products in each catalog, awards will be made to Bidders whose schedule of prices indicates that equipment will be delivered at a reasonable price as determined by the New York State Office of General Services. "Reasonable of price" may be determined by:

1. Reviewing discounts and net prices offered to NYS
2. Comparing pricing on contracts awarded by GSA, Veteran's Administration, other government entities
3. Reviewing prices on any previously awarded NYS contract,
4. Reviewing pricing offered by other Bidders for this solicitation
5. Reviewing pricing offered by bidders to their best commercial customer(s)
6. Reviewing other information deemed necessary by the Office of General Services

The contract pricing that is submitted for the "Reasonableness of price" comparison shall include pricing for the LOTS offered by the Bidder. Contract pricing may be submitted in hardcopy or electronic media (preferred).

NOTE: All proposed contract pricing must include the Procurement Contract Fee per State Finance Law, Section 163-c. See Section III.24.

Bidder must be able to demonstrate financial stability, as determined by the State. Qualifying sales history (refer to page 158) must be provided with a bidder's proposal. In addition, OGS reserves the right to request current financial statements or other financial information required to make a determination of financial stability. New York State reserves the right to reject any Bidder who does not demonstrate sufficient financial stability.

Award will be made to established manufacturers or established distributors taking into consideration delivery offered, past performance, including amount of business transacted under previous contract and all product information available. The basis for selection among multiple suppliers at the time of purchase shall be the most practical and economical alternative and shall be in the best interests of the State.

The State reserves the right to reject a bid or accept adjustments when prices are deemed to be excessive, seem to be erroneous due to an obvious mathematical or decimal placement error, or when the bid does not guarantee delivery of product in accordance with the "Delivery and Installation" section of the RFP. The State reserves the right to negotiate better pricing with all qualified Bidders being considered for award.

Bidders may offer contract pricing for New York State OGS contracts currently held by their suppliers as part of their product line submittal. Bidders who currently hold New York State OGS contracts must offer the pricing (or better pricing) listed in such contracts.

The commissioner reserves the right to evaluate and/or reject any and all bids, in whole or in part and to waive technicalities, irregularities and omissions if in his considered judgment, the best interests of the State will be served. In the event satisfactory bids fully in accord with the bid documents are not received, the Commissioner reserves the right to consider late or non-conforming bids as stipulated in "Late Bids" clause of Appendix B.

Recommendations for contract award are based on:

- Completeness of the proposal provided as defined in Section VI and Appendix C
- Reasonableness of price as reflected in Appendix C of the RFP
- Evaluation criteria outlined in Section VII of the RFP
- Compliance to the mandatory requirements of the RFP

II.5 QUALIFICATION OF BIDDER

Bids will be accepted only from established manufacturers or their authorized dealers. Any dealer submitting a bid hereby guarantees that it is an authorized dealer of the manufacturer, that the manufacturer has agreed to supply the dealer with all quantities of products required by the dealer in fulfillment of its obligations under any resultant contract with the State, and that it will provide a certificate from the manufacturer acknowledging this level of support. (See Manufacturer's Certificates in Appendix C.)

Bidder must maintain a business establishment with adequate inventories of the products offered, and must be capable of processing and shipping large numbers of orders to various destinations.

The Commissioner may require a certificate from the bidder showing the number of years the bidder has been active in selling the products offered and the size and location of the inventories regularly maintained.

The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any bidder to properly perform under any resultant contract. See "Performance and Responsibility Qualifications," "Disqualification for Past Performance and Findings of Non-Responsibility" and "Employees/Subcontractors/Agents" in Appendix B, OGS General Specifications.

II.6 DISCOUNTS

Bidder must offer discount(s) from the manufacturer's suggested retail price in effect and identified at the time of the bid opening. OGS is seeking discounts that are equal to or better than the Bidder's GSA, VA, other government entity, or best commercial customer discounts.

The Bidder may bid in one of the following two ways:

1. Option I - a uniform percentage discount per LOT
2. Option II :
 - Pricing based on multiple uniform percentage discounts per product category/manufacturer offered within a LOT.
 - Bidder aligns each group of items offered within a category with a letter.
 - Bidders should include a description of what the category includes (e.g. A. Amplifiers, B. Antennas, C. Transmission Line etc.)
 - Category A may have a discount of 25%, Category B may have a discount of 10% etc.

If contract award is not made within six months of the bid opening date and new catalogs or price updates are issued prior to the award of these contracts, the updates should be sent as soon as possible for inclusion in any resulting award.

II.7 PRICING

All net prices must **INCLUDE** all applicable shipping and handling (refer to Appendix B, item 47b), insurance, customs duties and charges, and associated delivery charges and such charges must be included in the discount.

All services rates must **INCLUDE** travel time and costs incurred for travel to the site. The rates and charges for the Product and for the installation and maintenance of the Product must **INCLUDE** all travel and costs associated with accessing the installation site.

II.8 LOT REQUIREMENTS

It is **mandatory** that the Bidder completes a NYS Net Price Sheet for each LOT bid. Bidders **must** use the attached Excel spreadsheet "21390 Attachment1". The NYS Net Price Sheets have tables for the NYS Net Price Lists and services. The NYS Net Price List is formatted to include columns for the following:

- Product Manufacturer and Model Name/Number
- Product Description
- Category Discount Designation
- Manufacturer's Suggested Retail Price
- Discount Percentage Offered to NYS
- Discounted Price

Instructions on spreadsheet requirements are located in Appendix C. The following describes the NYS Net Price Sheet requirements for each LOT:

II.8.1 NYS Net Price Lists for LOTS 1-8

The Bidder shall provide a comprehensive catalog of products from a manufacturer's or distributor's officially published catalog. The officially published catalog shall contain the manufacturer's suggested retail prices (MSRP) for all products. It is **mandatory** that the Bidder provides 80% or more of the products offered in the manufacturers or distributor's officially published catalog.

There may be some instances where certain manufacturers do not include in their officially published catalog all the components that are required for the complete solution being bid. One example of this is antenna systems. For these instances, the Bidder shall develop a NYS Net Price list that reflects the products necessary for a complete solution. This may include products from various manufacturers officially published catalogs and any third party vendors catalogs that may be necessary to provide a complete solution. The Bidder is required to be an authorized reseller of any third party vendors offered.

Failure to propose all the items to make a complete solution may deem the proposal non-responsive and may be cause for rejection of the proposal for the LOT bid:

The following is a description of the features that may be included in the NYS Net Price Sheets for each LOT. The features listed are not meant to be specific requirements or limit bidders in their offerings. They are meant to be examples of features that are generally offered and purchased by Authorized Users of any contracts awarded as a result of RFP 21390.

NOTE: Bidders may include in their bid other features not included in the descriptions below.

LOT 1: Interoperability Systems

Bidders may propose complete VoIP and/or baseband solutions that provide interoperability among disparate communications systems such as, but not limited to, conventional radios, trunked radios, VoIP, real-time streaming video, cellular, satellite, PSTN, PBX, consoles, logging recorders, and computer networks. The interoperability system shall handle radios in multiple bands such as HF, VHF low band, VHF high band, UHF, 700 MHz, 800 MHz, and 900 MHz and link voice with PTT for radios with protocols such as, but not limited to, Project 25, OpenSky, SmartNet/SmartZone, EDACS, Multi-Net, and Logic Trunked Radio trunking protocols. Bidders may offer additional features such as secure transmissions, emergency ID, unit ID, and call priority.

Components of the VoIP Interoperability Systems include items such as IP switches, network management with supporting software, and gateways. Components of the Baseband Interoperability Systems include items such as control modules, power supply modules, channel modules, and supporting software, as applicable. The Bidder may propose fixed site systems, vehicle installed systems, and/or portable/field deployable systems.

LOT 2: Radio Dispatch Consoles

The Bidder shall propose radio dispatch console positions and/or systems for dispatchers to communicate with field users over two-way radio infrastructures. The radio dispatch console positions and systems shall meet FCC Part 15, Class A and Part 68. The Bidder may propose the following types of radio dispatch console positions and systems:

- Self contained dispatch position where audio sources are connected into the same unit that contains the channel selectors, microphone, and speakers used by the operator.
- Console system which has a console electronics rack with circuits for switching multiple audio sources and remote console positions for accessing the audio sources from the console electronics rack.
- IP console position which transmits/receives audio via IP connectivity to/from a LAN/WAN.
- Console system which has a server for switching packets and managing resources, gateways, and remote console positions for accessing the packets via an IP connection to/from the server.

The Bidder may propose radio dispatch console positions and/or systems that are compatible with the following:

- Conventional Analog/Digital Channels
- Project 25 Systems
- Proprietary Trunking Systems (e.g. OpenSky, SmartNet/SmartZone, EDACS, Multi-Net, and Logic Trunked Radio)

Console positions may, but are not required to, include any/all or additional features as follows:

- Select speaker, unselect speaker, and microphone
- Headset
- Handset
- Channel select
- Channel mute
- Channel patch
- Channel volume
- Transmit indicator
- Display for incoming calls

LOT 3: Dispatch Console Furniture

Bidders shall propose ergonomic console furniture to house dispatch communications equipment. Components are to include desktop workstations, panels for separating positions, standard EIA 19-inch rack-mount modules, storage cabinets, and rotating resource centers. Workstations must include electrical outlets and space for cable routing and housing PC's as well as other electronic equipment. Any console build from the components must comply with ANSI and ADA requirements.

In addition, the Bidder may propose motorized lifts for computer monitors and arm mounts and extensions for flat panel screens. The dispatcher workstations may contain the following:

- Halogen, Xenon, or Fluorescent task lighting with dimmer control
- Workspace air circulator with filter
- Workspace heater

The monitor/keyboard height adjustment, task lighting dimmer control, air circulator fan speed, and heat level may be adjustable from a remote controller(s).

LOT 4: Fire Station Alerting Systems

Bidders shall propose Fire Station Alerting Systems for this LOT. The fire station alerting system shall remotely alert fire stations from dispatch centers. The system shall be comprised of a controller at the dispatch center and remote units at the fire stations. The remote unit should contain relays to allow remote operation of items such as sirens, bay doors, station lights, stoves, exhaust systems, and traffic lights located close to the station. Methods of communications between the controller and the remotes units at the fire stations include, but are not limited to, two-way radio links, leased lines, private fiber networks, and broadband wireless.

LOT 5: Logging Recorders and Instant Recall Recorders

Bidders shall propose logging recorders and/or instant recall recorders for recording two-way radio and telephone conversations.

Logging recorders shall support resources such as analog phone, digital phone, conventional analog radio, conventional digital radio, trunked analog radio, and trunked digital radio. The logging recorder is to contain user features such as a display, keypad/controls, speaker, headphone jack, lineout jack, and volume control. The logging recorder is to contain a method to prevent unauthorized or accident adjustments. Password security at the unit or at a remote computer workstation should allow limited user access. Storage may be via a combination of hard drive, solid state, or optical media. Bidders may propose logging recorders that automatically switch to a backup mode of recording should the primary media fail.

The Bidder shall provide single-channel and/or multiple channel instant recall recorders (IRR) for use by dispatchers for recalling telephone and radio conversations at their console positions. For the instant recall recorders, Bidders may propose multimedia computer solutions or standalone units. The standalone IRR should be 19" rack mountable or available in a desktop version. The standalone IRR shall be 100% solid state. Password security should be required to access the IRR. A selectable beep tone should be recorded with the messages. The IRR should be capable of saving messages.

LOT 6: In-Building Communications Systems

Bidders shall propose RF and/or fiber optic in-building communications solutions to provide extended coverage in buildings, tunnels, or any enclosed area that is shielded from radio communications. The RF in-building communications system is to include bi-directional amplifiers. The fiber optic in-building system should consist of a front-end unit that converts RF to light and remote units near the coverage locations to convert light into RF for radiation from indoor antennas and radiating cable.

The Bidder may propose in-building communications system in the following frequency bands and/or service categories:

- UHF
- 700 MHz
- 800 MHz SMR
- 800 MHz Cellular
- 900 MHz SMR
- PCS

The Bidder shall provide accessories such as indoor antennas and radomes, transmission line, radiating cable, fiber optic cable, connectors, mounting hardware, attenuators, RF terminations, and power dividers.

LOT 7: Portable Repeaters

Bidders shall propose portable repeaters for this LOT. The portable repeater shall be mounted in a lockable, weather-resistant suitcase. The portable repeater should be designed for open case and close case operation. The portable repeater should run on DC and 120 VAC power.

The Bidder may propose portable repeaters in the following frequency bands:

- VHF low band
- VHF high band
- UHF
- 700 MHz
- 800 MHz
- 900 MHz

The Bidder may propose the following types of portable repeaters:

- Conventional Analog
- Conventional Digital
- Project 25
- Proprietary Trunking Systems (e.g. OpenSky, SmartNet/SmartZone, EDACS, Multi-Net, and Logic Trunked Radio)

LOT 8: Vehicular Repeaters

Bidders shall propose vehicular repeaters for extended communications in the field. Bidders may provide in-band and cross-band vehicular repeaters. The mobile associated with the vehicular repeater and the portables on a scene shall communicate with each other through the vehicular repeater. The portables shall communicate with each other through the vehicular repeater. The portables on a scene should also be able to use the vehicular repeater and the mobile associated with the vehicular repeater to communicate with the dispatchers and subscribers on the base radio system. Multiple vehicular repeaters on a scene are to coordinate automatically to insure that one vehicular repeater handles the communications while the other vehicular repeaters remain in a dormant mode. When the active vehicular repeater leaves the scene or fails, the remaining vehicular repeaters should coordinate to make one vehicular repeater the active communicating repeater.

The Bidder shall provide accessories such as mounting brackets, remote control heads, external speakers, microphones, antennas, transmission line, duplexers, filters, and programming software/units/cables.

II.8.2 Services

The Bidder shall provide pricing for services in support of the products offered in the NYS Net Price Lists. Tables are provided in “21390 Attachment1” for entering pricing for the following services:

Emergency Maintenance (Prepaid and Hourly) – Unscheduled maintenance service provided in response to system or equipment failure that require repairs in a short time period.

The terms “Remedial Maintenance” and “Emergency Maintenance” are considered to have the same meaning and will be used interchangeably throughout this RFP:

- For Prepaid Emergency Maintenance, the customer pays for a maintenance service plan in advance to cover a specific time period (e.g. monthly, yearly). Prepaid Emergency Maintenance service plans are implemented after the expiration of the product or any additional warranty period.
- For Hourly Emergency Maintenance, the customer pays for the service after the repairs.

Integration – Services provided by the Contractor in support of system implementation and in support of the equipment installation at the customer location or in customer vehicles. Services include, but are not limited to, the following:

- Project Management
- Design and Engineering
- System Staging
- Optimization
- Acceptance Testing
- Cutover
- Developing System Documentation

Installation – Installation of newly purchased equipment at the customer location or in customer vehicles. For this RFP, programming of newly purchased units is also considered to be installation.

Moves, Adds, and Changes (MAC) – Changes to Both Hardware and Software.

Database changes and programming changes (software) that occur more than 30 days after system cutover.

Also include moves, additions, and upgrades for system infrastructures and end user equipment (hardware) that take place after initial installation. See Section II.11 for the Moves, Adds, and Changes requirements.

Preventive Maintenance – Regularly schedule maintenance (e.g. quarterly, semi-annual, annual) to insure optimal operation of a system and prevent or reduce the likelihood of major system failures that require 24/7 remedial maintenance response.

Training – Courses or instruction provided to the customer’s users, employees, or representatives on the operation and/or repair of the system or equipment provided by the Contractor.

The table in the “Instructions” tab of “21390 Attachment 1” has a breakdown of the service pricing that is required for each LOT.

Equipment Inspection for Maintenance Determination – Charges for the inspection of a system/equipment that was acquired previously and not purchased via any contracts issued as a result of RFP 21390. Contractor will make a determination as to whether or not they will provide maintenance of the existing, previously purchased system/equipment at the rates established in contracts awarded as a result of RFP 21390.

II.9 MAINTENANCE OF EQUIPMENT

II.9.1 GENERAL PROVISIONS

If the State and its Authorized Users elects to purchase any system or piece of equipment to be provided as a result of this RFP, all required maintenance will be provided under warranty during the first year subsequent to Acceptance of the system for LOTS 1-8. However, if at any time during the first year or any subsequent maintenance period, service is performed on the equipment by anyone other than the Contractor, without the Contractor’s consent, or if the infrastructural equipment is removed from the premises without the Contractor’s supervision and consent, then at the option of the Contractor, the maintenance contract may become null and void for those items of equipment affected by the prohibitions. The Contractor shall notify the OGS Procurement Services Group of any such cancellation. PSG reserves the right to review the validity of such cancellation with the Contractor and Authorized User and take appropriate action.

The Contractor's warranty obligations shall not apply to any Equipment, or part thereof, which (i) has been modified or otherwise altered other than pursuant to Contractor's written instructions or written approval or, (ii) is normally consumed in operation or, (iii) has a normal life inherently shorter than the warranty periods specified in Appendix B, or (iv) is not properly stored, installed, used, maintained or repaired, or (v) has been subjected to any other kind of misuse or detrimental exposure, or has been involved in an accident (except that caused by the Contractor). Trained personnel from the Authorized User may, without the Contractor's prior written consent, make modifications in the Authorized User's database for programming changes. Should the Contractor's consent be required, it shall not be unreasonably withheld. The Authorized User shall be responsible for updating of all records associated with their modifications.

Following the first year of warranty service, maintenance shall continue for the term of the contract unless the Authorized User, upon notice to the Contractor, discontinues coverage. A maintenance plan covering additional time periods, after expiration of the initial warranty period, with renewal options may be selected by the Authorized User. The Authorized User also has the right not to utilize the maintenance plan and use Hourly Emergency Maintenance instead. The State will pay monthly in arrears for any services utilized for hourly maintenance, service, and parts in accordance with the Contractor's established rates. Maintenance shall be provided for all equipment acquired and may include preventative and remedial maintenance. Maintenance costs must be set forth in the Bidder's proposal and shall apply for the term of maintenance contract(s) awarded as a result of RFP 21390 unless the Contractor requests price adjustments per the procedures outlined in Section III.18 of the RFP. If a maintenance rate is not included for a specific item, it is assumed that maintenance services for that item will be provided at no cost.

Rates are to be adjusted monthly in arrears by Contractor for increases and decreases in the amount of equipment covered.

The 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 30 days written notice to Contractor prior to the end of the term. In the event that the Authorized User has elected not to purchase a maintenance plan, or the Authorized User has discontinued such purchased maintenance, the Authorized User may acquire hourly emergency maintenance at any time thereafter. The Authorized User may only return to a maintenance plan after obtaining express written approval from the Contractor.

Nothing in this Contract shall be construed to prevent Authorized User from acquiring peripheral equipment from a Third Party. In the event an Authorized User acquires such equipment, Contractor shall be obligated to cooperate with the Third Party, as necessary, in the performance of each party's maintenance obligations.

II.9.2 MAINTENANCE OF EQUIPMENT NOT PURCHASED FROM CONTRACTS AWARDED AS A RESULT OF RFP 21390

1. Authorized Users are allowed to purchase replacement parts and monthly maintenance for systems/equipment purchased outside of the Award 21390, if the replacement parts and monthly maintenance rates for the systems/equipment are on the Contractor's NYS Net Price sheets. See bullet # 3.
2. Authorized Users would be allowed to purchase Time and Material maintenance for any products manufactured by the manufacturer, even if the specific product is not on the Contractor's NYS Net Price Sheets. See bullet #3.
3. The Contractor would be required to establish maintenance rates at or below the rates listed on their NYS Net Price Sheets and add to the contract prior to sale via the contract update procedures.
4. Contractors are not obligated to provide the Authorized Users maintenance service for systems/equipment not purchased from the NYS Public Safety Ancillary Equipment Contracts.
5. The Contractor will inspect the system/equipment to make a determination as to whether or not they wish to provide the Authorized User maintenance. Any rates for the inspection service will be at or below the hourly or per inspection rates listed on the Contractors' NYS Net Price Sheets. Contractors may refuse to offer maintenance on previously purchased equipment, due to age, condition, availability of parts, etc.
6. The availability of maintenance services for systems/equipment not purchased from contracts for Public Safety Ancillary Equipment established as a result of RFP 21390 will end at the same time as the maintenance contracts for systems/equipment purchased under Award 21390. (see Section I.1 above)

II.9.3 MAINTENANCE CENTER LOCATION AND PERSONNEL PROFILE

It is desirable that Bidders staff maintenance centers throughout the State. A "center" may be comprised of maintenance personnel housed in multiple locations. Refer to Appendix C, Section 10 for descriptions of the information that is required for the proposal.

In the absence of maintenance centers in NY State, it is required that bidders demonstrate that they can meet service requirements (located in Appendix C, Section 10e and Tables 1-8 below), for the LOTS and regions bid.

II.9.4 PREVENTIVE MAINTENANCE

The Bidder has the option of proposing preventive maintenance. If offered, the Contractor shall perform preventive maintenance (PM) according to the manufacturer's recommended schedule and it shall be performed during the Authorized User's working hours at a time acceptable to the Authorized User. Preventive maintenance may be performed during the warranty period. Any Preventive maintenance proposed shall be available on a per hour or per package basis.

II.9.5 DEPOT MAINTENANCE

The Contractor shall provide shipping labels and prepaid shipping for items that are to be sent to the Contractor's depot repair facility. The Contractor shall also pay for return shipping to the Authorized User. As an alternative, the Contractor may **provide** a location where the Authorized User or its representative could drop off equipment for depot repair or provide a Contractor's maintenance representative to pick up equipment at the Authorized User's location for depot repair. The Contractor shall arrange for qualified technicians to remove and re-install permanently installed items that require depot repair.

II.9.6 REMEDIAL MAINTENANCE

Whether the Authorized User elects to subscribe to a maintenance plan or hourly emergency maintenance, remedial maintenance shall be performed after the Authorized User notifies the Contractor that the equipment is inoperable or unsuitable for operation. The Maintenance Center will be responsible for insuring that service for each request is provided in accordance with the following:

- A. Priority Emergency Service - A "Priority Emergency" is a situation involving a "major loss" of System service.
- B. Emergency Service - An "Emergency" is a situation involving loss of some system functionality and/or capacity without jeopardizing critical operation or transitions to standby systems.
- C. Non-Emergency Service - A "Non-Emergency" is a situation involving a System failure of a scope less than that described for an Emergency.

