

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

INVITATION FOR BIDS

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

BID OPENING DATE: September 6, 2011 TIME: 11:00 AM	TITLE: Group 60010 - OFFICIAL NEW YORK STATE PRESCRIPTION FORM (Dept. of Health) Classification Code: 82
INVITATION FOR BIDS NUMBER: 22291	SPECIFICATION REFERENCE: As Incorporated in the Invitation For Bids
CONTRACT PERIOD: March 1, 2012 to February 28, 2014 with option to renew	
DESIGNATED CONTACTS:	
OGS Harry Brown, Purchasing Officer I Telephone No. (518) 474-7902 E-mail: harry.brown@ogs.ny.gov	OGS Jamie Nusbaum, Team Leader Telephone No. (518) 474-2387 E-mail: jamie.nusbaum@ogs.ny.gov
DOH Thomas Behanna/Anita Murray Telephone No. (518) 402-0707 E-mail: narcotic@health.state.ny.us	

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

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See "New York State Vendor File Registration" clause)</i>
Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Street	City
State	Zip
County	
If you are not bidding, place an "x" in the box and return this page only. ☐ 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

P.R. #22291	LIT ☐	MEMO ☐	MISSING PAGES
	LET ☐	OTHER ☐	

GENERAL INFORMATION

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

NOTICE TO BIDDERS:

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

1. BID PREPARATION

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

2. BID DEVIATIONS

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

3. BID DELIVERY

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

- **Bid envelopes and packages**

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

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

- **FAX transmittals**

Facsimile transmittals are NOT acceptable for this solicitation.

- **Hand deliveries**

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

4. IMPORTANT BUILDING ACCESS PROCEDURES

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

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

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

GENERAL INFORMATION (Cont'd)

NON-COLLUSIVE BIDDING CERTIFICATION:

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

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

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

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

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

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

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

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

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

DISPUTE RESOLUTION POLICY:

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

GENERAL INFORMATION (Cont'd)

CONTRACT BILLINGS AND PAYMENTS:

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

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

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

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

APPENDIX A:

Appendix A, Standard Clauses For New York State Contracts, dated June 2011, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

APPENDIX B:

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

CONFLICT OF TERMS AND CONDITIONS:

Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. Appendix A (Standard Clauses For NYS Contracts)
- b. This Invitation For Bids
- c. Appendix B (General Specifications)
- d. Bidder's Bid

GENERAL INFORMATION (Cont'd)

NEW YORK STATE VENDOR FILE REGISTRATION:

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

If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor id number on the first page of this bid document. Authorized resellers already registered should list the ten-digit vendor id number along with the authorized reseller information.

If the Bidder is not currently registered in the Vendor File, complete the enclosed OSC Substitute W-9 Form and submit it with your bid. In addition, if authorized resellers are to be used, an OSC Substitute W-9 form should be completed by each of the designated authorized resellers and submitted to the Office of General Services. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award and their authorized resellers. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website:
http://www.osc.state.ny.us/vendor_management/

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY (hereinafter the "Questionnaire")

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

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

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

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

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

GENERAL INFORMATION (Cont'd)

TAX LAW 5-A AMENDED APRIL 26, 2006 (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 attached to this bid. 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 forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a 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>.

MERCURY-ADDED CONSUMER PRODUCTS:

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

GENERAL INFORMATION (Cont'd)

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

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 Department of Economic Development's Division of Minority and Women's Business Development set forth at 5 NYCRR Parts 140-145, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women and for the facilitation of minority-and women-owned business on OGS covered 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 it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State.

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

By submission of a bid or proposal in response to this solicitation, the Offerer agrees to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (MWBE) as subcontractors and suppliers on this contract for the provision of services and materials. The Directory of New York State Certified Minority and Women-owned Businesses can be viewed at: <http://www.nylovesmwbe.ny.gov/>

ELECTRONIC BID OPENING RESULTS

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

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

DEBRIEFING

A bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, OGS shall, upon request, provide a debriefing to any unsuccessful bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such bidder was not selected for a contract award. The post-award debriefing should be requested in writing within 30 days of posting of the contract award on the OGS website.

ANNOUNCEMENT OF CONTRACT AWARD:

OGS distributes email notification to registered customers announcing the resultant contract award. The email includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered authorized users. Authorized users may register for the PNS at the following URL address: <http://www.ogs.ny.gov/PNS/default.asp>. All subsequent contract updates are also sent out via the PNS. Authorized users of the contract submit purchase orders or other such order documents directly to the contractor. See Appendix B Clause 44. Purchase Orders.

NEW YORK STATE PROCUREMENT CARD:

See "Procurement Card" in Appendix B, OGS General Specifications. All bidders shall indicate whether or not they will accept the NYS Purchasing Card for orders up to \$15,000 (see Questions at end of bid document).

GENERAL INFORMATION (Cont'd)

INQUIRIES/ISSUING OFFICE:

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

PRIMARY CONTACT

Harry T. Brown, Purchasing Officer
NYS Office of General Services
Procurement Services Group
Corning Tower - 38th Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 474-7902

FAX No. (518) 474-5052

E-Mail: harry.brown@ogs.ny.gov

SECONDARY CONTACT

Jamie Nusbaum, Team Leader
NYS Office of General Services
Procurement Services Group
Corning Tower - 38th Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 474-2387

FAX No. (518) 474-5052

E-Mail: jamie.nusbaum@ogs.ny.gov

All questions should be submitted in writing no later than fourteen (14) calendar days prior to the bid opening date, citing the particular bid section and paragraph number. The prospective bidder should notify the DESIGNATED CONTACT of any term, condition, etc., that precludes the vendor from submitting a compliant, responsive bid. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Bidders entering into a contract with the State are expected to comply with **all** the terms and conditions contained herein. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing contract.

DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

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

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

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

GENERAL INFORMATION (Cont'd)

SCOPE:

New York State law requires written prescriptions for drugs to be issued on the Official New York State Prescription Form. A minimum of 14,500,000 forms per month or 348,000,000 during the course of the contract (two years) of all the different versions combined, as described in the specifications, will be required to meet this need. The contractor must establish an online and manual ordering system, and be able to produce and provide up to 400,000,000 forms annually if required. The Department of Health's (DOH) Bureau of Narcotic Enforcement is responsible for the management of the Official New York State Prescription Program.

METHOD OF AWARD:

Award shall be made by Grand Total Bid for all Items to the lowest responsive and responsible bidder.

PRICE:

Price shall be net, F.O.B. destination to any point in New York State including inside delivery to Practitioner's or Institution's door and shall include all customs duties and charges. Contractor must obtain a signed receipt from an authorized person or delivery cannot be made. If delivery cannot be made, then a card or notice shall be left informing the intended recipient where to pick up their order. Bidder guarantees that prices quoted are the lowest offered to any governmental or commercial consumer.

Bidders quoted unit pricing shall be all inclusive of all requirements specified herein. Separate invoicing will not be permitted under any circumstances for:

1. Development effort that contractor must perform to meet the requirements of this bid specification.
2. Call center service and support.
3. Costs associated with production (including but not limited to destructions, returns, shipping, and rush service).
4. Software or hardware service fees, licenses or maintenance fees.
5. Travel or other business expenses related to successful execution of this contract.
6. Internal policies and procedures implemented in support of this program (including but not limited to drug screening, background checks, internal audits, secure storage, locked cabinets, security guards, security cameras throughout manufacturing process, and color camera surveillance of the production areas).
7. Shipping policies required of this program include but are not limited to signature receipt for residential delivery.
8. Secure transportation between contractor's facilities.

Chosen contractor cannot for any reason increase the original price submitted with this bid specification for the duration of the initial two-year contract period. Should the contract be renewed for additional periods, any increases or decreases in pricing shall be calculated and made in accordance with the PRICE ADJUSTMENT clause herein.