Maintenance call back and repair times for each LOT are contained in the Tables 1-8 below. The "Time to Call Back" refers to the time after the Authorized User places the call to the given maintenance telephone number (see paragraphs below in this subsection). Within the times given in Tables 1-8 for the applicable LOT, the Contractor's maintenance representative **must** contact the Authorized User to find out the details of the emergency. The "Time to Restore" refers to the time after the Contractor's maintenance representative contacts the Authorized User and finds out the details of the emergency. The Contractor's maintenance personnel **must** complete the restoration of the system within the times given in Tables 1-8 for the applicable LOT. At the discretion of the Authorized User, the Contractor and the Authorized User may come to a mutual agreement on establishing severity levels and restoration times that differ from the ones in Tables 1-8 for portions the systems/equipment offered.

There are two levels of restoration times for priority emergency service, depending on location. The following counties are designated as being in metro areas: Erie, Niagara, Monroe, Wayne, Cayuga, Onondaga, Oswego, Madison, Saratoga, Schenectady, Albany, Rensselaer, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, and Nassau.

See Tables below.

Table 1
Maintenance Call Back and Repair Times for Interoperability Systems (LOT 1)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Priority Emergency (fixed site)	Failure of central control functionality or 25% or greater of resources connected to the central control	One Hour	Four hours in metro areas Six hours outside metro areas
Emergency (fixed site)	Failure that do not completely affect central control functionality or failure of less than 25% of resources connected to the central control	Within same day if notified before noon, next day if notified after noon	Repair within next day after call back
Emergency (vehicle installed)	Failure of vehicle installed switching unit	Within same business day if notified before noon, next business day if notified on weekend, holiday, or after noon on business day	Exchange for spare within next business day after call back
Non Emergency (fixed site, vehicle installed, and portable/field deployable)	Depot repair of units, accessories, and parts	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

Table 2
Maintenance Call Back and Repair Times for Radio Dispatch Consoles (LOT 2)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Priority Emergency	Failure of central control functionality or 25% or greater of dispatch positions or resources connected to the central control	One Hour	Four hours in metro areas Six hours outside metro areas
Emergency	Failure that do not completely affect central control functionality or failure of less than 25% of dispatch positions or resources connected to the central control	Within same day if notified before noon, next day if notified after noon	Repair within next day after call back
Non Emergency	Depot repair of parts	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

Table 3
Maintenance Call Back and Repair Times for Dispatch Console Furniture (LOT 3)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Emergency	Failure of electronic controls or features of console position. Failure of structure components of console position.	Within same business day if notified before noon, next business day if notified on weekend, holiday, or after noon on business day	Repair within next day after call back
Non Emergency	Depot repair of units, accessories, and parts	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

Table 4
Maintenance Call Back and Repair Times for Fire Station Alerting Systems (LOT 4)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Priority Emergency	Failure of central control functionality or 25% or greater of fire stations connected to the central control	One Hour	Four hours in metro areas Six hours outside metro areas
Emergency	Failure that does not completely affect central control functionality or failure of less than 25% of fire stations connected to the central control	Within same day if notified before noon, next day if notified after noon	Repair within next day after call back
Emergency	Failure of fire station alerting functionality and/or features at a fire station	Within same day if notified before noon, next day if notified after noon	Repair within next day after call back
Non Emergency	Depot repair of parts and units	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

Table 5

Maintenance Call Back and Repair Times for Logging Recorders and Instant Recall Recorders (LOT 5)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Priority Emergency	Failure of primary and backup recorder or 25% or greater of recording of resources connected to the logging recorder	One Hour	Four hours in metro areas Six hours outside metro areas
Emergency	Failure of primary or backup recorder or less than 25% of recording of resources connected to the logging recorder	Within same day if notified before noon, next day if notified after noon	Repair within next day after call back
Emergency	Failure of functionality and/or features of the instant recall recorder	Within same day if notified before noon, next day if notified after noon	Repair within next day after call back
Non Emergency	Depot repair of parts and units	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

Table 6

Maintenance Call Back and Repair Times for In-Building Communications Systems (LOT 6)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Emergency	Failure of communications within a building or to/from units inside a building	Within same business day if notified before noon, next business day if notified on weekend, holiday, or after noon on business day	Repair within next day after call back
Non Emergency	Depot repair of units, accessories, and parts	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

Table 7
Maintenance Call Back and Repair Times for Portable Repeaters (LOT 7)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Non Emergency	Depot repair of units, accessories, and parts	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

Table 8
Maintenance Call Back and Repair Times for Vehicular Repeaters (LOT 8)

Service Types	Failure Severity	Required Call Back Time	Required Restoration Time
Emergency	Failure of Vehicle Installed equipment	Within same business day if notified before noon, next business day if notified on weekend, holiday, or after noon on business day	Exchange for spare within next business day after call back
Non Emergency	Depot repair of units, accessories and parts	Authorized User to ship or arrange pickup/drop-off with Contractor representative	Six business days after shipping from Authorized User or drop off with Contractor representative

The above Required Restoration Times include travel time. Remedial maintenance for Priority Emergency Services must be available twenty-four hours per day, seven days per week, including New York State legal holidays.

Contractors must provide a local telephone number for the facility. If a service or maintenance call to the service center would result in the requesting Authorized User incurring toll charges, the Contractor must provide a toll free telephone number (i.e. 800 or 888 number or Collect Call). This excludes local message units. A national toll-free number for service and dispatch of local technicians is acceptable.

If the Contractor does not perform according to the contract, the Authorized User reserves the right to contract with another maintenance company. The difference in cost, if any, between the two will be borne by the Contractor named in this contract. If the Contractor subcontracts any portion of the service, the subcontractor must be approved by OGS.

II.9.7 MAINTENANCE/SERVICE SHEETS

The Contractor shall furnish the Authorized User with a maintenance service sheet for all maintenance requests. The maintenance service sheets shall include, as a minimum, the following data for each request for service:

- a) Date and time notified
- b) Date and time of arrival
- c) Description of malfunction reported
- d) Diagnosis of failure and work performed
- e) Date and time failure was corrected
- f) Charges for the service, if applicable
- g) Name of person performing the service

The maintenance service report must be supplied upon completion of maintenance whenever it is performed on the system or equipment.

II.9.8 MAINTENANCE RESPONSIBILITY

Malfunctions, which cannot be immediately diagnosed and pinpointed to a certain piece of equipment or service, will require the participation of the service Contractor until the responsibility for the problem has been unequivocally established.

In no instance shall the failure to resolve the issue of responsibility relieve any Contractor of their obligation to restore system operation. The Authorized User shall have the right to adjust such matters after the fact and validate charges and/or maintenance credits applicable to the provisions of the contract.

II.9.9 MAINTENANCE GUARANTEE

The parties agree that to effectively provide maintenance specified hereunder, Contractor must maintain a spare parts inventory of critical parts at its maintenance facility. The Authorized User assumes no responsibility or liability for loss of any parts inventory where the Authorized User provides the Contractor with storage space on premises of the Authorized User.

Contractor agrees to administer such inventory at its own risk regardless of where it is stored and at no extra cost to the Authorized User. Contractor guarantees that repairs shall be successfully completed and that system service shall be fully restored according to the Maintenance Response and Repair Times table for the proposed system so long as the malfunction is attributable to Contractor's equipment. End users (customers) are required to purchase at time of order, the recommended list of critical spare modules and field replaceable units (FRU's) as recommended by the Contractor. The FRU kits may be stored at either the customer location or at a Contractor authorized service location.

The penalty for each occurrence of missed restoration will not exceed 10% of the monthly prepaid emergency maintenance charges (i.e. 10% of 1/12 of a 1-year plan, 1/24 of 2-year plan, or 1/36 of 3-year plan) (If the yearly cost for a maintenance plan is \$360, 1 months cost would be \$30 and 10% of the monthly total would result in a credit of \$3.00 to the Authorized User.) The Contractor will credit this amount in the form of a reduction in the rate of the subsequent maintenance plan or provide a refund of the credited amount(s) if the maintenance plan is not renewed. This penalty applies to the fixed equipment infrastructures only.

Should the equipment malfunction for a period of more than twenty-four (24) consecutive hours, or fail to be restored to reliable service after two corrective maintenance service calls, the Authorized User shall have the option of requesting, and Contractor shall provide on a temporary basis, replacement equipment of comparable design and performance pending successful repair of the hardware. Should these measures fail to lead to a satisfactory resolution within sixty (60) days of their commencement, the Authorized User shall be entitled, at its option, to the equipment's replacement with new, reliable equipment of the same or similar design and performance at no cost to the Authorized User. The terms and conditions of the Contract shall be equally applicable to such replacement equipment.

The Contractor shall not be responsible for restoration times if failure to perform arises out of causes beyond its control and without the fault or negligence of the Contractor (Acts of God, the public enemy, fires, floods, strikes, freight embargoes, etc.). However, the Contractor shall meet the response time to the Authorized User to work out a timetable for intermediate and permanent repairs.

II.9.10 FAILURE TO COMPLY

Should the selected Contractor fail to maintain the installed equipment at a level equal to the Remedial Maintenance requirement in Section II.9.6, the Authorized User reserves the right to terminate the maintenance contract without any penalty whatsoever after a thirty day written notice to said Contractor. Failure to meet the Remedial Maintenance requirements in Section II.9.6 may result in a responsibility hearing which could lead to contract suspension or termination. The Contractor will be required to refund the total amount of the prepaid emergency maintenance if found not to be responsible.

II.10 REFERENCES

PROJECT REFERENCES / CLIENT INFORMATION

OGS reserves the right to seek project references. If requested references must contain, at a minimum, the following information: company name, address, telephone number, hours of operation, contact person, e-mail address and a description of equipment provided and any other pertinent information necessary to verify that a bidder possesses the knowledge and experience to meet the terms and conditions of a contract resulting from this RFP. OGS/PSG reserves the right to review and consider other known clients of bidders in addition to those provided and to disqualify based on unsatisfactory reports.

Forms for providing reference information will be provided by the entity requesting the reference.

For OGS, the references must be able to rate the Bidder on the following aspects:

- Reliability and durability of the infrastructures and/or end user equipment/accessories
- Quality of voice or data on the infrastructures and/or end user equipment
- Quality of the feature sets on the infrastructures and/or end user equipment
- Aesthetics of end user equipment and accessories
- Quality of the implementation services, including project management, installation, training, and documentation provided
- Quality of the customer service and the on-going maintenance service
- Pricing of equipment and services

Authorized Users may require references to rate the Bidder on aspects that differ from the ones listed above.

II.11 MOVES, ADDS, AND CHANGES (MAC) (HARDWARE AND SOFTWARE)

Database changes and programming changes (software) must be provided at no additional charge to the Authorized User for a period of 30 days after system cutover. Following this period, charges for changes will be at the rates furnished on the NYS Net Price Sheets. As the Contractor makes changes to the software/programming of the system, the Contractor must retain all changes made on a backup source. In the case of system power failure or any action that results in the loss of memory of system and/or features, the Contractor will be required to reload the system software. If the most recent system and/or unit memory is not kept by the system, the Contractor must provide the system and/or unit software reprogramming at no cost to the Authorized User.

Moves, additions, and upgrades for system infrastructures and end user equipment (hardware) that take place after installation shall be provided at the rates furnished on the NYS Net Price Sheets.

II.12 OPERATIONAL SERVICE FEATURES & PROGRAMMING

The operational service features that require programming shall be programmable by the Authorized User. Jumpers or straps or switch settings on printed circuit card modules are not an acceptable method of programming the operational service features.

Equipment that will enable the Authorized User to program or reprogram the programmable operational service features must be available for purchase in the NYS Net Price Sheets. Additional programming equipment does not have to be bid if the ability to program the system is inherent in the factory delivered system configurations.

II.13 NOTIFICATION OF TESTING

A representative of Authorized User will be invited to witness field-testing. The Authorized Users representative will be notified of the start date of the testing phase five (5) business days before testing commences.

II.14 DOCUMENTATION

When equipment or a system is purchased, the Contractor must supply the Authorized User with all off-the-shelf manuals, as-built documents, plans, specifications or other materials necessary for the equipment's operation, including any additions or peripheral equipment.

Should such materials be updated or replaced, Authorized User will be provided such materials within ten (10) days of their issuance. Authorized Users may purchase additional sets of technical manuals, if needed. Bidders may include the cost of additional off-the-shelf manuals in the NYS Net Price Sheets.

II.15 TRAINING

Contractors will be required to complete user training and system administration training 30 calendar days before cutover on the proper use and programming of the new system to Authorized Users' supervisors and end users. The table in the "Instructions" tab of "21390 Attachment1" (NYS Net Price Sheets) outlines the LOTS where the cost of training is required. Contractors may also offer maintenance training for the Authorized Users' maintenance personnel. Maintenance training shall occur during the warranty period.

Training will take place at the site or sites specified by Authorized Users. Training must be provided to all shifts during their normal work schedules including evening and night shifts if required by the Authorized Users.

For subsequent orders of new/additional equipment, the Contractor must provide a user's guide and basic instruction.

II.16 DELIVERY AND INSTALLATION

Delivery shall be made within thirty calendar days after receipt of a purchase order by the Contractor for the following products:

- Vehicle-Installed and Portable/Field Deployable Interoperability Systems
- Portable Repeaters and Accessories
- Vehicular Repeaters and Accessories

For infrastructures or equipment installed at fixed sites, Contractor shall deliver, install, and program the system according to a schedule, which is mutually acceptable to both parties after receipt of a purchase order.

II.17 LABOR COSTS

The labor cost quotes will be considered straight time costs for work accomplished during regular hours between 7 AM and 5 PM, Mondays through Fridays, excluding all State Holidays. Any work performed at times other than above is considered to be overtime and would be allowed only when approved by the agency. The rates paid to the Contractor would be 1.5 times the rate bid for "after hours" and Saturdays, or double times the rate bid for Sundays and Holidays.

II.18 EQUIPMENT SPARES

The Contractor shall furnish a "Recommended Spares List" for each system provided.

The Contractor shall maintain a stock of repair and/or replacement parts for all equipment offered under any contract resulting from this RFP.

The parts inventory should be maintained in sufficient quantities to keep all equipment purchased under this contract in operating condition by providing immediate repair without having to order parts, for the duration of any contract resulting from the RFP. The contract administrator may require that the Contractor provide a parts inventory with quantity, description and location on a yearly basis for all equipment installed and maintained during the contract period including extensions. If parts inventorying services are requested, the Contractor shall include the cost as part of their price quote.

II.19 STANDARD OF PERFORMANCE REQUIREMENTS

The Standard of Performance requires that upon completion of the installation, all systems and associated equipment furnished by the supplier will be subjected to a thirty (30) consecutive day operational test to determine the reliability of the equipment. The Contractor shall work with the Authorized User to develop a 30-day performance test plan that is mutually agreeable to both parties. The re-start of the 30-day performance test shall be limited to system failures that require a 24/7 or priority emergency maintenance response.

The Contractor must certify in writing to the Authorized User that the equipment is installed and ready for performance testing. The notification shall include model and serial number nomenclature of all equipment installed and ready for testing. System performance shall not be less than one hundred (100%) percent during the operational 30 consecutive days test period. If the system fails to meet the mutually agreed upon performance requirements for that period, the Contractor will resolve the problems and start the test again beginning with day one. The Contractor will be given a 60-day period to successfully complete a 30 consecutive days test. If the results of this operational test meets the mutually agreed upon performance requirements, the Authorized User will accept the system and authorize payment.

II.19.1 Equipment Failure

In the event that any item of equipment furnished by the Contractor fails to perform satisfactorily for three (3) consecutive days during the performance test period, the tests shall be terminated for that item and replacement(s) shall be provided at a mutually agreed upon time at no cost to the Authorized User by the Contractor. The test period shall begin anew as provided in Section II.19.

II.19.2 Performance Period Termination

In the event that the equipment (including any special or optional features ordered and installed) has not achieved the Standard of Performance within sixty (60) days of the start of the test, the Authorized User may opt for one of the following:

- A. Terminate the tests and require the Contractor to provide a replacement for each item of equipment which failed to achieve the required Standard of Performance, at no cost to the Authorized User, and allow for a new 60-day period to complete the 30-day operational test;
- B. Find the Contractor in Default - If the Contractor is found in default, the Contractor shall remove the system or equipment at no cost to the Authorized User. Allowances may be made only for delays, which are beyond the control of the Contractor.

II.19.3 Replacements

If the Authorized User elects the option of acquiring replacement equipment, a new performance period will commence upon notification in writing to the Authorized User that the supplier has replaced all equipment subject to replacement. The notification shall contain, as a minimum, the model and serial number nomenclature of the new equipment, cross-referenced to that of the equipment replaced.

The Contractor shall bear the cost of transportation, installation, and delivery whenever equipment is subject to replacement, unless the replacement was due to the fault or negligence of the Authorized User.

II.20 EXAMINATION OF SITES AND SPECIFICATIONS (MANDATORY)

Prior to the issuance of the Cost Quote, Contractors **must perform a site visit at the associated installation location*** to become familiar with any local condition, which may in any manner affect the work to be done, as well as equipment, materials, labor, or services required. Contractors are required to examine carefully the specifications and to familiarize themselves thoroughly concerning any conditions and requirements that may in any manner affect the work to be performed under the contract. During the **mandatory** site visit, the Authorized User will indicate placement of all equipment. In addition, Contractors should specify if there are any required modifications or additions to the site, which are required to insure proper operation of the equipment. If changes are required, they must be included in the Cost Quote.

No allowances will be made because of lack of knowledge of these conditions. Ignorance of the requirements will not relieve the Contractors of their liability and obligations under the contract.

Contractors shall provide drawings of typical equipment room layouts, specifying floor space and site requirements (electrical, HVAC, grounding, cabling space, etc.) for each system. The system, drawings, and site requirements shall take into account the final maximum system configuration.

***Site visits are only required for the installation of the following LOTS:**

- LOT 1: Interoperability Systems (fixed site only)
- LOT 2: Radio Dispatch Consoles
- LOT 3: Dispatch Console Furniture
- LOT 4: Fire Station Alerting Systems
- LOT 5: Logging Recorders and Instant Recall Recorders
- LOT 6: In-Building Communications Systems

SECTION III SPECIAL TERMS AND CONDITIONS
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III.1 TERM OF CONTRACT

The term of the Contract will commence upon approval by the Office of State Comptroller and issuance by the Office of General Services and will continue for a period of ten (10) years with an allowance for annual termination after an initial five-year period. The contract term related to equipment maintenance will be in effect for five (5) years after the original equipment contract termination. Note that the contract term for the acquisition of maintenance services as further defined below differs in length from the contract term as indicated above. The Contractor's authority to sell systems shall expire upon the termination of the purchase portion of the Contract as indicated above even though authorized users will be able to acquire maintenance past the contract expiration date. All Cost Quotes issued to Authorized Users will be at prices not exceeding applicable contract prices. The State reserves the right not to accept, at its discretion, any product that is deemed excessive in cost during the contract period or any extension period.

The maintenance terms of the Contract (i.e., those terms of the contract related to maintenance) will be effective for a period of five (5) years after the original equipment contract termination and survive the original contract term or any extensions. This is meant to include preventive maintenance and remedial maintenance as well as ongoing moves, additions and changes of equipment and software upgrades to the basic system.

III.2 CANCELLATION FOR CONVENIENCE

REFER TO APPENDIX B, ITEM 60 FOR COMPLETE DETAILS.

III.2.1 Suspension of Contract Services

REFER TO APPENDIX B, ITEM 59 FOR COMPLETE DETAILS.

III.3 INTERCONNECTION WITH COMMON CARRIER/OTHER EQUIPMENT

Contractor warrants that Equipment as installed, or subsequently modified by Contractor (or others with its knowledge and consent) shall be suitable for connection to the common carrier network or other equipment (as identified by Authorized User) and guarantees that such interconnection will not in any way impair the quality of transmission or cause any harmful effects to such network or equipment. Contractor will save the State harmless from any action brought against the State to the extent that it is based on a claim that the Equipment at any time caused any such harmful effects, except to the extent that such damage was caused by acts or omissions of the State. The warranty, and remedy, set forth in this paragraph shall only be operable to the extent Authorized User informs Contractor of the carriers or equipment to which Equipment will be connected.

III.4 PERFORMANCE AND PAYMENT BOND

A. DESCRIPTION OF PERFORMANCE BOND

As specified in Section 137 of the State Finance Law, the Contractor may be required to furnish a bond for the faithful performance of all obligations imposed by the contract and also for the payment of all lawful claims of subcontractors, material suppliers, and workers arising out of the performance of the contract. Such bond will be in the form found herewith entitled "Performance and Payment Bond" and will be a sum equal to seventy-five percent (75%) of the estimated value of the Cost Quote and such bond will be signed by one or more sureties* satisfactory to the Authorized User.

When the Authorized User notifies the Contractor to furnish a bond, the Contractor will deliver such bond to the Authorized User within 15 days, after receipt by the Contractor of the acceptance of the Cost Quote and the sureties thereon will be as proposed by the Contractor, provided that if the Authorized User has therefore given notice to the Contractor that the proposed sureties or any of them are not satisfactory, the bond will be executed by other sureties satisfactory to the Authorized User.

B. DEFAULT

In the event of a default by the Contractor in its obligation to furnish a satisfactory bond within fifteen days after receipt of an acceptance of the Cost Quote, such default will entitle the Authorized User in its discretion to terminate this Cost Quote at any time within 25 days after the acceptance of the Cost Quote, without any liability on the part of the Authorized User or the State. Inasmuch as the damages to Authorized User, resulting from a termination by it upon the failure of the Contractor to furnish a satisfactory bond, will include items whose accurate amount will be difficult or impossible to compute. Therefore, such damages will be liquidated in the sum of the following amounts:

1. The excess, if any, of the Lump Sum quoted in the Cost Quote finally accepted over that quoted in the Cost Quote of the Contractor; and
2. The expense of such new advertisement of the contract, if any, as may be deemed necessary by the State; and

* Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the State of New York; whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Issuing Office as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties will equal or exceed the penal sum of the Performance and Payment Bond.

3. The sum of \$500.00 for each day following the receipt by the Contractor of the acceptance of its Cost Quote, that the performance of the Cost Quote is not commenced, by reason of the failure of the Contractor to furnish the required bond.

C. PROCEDURES FOR RECTIFYING PROBLEMS

If at any time the Authorized User will be or become dissatisfied with any surety or sureties furnished for any bond submitted in accordance with the requirements of the Authorized User, or if for any other reason such bond will cease to be adequate security to the Authorized User the Contractor will, within fifteen days after notice from the Authorized User to do so, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Authorized User to constitute adequate security.

The Performance and Payment Bond expires at the time the Authorized User "accepts" the system. From that point on, the Authorized User will rely on the Manufacturers Warranty and/or the maintenance contract to protect the Authorized User from inadequate performance or non-performance by the Contractor.

See Appendix G for Performance and Payment Bond Forms.

III.5 ADMINISTRATIVE AND REPORTING REQUIREMENTS

REFER TO SECTION IX FOR COMPLETE DETAILS.

III.6 NYS DEPARTMENT OF LABOR PREVAILING WAGE RATE SCHEDULES PUBLIC WORKS

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

A. "PUBLIC WORKS" (Article 8)

Bidders must refer to Appendix B, item 17 for a full description of these subjects.

B. PREVAILING WAGE RATE APPLICABLE TO BID SUBMISSIONS

NYS DEPT. OF LABOR PREVAILING WAGE RATE SCHEDULES

ALL PUBLIC WORKS AND BUILDING SERVICE CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS AS ESTABLISHED BY LAW BY THE DEPARTMENT OF LABOR. Information indicating that prevailing wages are not being paid on a public works project will be forwarded to the New York State Department of Labor for investigation. Willful violations of the prevailing wage provisions of the Labor Law may result in monetary fines or debarment from bidding and awarding of contracts.

NOTE: CONTRACTORS AND SUBCONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING WAGE RATES IN A PROMINENT AND ACCESSIBLE PLACE AT THE WORK SITE. Vendor is solely responsible for confirming subsequent changes to the posted rates and for paying the prevailing rates at all times during the contract term.

These are Public Works projects. The Bidder **must** use the labor rates and **must** adhere to Department of Labor rules and regulations in the payment to employees. **Notice: Prevailing Labor Rates from the NYS Department Of Labor are available on the web site.**

<http://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=328259>

The PRC reference number for prevailing wage rates for this bid is located in Appendix F.

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, 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" might be grounds for a determination of vendor non-responsibility and rejection of bid or cancellation of the contract.

The awarded Vendor(s) will be required to complete the following actions and maintain Department of Labor records as indicated:

- 1) The Prevailing Wage Schedules **must** be posted at the work site so that the workers are aware of the wages and supplements to which they are entitled by law.
- 2) The awarded Vendor(s) **must** provide all workers with written notice informing them of the prevailing wage requirements for the job and each worker **must** sign a statement or declaration that attests that all workers have been given this information.

The Vendor(s) are required to certify payrolls and keep the certified records on site and available.

The instructions for accessing the labor rates list from the NYS Department of Labor web site for this bid are located in Appendix F. If the prevailing wage titles for this bid are proposed, Bidders **must** submit proposals which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits, expense reimbursement, 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 proposals based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Proposals that fail to comply with this requirement will be disqualified.

A list of companies with which the Department of Labor prohibits State Agencies from doing business is located at the end of the labor rates list for this bid. The issuing Office will disqualify any bid from a company that is listed. The issuing Office has the option of disqualifying a bidder that uses one of the listed companies as a subcontractor or requesting that the bidder not use the listed company as a subcontractor.

C. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM

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

D. DAY'S LABOR - DEFINED FOR ARTICLE 8, PUBLIC WORKS (FOR PURPOSES OF ARTICLE 8 OF THE LABOR LAW)

No laborer, workers or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a 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 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 industrial commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the contract site.

III.7 MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION

REFER TO APPENDIX E FOR COMPLETE DETAILS.

III.8 APPENDICES

During the performance of the contract, Contractors agree to the terms outlined in the Appendices attached hereto and incorporated herein.

III.9 CORPORATE MERGER/ACQUISITION/TAKEOVER

Any assignment or other transfer of contracts issued as a result of this RFP by Contractors arising from merger, acquisition, takeover or any change in corporate form shall be subject to a condition that the pricing, terms and conditions inuring to the benefit of the State under this contract shall be assumed in their entirety by the assignee or transferee. Notwithstanding the terms of this provision, assignments of contractual obligations arising from corporate merger, acquisition, takeover or change in corporate form requires the advance approval of the Office of the State Comptroller.

III.10 NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this RFP or contract executed pursuant thereto shall not be valid unless in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address given set forth on the title page of this RFP, and (ii) if to Authorized Users, to address set forth in the Purchase Order, and (iii) if to Contractors, addressed to Contractors at their addresses. The parties may from time to time, specify any address in the United States as its address for the purpose of notices under this agreement by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for the purpose of this contract.

III.11 CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITIES

Procurement Services Group considers the prime contractor to be the sole contact with regard to all provisions of the proposal, to include payment of all charges resulting from the procurement and installation of the entire equipment and/or software configuration. In the event the bidder's proposal includes hardware and/or software manufactured by another manufacturer or supplier, the Prime Contractor must assume full responsibility for delivery, installation, maintenance, and support services for such items offered in the proposal. The Prime Contractor shall ensure that there is no interruption of service during implementation and shall assume responsibility for any related negotiations with local service providers.

The Contractor and its representatives must work in harmony, cooperation and coordination with existing trade unions.

Contractors are encouraged to subcontract with companies certified as minority or women-owned enterprises. A list of New York State registered minority and women-owned business enterprises is available through the OGS MWBE Office as referenced in Article 15 A. A description of Article 15 A is located in Appendix E.

If the Bidder intends to use a subcontractor for the maintenance, the subcontractor must be identified at the time that the proposal is submitted (Reference Appendix C, Section 10d and e).

All subcontractors must have a minimum of two (2) years' acceptable experience as determined by Procurement Services Group installing the same type of equipment being bid on in this proposal.

III.12 VALUE ADDED RESELLERS OR DISTRIBUTORS

OGS agrees to permit Contractor to utilize approved, designated Resellers including Value Added Resellers (VARs) and/or distributors and dealers ("Reseller[s]"), to participate as alternate distribution sources for Contractor. Resellers may be added at any time during the Contract term at the discretion of the Contractor provided that they comply with all of the conditions of participation set forth in paragraph B, below, with no set minimum or maximum number of Resellers who may be used. Such participation is subject to the following conditions:

- A. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). If Reseller(s) are designated to fulfill orders under this Contract, issue invoices and receive payment, Contractor must provide OGS, in advance, with all necessary ordering, billing addresses and federal identification numbers in the format provided in Appendix C, Section 10c.
- B. Conditions of Reseller(s) participation is subject to the following conditions:
 - 1. Reseller(s) must be approved in advance by OGS as a condition of eligibility.
 - 2. OGS reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time.
 - 3. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by Product line, contracting program (e.g. government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:
 - i. such qualifying criteria is uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental/ educational program criteria, and not to a particular procurement;
 - ii. all general categories of qualifying criteria must be disclosed by the Contractor to OGS, in advance, at the beginning of the Contract term;
 - iii. shall be compliant with State and Federal laws;
 - iv. those qualifying criteria met by the Reseller must be identified on the form provided in Appendix C, Section 10c at the time that Reseller approval is requested; and

- v. immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term. Contractor shall not be required to add any Reseller(s) who do not meet Contractor's qualifying criteria, as defined below, or where the addition of the Reseller(s) would violate any state or federal law or regulation.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote pricing for procurements under this contract which meet their qualifying criteria. Except as otherwise set forth in the qualifying criteria stated by the Contractor in the Manufacturer & Value Added Resellers/Distributor Information form (Appendix C, Section 10c), Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, otherwise restrict any Reseller's participation or ability to quote pricing for a project.

4. Contractor's pricing in the NYS Net Price Sheets constitutes a not to exceed price which shall be the maximum price payable by Authorized Users under the Contract for Product or services. Resellers may not charge more than the not to exceed rates set forth by Contractor in their NYS Net Price Sheets, but may offer Authorized Users lower pricing than the not to exceed pricing set forth therein.
5. Where the proposed approved Resellers (as referenced in Clause #B1 above) also holds an approved E-RATE contract and the rate offered by Reseller under this Contract is lower than the rate offered under the E-RATE contract, Resellers must agree to extend and match the lower rates offered under this Contract to the E-RATE purchasers in order to be approved for participation under this contract.

- C. **Applicability of Contract Terms/Responsibility for Reporting & Performance:** OGS shall execute a single Contract with the Contractor, and Resellers may only participate as a subcontractor or agent of the Contractor. Contractor shall be fully liable for Resellers' performance and compliance with all Contract terms and conditions.

Although OGS will not be entering into separately executed contractual agreements with the designated Resellers, Authorized Users may place orders with and issue payments directly to the Resellers in accordance with this Section. Resellers may also issue invoices to Authorized Users. Product ordered directly from Resellers is subject to all terms and conditions of this Contract. Resellers may only offer those Products and Services approved by the State for sale under the Contract.

Product (including services) purchased through Resellers must be included and reported by Contractor in the required Quarterly Reports to OGS. In addition to inclusion of Resellers volume in the Contractor's quarterly reporting obligation to OGS, at the request of Authorized User, Resellers shall provide Authorized User with quarterly reports of the individual Authorized User's Contract activity with Reseller.

III.13 CONSENT TO ASSIGNMENT

REFER TO APPENDIX B, ITEM 56 FOR COMPLETE DETAILS.

III.14 WARRANTIES

REFER TO APPENDIX B, ITEM 72 FOR COMPLETE DETAILS.

III.15 PRICE ADJUSTMENTS

During the term of the contract, the Vendor must maintain the discount(s) from list as quoted in the original bid for the categories outlined in the BID Award process clause except under the specific circumstances outlined below. It shall be the responsibility of the contract holder to submit to the Procurement Services Group all product line changes (additions, deletions, price changes) as soon as the manufacturer announces them in order that the contract can be amended accordingly. No price increases or discount decreases will take effect without the expressed approval of the Office of General Services. Price reductions or discount increases shall take effect immediately and be applied to all unshipped orders.

If a manufacturer revises the discounting structure in such a way that the Vendor cannot maintain the margin upon which the award was based and comply with the contractual requirements to pass along price reductions and add all new product and services to the contract at the discounts bid; or the manufacturer creates a new group or category of products or service that did not exist at the time of the bid opening, the Vendor shall, when updating the contract under these circumstances, provide such documentation as indicated in Section III.18.1, REGULAR ADD PROCEDURES.

III.16 SUBMISSION OF ELECTRONIC MEDIA

CD's are required when the Bidder has contract changes/updates for proposed adds/changes to the contract.

III.17 REGULATORY AND STANDARDS COMPLIANCE

All equipment offered in eventual contract(s) resulting from this RFP **must** be in compliance with all applicable regulatory rules and standards (e.g. FCC, EIA, UL) that govern operation of the equipment at the time of the bid opening and for the entire term of the contract. During the course of the contract, the Contractor shall be responsible for deleting equipment from the NYS Net Price sheets that fall out of compliance with regulatory rules and standards and adding equipment that is in compliance with regulatory rules and standards through the contract changes process outline in Section III.18 of the RFP.

III.18 CONTRACT CHANGES / UPDATE SCHEDULE

Adding New Products or Services Within Existing Price Structure. Where future offerings of Products or service become commercially available during the Contract term and are commercially offered within the established pricing categories and discount structures set forth in the NYS Net Price List, the Contract may be amended to include such offerings in accordance with the "Auto Add" procedures set forth in Section III.18.1.

Adding New Products or Services Using Different Price/Discount Structure. Where future Products or service offerings become commercially available during the Contract term and are not commercially offered within the established pricing categories and discount structures set forth in the NYS Net Price Sheets, the Contract may be amended to include such offerings in accordance with the "Regular Add" procedures set forth in Section III.18.1, which require the approval of OGS and the Office of the State Comptroller in advance of such Product being incorporated into the contract offerings.

Existing Products - Price Changes For approved Product or Service offerings under the Contract, Vendor may change the pricing set forth under this Contract as follows:

- 1) Price Decreases shall take effect automatically during the contract term where:
 - a) List Price/Reseller Cost/GSA Pricing, as Applicable, is Reduced. Vendor lowers its pricing for Product and/or services to its customers, resellers, or GSA as applicable during the contract term. In such case the Vendor shall lower Contract pricing in accordance with the established NYS Net pricing structure, as applicable; Or
 - b) Special Offers/Promotions. See Appendix B, Clause 24f. Vendor offers any customer generally during the term of the Contract other more advantageous special promotions or special discount pricing, in which case the maximum discount associated with such offer or promotion, if greater than the discount otherwise available under this Contract (“Contract discount”), shall, for transactions on the same terms or for the life of such special offer or promotion, be used in lieu of the Contract discount in the calculation of the NYS Price.
 - c) Special Offers/Promotions to Authorized Users Under/Outside of Contract. Vendor may offer Authorized Users, under either the Contract or any other contracting vehicle, competitive pricing which is lower than the rates set forth herein at any time during the Contract term and such lower rates shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (ii).

Additionally, where the pricing submitted for services are not benchmarked to an approved GSA Supply Schedule, Vendor may request an increase in the pricing contained in the NYS Net Price List provided that Vendor certifies in writing that the price change for services applies to all U.S. customers using the same benchmark. Such adjustment shall not exceed the lesser of five (5%) percent or the percent increase in the latest copy of the “National Consumer Price Index for All Urban Consumers (CPI-U)”, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. Vendor has the sole responsibility to submit to OGS a service rate adjustment request thirty (30) days prior to the anniversary date of the contract award, providing a copy of the index and other supporting documentation necessary to support the request. In the event that this index ceases to be published, the referent index shall be as issued by the U.S. Department of Labor in its place. In no case shall the percentage increase result in a NYS Price, which exceeds Vendor’s commercial price list.

III.18.1 TYPES OF CONTRACT CHANGES

This RFP will result in a contract subject to the Auto Add process for most rate change actions.

AUTO ADDS / DELETIONS

“Auto Adds/Deletions” are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a “discount from list” or pricing based on an approved GSA-based or MSRP based price schedule. Auto Adds include the bundling of Products/Services not previously bundled. Auto Adds cannot be submitted for price increases not based on GSA or MSRP based price schedules. Price increases not fitting the above categories must be submitted as a Regular Add. Auto Adds/Deletions include: i) adding new Products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. Contractor should note that all Auto Adds approved by OGS are subject to a post audit by the Office of the State Comptroller. If approved, OGS staff will notify Contractor in writing.

REGULAR ADD

“Regular Adds” are requests for i) Price increases for Products/Services which are already incorporated under the Contract, and retain the previously approved contract pricing formula (discount remains the same) but are not based on GSA or MSRP based price schedules, and ii) addition of new Products to the Contract which do not fall under the previously established price structure or discounts for Product types previously approved under the Contract. Regular Adds include re-bundled Products or Services. Regular Adds must be submitted to OGS for prior approval and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to pre-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing.

SPECIAL ADD

Contract changes and updates that do not fall within either of the above categories will be processed as “Special Adds”. Special Adds are changes that are not specifically covered by the terms of the Contract but inclusion is found to be in the best interest of the State. Contractor must provide a justification of reasonableness of the prices offered and a statement explaining why it is in the best interest of the State to approve the new Products. Special Adds are subject to pre-audit by the Office of the State Comptroller. If approved, OGS staff will notify Contractor in writing. New offerings may not be electronically posted by Contractor until after receipt of OGS approval of the Special Add.

CONTRACTOR’S SUBMISSION OF CONTRACT UPDATES In connection with any Contract update, OGS reserves the right to:

- request additional information
- reject Contract updates
- remove Products from Contracts
- remove Products from Contract updates
- request additional discounts for new or existing Products

PRICE JUSTIFICATION - FORMAT

Contractor is required to submit the Product and price information for the update in an Excel spreadsheet format on a CD or electronically via e-mail to the OGS Purchasing Officer. The list must be dated and the format should be consistent with the format of the price list(s) included in the NYS Net Price Sheet (see Appendix C, Section 5c) of this Contract. The price list should separately include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts) any products being added.

OGS or the State Comptroller reserves the right to require a revised NYS Net Price List at any time during the Contract period, and it will be requested if there have been numerous updates since the last complete update. Each updated price list must include the date the price list was prepared.

SUPPORTING DOCUMENTATION

Each update request must include the current U.S. commercial price list relevant to the Products included in the update. If the NYS Net Prices are based on a GSA Schedule, the current GSA Schedule must also be included with the update request. Requested price increases not based on an approved GSA schedule must also include a copy of the current National Consumer Price Index as described in the "Payments/Pricing" section of the Contract.

CONTRACT UPDATE FORMS

A Contract update must be accompanied by three (3) copies of the contract update form set forth in Appendix H. Each of the three copies of the contract update form must contain original signatures by an individual authorized to sign on behalf of Contractor, and an original corporate acknowledgment.

COVER LETTERS

A Contract update must be accompanied by three (3) Cover Letters. Each of the three Cover Letters must contain original signatures from an individual that was given the authority to perform this action by the Contractor. The Cover Letter should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, and/or for new Products or services which fall into a new group or category that did not exist at the time of approval of the Contract by the State Comptroller, etc.).

III.19 MODIFICATION OF CONTRACT TERMS

REFER TO APPENDIX B, ITEM 40 FOR COMPLETE DETAILS.

III.20 PERIODIC RECRUITMENT

This RFP is a Periodic Recruitment RFP to obtain qualified bidders to provide Public Safety Ancillary Equipment. OGS intends to make annual awards through the Periodic Recruitment of proposals. This RFP will result in a group of contracts which become effective upon approval by the Office of the State Comptroller (OSC). Bidders who are rejected or who missed this initial opportunity to submit a proposal will be allowed to respond to the requirements of this RFP, which may be revised as required and reissued commencing in year two of the original contract award(s) and each year thereafter, during the entire contract term. The goal is to have any additional new contracts in place 1 year from the date of the initial contract award(s) and approval by OSC, or as otherwise specified by OGS and submitted to the Office of the State Comptroller for contract approval. **OGS reserves the right to make a final determination regarding the yearly issuance of this RFP.**

Periodic Recruitment is a contracting process offered through the NYS Office of General Services which is designed to assist vendors to do business with the State of New York more easily and in a timely manner. RFP 21390 may be reissued yearly. This will be determined after a need assessment is completed prior to the reissue date.

Key objectives are:

- i. Ability to award contracts to new Bidders during the contract term
 - ii. Ability of the State to respond to fluid changes in the Public Safety marketplace as technology issues change;
 - iii. Ease the duplicative requirements otherwise imposed on Bidders when filing bids, and
 - iv. Allow newly emerging technologies or Bidder specialties to be quickly recognized and included by amendment to existing contracts.
- A. Periodic Recruitment is unique in that there are periodic reissues of the original RFP. This RFP will have provisions for the RFP to be reissued yearly. The goal is to have new contracts in place on the annual anniversary date of the original award. Additional contracts awarded as a result of Periodic Recruitment will have terms of 9 years, 8 years, 7 years and 6 years, with an allowance for annual termination after an initial 4-year, 3-year, 2-year and 1-year period respectively.
- B. The start date for each bidder's contract will vary according to the date of bid opening, recommendation for contract award and contract approval. All contracts awarded under periodic recruitment will end at the same time as the initially awarded contracts.
- C. All future proposals submitted under the Periodic Recruitment provisions of RFP 21390 must meet all RFP requirements as of the date of the RFP issuance, including all future additions or revisions (i.e. Addendums) of that most recent version of RFP 21390.

III.21 EMERGING TECHNOLOGIES

The State reserves the right to modify the terms of the RFP at any time to allow for technologies not identified elsewhere under this document. If there are repeated requests for an "emerging technology," and OGS feels it is warranted to add such technology to the list of Categories of Expertise, OGS reserves the right to include such technology hereunder or to issue a formal modification or amendment to the RFP or resulting contract. The technology will have to have been in the commercial marketplace for a reasonable amount of time and have met with some degree of success among a substantial base of Issuing Entities to be considered by OGS as a new category for contract services. The parties may, however, modify the license terms as expressly provided herein upon mutual agreement of the parties, where Contractor provides Authorized Users more advantageous terms and conditions than those set forth herein.

III.22 NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (APPENDIX 1)

Bidder agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as Appendix 1 (hereinafter the “SVRQ”). 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 SVRQ in making that determination. The Bidder agrees that if it is found by the State that the Bidder’s responses to the SVRQ were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

III.23 TAX LAW § 5-A (APPENDIX 2)

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the 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 are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

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

Contractor certification forms and instructions for completing the forms are in Appendix 2. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification form, ST-220-CA, with their proposal. Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>

III.24 PROCUREMENT CONTRACT FEE

State Finance Law §163-c (added by Part F of Chapter 56 of the Laws of 2008), imposes a centralized procurement contract fee (procurement fee) for centralized contracts for the purchase of commodities, services and technology awarded and administered by the Commissioner of General Services. The procurement fee is equal to one half of one percent (0.005) of the price of the commodity, service or technology sold by the contractor. The pricing offered by bidders/offerers for the commodity, service or technology will be considered by the Office of General Services (OGS) to be inclusive of the fee, and will be subject to review for evaluation and recommendations for contract award. The procurement fee shall be paid by the contractor based on total sales made by Authorized Users of centralized contracts.

State Finance Law section 163-c applies to bids issued by OGS on or after July 1, 2008.

The procurement fee of one half of one percent of sales to purchasers by the contractor for the applicable preceding calendar quarter, as well as an accompanying return, must be made by the contractor to the New York State Department of Taxation and Finance ("DTF") no later than forty-five (45) days after the close of each calendar quarter. Payment of the procurement fee, as well as filing of the accompanying return, must be made electronically to DTF. Prior to electronically filing the initial return and electronically paying the initial procurement fee, contractors must register on DTF's Online Tax Center (<http://www.tax.state.ny.us/nyshome/online.htm>).

Returns must be filed even if no sales under the centralized contract were made during the preceding calendar quarter. Simultaneously, the contractor must provide its sales report for such preceding calendar quarter to OGS in the format and with details set forth in this solicitation. Contractors must fully cooperate with DTF and OGS relative to such payments and filings. Penalties for failure to comply with the filing and payment requirements are provided for by Article 27 of the Tax Law.

A contractor that cannot comply with the mandatory electronic filing and payment requirements must advise the OGS in writing at the time of bidding that it cannot reasonably comply with such electronic requirements. The contractor must provide the basis and reasons for its inability to comply. OGS shall in its sole discretion determine whether a sufficient basis and reasons have been presented supporting waiver of the mandatory electronic requirements. If the waiver is granted, the contractor shall pay the procurement fee to OGS by paper check, accompanied by the sales report and the paper return within forty-five days (45) days after the close of the preceding calendar quarter in accordance with the directions on the form. Contractor agrees to fully cooperate with OGS relative to such payment and filings.

In addition to the penalties prescribed by Article 27 of the Tax Law, failure by a contractor to timely and accurately remit the procurement fee, provide the sales report and file the return for each calendar quarter shall constitute a breach of contract, and the Commissioner of General Services may exercise discretion to terminate such centralized contract on written notice to the contractor.