SUBCONTRACTING:

There is no subcontracting allowed under the contract. Bids will only be considered by bidders who have all of the necessary equipment, facilities and capabilities necessary to process, manufacture and distribute orders of the printed Official New York State Prescription forms.

SITE VISITS:

The DOH's representatives may visit the facilities of bidders who have been initially determined to be among the top three (3) bidders during the bid evaluation period. During these visits, the representatives will review proposed operation systems, procedures, software, equipment, facilities and personnel that may be used in support of the Official New York State Prescription Program. The outcomes of the site visits will be used to clarify bidders' proposals and determine the responsiveness of bidders' bids and production capabilities. The site visits will not amend the Scope of the IFB or the submitted proposals.

PAYMENT OF ORDERS FOR FORMS:

DOH will pay on a monthly basis according to the volume of inventory shipped during the previous month. Subsequent orders will be shipped during the contract period as additional forms are required. The contractor will retain printed stock and ship as requested after imprinting as described herein.

GENERAL INFORMATION (Cont'd)

ESTIMATED QUANTITIES:

The quantities listed in this Invitation for Bids (IFB) are estimated quantities for two years. Contract shall only be for the actual quantities and items shipped during the contract period. No guarantee shall be made for the quantities or items actually ordered during the contract period. It should be noted that estimated quantities are for bidding purposes only and that estimated quantities may be exceeded, not met, or the item itself may not be ordered at all, as the DOH requires. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

EMERGENCY PURCHASING:

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

PRICE ADJUSTMENT:

In the event that the contract is renewed, the prices set forth in the contract shall be adjusted following the second year of the contract and each year or renewal period thereafter in accordance with the provisions of this clause. There shall be no price adjustments during the first two years of the contract.

The prices shall be adjusted based on the Not Seasonally Adjusted "Consumer Price Index (CPI) - All Urban Consumers," Series ID: **CUUR0000SAS, CUUS0000SAS**, U.S. City Average, Services published by the U.S. Department of Labor, Bureau of Labor Statistics. The index is also available through the Internet at the Bureau of Labor Statistics website. Go to <http://data.bls.gov/pdq/querytool.jsp?survey=cu>, click on "U.S. City Average", then click on "Services".

For all items listed in this Invitation for Bids and resultant Contract Award Notification, a price adjustment (either upward or downward) will be established by the State for any renewals effected for the third year and each subsequent renewal period of the contract. The adjustment shall be established as follows:

A contract **Base Index** shall be established by taking the CPI for the month of March 2012 and an **Adjusted Index** shall be established by taking the CPI for the month of March 2013. The **Base Index** is subtracted from the **Adjusted Index** and then that number is divided by the **Base Index** and multiplied by 100 to arrive at the percentage of increase or decrease for the third year of the contract in the event it is renewed. The resulting percentage of increase or decrease shall be applied to the contract prices to arrive at the new contract pricing. NOTE: The adjusted index will then become the base index for the next price adjustment period. All calculations will be based upon data from the first-published version of the month's index. Each succeeding renewal period will follow this format. Price increases or decreases shall not exceed 5%.

Should the referenced Consumer Price Index (CPI) become discontinued during the course of the contract, it will be replaced by an alternative CPI appropriate for Prescription Form Manufacturing and adjustments will be calculated based on the same methodology as outlined above, but with data from the new replacement index.

The Office of General Services will notify all interested parties in writing of effected price adjustments by way of a Revised Contract Award Notification.

GENERAL INFORMATION (Cont'd)

CONTRACT PERIOD AND RENEWAL:

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

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

Discounts quoted are to be firm for the entire period of the contract. Discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bids, its specifications and subsequent contract award. Discount increases are permitted at any time.

If mutually agreed between the Procurement Services Group and the contractor and approved by the Office of the State Comptroller, the contract may be renewed in accordance with the PRICE ADJUSTMENT clause for additional period(s) not to exceed a total contract term of five (5) years.