III.25 MERCURY-ADDED CONSUMER PRODUCTS

Bidders are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale of fever thermometers containing mercury and the sale of elemental mercury for other than research purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Bidders are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Bidders may also visit the Department's web site for additional information:

<http://www.dec.ny.gov/>

III.26 EPA ENERGY STAR PROGRAM:

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort. See Appendix C, page 127, QUESTIONNAIRE.

III.27 PRODUCT ACCEPTANCE AND OWNERSHIP

The provision below shall supplement Sections 79 and 81 of Appendix B:

Notwithstanding Sections 79 and 81 of Appendix B, incorporated by reference and made a part of the contract, the parties agree that for Lots 7 and 8 which are for products **only** acceptance will be deemed to occur thirty (30) days after delivery or earlier if agreed to by the Authorized User in writing and title and ownership to Lots 7 and 8 products **only** shall pass to the Authorized User upon such acceptance.

III.28 PRODUCT SUPPORT

The Contractor shall provide the same or compatible parts with the same or advanced features of the original parts and field support for the same or compatible parts for seven years from the purchase of the equipment.

SECTION IV USE OF CONTRACT BY STATE AGENCIES, POLITICAL SUBDIVISIONS AND OTHERS AUTHORIZED BY LAW

IV.1 DETERMINATION OF CONTRACT USE

The intent of this section is to acquaint prospective contractors with the procedures and methods that Authorized Users will follow in order to utilize the contracts. After contracts have been approved by the control Agencies (see Section V.6), the Authorized User will identify the LOT from which the equipment will be purchased. **If more than one vendor has been awarded a contract for any LOT, Authorized Users should seek cost quotes from all contractors and select the lowest cost quote that meets their needs.**

It is the intention of the Office of General Services to issue an electronic Contract Award Notification to State Agencies and participating political subdivisions and others authorized by law to use OGS contracts.

The notification will include the terms and conditions of contract(s) awarded as a result of this RFP 21390, how to use contract instructions, Contract numbers and contractor contact information, FAQ's, etc. Bidders should be aware that Authorized Users will be informed that contracts issued as a result of RFP 21390 contain "not to exceed" pricing and that Authorized Users will be advised to seek better pricing when issuing a purchase order.

IV.2 PARTICIPATION IN CENTRALIZED CONTRACTS

Bidders must refer to Appendix B, item 39 regarding participation in a centralized contract.

IV.2.1 Extension of Use

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

SECTION V

ADMINISTRATIVE

V.1 PROPOSALS

All proposals will be received with the understanding that the acceptance in writing by OGS with the approval of the Attorney General and the Office of the State Comptroller will constitute a contract between the bidder and the State. All proposals and accompanying documentation will become the property of the State of New York and will not be returned. The successful bidder's proposal and a copy of the specification will be made part of the contract. Therefore, the proposal **must** be signed by an official authorized to commit the company to a contract.

Detailed information on content of proposals is found in Section II PROCUREMENT SPECIFIC REQUIREMENTS. The specific guidelines for the format are contained in Section VI PROPOSAL FORMAT AND CONTENT.

NOTE: These requirements must be followed and proposals must contain all required signatures, documentation, pricing etc. in order to be evaluated for recommendation for contract award.

V.2 SUBMISSION OF SEALED PROPOSALS

Complete proposals must be packaged, sealed and submitted to OGS Procurement Services Group, Floor 37, Mayor Erastus Corning 2nd Tower, GNAR Empire State Plaza, Albany, New York, 12242. The date and time are shown on the cover of this RFP. Bids will not be accepted on the 38th floor location. The envelope or shipping container should reflect: RFP 21390, Sealed Bid, Do Not Open.

The Procurement Services Group (PSG) will only post the signature pages (first page of RFP) of the companies that submitted proposals on the OGS/PSG web page. Previously only available through Freedom of Information, such information is anticipated to be available online within two business days after the bid opening.

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

If **using a commercial delivery company**, which requires that you use their shipping package or envelope, your proposal should be placed within a **second sealed package labeled** as detailed above. This will ensure that your proposal is not prematurely opened.

Proposals not received by the time and date shown in Section I.10 will not be opened. Bidders using commercial delivery companies are encouraged to ship early. If one of these companies is late delivering a bid, the bid will be considered late. **There will be no exceptions.**

For additional information, refer to Appendix B, Item 8.

IMPORTANT NOTE: New security procedures are in effect at the Corning Tower. While Empire State Plaza procedures govern both parking and admittance to buildings, the new Corning Tower procedures require turnstile security access. Photo identification is required. **Bidders attending bid openings must pre-register for building access by contacting the Procurement Services Groups (PSG) receptionist at 518-474-6262 at least 24 hours prior to the bid opening.** Vendors who intend to deliver bids or conduct business with PSG should allow extra time to comply with the security procedures. These security procedures may change or be modified at any time. Bids not received within the Procurement Services Group, or the OGS Mailroom, by the time and date shown on the front page of the RFP will be considered late and disqualified.

V.3 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

- A. Utilize any and all ideas submitted in the proposals received.
- B. Negotiate with bidders responding to this RFP within the RFP requirements to serve the best interests of the State.
- C. Select and award the contract to other than the lowest Bidder in the event of other specified circumstances as detailed in the RFP requirements.
- D. Adjust any Bidder's expected costs based on a determination of OGS that the selection of the said Bidder will incur additional costs by the State.

V.4 ASSIGNMENT OF MONIES

This section appends item 56, Appendix B.

If the Contractor assigns the right to receive payments to a third party, Contractor shall, at a minimum, provide written notice of the assignment of monies to the Authorized User and the Office of the State Comptroller which shall include the following: (i) Contractor (Assignor) name; (ii) Third Party (Assignee) name and address; (iii) State Contract Number and commodity, service or technology; (iv) Federal identification number of Assignee; (v) Effective date of assignment (Such date shall allow for filing and processing of the assignment of monies by the Authorized User and OSC). Such assignment shall not relieve Contractor of any of its obligations under the contract. An assignment form is available from the Office of General Services.

V.5 LIABILITY FOR PROPOSAL PREPARATION EXPENSE

The State is not liable for any costs incurred by a bidder in the preparation and production of a proposal, Cost Quote, or for any work performed prior to the issuance of a contract or delivery order.

V.6 NOTIFICATION OF AWARD

The successful Bidders will be advised by OGS in writing. The contract will be submitted for approval to:

- Attorney General of the State of New York
- The Comptroller of the State of New York

Public announcements or news releases pertaining to a contract will not be made without prior permission of OGS.

V.6.1 Bidder Debriefing

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Disclosure of the content of competing bids other than statistical tabulations of bids received in response to an RFP is prohibited prior to contract award. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, OGS shall, upon request, provide a debriefing to any bidder that responded to the RFP, regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of posting of the contract award on the OGS website.

V.6.2 Dispute Resolution Policy

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

V.7 SECURITY INTEREST

As applicable and as agreed to by the parties, the State grants to the Contractor a security interest in the Product to secure payment of the unpaid balance of the purchase price notwithstanding installation of the Product at the premises or its attachment to real property in accordance with the Uniform Commercial Code of New York State. Upon default in payment of the purchase price due and payable, the Contractor shall be entitled to exercise all rights and remedies of a secured party under the Uniform Commercial Code of New York State. Upon the Authorized User's payment of the unpaid balance of the purchase price, the Contractor shall be obligated to complete its obligations within the terms of the Contract and shall simultaneously with payment, immediately release its security interest in the Product.

V.8 TRADE-INS

Contractor may, at the discretion of the Authorized User, be required to accept trade-ins under the Contract resulting from this bid. The monetary allowance for trade-ins shall not be less than the current market value or salvage value, whichever is greater. The Contractor shall determine the value of all trade-ins. The Contractor shall be responsible for the disconnection and removal of the equipment. The Contractor may factor the cost of de-installation into the trade-in value, but the de-installation cost must be subject to the Authorized User's concurrence.

SECTION VI

PROPOSAL FORMAT AND CONTENT

Bidders must supply **ONE (1) ORIGINAL PROPOSAL IN HARDCOPY AND ONE (1) PROPOSAL IN SOFTCOPY** and include as part of the proposal; all items listed below (except as noted in this paragraph) and use the following format as their TABLE OF CONTENTS for their proposal submission. The Bidder may provide the Officially Published Price Catalog, "Reasonableness of Price" Contract Pricing, and Technical Library Brochures in hardcopy or softcopy only (softcopy preferred).

Archival quality CD's or USB Flashdrives are required.

The Bidder must provide three hardcopies of documents that require signatures and/or seals/stamps. All signatures must be original black or blue ink and all seal/stamps must be original. The three copies of signed and/or sealed/stamped documents may be grouped together in the one original hardcopy proposal.

Proposals must be submitted in **three-ring binders** (not spiral binders), 2" or larger, view binder, including the spine, with each item listed below as a separate section marked with index tabs as section dividers.

ATTENTION: BIDDERS SUBMITTING PROPOSALS IN RESPONSE TO RFP 21390 ARE ADVISED THAT ALL BID SUBMISSIONS WILL UNDERGO A REVIEW FOR COMPLETENESS. THIS WILL BE A PASS OR FAIL REVIEW. IN ORDER FOR BIDS TO BE EVALUATED THEY MUST BE 100% COMPLETE. ALL REQUIRED INFORMATION, FORMS, SIGNATURES ETC. MUST BE INCLUDED.

FAILURE TO FOLLOW THE TABLE OF CONTENTS AS PROVIDED BELOW MAY CAUSE A BID TO BE DISQUALIFIED.

If the Bidder has any questions regarding what is required for the proposal submission, please call the person listed on the cover of this Request for Proposals.

Electronic mail and facsimile proposals will not be accepted.

The following is an outline of the content of the bid submittal. Appendix C provides detailed descriptions of the items required for the bid submittal. There is a hyperlink between the headings in the outline below and the corresponding detailed descriptions in Appendix C:

NOTE: ALL OF THE FOLLOWING REQUIREMENTS/FORMS MUST BE MET AND ALL FORMS MUST BE COMPLETE. ANY DELETIONS OR OMISSIONS MAY BE CAUSE FOR DISQUALIFICATION.

Proposal Table of Contents

1. **Bid Document** (ORIGINAL INK SIGNATURES ARE REQUIRED WITH ALL THREE COPIES)

Bidder must submit the following with the proposal unless otherwise noted:

- a. Signature Page, completed and signed (Front Cover of RFP)
- b. Proposal Form for LOTS 1-8, completed and signed
- c. Notarized Corporate Acknowledgment Form, completed and signed
- d. If applicable, insert signed Addenda (Addendum # 1, Addendum # 2, etc.)
- e. MacBride/Non-Collusive Forms, completed and signed
- f. Questionnaire Form, completed
- g. NYS Standard Vendor Responsibility Questionnaire, completed and signed (Appendix 1)
- h. Emergency Contact List, completed and signed
- i. Authorized Users Tables, completed and signed
- j. NYS Department of Taxation and Finance Contractor Certification Form(s), completed and signed (Appendix 2)
- k. Compliance with Electronic Filing of Procurement Contract Fee (Section III.24)

2. **Extraneous Terms** (if applicable)

This section should contain any exceptions to the terms and conditions listed herein, (see item 13, EXTRANEIOUS TERMS in APPENDIX B). If applicable, Bidder must submit one set with the proposal.

3. **Financial Security/Certification to Conduct Business/Insurance Requirements**

Bidder must submit one set of the following with the proposal:

- a. Financial Security
- b. Certification to Conduct Business
- c. Insurance Requirements Original ink signatures are required with all three copies.

4. **Manufacturer Certificate/Manufacturer(s) Guarantee**

ORIGINAL INK SIGNATURES ARE REQUIRED WITH ALL THREE COPIES

- a. Manufacturer(s) Certificate completed and signed
- b. Manufacturer(s) Guarantee completed and signed with corporate seal

5. **New York State Net Price/Product Listing**

The Bidder must submit the following for each LOT:

- a. Bid Sheets
- b. Manufacturer's and Distributor's Officially Published Catalog with the Suggested Retail Prices
- c. NYS Net Price Sheet, See Appendix C
- d. Reasonableness of Prices

6. **Pricing Information Provided in Electronic Format**

The Bidder must submit one set for each LOT:

7. **Proof of Sales**

The Bidder must submit one set for each LOT

8. **Evidence of Ability**

The Bidder must submit one set for each LOT:

9. **Product Certification Form**

The Bidder must submit the above for each LOT and Officially Published Catalog bid. Original ink signatures are required with all three copies.

10. **Services Proposal**

The Bidder must submit the following for each LOT unless otherwise noted:

- a. Main Contract Contact Person identified
- b. Remit To Address identified
- c. Designation of Resellers identified
- d. Maintenance Center Information Form
 - i. On-Site Maintenance Information Form
 - ii. Remote Monitoring Center Information Form
 - iii. Depot Center Information Form
- e. Remedial Maintenance Response, three copies, completed and signed
- f. Description of Job Titles
- g. Preventive Maintenance Descriptions
- h. Training Course Syllabus and Descriptions

11. **Technical Library**

Must be provided electronically, be labeled, and included in the proposal binder.

FAILURE TO SUBMIT ANY OF THE ABOVE INFORMATION IN THE REQUIRED FORMAT MAY BE CAUSE FOR REJECTION OF THE PROPOSAL. PSG RESERVES THE RIGHT TO SUBMIT CLARIFICATION QUESTIONS TO BIDDERS TO ADDRESS OR CORRECT INCOMPLETE PROPOSAL ITEMS IF PSG DEEMS THE ITEMS TO BE NON-SUBSTANTIVE.

SECTION VII PROPOSAL AWARD PROCESS

Completeness of Catalog, Pricing Considerations, and Financial Security will be considered in the evaluation of the proposals. Bidders proposing multiple manufacturer's or distributor's officially published catalogs comprised of multiple manufacturers, that comply with the bid qualifications will be evaluated by individual officially published catalog for each LOT bid. If multiple bidders achieve identical rankings per a LOT and officially published catalog, the award will be made based on which proposal is most responsive to the needs of and offers best value to Authorized Contract Users. This will be determined solely by the State. The maximum point value to be awarded to each LOT per proposal will be:

Completeness of Catalog	-	50
Pricing Considerations	-	35
Financial Security	-	<u>15</u>
TOTAL		100

1. **Completeness of Catalog** (50 points)

The Bidder **must** propose 80% of the products in each manufacturer's or distributor's officially published catalogs offered. The Bidder is to certify this by completing a Bid Sheet for the officially published catalog. Refer to Appendix C, Section 5a for instructions on completing Bid Sheets.

2. **Pricing Considerations** (35 points)

The following criteria will be used for pricing considerations:

A. Reasonableness of Prices

OGS is seeking discounts that are equal to or better than the Bidder's GSA, VA, State, or best commercial customer discounts. "Reasonable Prices" will be determined by reviewing discounts and net prices offered to GSA and VA as well as contracts with other state or government entities, best commercial customers, etc. Refer to Appendix C, Section 5d for the items required for demonstration of Reasonableness of Prices.

B. Discount Comparison of discounts offered on existing NYS contracts for Radio Communications Equipment

OGS is seeking discounts that are equal to or better than the discounts offered by Contractors for Radio Communications Equipment on present NYS contracts. The criterion will be determined by comparing discounts and net prices offered to NYS in response to RFP 21390 with the discounts on present NYS contracts.

For information on Radio Communications Equipment currently represented on NYS contract, see the link below:

<http://www.ogs.state.ny.us/purchase/snt/awardnotes/7720019521can.HTM>

C. Discount Comparisons Between Bidders Offering Same LOT and Manufacturer's or Distributor's Officially Published Catalogs

In instances where bidders offer the same LOT and Manufacturer's or Distributor's officially published catalog, OGS will compare the discounts offered by the bidders. This may be used as a factor in determining best value for New York State.

3. **Financial Security** (15 points)

The Bidder is required to obtain a Dun and Bradstreet (D&B) D-U-N-S number and complete a company profile. The Bidder is also required to provide in the proposal a Dun & Bradstreet (D&B) **Comprehensive Report™*** on the Bidders organization. These requirements are further described in Appendix C. The information on the Dun & Bradstreet (D&B) **Comprehensive Report™*** will be used to evaluate the Bidder's past performance along with their financial and operational stability. The Bidder will be allocated points according to the Paydex Score, Financial Stress Class, and Credit Score Class rankings received in the report.

***This is the only report that is acceptable.**

The Points from the individual evaluation categories will be added together to determine a total score. The total evaluation scores will be used to determine award recommendation.

SECTION VIII

BID SHEETS

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

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Bidder

LOT #1 – INTEROPERABILITY SYSTEMS

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP), _____
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes skip questions 2, 3, & 4. _____ **100% catalog offered**
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ ***If less than 80% do not proceed**
- 5. Guaranteed Delivery ARO: (Vehicle-installed and portable/field deployable only) _____ (calendar days)

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount

Discount
_____ %

Or

Option II

Category or Manufacturer discount

Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or
in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS

for single order to one location in dollars. Please
specify the amount that applies:

	<u>Discount</u>
\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

VOLUME PRICING-PRICE BREAKS

for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

VOLUME PRICING-PRICE BREAKS for aggregate

contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):

Use additional pages as needed

SPECIAL PRICING-PRICE BREAKS

Please specify the amount that applies:

	<u>Discount</u>
Type _____	_____ %
Type _____	_____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):

Please specify the amount that applies:

Discount
_____ %

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

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Bidder

LOT #2 – RADIO DISPATCH CONSOLES

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP),
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes skip questions 2, 3, & 4. _____ **100% catalog offered**
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ ***If less than 80% do not proceed**

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount
Or

Discount
_____ %

Option II

Category or Manufacturer discount
Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS
for single order to one location in dollars. Please
specify the amount that applies:

Discount
\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS
for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS for aggregate
contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):

Use additional pages as needed

SPECIAL PRICING-PRICE BREAKS
Please specify the amount that applies:

Discount
Type _____ %
Type _____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):

Please specify the amount that applies:

Discount
_____ %

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

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Bidder

LOT #3 – DISPATCH CONSOLE FURNITURE

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP),
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes skip questions 2, 3, & 4. _____ **100% catalog offered**
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ ***If less than 80% do not proceed**

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount
Or

Discount
_____ %

Option II

Category or Manufacturer discount
Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS
for single order to one location in dollars. Please
specify the amount that applies:

Discount
\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS
for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS for aggregate
contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____ %
\$ _____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):

Use additional pages as needed

SPECIAL PRICING-PRICE BREAKS
Please specify the amount that applies:

Discount
Type _____ %
Type _____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):

Please specify the amount that applies:

Discount
_____ %

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

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Bidder

LOT #4 – FIRE STATION ALERTING SYSTEMS

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP),
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes skip questions 2, 3, & 4. _____ **100% catalog offered**
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ ***If less than 80% do not proceed**

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount
Or

Discount
_____ %

Option II

Category or Manufacturer discount
Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS
for single order to one location in dollars. Please
specify the amount that applies:

Discount
\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS
for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS for aggregate
contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):

Use additional pages as needed

SPECIAL PRICING-PRICE BREAKS
Please specify the amount that applies:

Discount
Type _____ %
Type _____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):

Please specify the amount that applies:

Discount
_____ %

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

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Bidder

LOT #5-LOGGING RECORDERS AND INSTANT RECALL RECORDERS

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP),
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes, skip questions 2, 3, & 4. _____ **100% catalog offered**
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ ***If less than 80% do not proceed**

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount

Discount
_____ %

Or

Option II

Category or Manufacturer discount
Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS
for single order to one location in dollars. Please
specify the amount that applies:

Discount
\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS
for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS for aggregate
contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):

Use additional pages as needed

SPECIAL PRICING-PRICE BREAKS
Please specify the amount that applies:

Discount
Type _____ %
Type _____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):

Please specify the amount that applies:

Discount
_____ %

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

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Bidder

LOT #6-IN-BUILDING COMMUNICATIONS SYSTEMS

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP),
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes, skip questions 2, 3, & 4. _____ 100% catalog offered
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ *If less than 80% do not proceed

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount
Or

Discount
_____ %

Option II

Category or Manufacturer discount
Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):
Use additional pages as needed
VOLUME PRICING-PRICE BREAKS
for single order to one location in dollars. Please
specify the amount that applies:

Discount
\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS
for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

VOLUME PRICING-PRICE BREAKS for aggregate
contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____ %
\$ _____ %
\$ _____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):
Use additional pages as needed
SPECIAL PRICING-PRICE BREAKS
Please specify the amount that applies:

Discount
Type _____ %
Type _____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):
Please specify the amount that applies:

Discount
_____ %

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

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Bidder

LOT #7-PORTABLE REPEATERS

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP), _____
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes, skip questions 2, 3, & 4. _____ **100% catalog offered**
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ ***If less than 80% do not proceed**
- 5. Guaranteed Delivery ARO: _____ **(calendar days)**

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount

Discount
_____ %

Or

Option II

Category or Manufacturer discount

Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or
in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):

Discount

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS

for single order to one location in dollars. Please
specify the amount that applies:

\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

VOLUME PRICING-PRICE BREAKS

for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

VOLUME PRICING-PRICE BREAKS for aggregate

contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):

Discount

Use additional pages as needed

SPECIAL PRICING-PRICE BREAKS

Please specify the amount that applies:

Type _____	_____ %
Type _____	_____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):

Discount

Please specify the amount that applies:

_____ %

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

LOT #8 – VEHICULAR REPEATERS

Manufacturer(s) of equipment offered: _____
Name of Officially Published Catalog (with MSRP),
which includes equipment, options, features and accessories offered: _____
Date of Catalog: _____

- 1. Is bidder offering 100% of Officially Published Catalog? If yes, skip questions 2, 3, & 4. _____ **100% catalog offered**
- 2. Number of Products in Officially Published Catalog Applicable to LOT _____
- 3. Number of above Products Offered in NYS Net Price Sheets _____
- 4. Percentage of above Products Offered in NYS Net Price Sheets* _____ ***If less than 80% do not proceed**
- 5. Guaranteed Delivery ARO: _____ **(calendar days)**

You may bid using one of the following Options:

Option I

Uniform NYS Net Price Equipment discount

Discount
_____ %

Or

Option II

Category or Manufacturer discount

Attach table with category or manufacturer designations, descriptions,
and discounts

_____ Check here if bidding Option II

Option II may be bid as manufacturer's discounts, category discounts or
in any way bidder feels best pricing would be attained.

Option I and Option II Bidders

Additional Volume Discount: (See Appendix C):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS
for single order to one location in dollars. Please
specify the amount that applies:

	<u>Discount</u>
\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

VOLUME PRICING-PRICE BREAKS
for agency's aggregate purchase in dollars. Please
specify the amount that applies:

\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

VOLUME PRICING-PRICE BREAKS for aggregate
contract purchases in dollars statewide: Please
specify the amount that applies:

\$ _____	_____ %
\$ _____	_____ %
\$ _____	_____ %

Option I and Option II Bidders

Special Discount: (See Appendix C):

Use additional pages as needed

SPECIAL PRICING-PRICE BREAKS
Please specify the amount that applies:

	<u>Discount</u>
Type _____	_____ %
Type _____	_____ %

Option I and Option II Bidders

Prepaid Emergency Maintenance Discount: (See Appendix C):

Please specify the amount that applies:

Discount
_____ %

SECTION IX QUARTERLY REPORT OF CONTRACT USAGE

Contractor **must** furnish a report containing both state agency and authorized non-state agency contract purchases no later than forty-five (45) days after the close of each calendar quarter. In addition to contractor direct sales, contractor **must** submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. Contractors **must** verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Business. Contractors **must** verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://www.nylovesmwbe.ny.gov/>

A sales report form will be forwarded to each contractor at the time of award for completion in accordance with the contract terms and conditions. Failure to submit the required reports may be cause for disqualification of a Contractor for future contracts and/or cancellation of the current contract.

Please retain the following attached Excel spreadsheet for the most current copy of the sales report form and summary:

21390 Contract Usage Report.xls

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

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

APPENDICES

APPENDIX 1	NYS Standard Vendor Responsibility Questionnaire
APPENDIX 2	NYS Department of Taxation and Finance Contractor Certification Form
APPENDIX A	Standard Clauses for New York State Contractors
APPENDIX B	General Specifications
APPENDIX C	Description of Content of Bid Submittal
APPENDIX D	Bidder Proposal Checklist
APPENDIX E	Article 15-A
APPENDIX F	Prevailing Wage Rates
APPENDIX G	Performance and Payment Bond Form
APPENDIX H	Contract Update Form

**APPENDIX 1 NYS STANDARD VENDOR RESPONSIBILITY
QUESTIONNAIRE**

APPENDIX 1
{Revised: March 2009}

New York State
Standard Vendor Responsibility Questionnaire
(Use the Uniform Contracting Questionnaire CCA-1, for all construction contracts)

Each Contracting Agency conducts a review of prospective contractors (“vendors”) to provide reasonable assurances that the vendor is responsible. This questionnaire is used for all non-construction contracts with a contract value of \$100,000.00 or more and is designed to provide information to assess a vendor’s authorization to do business in New York State, as well as your business integrity, financial and organizational capacity, and performance history. (Review of construction contractors will be based upon the Uniform Contracting Questionnaire developed by the Council of Contracting Agencies.)

Each vendor must answer every question contained in this questionnaire. Where a response requires additional information, the vendor must attach a written response that adequately details the requested information. Please number each response to match the question number. The completed questionnaire and attached responses will become part of the procurement record.

In order to expedite the required review, when providing additional information for a “YES” answer to Questions 14 a-s, or any other response which requires additional explanation, your information and responses should address the relationship of the issue to the proposed contract. Be brief, concise and to the point. Discuss as appropriate the following:

- Provide a description of the issue and identify the actions taken or currently being implemented to ensure that the issue will not occur again.
- State whether the staff and/or organizational component involved in the identified issue(s) will work on the proposed contract. If so, provide information to assure the agency that the issue will not be repeated.
- Identify the relationship (or lack thereof) between the product/services involved in the issue and the type of product/services proposed for this contract.
- State whether the issue will affect your financial or organizational ability to perform under the proposed contract.
- Provide copies of relevant documents or any other information that would assist the agency in its vendor responsibility evaluation.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing vendor’s business and operations, as an owner or officer of the vendor must attest to the questionnaire information. Please be advised that at the end of this questionnaire, you must certify, under oath, all responses given.

New York State
Standard Vendor Responsibility Questionnaire

1. LEGAL BUSINESS NAME: _____
2. FEDERAL EMPLOYER ID NO. (FEIN): _____
3. D/B/A — Doing Business As (if applicable): _____
COUNTY FILED: _____
4. WEBSITE ADDRESS (if applicable): _____
5. PRINCIPAL PLACE OF BUSINESS ADDRESS: _____
6. TELEPHONE NUMBER: _____
7. FAX NUMBER: _____
8. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE:
Name: _____
Title: _____
Telephone Number: _____ Fax Number: _____
E-mail: _____
9. TYPE OF BUSINESS: (please check appropriate box and provide additional information)
 - a) Corporation State of Incorporation: _____
 - b) Sole Proprietor State/County filed in: _____
 - c) General Partnership State/County filed in: _____
 - d) Not-for-Profit Corporation Charities Registration Number: _____
 - e) Limited Liability Company (LLC) Jurisdiction filed: _____
 - f) Limited Partnership State/County filed in: _____
 - g) Other — Specify: _____ Jurisdiction Filed (if applicable) _____
10. IF NOT INCORPORATED OR FORMED IN NEW YORK STATE, PLEASE PROVIDE A CURRENT CERTIFICATE OF GOOD STANDING FROM YOUR STATE OR APPLICABLE LOCAL JURISDICTION.
11. LIST NAME AND TITLE OF EACH PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), DIRECTOR AND MEMBER, as applicable:
 - a) _____
 - b) _____
 - c) _____
 - d) _____
 - e) _____
 - f) _____
 - g) _____
 - h) _____
12. AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:
Name: _____
Title: _____
Telephone Number: _____ Fax Number: _____
E-mail: _____

New York State
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

13. DOES THE VENDOR USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, OR D/B/A OTHER THAN WHAT IS LISTED IN QUESTIONS 1-3 ABOVE? Yes No

If yes, provide the name(s), FEIN(s) and d/b/a(s) and the address for each such company and d/b/a on a separate piece of paper and attach to this response.

14. WITHIN THE PAST FIVE (5) YEARS, HAS THE VENDOR, ANY PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), AFFILIATE¹ OR ANY PERSON INVOLVED IN THE BIDDING, CONTRACTING OR LEASING PROCESS BEEN THE SUBJECT OF ANY OF THE FOLLOWING:

- (a) a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? Yes No
- (b) a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? Yes No
- (c) an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency? Yes No
- (d) an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency? Yes No
- (e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct? Yes No
- (f) a federal, state or local government suspension or debarment from the contracting process? Yes No
- (g) a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract? Yes No
- (h) a federal, state or local government denial of a lease or contract award for non-responsibility? Yes No
- (i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease? Yes No

¹"Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

New York State
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

- (j) a federal, state or local determination of a willful violation of any public works or labor law or regulation? Yes No
- (k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license? Yes No
- (l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws? Yes No
- (m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful? Yes No
- (n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles? Yes No
- (o) a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of:
 - health laws, rules or regulations Yes No
 - unemployment insurance or workers' compensation coverage or claim requirements Yes No
 - ERISA (Employee Retirement Income Security Act) Yes No
 - human rights laws Yes No
 - federal U.S. Citizenship and Immigration Services laws Yes No
 - Sherman Act or other federal anti-trust laws Yes No
- (p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity? Yes No
- (q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? Yes No
- (r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract? Yes No
- (s) a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j? Yes No

FOR EACH YES ANSWER TO QUESTIONS 14 a-s, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.

15. DURING THE PAST THREE YEARS, HAS THE VENDOR FAILED TO:

- (a) FILE RETURNS OR PAY ANY APPLICABLE FEDERAL, STATE OR LOCAL GOVERNMENT TAXES? Yes No

If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability:

- (b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE? Yes No

If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability:

New York State
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

16. HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST THE VENDOR OR ITS AFFILIATES WITHIN THE PAST SEVEN YEARS (WHETHER OR NOT CLOSED) OR IS ANY BANKRUPTCY PROCEEDING PENDING BY OR AGAINST THE VENDOR OR ITS AFFILIATES, REGARDLESS OF THE DATE OF FILING?

Yes No

If yes, indicate if this is applicable to the submitting vendor or one of its affiliates: _____

If it is an affiliate, include the affiliate's name and FEIN: _____

Provide the court name, address and docket number: _____

Indicate if the proceedings have been initiated, remain pending or have been closed: _____

If closed, provide the date closed: _____

17. DOES VENDOR HAVE THE FINANCIAL RESOURCES NECESSARY TO FULFILL THE REQUIREMENTS OF THE PROPOSED CONTRACT?

Yes No

**APPENDIX 2 NYS DEPARTMENT OF TAXATION AND
FINANCE CONTRACTOR CERTIFICATION
FORM**

Appendix 2

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD) {Updated 01/08}
Contractor Certification to Covered Agency (ST-220-CA)



New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-TD
(5/07)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name		
Contractor's principal place of business	City	State ZIP code
Contractor's mailing address (if different than above)		
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ()
Covered agency name OGS PSG	Contract number or description	Estimated contract value over the full term of the contract (but not including renewals) \$ N/A
Covered agency address Corning Tower, The Governor Nelson A. Rockefeller Plaza, Albany, NY 12242		Covered agency telephone number

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

Need Help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from
8:00 A.M. to 5:00 P.M. (eastern time),
Monday through Friday.

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, 3 below. Make only one entry in each section below.

Section 1 - Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 - Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 - Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this _____ day of _____, 20 _____

(sign before a notary public)

(title)

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:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (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 a _____ 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

Registration No. _____

ST-220-CA
(6/06)



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need Help? on back)*.

Contractor name		For covered agency use only Contract number or description
Contractor's principal place of business	City State ZIP code	
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number ()	Covered agency name	\$
Covered agency address		Covered agency telephone number

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:
(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)
and, to the best of the contractor's knowledge, the information provided on that previously filed Form T-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General Information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities or services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

**APPENDIX A STANDARD CLAUSES FOR NEW YORK
STATE CONTRACTS**

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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 \$15,000 (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 \$30,000 (State Finance Law Section 163.6.a).

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate

against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in

Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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 warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants 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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor

Albany, New York 12245
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

APPENDIX B GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.
2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.
3. **ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.
4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:
 - a. **Appendix A** (Standard Clauses for NYS Contracts)
 - b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
 - c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
 - d. **Bid Documents** (Other than Appendix A).
 - i. Bid Specifications prepared by the Authorized User.
 - ii. Appendix B (General Specifications).
 - iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
 - e. **Contractor's Bid or Mini-Bid Proposal**.
 - f. **Unincorporated Appendices** (if any).
5. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

"BID ENCLOSED" (bold print, all capitals)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

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

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

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

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

18. TAXES

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

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

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

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

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

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

21. PRODUCT REFERENCES

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

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

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

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

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

24. PRICING

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

- b. Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.
- c. “No Charge” Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid “no charge” on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.
- d. Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.
- e. Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.
- f. Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a similarly situated governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

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

- (i) GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or
- (ii) Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or
- (iii) Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and
- (iv) Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

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

- g. Best and Final Prices** As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

25. DRAWINGS

- a. Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.
- b. Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User’s representative.
- c. Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

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

27. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

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

28. SAMPLES

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

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

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

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

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

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

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

BID EVALUATION

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

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

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

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

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

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

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

36. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

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

TERMS & CONDITIONS

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

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

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

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

c. Voluntary Extension Purchase Orders issued against a State Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163 (3) (iv) of the State Finance Law.

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

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

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

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

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

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

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

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

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

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

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

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

45. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

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

47. SHIPPING/RECEIPT OF PRODUCT

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

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

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

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

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

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

52. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

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

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

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

56. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable) whose consent shall not be unreasonably withheld. Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

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

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

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

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

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

60. TERMINATION

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

If a breach is in the process of being cured and the total solution exceeds thirty (30) days, the Authorized User can agree to provide additional time for the cure to be completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

63. DEFAULT – AUTHORIZED USER

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

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

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

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

64. INTEREST ON LATE PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User agency representative.

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

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

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

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

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

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

b. Title and Ownership Warranty Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

74. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.

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

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

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

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

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

- a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.
- b.** The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c.** Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

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

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

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

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

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

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

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

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

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

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

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

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

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

f. **Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

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

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

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

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

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

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

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

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

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

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

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

(ii) For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

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

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

(i) Existing Products:

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

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

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

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

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

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

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

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

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

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

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

85. NO HARDSTOP/PASSIVE LICENSE MONITORING Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37

I N D E X

	<u>Paragraph</u>		<u>Paragraph</u>
<u>A</u>	<u>No.</u>	<u>M</u>	<u>No.</u>
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Advertising Results	20		
Applicability	1	<u>N</u>	
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Assignment of Claim	66		
Audit of Licensed Product Usage	80	<u>Q</u>	
Authentication of Facsimile Bids	10	On-Site Storage	54
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Bid Contents	12	Participation in Centralized Contracts	39
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Bid Opening	7	Performance/Bid Bond	58
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<u>I</u>		Taxes	18
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Indemnification Relating to Third Party Rights	75	Timeframe for Offers	37
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Installation	52	Toxic Substances	67
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**APPENDIX C DESCRIPTION OF CONTENT OF BID
SUBMITTAL**

Bidders are advised that the intent of the State is to inform potential bidders that the requirements listed in RFP 21390 and this Appendix C is to ensure that only qualified and responsible bidders receive recommendations for contract award and be able to perform the work of the resultant contract(s). To be eligible for awards Bidders must submit overall company qualifications and references along with technical and price information for each LOT being bid. Bidders must submit all LOTS bid in a single proposal. Provisions for the purchase of labor or installation only will not be included in any contracts awarded as a result of RFP 21390.

This RFP outlines the terms and conditions and all applicable information required for submitting a bid. Bidders should pay strict attention to the bid submission date and time to prevent disqualification. To insure compliance with bid requirements and prevent possible disqualification, Bidders should follow the format and instructions in the PROPOSAL FORMAT AND CONTENT, Section VI, and this Appendix C of RFP 21390 and complete the Bidder Proposal Checklist located in Appendix D of the RFP.

NOTE: The initial review will be for completeness. This will be a pass or fail. Submissions that do not meet all requirements as outlined in Section VI, will not receive any further evaluation and will be deemed non-responsive.

The following describes how this information is to be provided in a proposal. All statements made must be able to be independently verifiable by PSG.

SECTION 1. BID DOCUMENT

Bidder must submit three copies with original ink signatures of the following documents with their proposal unless otherwise noted*. ***NOTE: See Section VI for a detailed description of Proposal Format and Content Requirements**

- a. **[Signature Page](#)**
The Bidder shall complete and sign the form on the first page of the RFP.
- b. **[Proposal Form](#)**
The Bidder shall complete and sign the Proposal Forms.
- c. **[Notarized Corporate Acknowledgment Form](#)**
The Bidder shall complete and sign the Notarized Corporate Acknowledgement Form.
- d. **[Signed Addenda](#)**
If applicable, the Bidder shall insert the completed and signed Addenda (Addendum # 1, Addendum # 2, etc.) to the RFP as issued by the Office of General Services.
- e. **[MacBride/Non-Collusive Forms](#)**
The Bidder shall complete and sign the MacBride and Non-Collusive Forms.
- f. **[Questionnaire Form](#)**
The Bidder shall complete the Questionnaire Form.

- g. [NYS Standard Vendor Responsibility Questionnaire](#)
The Bidder shall complete and sign the NYS Standard Vendor Responsibility Questionnaire in Appendix 1.
- h. [Emergency Contact List](#)
The Bidder shall complete and sign the Emergency Contact List.
- i. [Authorized Users Tables](#)
Please review and sign the Table of Authorized Users to indicate agreement and acceptance to extending the contracts awarded hereunder to the listed entities.
- j. [NYS Department of Taxation and Finance Contractor Certification Form\(s\)](#)
Bidders **are required** to complete, sign, and notarize the [ST-220-TD](#) form and submit this to the NYS Department of Taxation and Finance (this form should not be in the bid proposal submitted to OGS).

Bidders **are required** to complete, sign, notarize and include with their proposal three original [ST-220-CA](#) forms.
- k. **Compliance with Electronic Filing of Procurement Contract Fee (Section III.24)**
A contractor that cannot comply with the mandatory electronic filing and payment requirements must advise the OGS in writing at the time of bidding that it cannot reasonably comply with such electronic requirements. The contractor must provide the basis and reasons for its inability to comply. OGS shall in its sole discretion determine whether a sufficient basis and reasons have been presented supporting waiver of the mandatory electronic requirements. If the waiver is granted, the contractor shall pay the procurement fee to OGS by paper check, accompanied by the sales report and the paper return within forty-five days (45) days after the close of the preceding calendar quarter in accordance with the directions on the form. Contractor agrees to fully cooperate with OGS relative to such payment and filings.

CONTRACT NO. _____
(To be completed by the State)

NYS/OGS Procurement Services Group
Corning Tower - 38th Floor
The Governor Nelson A. Rockefeller
Empire State Plaza
Albany, New York 12242

PROPOSAL FORM

NOTE: Proposal Form must be completed and signed in triplicate.

People:

_____ agrees to provide all necessary installations, maintenance, and annual operation in accordance with the specifications in this Request for Proposals, for equipment and services for the LOTS indicated below for the prices on the attached NYS Net Price Sheets:

Bids are being submitted for the following LOTS and regions:

Check all that apply*:

ALL REGIONS (Statewide) _____ Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___

or

Region 1: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___
Region 2: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___
Region 3: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___
Region 4: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___
Region 5: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___
Region 6: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___
Region 7: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___
Region 8: _____	Lots 1: ___ 2: ___ 3: ___ 4: ___ 5: ___ 6: ___ 7: ___ 8: ___

*Bidders should indicate LOTS to be bid statewide and/or LOTS to be bid on a per region basis.

NOTE: For regions reference pages 162 and 171.

NOTE: This contract is comprised of the Request for Proposals # 21390, the Bidder's proposal, and all correspondence resulting from the evaluation process.

Signature

Date

Title

PROPOSAL FORM

CONTRACT NO. _____

(To be completed by the State)

AGENCY CERTIFICATION (In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.)

Principal place of business is the location of the primary control, direction and management of the enterprise.

State of _____
Bidder's Principal Place of Business

AGENCY SIGNATURE

DATED _____

CONTRACTOR'S SIGNATURE

PRINT NAME

TITLE

COMPANY

ADDRESS

CITY STATE/ZIP

TELEPHONE NUMBER

FEDERAL I.D. NUMBER

DATE

NEW YORK STATE
ATTORNEY GENERAL'S SIGNATURE

DATED _____

NEW YORK STATE
COMPTROLLER'S SIGNATURE

DATED _____

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 _____
Registration No. _____

State of: _____

BIDDER IS REQUIRED TO SIGN BOTH SECTIONS ON THIS PAGE

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the Bidder, by submission of this bid, certifies that it or any individual or legal entity in which the Bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) have business operations in Northern Ireland,

Yes ___ or No ___

if yes:

(2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes ___ or No ___

(Contractor's Signature)

(Name of Business)

NON-COLLUSIVE BIDDING CERTIFICATION

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

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

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

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

(Contractor's Signature)

(Name of Business)

QUESTIONNAIRE

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

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

Do you have a website available on the Internet?

___ YES ___ NO

If yes, please list your website

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

___ YES ___ NO

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

\$ _____

Additional discount for purchases made with the NYS Procurement Card:

___ %

Are any products offered manufactured from recycled materials?

___ YES ___ NO

Are any products offered remanufactured (restored to its original performance standards and function)?

___ YES ___ NO

Are any products offered Energy Star Compliant?

___ YES ___ NO

If YES to any of the above items, please attach specifics.

QUESTIONNAIRE

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

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

Name:

Title:

Telephone Number:

() _____

Toll Free Telephone Number:

() _____

Fax Number:

() _____

Toll Free Fax Number:

() _____

E-Mail Address:

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

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

Name:

Title:

Telephone Number:

() _____

Fax Number:

() _____

Pager Number:

() _____

Cellular Telephone Number:

() _____

E-Mail Address:

QUESTIONNAIRE

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

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

_____ YES _____ NO

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

_____ YES _____ NO

<http://www.nylovesmwbe.ny.gov/>

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

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

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

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

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

_____ YES _____ NO

"Small Business Concern" means a business which:

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

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

QUESTIONNAIRE

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

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

5. PLACE OF MANUFACTURE OF PRODUCT(S) BID: (Indicate Yes or No for either A, B or C)

- A. All NYS Manufacture
 - B. All Manufactured outside NYS
 - C. Manufactured In NYS and Outside NYS
- If yes to C above, Location (State) where more than half the value is added to the product(s) bid:

_____ YES _____ NO
 _____ YES _____ NO
 _____ YES _____ NO

State of _____

6. BIDDER'S PRINCIPAL PLACE OF BUSINESS*:

State of _____

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

7. "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES"

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

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

A. have business operations in Northern Ireland:

_____ YES _____ NO

If yes,

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

_____ YES _____ NO

QUESTIONNAIRE

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

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

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

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

_____ YES _____ NO

If yes, please answer the following question:

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

_____ YES _____ NO

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

_____ YES _____ NO

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

Governmental Entity:

Date of Finding of Non-responsibility:

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

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

_____ YES _____ NO

If yes, please provide details:

Governmental Entity:

Date of Termination or Withholding of Contract:

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

EMERGENCY CONTACT LIST

It has been determined that products and/or services which may be provided by your company through this RFP and placed under contract are critical to the missions of our State agency and non-agency customers. In that regard, please provide the following information that will facilitate our ability to contact your company in the event of an emergency occurring after normal work hours or on weekends/holidays. You may provide additional contact persons or other information by copying this form or by attachments. This information may be provided to the State Emergency Management Office (SEMO).

Normal Business Hours:

_____ a.m. _____ p.m. <i>(Mon. – Fri.)</i>	_____ am _____ p.m. <i>(Sat.)</i>	_____ am _____ p.m. <i>(Sun.)</i>
---	--	--

Person to Contact in the Event of an After Hour Emergency (Mon.-Fri.)

Person to Contact in the Event of a Weekend (Sat.-Sun.) or Holiday Emergency

Name:	Name:
Title:	Title:
Telephone #:	Telephone #:
Pager #:	Pager #:
Mobile Phone #:	Mobile Phone #:

Individual Completing Form: _____ Title: _____

Signature: _____

OGS believes that having the above information available contributes to our mutual goal of insuring total customer satisfaction. Contractor's must notify OGS immediately if this information changes.