CANCELLATION FOR CONVENIENCE:

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

SAMPLES:

Samples of required forms are on display at the NYS Office of General Services and may be viewed by contacting one of the OGS Designated Contacts listed herein by appointment only.

GENERAL INFORMATION (Cont'd)

WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS:

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

1. Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
- B) Certificate of Workers' Compensation Insurance:
 - 1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
 - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
- C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

2. Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
- B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
- C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The Office of General Services, Procurement Services Group, Team 1, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

ORGANIZATIONAL STRUCTURE AND OPERATIONS

QUALIFICATION OF BIDDER:

Bids will be considered only from bidders that have a minimum of five years experience in the production of secure documents and who have the adequate equipment, facilities and resources to produce ALL items specified herein.

ORGANIZATIONAL STRUCTURE:

The DOH requires that the selected bidder have adequate experience and capacity in the key operational functions proposed, and has the overall capacity to undertake the size and scope of the work included in this IFB.

Provide a summary description [two (2) pages maximum] of the bidder's organizational structure. Include a brief narrative describing the history, size, ownership and orientation of the company providing the following information:

1. Type of corporation (individual, partnership or corporation).
2. Number of years the firm has provided services as required under this contract.
3. Organizational charts which indicate the ownership and reporting relationships between the parent organization, if any, and related companies.

KEY PERSONNEL:

The DOH desires a management team that possesses a high level of creative and technical skills as well as extensive experience relevant to the primary activities included in this IFB.

The contractor is responsible to supply a method of assessing and reporting the project status in an automated fashion using project management software through the development, implementation, maintenance and operation of the system. This methodology should allow for a straightforward system or reporting to allow effective DOH oversight of the project, indicating but not limited to the following:

1. Status of each task;
2. Staff assigned;
3. Effort required;
4. Effort expended;
5. Percent complete; and
6. Tasks on the critical path.

PROJECT TEAM REQUIREMENTS:

1. Upon contract award, if any individual named as key personnel under the Bidder's proposal becomes unavailable, the contractor shall notify the DOH immediately and provide the name(s) of suitable replacements.
2. Upon the DOH's request, the contractor shall provide the DOH with the resume(s) of the proposed replacement(s) and offer the DOH the opportunity to interview that person(s).
3. If the DOH is not reasonably satisfied that the proposed replacement has comparable ability and experience, the DOH shall notify the contractor within ten (10) business days after receiving the resume and completing any interviews, and the contractor shall propose another replacement for approval.
4. The process shall be repeated until a proposed replacement is approved by the DOH.
5. Key Personnel are those personnel who have primary responsibility for a discipline in either a managerial or technical role (i.e. data base administrator) based on their specific expertise in that discipline.
6. As part of this bid, the Bidder must identify Key Personnel for each of the following areas:
 - a. Project Manager
 - b. Implementation Manager
 - c. Day-to-Day Account Manager
 - d. System Manager
 - e. Developers/System Analysts/Programmers
 - f. Data Base Administrator
 - g. Testing Team

GENERAL ORGANIZATIONAL STRUCTURE AND OPERATIONS (Cont'd)

PROJECT TEAM REQUIREMENTS: (Cont'd)

- h. Quality Assurance/Quality Control Coordinator
- i. Help Desk/Call Center Manager
- j. Communications Expert
- k. Technical Writers
- l. Reporting/Data Coordinator

CONTRACT MANAGEMENT AND DEVELOPMENT:

For the implementation of the deliverables associated with this contract and for any new project or task, the initial project design/development meetings will be held with the contractor and DOH representatives at the DOH site in Troy, New York. The contractor is required to provide written meeting summaries/minutes. Meeting summaries/minutes are not considered final until approved by the DOH project manager or designee. Subsequent or follow-up design meetings may be held via conference call at the discretion of the DOH project manager. Appropriate contractor staff is required to be present at all on-site design meetings. Before starting production of the Official New York State Prescription forms, contractor must arrange for their representative to personally meet with DOH personnel in Troy, New York to discuss all aspects of the job and to view the composition and make-up of the present forms. DOH personnel must be notified at least 24 hours prior to press time to allow for the designated DOH representative to be press-side at start of run. The contractor is required to contact the designated DOH representative.