AUTHORIZED USERS

NYS Laws Extend Use of State Centralized Contracts for
Purchases by Non-State Agencies

Table One

These groups are eligible to purchase through Centralized Contracts
for Commodities, Services and Technology issued by
OGS Procurement Services Group

- Any officer, board or agency of a political subdivision, or of a district therein (counties, cities, towns, villages, public school districts) -- Section 163 of the State Finance Law and Sections 100 and 104 of the General Municipal Law.
- Volunteer fire companies -- Sections 100 and 104 of the General Municipal Law.
- Boards of Cooperative Educational Services -- Section 100 of the General Municipal Law.
- Institutions for instruction of the deaf and the blind -- Section 163 of the State Finance Law and Section 4201 of the Education Law.
- Non-profit public television corporations -- Section 236 of the Education Law.
- Voluntary ambulance services -- Sections 100 and 104 of the General Municipal Law.
- Non-profit public radio corporations -- Section 236 of the Education Law.
- Any public authority or public benefit corporation of the State -- Section 163 of the State Finance Law.
- Non-public, non-profit elementary and secondary schools -- Section 109-a of the General Municipal Law.
- Certain public associations -- New York State Association of Counties, Association of Towns of the State of New York, New York State Conference of Mayors and other Municipal Officials, New York State School Boards Association, Inc., the New York Planning Federation and Association of Fire Districts of the State of New York -- Section 109-a of the General Municipal Law.
- Public library, association library, library system, cooperative library system, the New York Library Association and the New York State Association of Library Boards (or any other library except those operated by for profit entities) – Sections 163 of the State Finance Law and Section 109-a of the General Municipal Law.

AUTHORIZED USERS

Table Two

These groups are eligible to purchase ONLY through Centralized Contracts for Commodities issued by OGS Procurement Services Group

Note: Contracts for Services and Technology issued by OGS Procurement Services Group may be available to these groups through voluntary extension by the Contractor.

- Non-profit independent colleges and universities -- Section 6404 of the Education Law.
- Certain non-profit museums, historical societies, zoological gardens, botanical gardens, arboreta, and aquariums -- Section 258-a of the Education Law.
- Certain not-for-profit corporations that receive federal funds for provision of transportation services -- Section 31-a of the Transportation Law.
- The Interstate Environmental Commission -- Section 163 of the State Finance Law.
- Charitable non-profit agencies for the blind and other severely disabled -- Section 163 of the State Finance Law.
- Non-profit, non-public hospitals, residential health care or mental hygiene facilities -- Section 163 of the State Finance Law.
- Non-profit cemetery corporations -- Section 1509 of the Not-for-Profit Corporation Law.
- Non-profit county, town or other agricultural societies and youth fairs or expositions held by county extension service associations -- Chapter 741 of the Laws of 1985 and as amended by Chapter 90 of the Laws of 1992.
- Certain charitable organizations -- Chapter 741 of the Laws of 1985 and as amended through Chapter 134 of the Laws of 1994.

Acknowledged, Agreed and Accepted

By _____
Name:

Bidder is asked to execute this Authorized Users Contract. In signing, Bidder indicates that it has read the listing of authorized users set forth herein and voluntarily agrees and accepts that entities listed in Tables 1 and 2 may participate in and make purchases as provided for in the RFP and the resulting contract awards.

SECTION 2. EXTRANEOUS TERMS

NOTE: Appendix B was revised and updated in July 2006, no changes to Appendix B will be considered. Listing extraneous terms that conflict with Appendix B will delay the evaluation of your proposal and may delay a recommendation for contract award or cause the proposal to be deemed non-responsive and ineligible for contract award.

This section should contain any exceptions to the terms and conditions listed herein. Bidder must submit one hard copy and one soft copy of any extraneous terms requested with the proposal.

Any deviation from the terms and conditions of this RFP will not be considered unless specifically referenced in this section of the proposal submitted and titled "Extraneous Terms." Please see item 13, EXTRANEOUS TERMS in APPENDIX B. Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection. All extraneous terms submitted will be reviewed and negotiated with OGS Legal Services as appropriate.

The terms of Appendix A are non-negotiable. At the sole discretion of the State, "Extraneous Terms" introduced, as new after the proposal submission may not be considered.

Any deviations or "standard" terms and conditions which may be included with this bid, such as those included as part of a price list, are not relevant and will not be considered.

SECTION 3. FINANCIAL SECURITY/CERTIFICATION TO CONDUCT BUSINESS/INSURANCE REQUIREMENTS

Bidder must submit one set of the following with the proposal:

a. **Financial Security**

The Bidder is required to obtain a Dun and Bradstreet (D&B) D-U-N-S number and complete a company profile. The information will assist in the evaluation of the Bidder's past performance along with their financial and operational stability. The company profile is available at no cost to the Bidder. The Dun & Bradstreet website URL is: <http://www.dnb.com>

The Bidder is required to provide in the proposal a Dun & Bradstreet (D&B) **Comprehensive Report™** on the Bidder's organization. The report must be dated no more than 6 months prior to the bid opening date. A positive financial position is desired. If the report indicates that the Bidder has tax liens, the Bidder shall provide an explanation as to the status of each tax lien or how each tax lien was satisfied. OGS will make the final determination of whether the Bidder meets the financial and operational stability criterion.

Note: Dun & Bradstreet provides various reports however only the **Comprehensive Report™** will be accepted. Failure to provide a **Comprehensive Report™** may result in Bidder disqualification.

b. **Certification to Conduct Business**

- The Bidder shall provide either a certificate to conduct business from the NYS Department of State or provide proof that the Bidder is registered in the NYS Department of State's Corporation and Business Entity database. The following is a link to the NYS Department of State's Corporation and Business Entity database:

http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry

The following is a link to the NYS Department of State web site:

<http://www.dos.state.ny.us/>

c. **Insurance Requirements**

- Please refer to the "Contractors Insurance Requirements" on the next page. The Bidder must submit with their bid statements from the Bidder and their Authorized Service Centers indicating that they will comply with all insurance requirements if the Bidder is awarded a NYS contract (see sample statement below). The statements from the Bidder and Authorized Service Centers must be on company letterhead and signed by authorized representatives. Original ink signatures are required with all three copies.

[INSERT SERVICE CENTER] commits to acquiring the required certificate of insurance to meet the requirements of RFP 21390 within 30 days of notification of contract award to [INSERT BIDDER].

- Certificates of Insurance to meet the requirements of RFP 21390 are due within 30 days of contract award notification from the Bidder and the Authorized Service Centers.

Failure to provide the above items may result in a determination that the bid is non-responsive.

New York State reserves the right to request any additional information pertaining to the Bidder's ability or qualifications to accomplish all work under the resultant contract.

Contractors Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), Certificates of Insurance evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of form and substance acceptable to OGS.

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to OGS ; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to NYS Office of General Services, Procurement Services Group, Corning Tower, Empire State Plaza, Albany, New York 12242 and shall name **The People of the State of New York, its officers, agents, and employees as additional insured thereunder** (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85). The additional Insured requirement does not apply to Workers Compensation, Disability or Professional Liability Coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

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

Specific Insurance Requirements (Coverage Level and Scope of Coverage)

a) **Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence:**

Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from

1. premises operations,
2. independent contractors,
3. products-completed operations,
4. broad form property damage,
5. personal & advertising injury,
6. cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

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

b) **Workers Compensation, Employers Liability, and Disability Benefits as required by New York State:**

If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

For additional information regarding NYS requirements use the link listed below:

<http://www.wcb.state.ny.us>

c) **Workers Compensation, Employers Liability, and Disability Benefits as required by New York State for all out-of-state employers with employees working in NYS:**

Effective September 9, 2007, all out-of-state employers with employees working in NYS are required to carry a full, statutory NYS workers' compensation insurance policy. An employer has a full, statutory NYS workers' compensation insurance policy when New York is listed in Item "3A" on the Information Page of the employer's workers' compensation insurance policy.

Accordingly, if an out-of-state employer is getting a permit, license or contract from a government agency in NYS, then that employer must fulfill requirements effective September, 2007 under Workers' Compensation Law Section 57. Also, every out-of-state employer doing any construction related activity in New York State is required to carry a full, statutory NYS workers' compensation insurance policy.

An out-of-state employer needs a New York State disability benefits insurance policy if the employer employs one or more individuals on each of at least 30 days in a calendar year in New York State.

If an out-of-state employer meets this criterion, the employer is required to carry a New York State disability benefits policy (The employer has four weeks from the completion of the 30th day of work by one or more individuals to obtain the disability benefits policy.) (Independent contractors are not considered to be employees under the Disability Benefits Law.)

The link below can be used for additional information:

http://www.wcb.state.ny.us/content/main/DisabilityBenefits/Employer/outOfStateEmp_D B.jsp

Also, questions regarding coverage requirements may be directed to the WCB Compliance Unit at 1-866-298-7830.

The links below are to the applicable forms on the NYS Worker's Compensation Board website:

Workers Compensation - <http://www.wcb.state.ny.us/content/onlineforms/obtainC105.jsp>

Disability Benefits - <http://www.wcb.state.ny.us/content/onlineforms/obtainDB120-1.jsp>

d) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident:

Such insurance shall cover liability arising out of any automobile including

1. owned,
2. leased,
3. hired and
4. non owned automobiles.

e) Errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss:

For professional services (including all installation, system integration, and maintenance performed under contracts awarded as a result of RFP 21390) the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain the aforementioned errors and omissions coverage.

Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and may not exclude

1. bodily injury,
2. personal injury,
3. property damage,
4. pollution or asbestos related claims,
5. testing,
6. monitoring,
7. measuring, or
8. laboratory analyses.

If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under this Contract is completed.

If Errors and Omissions Liability insurance coverage is included under a Commercial General Liability Policy, this shall be clearly indicated by a cover memo that lists this information. Additionally the information should be included in the “Description of Operations” Box on the Accord Certificate.

f) **Pollution Legal Liability Insurance:**

NOTE: THE CONTRACTOR IS NOT REQUIRED TO PURCHASE POLLUTION LEGAL LIABILITY INSURANCE WITHIN 30 DAYS OF NOTIFICATION OF CONTRACT AWARD. THE AUTHORIZED USER MAY REQUIRE THE CONTRACTOR TO PROVIDE POLLUTION LEGAL LIABILITY INSURANCE AS A CONDITION OF THEIR PURCHASE. THE CONTRACTOR IS TO PROVIDE POLLUTION LEGAL LIABILITY INSURANCE TO THE AUTHORIZED USER AT A TIME MUTUALLY ACCEPTABLE TO BOTH PARTIES.

For the abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for

1. actual, alleged or threatened emission,
2. discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation,
3. settlement or defense of any claim, suit, or proceedings against OGS arising from Contractors work.

If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under this Contract is completed.

If the Contract includes disposal of materials from the job site, the Contractor must furnish to OGS, evidence of pollution legal liability insurance in the amount of \$5,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.

If autos are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

If Pollution Legal Liability insurance coverage is included under a Commercial General Liability Policy, this shall be clearly indicated by a cover memo that lists this information. Additionally the information should be included in the “Description of Operations” Box on the Accord Certificate.

g) Commercial Property Insurance:

Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of OGS held in their care, custody and/or control.

h) Construction Work, Restoration, Alteration, or Installation:

During the performance of any Construction Work, Restoration, Alteration, or Installation, builder’s risk completed value form covering the perils insured under the ISO special causes of loss form, including collapse, water damage, and transit and theft of building materials or equipment, with deductible reasonably approved by the State, in non reporting form, covering the total value of work performed and equipment, supplies and materials at the location of the job as well as at any off-site storage location used with respect to the Project. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation. Such policy shall name as insured, The People of the State of New York, as well as the Contractor and Subcontractors.

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

SECTION 4. MANUFACTURER(S) CERTIFICATE & MANUFACTURER(S) GUARANTEE

Bidder Types

Type 1

Manufacturer	No Table A-1, A3, or A5 Required
	No Table A-2, A-4, or A-6 Required

Type 2

Reseller (Product from Manufacturer)	Manufacturer's Certificate (Table A-1) from the Manufacturer Naming the Bidder
	Manufacturer's Guarantee (Table A-2)* from the Manufacturer Naming Bidder (Per lot and category requirements)

Type 3

Reseller (Product from Distributor)	Manufacturer's Certificate (Table A-3) from the Distributor Naming the Bidder. (Table A-1 signed by the Manufacturer given to the Distributor then given to the Bidder is also acceptable)
	Manufacturer's Guarantee (Table A-4)* from the Distributor, listing the Manufacturers , and naming the Bidder *

Type 4

Distributor (Product from Manufacturer)	Manufacturer's Certificate (Table A-5) from the Distributor naming the Manufacturers (Table A-1 signed by the Manufacturer and given to the Bidder is also acceptable)
	Manufacturer's Guarantee (Table A-6)* from the Distributor naming the Manufacturers

<p>* Manufacturers/Distributors/Resellers will only be required to identify alternate Installers or Maintenance providers, at contract rates in effect at the time.</p>
--

a. Manufacturers Certificate

Bidders must submit the Manufacturer(s) Certification with their proposal for each LOT and officially published catalog offered where the Bidder is not the manufacturer.

The manufacturer's ([Table A-1](#)) or distributor's ([Tables A-3](#) and [A-5](#)) authorized representative must complete and sign the Manufacturer's Certificate. Original ink signatures are required with all three copies.

b. Manufacturer(s) Guarantee

For each LOT and manufacturer's officially published catalog offered where the Bidder is the reseller for the manufacturer, the manufacturer's authorized representative must complete, sign, and seal [Table A-2](#) on the following pages. If a Manufacturer doesn't have a corporate seal, they must submit a notarized letter, on their official corporate letterhead, attesting they don't have a corporate seal, and agreeing to the terms of the Manufacturer's Guarantee in their entirety. If a letter is submitted, it cannot contain any modifications of the terms in the Manufacturer's Guarantee. Original ink signatures are required with all three copies of the Guarantee and notarized letter (if applicable).

For each LOT and distributor's officially published catalog offered where the Bidder is the reseller for the distributor, the distributor's authorized representative must complete, sign, and seal [Table A-4](#) on the following pages. If a Distributor doesn't have a corporate seal, they must submit a notarized letter, on their official corporate letterhead, attesting they don't have a corporate seal, and agreeing to the terms of the Manufacturer's Guarantee in their entirety. If a letter is submitted, it cannot contain any modifications of the terms in the Manufacturer's Guarantee. Original ink signatures are required with all three copies of the Guarantee and notarized letter (if applicable).

For each LOT and distributor's officially published catalog offered where the Bidder is the distributor, the distributor's authorized representative must complete, sign, and seal [Table A-6](#) on the following pages. If a Distributor doesn't have a corporate seal, they must submit a notarized letter, on their official corporate letterhead, attesting they don't have a corporate seal, and agreeing to the terms of the Manufacturer's Guarantee in their entirety. If a letter is submitted, it cannot contain any modifications of the terms in the Manufacturer's Guarantee. Original ink signatures are required with all three copies of the Guarantee and notarized letter (if applicable).

**Table A-1
MANUFACTURER'S CERTIFICATE**

NOTE TO BIDDERS:

This "Manufacturer's Certificate" is to be removed, and forwarded to the manufacturer by the bidder, completed and returned to the bidder by the manufacturer, and submitted with the bidder's offer. (See "QUALIFICATION OF BIDDER" clause.)

BIDDER'S COMPANY NAME: _____

ADDRESS: _____

The manufacturer executing this certificate by signature below does hereby attest to the accuracy and validity of the responses to the following questions:

- 1. Is the bidder listed above an authorized dealer? _____ Yes _____ No
- 2. Do you as a manufacturer agree to supply the bidder/dealer with all quantities of products ordered pursuant to any resulting contract with the State? _____ Yes _____ No

MANUFACTURER'S COMPANY NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

PRINTED OR TYPED COPY OF SIGNATURE

SIGNATURE OF AUTHORIZED
MANUFACTURER'S REPRESENTATIVE

DATE

* * * * *

**Table A-2
MANUFACTURER'S GUARANTEE**

Part A * - The vendor must secure from the manufacturer, if the bidder is not the manufacturer, a written guarantee executed by the manufacturer that the manufacturer, in the event that the contractor is unable to complete an acceptable installation or to provide continuing maintenance within the terms and conditions of such contract, **will perform or cause to be performed all installation and maintenance obligations of the contractor for the awarded contract at a cost to the State no greater than manufacturer's then prevailing rates for similarly situated customers***.

** Manufacturers have been requested to supply and have supplied a guarantee in accordance with and in acceptable form with this requirement under RFP. Bidders who supply a manufacturer's guarantee at variance with the sample referenced here should note any changes in such manufacturer's guarantee in their bid. Non conformance with the sample or filed manufacturer's guarantee may constitute grounds for rejection of the bid in the sole discretion of the State.

Part B -For seven years from last date of manufacture pursuant to the terms of the contract the manufacturer's guarantee will also include the following:

1. Parts supply.
2. Manufacturing field support and maintenance to protect the issuer from interruption of service due to the inability of the bidder to meet its service obligations. This maintenance will be provided at the then current service rates of the manufacturer to similarly situated customers. The determination of what constitutes inability of the bidder to meet service obligations under the contract will be that of the State in its sole discretion.

Part C - The above referenced manufacturer's guarantee must be submitted with a proposal.

Part D - In the event the bidder proposes to supply principal components of the system from different manufacturers, separate written guarantees from the manufacturers must be supplied as required above. Bidders must request directions from the State if a question is raised as to whether an item comprises a principal component requiring a separate manufacturer's guarantee.

MANUFACTURER'S GUARANTEE STATEMENT

IN WITNESS WHEREOF, the undersigned hereunto affixes its corporate seal and causes these presents to be signed by its duly authorized officer. **

(Manufacturer)

(Signature of Representative)

(Date)

(Title)

* To comply with this requirement, Manufacturers who do not provide installation or maintenance will be required to identify firms who can provide any required services in the event that the contractor is unable to complete an acceptable installation or to provide continuing maintenance within the terms and conditions of contracts awarded as a result of RFP 21390.

** Insert the name of the manufacturer and the title of the authorized officer and AFFIX THE CORPORATE SEAL or Notarized statement on Company Letterhead.

Table A-3
DISTRIBUTOR'S CERTIFICATE
(Reseller is Bidder)

NOTE TO BIDDERS:

This "Distributor's Certificate" is to be removed, and forwarded to the Distributor by the bidder, completed and returned to the bidder by the distributor, and submitted with the bidder's offer. (See "QUALIFICATION OF BIDDER" clause.)

BIDDER'S COMPANY NAME: _____

ADDRESS: _____

The distributor executing this certificate by signature below does hereby attest to the accuracy and validity of the responses to the following questions:

1. Is the bidder listed above an authorized dealer? _____ Yes _____ No
2. Do you as a distributor agree to supply the bidder/dealer with all quantities of products ordered pursuant to any resulting contract with the State? _____ Yes _____ No

DISTRIBUTOR'S COMPANY NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

PRINTED OR TYPED COPY OF SIGNATURE

SIGNATURE OF AUTHORIZED
DISTRIBUTOR'S REPRESENTATIVE

DATE

* * * * *

Table A-5
DISTRIBUTOR'S CERTIFICATE
(Bidder is Distributor)

NOTE TO BIDDERS:

This "Distributor's Certificate" is to be completed and submitted with the bidder's offer. (See "QUALIFICATION OF BIDDER" clause.)

BIDDER'S COMPANY NAME: _____

ADDRESS: _____

The distributor executing this certificate by signature below does hereby attest to the accuracy and validity of the responses to the one of the two following questions:

1. Provide Manufacturer's Certificates from all _____ Yes _____ No
manufacturer's that you represent?

OR

2. Certify that the distributor will supply all _____ Yes _____ No
quantities of products ordered pursuant
to any resulting contract with the State?

Attach a list of all manufacturers that you represent

PRINTED OR TYPED COPY OF SIGNATURE

SIGNATURE OF AUTHORIZED
DISTRIBUTOR'S REPRESENTATIVE

DATE

* * * * *

**Table A-6
MANUFACTURER'S GUARANTEE
(Bidder is Distributor)**

In response to RFP 21390, _____, (insert Bidder Name), (hereinafter referred to as "Guarantor"), as distributor for _____ (attach list) _____ (hereinafter referred to as "Manufacturer") hereby guarantees the following:

- 2. That they will either provide Manufacturer's Guarantees, in substantially the same format as provided in this Request for Proposals, Table A-2, from all manufacturers that they represent, or certify that they will comply with the terms and conditions of the Manufacturer's Guarantee included in the Request for Proposals; and
- 2. That during the term of this contract they will provide authorized users and/or staff of the Office of General Services with the contact information for an individual or entity that can complete an installation in accordance with the terms and conditions of the contract, and/or fulfill any outstanding maintenance obligations that exist under the contract, at contract prices in effect at time of notice. The distributor agrees that such information will be provided within five business days from the date a request is received, unless a request is made in an emergency situation in which case such information will be responded to immediately upon receipt of a request.

This Guarantee shall be absolute and unconditional, shall be continuing and shall not be discharged or terminated so long as any claim remains outstanding. Guarantor agrees to remain bound by this Guarantee notwithstanding any extension of time of performance, the granting of any indulgence or waiver to the manufacturer or any modification or revision of the Agreement.

The obligations of Guarantor hereunder and the obligations of the manufacturers under the Agreement are joint and several. Prior suit or action against a manufacturer shall not be a condition precedent to the Guarantor's obligations under this Guarantee or to the enforcement of any rights under this Guarantee.

By: _____
Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF }
 : ss.:
COUNTY OF }

On the _____ day of _____ in the year 20__, before me personally came: to me known, who, being by me duly sworn, did depose and say that he resides in _____; that he is _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above guarantee; and that he signed his name thereto by authority of the board of directors of said corporation.

Signature and Office of Person Taking Acknowledgment

SECTION 5. NEW YORK STATE NET PRICE/PRODUCT LISTING

The Bidder must submit the following for each LOT and manufacturer's or distributor's catalog bid:

a. **Bid Sheets**

Bidders must base their bids on the latest revision of the manufacturer's or distributor's officially published catalog in effect and identified as of the time of the bid opening.

The Bid Sheets for the LOTS are in Section VIII.

Bidders shall provide the following information for each LOT bid sheet:

- Manufacturer of equipment offered
- Name of Manufacturer's officially published catalog (with MSRP), which includes equipment, options, features and accessories offered
- Date of Catalog

If the Bidder is offering every product in the Manufacturer's Officially Published Catalog, the Bidder must certify on the Bid Sheet that 100% of the products are offered by completing item 1 on the Bid Sheet. The Bidder must complete items 2-4 on the Bid Sheet if 100% of the products are not offered from the Manufacturer's Officially Published Catalog. The Bidders shall provide the following information:

- Number of OEM Manufactured Products in Published Catalog Applicable to LOT
- Number of above OEM Manufactured Products Offered in NYS Net Price Sheets
- Percentage of above OEM Manufactured Products Offered in NYS Net Price Sheets

For LOTS 1 (vehicle-installed and portable/field deployable interoperability systems only), 7, and 8, the Bidder shall complete item 5 on the Bid Sheets, "Guaranteed Delivery ARO". Please refer to Section II.16 of RFP 21390 for delivery requirements.

Option I and Option II Discounts:

The Bidder is to complete the Bid Sheets for each LOT bid according to the manufacturer's or distributor's officially published catalog used and indicate the types of discounts that are bid on the NYS Net Price Sheets. The Bid Sheets contain fields for the NYS Net Price discounts (Option I and Option II). The Bidder may enter discounts in one of the following two ways:

Option I - a uniform percentage discount per LOT.

The Bidder shall insert the discount in the field to the right of "**Option I**" on the Bid Sheet.

Option II -itemized pricing based on a uniform percentage discount per product category offered within a LOT (e.g. Bidder aligns each item offered with a category defined by a letter. In the case of multiple manufacturers within a LOT, bidders may indicate a uniform percentage discount for the particular manufacturers' product line(s) or subsets within manufacturers' product line(s), being bid.)

For catalogs which consists primarily of a single manufacturer’s product lines (not including third party accessories used to support the single manufacturer’s product lines), Category A may have a discount of 25% for in-building amplifiers or Category B may have a discount of 10% for antennas and so forth.

The Bidder shall insert a checkmark in the field to the right of “**Option II**” on the Bid Sheet. The Bidder shall also attach a table that indicates the category designations (e.g. A, B), category descriptions (e.g. in-building amplifiers, antennas), and category discounts (e.g. 25%, 10%). Please see the example below:

<u>Category</u>	<u>Description</u>	<u>Discount</u>
A	In-Building Amplifiers	25%
B	Antennas	10%

For catalogs which consist of multiple manufacturers’ product lines, Manufacturer A may have a discount of 30% for 800 MHz in-building amplifiers or 20% for 900 MHz in-building amplifiers. Manufacturer B may have a discount of 25% for 800 MHz in-building amplifiers or 15% for 900 MHz in-building amplifiers. The Bidder shall insert a checkmark in the field to the right of “**Option II**” on the Bid Sheet. The Bidder shall also attach a table that indicates the manufacturer (e.g. A, B), category designations (e.g. A1, A2, B1, B2), category descriptions (e.g. Manufacturer A 800 MHz in-building amplifier), and category discounts (e.g. 30 %, 25%, 20%, 15%). Please see the example below:

<u>Manufacturer</u>	<u>Category</u>	<u>Description</u>	<u>Discount</u>
A	A1	Man. A 800 MHz In-Building Amp.	30%
A	A2	Man. A 900 MHz In-Building Amp.	20%
B	B1	Man. B 800 MHz In-Building Amp.	25%
B	B2	Man. B 900 MHz In-Building Amp.	15%

Volume Discount Level for Aggregate Contract Usage:

Bidders should offer their best possible pricing through the bid format offered. However, Bidders are encouraged to offer additional volume discounts. Volume discounts may be applied per purchase order, cumulatively per customer agency and/or cumulatively statewide. The Bidder shall indicate the basis for applying the volume discount(s) on the bid sheets. Volume discounts shall be defined and applied as follows: Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this contract. Volume discounts shall be cumulative over the term of the contract.

Volume discounts will not be used as part of the evaluation criteria.

Special Discounts:

Bidders may quote any special pricing or programs offered for educational customers, hospitals, etc. and provide descriptions of the appropriate qualifications for participation as a separate attachment. In addition, THE STATE RESERVES THE RIGHT TO MAKE A SEPARATE AWARD FOR THE EDUCATIONAL MARKET IF IT IS IN THE BEST INTEREST OF THE STATE.

Special discounts will not be used as part of the evaluation criteria.

Prepaid Emergency Maintenance Discounts:

Bidders may quote any discounts for Prepaid Emergency Maintenance and provide descriptions of the appropriate qualifications for participation as a separate attachment. Prepaid Emergency Maintenance discounts may be entered under the "Special Discounts" portion of the Bid Sheets.

Prepaid Emergency Maintenance discounts will not be used as part of the evaluation criteria.

b. **Manufacturer's and Distributor's Official Published Catalog**

Bidders must **INCLUDE** in the bid the latest revision of the manufacturer's or distributor's officially published catalog for the products provided in the LOTS in effect and identified as of the time of the bid opening. The Officially Published Catalog may be provided in hardcopy or electronically (electronic copy preferred). The catalog must be the same as the one stated on the Bid Sheets and include the following information:

- Name of Manufacturer's or Distributor's officially published catalog
- Date of Catalog

The catalog must also contain the manufacturer's suggested retail prices for all items.

c. **NYS Net Price Sheet**

i. General Requirements

Please retain the attached Excel spreadsheet:

21390 Attachment1.xls

The spreadsheet has multiple tabs for entering product prices and service rates. The Bidder may add rows to the tables to accommodate all the items required.

In addition to paper copies required for this part, all Bidders are required to submit pricing information on a CD(s) with their proposal. **See Appendix C, Section 6 for details.**

The Bidder shall develop a NYS Net Price Sheet based on the items in a manufacturer's or distributor's officially published catalog.

All NYS net prices must **INCLUDE** all applicable shipping and handling (refer to Appendix B, item 47b), insurance, customs duties and charges, and associated delivery charges and such charges must be included in the discount.

All NYS net prices must **INCLUDE** the Procurement Contract Fee. See Section III.24.

All services rates must **INCLUDE** travel time and costs incurred for travel to the site. The rates and charges for the Product and for the installation and maintenance of the Product must **INCLUDE** all travel and costs associated with accessing the installation site.

ii. Instructions

The “Instructions” tab has a table that provides a summary of the price sheet requirements for each LOT. Section II.8.2 of RFP 21390 has descriptions of the services to be performed for each service rate type. If a price sheet is required for the LOT, do not provide a blank price sheet or exclude the price sheet. If the bidder determines that a price sheet is not applicable, insert an N/A and provide an explanation of why or indicate if the tasks to be performed are bundled under another service. NYS reserves the right to determine whether an N/A is acceptable for a price sheet. Those proposals that do not include complete pricing to meet the requirements of the RFP will be considered non-responsive and may be disqualified at the sole discretion of the State.

iii. NYS Net Price Lists

The “NYS Net LOTS 1-8” tab has tables for entering NYS Net pricing for the products offered. The Bidder shall complete a NYS Net Price List for each manufacturer’s or distributor’s officially published catalog offered for each Bid Sheet.

The Bidder is to complete the Bidder, Name of the Officially Published Catalog (from the Bid Sheet), Date of Catalog (from the Bid Sheet), and LOT number cells at the top of the spreadsheet. Next, the Bidder is to enter the manufacturer and model name/number of the product along with the product description. The Bidder is to then enter the manufacturer’s suggested retail price. The Bidder must use the model name/number and MSRP from the catalog stated in the Bid Sheet. Do not include bundled items, bundled prices, or alternative model names/numbers that are not shown in the Manufacturer’s or Distributor’s Officially Published Catalogs. The NYS Net Price List is not to include products from the Officially Published Catalogs where pricing is to be determined later or where the buyer is required to call the Bidder or Manufacturer for pricing.

For Option II (uniform percentage discount per category) discounts, the Bidder enters the discount category designation for the product from the table attached to the applicable Bid Sheet. The Bidder may leave the column blank if Option I (uniform percentage discount) discounts are proposed for the LOT and Manufacturer or Distributor catalog. Afterwards, the Bidder enters the percentage discount from the manufacturer's suggested retail price. The Bidder may enter the Option I discount from the Bid Sheet or one of the Option II discounts from the table attached to the applicable Bid Sheet.

The spreadsheet will calculate the NYS Net Price for the product.

iv. Prepaid Emergency Maintenance

The "NYS Net LOTS 1-8" tab has tables for entering Prepaid Emergency Maintenance Prices that apply after expiration of the warranty. The Bidder has the option of providing prepaid emergency maintenance prices on a per item basis or on a per system cost basis.

For the per item option, the Bidder is to complete one or more columns in the NYS Net Price List table, depending on the number of regions and/or maintenance time periods proposed. The Bidder shall enter the period that the maintenance rate covers and the region(s) in which the rate applies. Valid entries for "Maint. Period" include the following: monthly, yearly, 2-year period, and 3-year period. For the region(s), the Bidder may enter a single region, multiple regions if the same rates apply, or statewide if the same rates apply throughout New York State. Once a column is started, every cell must be completed. Valid entries include the following:

- Dollar Amount.
- No Cost. The Bidder provides maintenance service on the item at no cost to the purchaser.
- Included. The cost of maintenance is included with the service rate stated above. The price sheet must clearly refer the purchaser to the rate that will be paid.
- Not Applicable. Maintenance service is not performed for the item.

For the per system option, the Bidder is to complete one or more rows under the NYS Net Price List table, depending on the number of regions and/or maintenance time periods proposed. The Bidder shall enter the period that the maintenance rate or formula covers and the region(s) in which the rate or formula applies. Valid entries for "Maint. Period" include the following: monthly, yearly, 2-year period, and 3-year period. For the region(s), the Bidder may enter a single region, multiple regions if the same rate or formula applies, or statewide if the same rate or formula applies throughout New York State.

Then, the Bidder is to enter the title and description of the prepaid emergency maintenance package. Next, the Bidder is to provide a rate, formula, or methodology for calculating the maintenance cost based on the cost of the system or equipment purchased by the User (e.g. 15% of the system cost per year). The Bidder is to also provide a sample calculation to illustrate how the maintenance cost information is used to calculate the User's maintenance service cost.

v. Hourly Emergency Maintenance

The table in the “Hourly Emergency Maintenance” tab has columns for priority emergency service, emergency service, and non-emergency service during and after business hours. Section II.9.6 of RFP 21390 outlines the requirements for emergency service for the LOTS. Some of the emergency service types are not applicable to every LOT.

The Bidder is to complete the Bidder, Name of the Officially Published Catalog (from the Bid Sheet), Date of Catalog (from the Bid Sheet), LOT number, and Region No.# cells at the top of the spreadsheet. For the Region No.#, the Bidder may enter a single region, multiple regions if the same rates apply, or statewide if the same rates apply throughout New York State. The Bidder enters the job title in the Title cell. The Bidder is to then enter the hourly rates under the applicable columns for priority emergency service, emergency service, and non-emergency service during and after business hours.

vi. Hourly Service Rates

The “Integration”, “Installation”, “Moves, Adds, and Changes (MAC)” (both hardware and software), “Preventive Maintenance”, “Training”, and “Equipment Inspection for Maintenance Determination” tabs have tables for entering the job titles and pricing information for the service personnel used in support of the products in the NYS Net Price Sheets.

The Bidder is to complete the Bidder, Name of the Officially Published Catalog (from the Bid Sheet), Date of Catalog (from the Bid Sheet), LOT number, and Region No.# cells at the top of the spreadsheet. For the Region No.#, the Bidder may enter a single region, multiple regions if the same rates apply, or statewide if the same rates apply throughout New York State. The Bidder enters the job title in the Title cell. The Bidder is to then determine if the job title is a Prevailing Wage job title. Appendix F provides instructions on how to access the prevailing wage titles and rates on the NYS Department of Labor web site so that the Bidder can use them as a reference to make the determination.

If the job title is a Prevailing Wage job title, the Bidder is to enter the prevailing wage (from the NYS Department of Labor web site), supplemental benefit, and percentage markup in the first three columns under “Prevailing Wage”. The spreadsheet will calculate the Total Hourly Rate for the Prevailing Wage job title.

If the job title is not a Prevailing Wage job title, the Bidder is to enter the Total Hourly Rate in the Non-Prevailing Wage column only.

vii. Preventive Maintenance

In addition to the Hourly Service Rates table, the “Preventive Maintenance” tab has a table for the Bidder to enter Preventive Maintenance pricing on a per package basis. Bidders should indicate in their response the frequency of and rates for Preventative Maintenance. If there are specific maintenance packages or service levels, these should be fully described in addition to the pricing being proposed.

viii. Training

In addition to the Hourly Service Rates table, the “Training” tab has a table for the Bidder to enter Training pricing on a per course basis. The Bidder is to enter the course title, description, class size, class length (e.g. 4 hours, 2 days, 1 week), NYS Service Price/Day (if applicable), and NYS Service Price/Course (if applicable).

ix. Equipment Inspection for Maintenance Determination

In addition to the Hourly Service Rates table, the “Equipment Inspection for Maintenance Determination” tab has a table for the Bidder to enter pricing on a per inspection basis. The Bidder is to enter the title, description, time period for completion (e.g. 4 hours, 8 hours, 2 days), and the NYS Service Price.

d. **Reasonableness of Prices**

For each LOT and Manufacturer’s or Distributor’s Officially Published Catalog offered, the Bidder shall complete the Reasonableness of Price Questionnaire on the next page and submit contract pricing from one or more of the following:

- An electronic copy or hardcopy (electronic copy preferred) of Bidder’s Federal contract (e.g. GSA, VA, DOD, etc.) along with discounts offered to the Federal government under that contract
- An electronic copy or hardcopy (electronic copy preferred) of pricing information for other State contracts awarded the bidder. Pricing information is to include discounts offered to the State that issued the contract
- An electronic copy or hardcopy (electronic copy preferred) of pricing information offered to the bidders best commercial customers. This is to include the discounts offered to those commercial customers

REASONABLE OF PRICE QUESTIONNAIRE

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

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

Please provide the following information for the Manufacturer's/Distributor's Officially Published Catalog Offered:

LOT No.#: _____
Name of Catalog: _____
Date of Catalog: _____

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

____ GSA ____ VA
____ NO

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

____ GSA ____ VA
____ NO

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

____ GSA ____ VA
____ NO

If no to above, an explanation of why equal to or better pricing is not being offered is required. Have you attached a written explanation?

____ YES ____ NO

If Bidder has state contract for products offered, please provide the name of the state:

If state was completed above, a copy of the state contract pricing is required. Have you included a copy?

____ YES ____ NO

For state contract referenced above, will Bidder offer New York State pricing equal to or better than your state contract pricing?

____ YES ____ NO

If no to above, an explanation of why equal to or better pricing is not being offered is required. Have you attached a written explanation?

____ YES ____ NO

If Bidder has a contract for products offered with a best commercial customer outside of GSA, VA, or a state, please provide the name of the customer:

If best commercial customer was completed above, a copy of the customer's pricing is required. Have you included a copy?

____ YES ____ NO

For best commercial customer contract referenced above, will Bidder offer New York State pricing equal to or better than the pricing for the best commercial customer?

____ YES ____ NO

If no to above, an explanation of why equal to or better pricing is not being offered is required. Have you attached a written explanation?

____ YES ____ NO

SECTION 6. PRICING INFORMATION PROVIDED IN ELECTRONIC FORMAT

It is required that, with their proposal, in addition to the hardcopy requirements of Section 5, each Bidder submit one softcopy (electronic format) of the NYS Net Price Sheets. The electronic version is required for all LOTS bid.

NYS Net Price Sheets **must** be submitted on CD, unprotected, and in Excel. Disk(s) must be labeled with 1) name of Bidder, 2) the RFP Number, 3) file format, the name and version of the software program.

SECTION 7. PROOF OF SALES

Bidders must show proof of sales for the equipment listed on their proposed NYS Net Price Sheets for the 24 month period prior to the bid opening date for customers throughout the United States. The Bidders must provide proof of sales on a per LOT basis for each LOT bid. The Bidder must meet the following minimum sales amounts below to qualify for contract award for each LOT bid:

Proposing four regions or less:	\$75,000
Proposing five regions or more:	\$250,000
Proposing statewide:	\$250,000

If a major component of a bidder's proof of sales for a LOT is met with a set of products that was replaced with equivalent products within the last 24 months; the bidder may use sales for the discontinued items as proof of sales. Sales for the discontinued products have to be within 24 months of the bid opening. NYS reserves the right to determine whether the discontinued items are equivalent to the replacement products and meet the scope of the LOT bid.

Acceptable forms for Proof of Sales may include, but are not limited to, the following*:

- Copies of invoices for products specific to the LOT bid
- Accounts Receivable information for products specific to the LOT bid
- A summary table that includes the information indicated above. This table should reflect product codes or numbers, pricing etc.
- Any other verifiable sales data bidders may use in the normal course of their business

***NOTE: NYS may seek independent verification of this data if deemed necessary.**

SECTION 8. EVIDENCE OF ABILITY

The Bidder shall submit satisfactory evidence using an Executive Summary format that:

- a) it has maintained an organization capable of performing the work hereinafter described.
- b) it has been in continuous operation for at least the past five (5) years in the industry.
- c) it possesses the manufacturing capability to meet the anticipated needs as described in the RFP or is an official reseller of equipment from a manufacturer that has the manufacturing capability to meet the anticipated needs as described in the RFP. All the LOTS and manufacturer's/distributor's catalogs proposed must be covered.
- d) it possesses financial resources and organization to perform the type, magnitude, and quality of work specified in the RFP.

Each point above must be addressed in the required Executive Summary.

SECTION 9. PRODUCT CERTIFICATION FORM

For each LOT and Manufacturer's or Distributor's officially published catalog offered, the Bidder (or the manufacturer if the Bidder is an official reseller) must complete the form below certifying that the products offered. Original ink signatures are required with all three copies:

- Are in compliance with all applicable certifications and standards that govern operation of the equipment at the time of the bid opening and for the entire term of the contract. Certifications may include general regulatory rules and standards bodies (e.g. FCC, EIA, UL) as well as standards bodies that are specific to an industry (e.g. National Fire Protection Association for Fire Alerting equipment). OGS may seek independent verification of product certifications. Any products found not to comply with the applicable regulatory rules and standards during the term of the contract may be considered a breach and may lead to contract termination.

Acknowledged, Agreed, and Accepted. In signing and notarizing, Manufacturer indicates that it has agreed to meet the requirements above for the LOT and Manufacturer's or Distributor's officially published catalog indicated in the signature block.

Bidder Name: _____

Manufacturer Name: _____

LOT NO.# _____

Name of Catalog: _____

Date of Catalog: _____

By _____

Manufacturer Representative:

Title

Date

NOTARY:

Sworn to before me this _____

day of _____ 20____.

Notary Public: _____

Registration No: _____

State: _____

SECTION 10. SERVICES PROPOSAL

The Bidder must submit the following for each LOT unless otherwise noted.

a. **Main Contract Contact Person**

The name, address, telephone number, fax number, and e-mail address of the contact person who will handle the day-to-day customer requests concerning this contract for each LOT bid must be provided. Use [Table B](#) to report the above required information.

b. **Remit To Address**

If the “remit to” address is different from the Contractor Bidding address, it should be indicated in [Table C](#) below.

c. **Designation of Resellers**

If Reseller(s) are designated to fulfill orders under this Contract, issue invoices, and receive payment, Contractor must provide OGS with all necessary ordering, billing addresses and federal identification numbers in [Table D](#) below.

d. **Maintenance Center Information Forms**

- i. For LOTS 1-6 and 8, each proposal must contain completed On-Site Maintenance Information Forms that provide information on the locations from which maintenance personnel will be dispatched to provide on-site service of the equipment. The proposal must also list the service personnel by title along with their experience and certifications. Use [Table E-1](#) to report the above required information.
- ii. If proposed, Bidders may also provide Remote Monitoring Center Information Forms for service locations that provide Remote Monitoring or Administration on a statewide or nationwide basis. Remote Monitoring Center Information Forms are not applicable for LOTS 3, 7, and 8. Use [Table E-2](#) to report the above required information.
- iii. For Bidders that propose products that only require non-emergency maintenance services, the proposal must contain completed Depot Center Information Forms that provide information for the location(s) from which depot service will be performed (inside and outside NYS). Bidders are only required to provide Depot Center Information Forms for depot service only if they bid the following types of products:
 - Portable/field deployable interoperability units only for LOT 1
 - Portable repeaters for LOT 7

Use [Table E-3](#) to report the above required information.

e. **Remedial Maintenance Response**

For LOTS 1-8, the Bidder shall complete one of the three Remedial Maintenance Response tables on the following pages for each LOT based on the LOTS and products bid.

The purpose of this criterion is to determine the extent to which the Bidder can provide rapid remedial maintenance for systems used in a 24/7 emergency operation, next day maintenance for non-critical system failures, and depot maintenance. The Bidder shall meet the requirements described in the tables in “Remedial Maintenance” in Section II.9.6 of the RFP for the applicable LOTS.

The regions for maintenance service are as follows:

REGION NUMBER	REGION NAME
Region 1	Long Island
Region 2	New York City
Region 3	Ulster
Region 4	Albany
Region 5	Adirondacks
Region 6	Syracuse
Region 7	Finger Lakes
Region 8	Buffalo

- i. If the Bidder proposes products that require priority emergency, emergency, and non-emergency maintenance service according to the tables in “Remedial Maintenance” in Section II.9.6, it is **mandatory** that the Bidder meets the response and repair times for each county in each region proposed. It is desirable that the Bidders provide at least one maintenance repair facility and/or qualified on-duty system maintenance technician(s) within each region proposed for the performance of priority emergency service, emergency service, and non-emergency service. If at least one maintenance repair facility and/or qualified on-duty system maintenance technician(s) can not be provided within each region proposed, the Bidder must provide an explanation of how the service centers/personnel proposed can meet the repair times for each region. **USE [Table F-1](#) to report the above required information.**

- ii. If the Bidder proposes products that only require emergency and non-emergency maintenance service according to the tables in “Remedial Maintenance” in Section II.9.6, it is **mandatory** that the Bidder meets the response and repair times for each county in each region proposed. It is desirable that the Bidders provide at least one maintenance repair facility and/or qualified on-duty system maintenance technician(s) within each region proposed for the performance of both emergency and non-emergency service. If at least one maintenance repair facility and/or qualified on-duty system maintenance technician(s) can not be provided within each region proposed, the Bidder must provide an explanation of how the service centers/personnel proposed can meet the repair times for each region. **USE [Table F-2](#) to report the above required information.**
- iii. If the Bidder proposes products that only require non-emergency maintenance service according to the tables in “Remedial Maintenance” in Section II.9.6, it is **mandatory** that the Bidder meets the response and repair times for each county in each region proposed. **USE [Table F-3](#) to report the above required information.**

The Bidder shall provide one of the following in the “Responding Maintenance Location” column of Table F-3 for each region proposed. Refer to Section II.9.5 for depot maintenance requirements:

- Location where the Authorized User can drop off a part for depot repair. The drop off location must be within the region bid. The Bidder shall indicate that this is a drop off location in the far right column of Table F-3.
- Contact information for the representative that will pick-up the part at the Authorized User’s location for depot repair. The Bidder shall indicate that this is the contact information for a representative that will pick-up the part in the far right column of Table F-3.
- The name and address of the facility where the Authorized User ships the part for depot repair. Complete information for the depot repair facility should also be provided in the Depot Center Information Form (see Appendix C, Section 10d above). The Bidder shall use Table E-3 and make copies as required. The Bidder shall indicate that this is a depot facility in the far right column of Table F-3.

f. **Description of Job Titles**

The Bidder shall provide a description of the duties of each job title listed in the NYS Net Price Sheets.

g. **Preventive Maintenance Descriptions**

The Bidder shall provide descriptions of preventive maintenance programs offered and the tasks performed by the maintenance service personnel. If there are specific maintenance packages or service levels, these should be fully described. Bidders should indicate in their response the frequency of Preventative Maintenance (Monthly, Semi-Annually, Annually, etc.)

h. Training Course Syllabus and Descriptions

The Bidder shall provide descriptions of the user training, system administration training, and maintenance training offered. The Bidder shall describe in detail the training syllabus with class size, length, and experience level required to participate in the course.