STANDARDS REQUIREMENTS/COMPLIANCE:

Contractor shall ensure compliance with all applicable DOH, New York State, and NYS Office for Technology standards. Contractor is responsible for keeping apprised of all such current standards. More information regarding these standards can be found at <http://www.cio.ny.gov>.

Also, the successful contractor will be required to meet the accessibility standards, which can be found at: <http://www.cio.ny.gov/policy/NYS-P08-005.pdf> and <http://www.cio.ny.gov/policy/NYS-P08-002.pdf>
Prospective bidders may also want to refer to the Cyber Security policy at: <http://www.dhss.ny.gov/ocs/resources/>

QUALITY ASSURANCE:

The contractor must adopt and maintain a quality assurance program to ensure continuous contract compliance. The contractor is required to monitor all of the day-to-day activities through an independent Quality Assurance function. This unit is charged with ensuring that all work has been performed according to State and DOH laws, regulations, policies and standards of performance. This unit is also expected, on an ongoing basis, to analyze, revise, develop and implement work processes within the contractor's operation to ensure more effective and efficient service for internal and external customers, and to improve organizational effectiveness. Contractor staff assigned to this unit is required to have separate accountability outside the specified departmental areas and to work cooperatively with State personnel to ensure implementation and maintenance of a high quality operation. Contractor must notify DOH of any quality control problems as they occur.

DISASTER PLAN:

As part of this contract, the contractor will be required to maintain and test annually a disaster recovery plan designed to minimize any disruption of the contractor's services. It is the sole responsibility of the contractor to maintain adequate backup to ensure continued automated and manual processing of services/transactions required to be conducted under this contract.

The contractor must have a facility, located separate and apart from the main facility where the Official NYS Prescription forms are being produced, available as part of a contingency plan for unforeseen interruptions in production at the main facility. This back-up facility must be capable of producing Official NYS Prescription forms at the quantity and exactly according to the specifications stated herein. All security features for document handling and for the technical environment of the main facility must be in place at this back-up location. The back-up location must be able to produce the Official NYS Prescription forms within 48 hours of the failure of the main facility.

GENERAL ORGANIZATIONAL STRUCTURE AND OPERATIONS (Cont'd)

DISASTER PLAN: (Cont'd)

The disaster recovery plan and procedures will at least provide for the following:

1. Assuming the loss of the contractor's primary processing or operational site, resumption of the processing of contractor's services within 48 hours;
2. Backup procedures and support to accommodate the loss of on-line communications between the contractor's processing site and the DOH. These procedures must specify an alternate location for back-up procedures;
3. A detailed file backup plan and procedures, including the off-site storage of crucial transactions and master files. The plan and procedures will include a detailed schedule for backing-up critical files and their rotation to an off-site storage facility. The off-site storage facility will also provide for comparable security of the data stored there, including fire, sabotage and environmental considerations;
4. The maintenance of current system documentation and source program libraries at an off-site location and at the DOH; and
5. The availability of the disaster recovery plan and procedures for review by DOH on request.

DISASTER RECOVERY TESTING:

The contractor shall routinely conduct disaster backup testing, to test the backup facility requirements as follows:

1. The contractor shall perform an initial disaster recovery test at the backup facility(s) secured within sixty (60) calendar days of the start of operations. A minimum of one (1) disaster recovery test shall be performed every twelve (12) months thereafter at the backup facility(s) secured by the contractor. The DOH shall have sole discretion in determining the extent of each of the disaster recovery tests.
2. At the option of the DOH, DOH personnel may be present during the disaster recovery tests to monitor the process and the results. Provision shall be made for DOH personnel to have access to the disaster recovery facility computer room. All test results must be made available to the DOH.
3. Formal written agreements shall be made for all disaster recovery services and shall be presented to the DOH for approval prior to execution. Any changes to these agreements must receive prior written approval of the DOH.

INTEGRATION:

The DOH requires a contractor that is capable and has the experience of not only undertaking the specific tasks identified in this IFB, but also integrating their operation with existing DOH operations to ensure that the DOH is provided timely, effective access and information needed to provide for the efficient management of the Official New York State Prescription Program. The bidder must provide the following information with bid submission regarding:

1. Bidder's operating systems utilized
2. Limitations regarding integration with other systems/vendors
3. Systems compatibility
4. Customization ability
5. Security/confidentiality protections
6. Technical staffing/support availability

TECHNICAL REQUIREMENTS

PRESCRIPTION ORDER FORM PRODUCT TYPES:

Official NYS Prescription Forms: forms consisting of all the different versions specified herein must be printed and ready for imprinting and held in secure storage no later than 45 days after the contract start date. The breakdown of the quantities of all the individual versions to be held in storage subsequent to the start of the contract will be as dictated below. The versions of prescription forms include one-part prescription pads, laser sheets (1-up and 4-up), thermal rolls, Intermec thermal rolls, two-part carbonless prescription pads, and serialized, secure, adhesive labels.

Item Description	Quantity on Hand (45 days from start of contract)	Average Minimum Anticipated Monthly Usage
Item 1 (One Part Prescription Pads-Practitioner and Institution)	25 Million	10 Million
Item 2 (Laser Sheets-1 up Version)	6.5 Million	2.5 Million
Item 3 (Laser Sheets-4 up Version)	2 Million	800 Thousand
Item 4 (Thermal Rolls)	2 Million	800 Thousand
Item 5 (Intermec Thermal Rolls)	750 Thousand	300 Thousand
Item 6 (Two Part Carbonless Form Pads)	125 Thousand	50 Thousand
Item 7 (Serialized Secure Label)	125 Thousand	50 Thousand

The contractor is required to have a minimum of 30,000,000 Official New York State Prescription forms in secure storage at all times for emergency orders that may be placed. After contract start date, the contractor will have up to 6 months to establish the emergency stock. At a minimum, the contractor must produce 1/6 of the emergency stock each month until the full amount has been produced.

Emergency stock shall not be reflected in the general inventory figures used by the contractor to meet its obligations under the provisions of the contract with the State. After contract award, the DOH will dictate the breakdown of the quantities of individual items to be held in secure storage. Emergency stock shall be replenished with 'new' prescription forms as required by the DOH.

The contractor will have the opportunity to exhaust their remaining inventory of Official New York State Prescription Forms through order fulfillment should it become necessary to transition to another contractor at a future date. At such time, the Reversion Process will be enacted whereby the current contractor, new contractor and DOH will work together to ensure the quantity of remaining emergency inventory is exhausted.

The contractor must be ready for imprinting for distribution to practitioners and institutions as directed by the New York State Department of Health (approximately 117,000 locations). Contractor will monitor storage and self-initiate the reorder point and report to DOH on a bi-weekly basis.

PROOFS:

Two sets of proofs, mailing container and paper samples for each product line are to be submitted for approval prior to production to Thomas Behanna and Anita Murray, NYS DOH, Bureau of Narcotic Enforcement (BNE), 433 River Street, Troy, NY 12180.

PRODUCTION TIMELINE:

Contractor must begin imprinting and shipping forms immediately upon the start of the contract **AS DIRECTED BY THE DOH AND UPON APPROVAL OF PROOFS**. The successful bidder must coordinate and collaborate with the DOH and the incumbent contractor to meet contract deliverables.

TECHNICAL REQUIREMENTS (Cont'd)

SHIPPING TIMELINE:

All forms must be shipped within three (3) NYS business days of receipt of orders from practitioners/institutions except "Rush Orders" as described herein.