NOTE: Items f, g, and h above require a narrative description of the requirements listed.

Table B
MAIN CONTRACT CONTACT INFORMATION

BIDDER MUST PROVIDE FOR EACH LOT BID. MULTIPLE LOTS MAY BE ENTERED FOR AN INDIVIDUAL.

- A. LOT(S) Bid _____
- B. Name _____
- C. Street Address: _____
- D. City, State, Zip Code: _____
- E. Telephone Number: (_____) _____
- F. Fax Number: (_____) _____
- G. E-Mail Address: _____

Reproduce as necessary

Table C
REMIT TO ADDRESS INFORMATION

BIDDER MUST PROVIDE FOR EACH LOT BID. MULTIPLE LOTS MAY BE ENTERED FOR AN
REMIT TO ADDRESS.

- A. LOT(S) Bid _____
- B. Name _____
- C. Street Address: _____
- D. City, State, Zip Code: _____

**Table D
Manufacturer & Value Added Reseller/Distributor Information**

Manufacturer/Contractor Information (for Ordering and Contract Administration Purposes)			
Company Name:			
Address:			
Federal ID #:			
Contract Administrator Name:			
Title:			
Telephone Number:			
E-mail:			
FAX:			
Orders Placed Directly with Contractor <input type="checkbox"/> Orders Placed Directly with VAR <input type="checkbox"/>			
Contract "Toll" Free Support Number:			

Value Added Reseller/Distributor Information	
Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
LOTS/Options Provided:	
Reseller Qualifying Criteria:	

Value Added Reseller/Distributor Information	
(2) Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
LOTS/Options Provided:	
Reseller Qualifying Criteria:	

Table E-1
ON-SITE MAINTENANCE INFORMATION

FOR EACH LOT BID, BIDDER MUST PROVIDE ON-SITE MAINTENANCE INFORMATION TO REFLECT THEIR ABILITY TO SERVICE EQUIPMENT FOR EACH REGION BID*

*It is required that bidders demonstrate that they can meet service requirements for each region bid. These requirements are located in Appendix C and Section II.9.6, Tables 1-8. It is not necessary for bidders to staff a maintenance center in each region bid.

- A. LOT Bid _____ Region(s) Covered _____
- B. Subcontractor Name (if different than Prime Contractor) _____
- C. Maintenance Office Address: _____
- D. Telephone Number: (_____) _____
- E. Toll Free Telephone Number: (_____) _____
- F. E-Mail Address: _____
- G. Hours of Operation: _____
- H. Person in Charge: _____
- I. Number of Maintenance Personnel based in location: _____
- J. Systems/Equipment Served from this Office: _____

Attach list that provides information below for each system or equipment serviced

- Manufacturer of Systems/Equipment: _____
- Type(s) of Systems/Equipment: _____
- Description of Systems/Equipment: _____

K. Employees, Title, and Experience:

Attach a chart that lists all personnel who will service the proposed system or equipment from the service location with title, years of experience, and certifications completed. The Bidder shall state technical training information and certifications by specific technician for the implementation, installation, and maintenance of products proposed in the NYS Net Price Sheets. If maintenance personnel are housed in multiple locations or service equipment from a vehicle that is parked at a residence, the Bidder must list each employee, title, and the location of that employee, and any information that demonstrates that service requirements can be met for the regions proposed.

Reproduce as necessary

Table E-2
REMOTE MONITORING CENTER INFORMATION

- A. LOT Bid _____ Region(s) Covered _____
- B. Subcontractor Name (if different than Prime Contractor) _____
- C. Maintenance Office Address: _____
- D. Telephone Number: (_____) _____
- E. Toll Free Telephone Number: (_____) _____
- F. E-Mail Address: _____
- G. Hours of Operation: _____
- H. Person in Charge: _____
- I. Number of Maintenance Personnel based in location: _____
- J. Systems/Equipment Served from this Location: _____

Attach list that provides information below

- Manufacturer of Systems/Equipment: _____
- Type(s) of Systems/Equipment: _____
- Description of Systems/Equipment: _____
- Description of Facility Capabilities and Services Provided: _____

Reproduce as necessary

Table E-3
DEPOT CENTER INFORMATION*

*For portable/field deployable interoperability units only for LOT 1 and portable repeaters for LOT 7. It is required that bidders demonstrate that they can meet service requirements for each region bid. These requirements are located in Appendix C and Section II.9.6, Tables 1-8. It is not necessary for bidders to staff a maintenance center in each region bid.

- A. LOT Bid _____ Region(s) Covered _____
- B. Subcontractor Name (if different than Prime Contractor) _____
- C. Maintenance Office Address: _____
- D. Telephone Number: (_____) _____
- E. Toll Free Telephone Number: (_____) _____
- F. E-Mail Address: _____
- G. Hours of Operation: _____
- H. Person in Charge: _____
- I. Number of Maintenance Personnel based in location: _____
- J. Systems/Equipment Served from this Location: _____

Attach list that provides information below

- Manufacturer of Systems/Equipment: _____
- Type(s) of Systems/Equipment: _____
- Description of Systems/Equipment: _____
- Description of Facility Capabilities and Services Provided: _____

Reproduce as necessary

Table F-1			
Remedial Maintenance Response for Priority Emergency, Emergency, and Non-Emergency Service			
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)
<i>1. Long Island</i>			
Nassau			
Suffolk			
<i>2. New York City</i>			
Bronx			
Kings			
New York			
Queens			
Richmond			
Rockland			
Westchester			
<i>3. Ulster</i>			
Dutchess			
Orange			
Putnam			
Sullivan			
Ulster			
<i>4. Albany</i>			
Albany			
Columbia			
Delaware			
Fulton			
Greene			
Montgomery			
Otsego			
Rensselaer			
Schenectady			
Schoharie			
<i>5. Adirondacks</i>			
Clinton			
Essex			
Franklin			
Hamilton			
Saratoga			
Warren			
Washington			

Table F-1			
Remedial Maintenance Response for Priority Emergency , Emergency, and Non-Emergency Service			
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)
<i>6. Syracuse</i>			
Cayuga			
Herkimer			
Jefferson			
Lewis			
Madison			
Oneida			
Onondaga			
Oswego			
St. Lawrence			
<i>7. Finger Lakes</i>			
Broome			
Chemung			
Chenango			
Cortland			
Livingston			
Monroe			
Ontario			
Schuyler			
Seneca			
Steuben			
Tioga			
Tompkins			
Wayne			
Yates			

Table F-1			
Remedial Maintenance Response for Priority Emergency, Emergency, and Non-Emergency Service			
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)
<i>8. Buffalo</i>			
Allegany			
Cattaraugus			
Chautauqua			
Erie			
Genesee			
Niagara			
Orleans			
Wyoming			

Acknowledged, Agreed, and Accepted

By _____
Bidder: Representative

_____ Title
Date

LOT NO.# _____

In signing, Bidder indicates that it has agreed to meet the response and restoration times as shown in the table above for the LOT indicated in the signature block and be subject to the terms for not meeting the response and restoration times as described in the RFP.

NOTE: OGS reserves the right to request additional information, if required, to verify maintenance capabilities.

Table F-2			
Remedial Maintenance Response for Emergency and Non-Emergency Service Only			
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)
<i>1. Long Island</i>			
Nassau			
Suffolk			
<i>2. New York City</i>			
Bronx			
Kings			
New York			
Queens			
Richmond			
Rockland			
Westchester			
<i>3. Ulster</i>			
Dutchess			
Orange			
Putnam			
Sullivan			
Ulster			
<i>4. Albany</i>			
Albany			
Columbia			
Delaware			
Fulton			
Greene			
Montgomery			
Otsego			
Rensselaer			
Schenectady			
Schoharie			
<i>5. Adirondacks</i>			
Clinton			
Essex			
Franklin			
Hamilton			
Saratoga			
Warren			
Washington			

Table F-2			
Remedial Maintenance Response for Emergency and Non-Emergency Service Only			
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)
<i>6. Syracuse</i>			
Cayuga			
Herkimer			
Jefferson			
Lewis			
Madison			
Oneida			
Onondaga			
Oswego			
St. Lawrence			
<i>7. Finger Lakes</i>			
Broome			
Chemung			
Chenango			
Cortland			
Livingston			
Monroe			
Ontario			
Schuyler			
Seneca			
Steuben			
Tioga			
Tompkins			
Wayne			
Yates			

Table F-2			
Remedial Maintenance Response for Emergency and Non-Emergency Service Only			
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)
<i>8. Buffalo</i>			
Allegany			
Cattaraugus			
Chautauqua			
Erie			
Genesee			
Niagara			
Orleans			
Wyoming			

Acknowledged, Agreed, and Accepted

By _____ Bidder: _____ Representative _____

_____ Date _____ Title _____

LOT NO.# _____

In signing, Bidder indicates that it has agreed to meet the response and restoration times as shown in the table above for the LOT indicated in the signature block and be subject to the terms for not meeting the response and restoration times as described in the RFP.

NOTE: OGS reserves the right to request additional information, if required, to verify maintenance capabilities.

Table F-3 Remedial Maintenance Response for Non-Emergency Service Only				
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)	Indicate the following: Drop off site - Drop Representative for pick-up- Pick-up Depot repair facility- Depot
<i>1. Long Island</i>				
Nassau				
Suffolk				
<i>2. New York City</i>				
Bronx				
Kings				
New York				
Queens				
Richmond				
Rockland				
Westchester				
<i>3. Ulster</i>				
Dutchess				
Orange				
Putnam				
Sullivan				
Ulster				
<i>4. Albany</i>				
Albany				
Columbia				
Delaware				
Fulton				
Greene				
Montgomery				
Otsego				
Rensselaer				
Schenectady				
Schoharie				

Table F-3 Remedial Maintenance Response for Non-Emergency Service Only				
Region	Meet Response Time in RFP? (Yes/No)	Meet Restoration Time in RFP? (Yes/No)	Responding Maintenance Location (Name & Address)	Indicate the following: Drop off site - Drop Representative for pick-up- Pick-up Depot repair facility- Depot
<i>5. Adirondacks</i>				
Clinton				
Essex				
Franklin				
Hamilton				
Saratoga				
Warren				
Washington				
<i>6. Syracuse</i>				
Cayuga				
Herkimer				
Jefferson				
Lewis				
Madison				
Oneida				
Onondaga				
Oswego				
St. Lawrence				
<i>7. Finger Lakes</i>				
Broome				
Chemung				
Chenango				
Cortland				
Livingston				
Monroe				
Ontario				
Schuyler				
Seneca				
Steuben				
Tioga				
Tompkins				
Wayne				
Yates				

SECTION 11. TECHNICAL LIBRARY

The Bidder shall provide specifications and technical brochures for each of the systems and/or equipment product lines offered in the NYS Net Price Sheets. The technical library must be provided electronically, be labeled, and included in the proposal binder. The State reserves the right to request any additional information deemed necessary for the proper evaluation of proposals.

FAILURE TO SUBMIT ANY OF THE ABOVE INFORMATION IN THE REQUIRED FORMAT MAY BE CAUSE FOR REJECTION OF THE PROPOSAL. PSG RESERVES THE RIGHT TO SUBMIT CLARIFICATION QUESTIONS TO BIDDERS TO ADDRESS OR CORRECT INCOMPLETE PROPOSAL ITEMS IF PSG DEEMS THE ITEMS TO BE NON-SUBSTANTIVE.

APPENDIX D BIDDER PROPOSAL CHECKLIST

Bidder Proposal Checklist

RFP Number: _____ Bid Date: _____

Bidder Name: _____

Reviewer(s): _____

Note 1: The Bidder Proposal Checklist is provided to assist the Bidders in preparing their bid submissions. PSG reserves the right to request any additional information required to evaluate the bids submitted.

Note 2: Appendix C provides detailed descriptions of the items required for the bid submittal. There is a hyperlink between the headings in the Bidder Proposal Checklist below and the corresponding detailed descriptions in Appendix C:

Section 1. [Bid Document](#)

- a. [Signature Page](#) Yes No
- b. [Proposal Form](#) for LOTS 1-8 Yes No
- c. [Notarized Corporate Acknowledgement Form](#) Yes No
- d. [Signed Addenda](#) Yes No
- e. [MacBride/Non-Collusive Forms](#) Yes No
- f. [Questionnaire Form](#) Yes No
- g. [NYS Standard Vendor Responsibility Questionnaire](#) (App. 1) Yes No
- h. [Emergency Contact List](#) Yes No
- i. [Authorized Users Tables](#) Yes No
- j. [NYS Department of Taxation and Finance Contractor Cert. Form\(s\)](#) (App. 2) Yes No
- k. [Compliance with Electronic Filing of Procurement Contract Fee](#) (Section III.24) Yes No

Section 2. [Extraneous Terms](#) (if applicable) Yes No

- ## Section 3. [Financial Security/Certification to Conduct Business/Insurance Requirements](#) Yes No
- a. [Financial Security](#) Yes No
 - b. [Certification to Conduct Business](#) Yes No
 - c. [Insurance Requirements](#) Yes No

- ## Section 4. [Manufacturer\(s\) Certificate/Manufacturer\(s\) Guarantee](#) Yes No
- a. [Manufacturer\(s\) Certificate](#) Yes No
 - b. [Manufacturer\(s\) Guarantee](#) (LOTS 1-8) Yes No

- ## Section 5. [New York State Net Price/Product Listing](#)
- a. [Bid Sheets](#) (Check applicable boxes for LOTS bid)
 - LOT 1 LOT 3 LOT 5 LOT 7
 - LOT 2 LOT 4 LOT 6 LOT 8

b. [Manufacturer's/Distributor's Officially Published Catalog](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

c. [NYS Net Price Sheet](#) (Check applicable boxes for LOTS bid) **NOTE: NYS Net Price must include the Procurement Contract Fee (see Section III.24).**

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

d. [Reasonableness of Prices](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

Section 6. [Pricing Information Provided in Electronic Format](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

Section 7. [Proof of Sales](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

Section 8. [Evidence of Ability](#)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

Section 9. [Product Certifications Form](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

Section 10. [Services Proposal](#)

a. [Main Contract Contact Person](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

b. [Remit To Address](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

c. [Designation of Resellers](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

d. [Maintenance Center Information Form](#) (Check applicable boxes for LOTS bid)

i. [On-Site Maintenance Information Form](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 8 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | |

ii. [Remote Monitoring Center Information Form](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 6 |
| <input type="checkbox"/> LOT 2 | | | |

iii. [Depot Center Information Form](#) (Check applicable boxes for LOTS bid)

- | | |
|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 7 |
|--------------------------------|--------------------------------|

e. [Remedial Maintenance Response](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

f. [Description of Job Titles](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

g. [Preventive Maintenance Descriptions](#) Optional (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|-------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> NONE |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | |

h. [Training Course Syllabus and Descriptions](#) (Check applicable boxes for LOTS bid)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 5 |
| <input type="checkbox"/> LOT 2 | | | |
| <input type="checkbox"/> LOT 4 | (Logging Recorder) | (IRR w/ training courses) | (IRR w/o training courses) |

Section 11. [Technical Library](#)

- | | | | |
|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| <input type="checkbox"/> LOT 1 | <input type="checkbox"/> LOT 3 | <input type="checkbox"/> LOT 5 | <input type="checkbox"/> LOT 7 |
| <input type="checkbox"/> LOT 2 | <input type="checkbox"/> LOT 4 | <input type="checkbox"/> LOT 6 | <input type="checkbox"/> LOT 8 |

APPENDIX E ARTICLE 15-A

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

a. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

b. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at:

<http://www.nylovesmwbe.ny.gov/>

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, OGS hereby establishes a goal of 3% for minority business enterprises (MBE) participation and 3% for women-owned business enterprises (WBE) participation.

GOALS - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.

APPENDIX F PREVAILING WAGE RATES

NYS PREVAILING WAGE RATES

All labor rates **must** adhere to Department of Labor rules and regulations in the payment to employees.

According to Paragraph 17 of Appendix B, all prices quoted for hourly rates shall be equal to or greater than the prevailing wage plus supplemental benefits for the title referenced herein for each county.

Contractors can access the most current labor rates by going to the following web page:

<http://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=328259>

The PRC number for the Public Safety Ancillary Equipment Contract is 2008001273.

APPENDIX G

**PERFORMANCE AND PAYMENT BOND
FORM**

CONTRACT _____

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned (*) as principal; and (†) as sureties, are hereby held and bound unto The
..... in the penal sum of..... Dollars
and.....Cents (.....), for the payment of which, well and truly to be made jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this.....day of....., 20.....

(*) Insert Contractor's name. If a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of.....".

If a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of.....".

If an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of.....".

(†) Insert name of surety or sureties. If space is insufficient, add rider.

The condition of the above obligation is that:

WHEREAS, the above named principal has entered into a Contract in writing with The _____ a copy of which is hereby made a part of this bond as through herein set forth in full and which is designated Contract _____ Public Safety Ancillary Equipment.

WHEREAS, The _____ has required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract;

NOW, if the said principal shall well and faithfully do and perform the items agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit of The _____ and all subcontractors, materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such subcontractors, materialmen and workmen (as well as The _____) shall have a direct right of action upon this bond; but the rights and equities of such subcontractors, materialmen and workmen shall be subject and subordinate to those of the _____.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction or by any payment thereunder before the time required therein or by any waiver of any provision or condition thereof (whether precedent or of any part thereof or of any construction to be performed or any monies due or to become due thereunder: and said sureties do hereby waive notice of any and all of such extensions, modification, omissions, additions, changes, payments, waivers, assignments, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal).

The sureties shall give the _____ Counsel of The _____ the following notices:

- (a) Written notice of an intent to pay any claim of a subcontractor, materialman or workman hereunder;
- (b) Written notice within five days of the institution of an action by a subcontractor, materialman or workman hereunder.

The sureties shall not pay the claim of any subcontractor, materialman or workman hereunder until the expiration of thirty days after receipt of said _____ Counsel of notice under wither subparagraph (a) or (b) above, describing the claim to be paid.

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal (Seal)
By (*) _____

Surety
By (†) _____

By (†) _____

APPROVED AS TO ACCEPTABILITY OF
SURETIES:

(Credit Manager)

_____, 20____.

(*) If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

(†) Add signatures of additional sureties, if any.

APPENDIX H CONTRACT UPDATE FORM

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

CONTRACT UPDATE FORM	
OGS CONTRACT NO.: _____	DATE OF SUBMISSION: _____
CONTRACT PERIOD: From: _____ To: _____	VENDOR CONTACT: NAME: _____ PHONE NO: _____ FAX NO.: _____ E-MAIL: _____
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:

- This form is to be used for all contract updates. The form is to be completed in triplicate and submitted to the OGS Procurement Services Group for final approval. Vendors shall complete, sign, and notarize where indicated, and attach this form to a cover letters (in triplicate) written on standard company letterhead. Any submission that is not complete or signed in triplicate will be rejected.*
- Contractor may be required to submit the Product and price information for the update in an Excel spreadsheet format on a CD and/or electronically via e-mail to the OGS Purchasing Officer.*
- To expedite the processing of updates that qualify as Auto Adds, do not combine Auto Adds with Regular Adds. **If more than one type of update is being submitted, they should be submitted as totally separate requests.***
- The list must be dated and the format should be consistent with the format of the price list(s) included in the Pricing Appendix of the Contract.*
- The contract update must be accompanied by either the GSA Price List and revised NYS Net Price List incorporating all changes or the US Commercial Price List and revised NYS Net Price List incorporating all changes, whichever is applicable.*

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

1. This request is an: <input type="checkbox"/> Auto Add <input type="checkbox"/> Regular Add See contract for an explanation of these terms.	2. The intent of this submittal is to: <input type="checkbox"/> Add new products <input type="checkbox"/> Delete products <input type="checkbox"/> Increase pricing <input type="checkbox"/> Reduce pricing <input type="checkbox"/> Amend VAR list
3. All terms and conditions of the contract shall apply to this request. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree	4. All discounts as agreed to in the contract shall apply. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree

5. All discounts are: _____ GSA _____ Most Favored Nation* *Prices offered are the lowest offered to any similarly situated entity.	6. Attached documentation includes: _____ Current approved GSA (labeled "For information only") _____ Current commercial price list (labeled "For information only") _____ Revised NYS Net Price List
7. If other than an auto-ad, describe the Nature and Purpose of the update: _____ _____	
8. For a regular add, please explain how pricing has been restructured to customers, and/or identify and describe new Products or services, which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller. If not applicable, state NA: _____ _____	

The following CORPORATE ACKNOWLEDGEMENT statement is to be included in each of the three original forms. The request must be signed by an individual given the authority to perform this action by the corporation’s board of directors and the signature must be notarized.

Signature of Authorized Vendor Representative:

<u>CORPORATE ACKNOWLEDGMENT</u>	
STATE OF	}
	:
COUNTY OF	}
On the _____ day of _____ in the year _____, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.	
_____ Notary Public	

FOR STATE USE ONLY	
<u>OGS APPROVAL:</u> Approved _____ Approved as amended _____ Disapproved _____ Name: _____ Title: _____ Date _____	<u>OSC APPROVAL:</u> Approved _____ Disapproved _____ Name: _____ Title: _____ Date _____

Regular and Special Adds requests to update the contract that are not submitted in accordance with the above requirements shall be returned to the Contractor without action.