ORDER PROCESSING:

The contractor must establish a system to directly receive, verify and process all manual orders for Official Prescription forms with original signature of the orderer only. Phone and facsimile orders are unacceptable. The contractor shall also include a method by which authorized prescribers, group practices and institutions may order Official Prescription forms via a secure web-based transmission process. Such systems shall be approved by DOH. The contractor must ensure that Official Prescriptions are only to be issued to authorized prescribers and institutions. Such authorization shall include a registration process by which DOH registers authorized prescribers/institutions. The method of order receipt, verification, and processing, as well as the different ordering methods and processes, must be approved by the DOH. All such systems, including all data associated with this contract, shall be housed and maintained in a secure environment as required under the Disaster Planning section herein. In 2010, approximately 50% of orders were submitted via secure web-based transmission and approximately 50% were submitted via manual order form.

The contractor must establish a web-based system for order processing that meets all applicable DOH, NYS Office for Technology, and other applicable New York State requirements. The contractor will provide appropriate staff to meet with both business analysts and information technology personnel assigned to DOH to discuss the requirements for the system in application development planning meetings at the DOH Troy, New York location. During the application development meetings, the business rules will be modified and refined to reflect business, as it will be handled in this new system. Prototypes of the system will be developed and shared with the DOH/IT staff. Once a design of the system has been accepted by DOH, the contractor will develop the actual software and business practices to ensure that all rules are met.

An electronic audit trail of orders requested, processed, fulfilled and shipped must be developed and available to DOH staff at all times within the contractor's web-based system.

ORDER PROCESSING DATA TRANSMISSION:

The contractor shall provide DOH with the order information in electronic format as stipulated by DOH.

SUSPICIOUS ORDERS:

Contractor must report all suspicious orders (orders which can be construed as non-routine) to DOH within the same business day.

RUSH ORDERS:

The contractor shall establish and maintain a web-based system capable of processing and shipping emergency orders overnight. Rush orders shall not be processed through the manual ordering system. Rush Order shipping preference must be available to the user for one or more products in the order. All additional applicable shipping charges for rush orders shall be borne by the institution, group or practitioner user placing said orders and all such charges shall be billed directly by the contractor to the institution or practitioner user's credit card. Rush orders not only pertain to shipping but must also be expedited through the printing process in the same business day as the order is placed. For rush orders placed Monday through Thursday and up until 2:00 PM on Friday, the order should ship within twenty four (24) hours of order placement. Rush orders received after 2:00 PM on Friday or the day before a NYS holiday must be shipped on the next regular business day.

RETURN OF PRESCRIPTION ORDER REQUESTS:

The contractor is responsible for returning incomplete, incorrect, or unauthorized requests for prescription product orders to the practitioner/institution with a letter of explanation.

TECHNICAL REQUIREMENTS (Cont'd)

ORDERING SYSTEM TIMELINE--DEVELOPMENT, TESTING AND IMPLEMENTATION:

The bidder must provide, as part of the response to this IFB, a high level plan and timeline detailing the development, testing and implementation of the ordering system. The manual and the web-based ordering systems must be tested and fully approved by DOH by March 1, 2012. (For additional information refer to the Acceptance Testing description as specified herein.)

ADDITIONAL SOLUTIONS:

Contractor has the responsibility to be continually informed of technical or process advancements and should present recommendations to DOH for implementation of such advancements in the DOH program.

In the event the contractor initiates, with DOH approval, any significant improvements in the design or operation of the System which results in reductions in expenses incurred by the contractor, the contractor must pass along these savings to the State.

CUSTOMIZATION OF PRACTITIONER PRESCRIPTIONS:

A practitioner is given control to customize certain information that can be contained on their prescriptions. Practitioner customization may only be performed through the web-based ordering system. This provides the ability for practitioners to list multiple practitioners and/or multiple practice locations on prescription forms. These are referred to as Group Practice Prescriptions. A practitioner can be in multiple groups. A practitioner or group practice can have up to four locations printed. Ordering practitioners maintain their own group practice list and the contractor's web-based system must be capable of saving the list on the practitioner's profile. The system must be able to check that each practitioner on that list is on the DOH registration/profile list and is able to receive prescription forms.

- Group Practice List - The contractor's system must provide for a list of practitioners who will be imprinted on any variable product ordered, allowing up to 10 practitioners to appear on the prescriptions. The contractor's system must allow for users to ADD, RESEQUENCE and REMOVE other practitioners who are also registered within the system. The contractor's system must have the ability to prohibit registered physician assistants from placing an order unless linked to a supervising physician who is also registered.
- Other Practice Locations - The contractor's system must allow practitioners to maintain a list of addresses and allow up to 4 of these addresses to be imprinted on any variable product ordered. The contractor's system must allow for users to ADD, REMOVE, RESEQUENCE and MODIFY practice locations.

INITIATION OF CUSTOM IMPRINTING:

Custom imprinting of the Official NYS Prescription forms in black ink for ITEMS 1 and 6, as specified in the Official New York State Prescription Forms Requirements section herein, will be required for each practitioner, group practice or institution. Printing will include name, street, city, state zip code, telephone number, NY State Education Department license number, National Provider Identifier number (NPI) and the United States Drug Enforcement Agency (DEA) number (at the practitioner's option) of the practitioner(s) or institution as requested. The address imprinted on the prescriptions must be an address layout and font size approved by DOH. All Official New York State Prescription products require numbering and barcoding in accordance with specifications herein.

TECHNICAL REQUIREMENTS (Cont'd)

PRODUCTION CONTROL SPECIFICATION AND SPECIAL DELIVERY REQUIREMENTS:

All requested prescription forms must be shipped within three (3) NYS business days of receipt of order. Delivery must be made to the address approved by the DOH. Orders which are not delivered shall be handled as detailed in the section titled "Returned Prescriptions". Guaranteed delivery will be considered in making contract award.

Forms shall be shipped via courier which provides a "protective signature service," or the contractor may make direct shipment from their facilities by "For Hire" carrier or contractor's truck, provided shipment is made in locked vans and such vans are not left unlocked or unattended while making pickups and deliveries. Delivery may also be made by contractor's automobiles under similar security and delivery requirements. A printer's manifest must accompany the shipment. A record of delivery must be maintained by the contractor and shall consist of the name of the practitioner/institution, prescription serial numbers, date of delivery, and the name/signature of the person receiving the delivery.

Bid must be accompanied by a full explanation of the security precautions which the manufacturer proposes to employ within their facilities and organization to protect the State against unlawful production of the forms. Bidder must designate the means by which they propose to guard against the loss of forms during the process of manufacture, storage, imprinting and delivery to designated recipients. Contractor shall guarantee that only one copy of each serially numbered set will be produced. **NO DUPLICATE OR MISSING NUMBERS ARE ACCEPTABLE.**

The State reserves the right to enter contractor's premises without advance notice at any time to inspect methods of production, storage and handling of forms, and full compliance with all provisions of the Specifications and Purchase Order.

Bidders shall also submit with their bid, details of their system for the immediate disposal of all damaged or mutilated forms. Failure to submit the preceding may be sufficient reason for rejection of bid.

Before making an award, representatives of the DOH will inspect the contractor's facilities to be used for printing of these forms including the paper stocks proposed, and the storage and imprinting areas.

TRACERS:

Contractor is responsible for tracing orders not received, claims filed for non-receipt, and providing credit to DOH for the cost of orders not received. For orders not older than 3 months, tracers should be initiated by the contractor within 24 hours. Contractor is responsible for providing DOH with a written report within 24 hours of contractor becoming aware of orders not received by the requestor.

RETURNED PRESCRIPTIONS:

The contractor is responsible for tracking all prescriptions that have been returned to the contractor as being undeliverable or that contain errors. The contractor must maintain a record of all returned prescriptions and shall report such serial numbers, the date of delivery, and the name of the practitioner/institution, to DOH. All prescriptions that have been issued containing errors shall be replaced to the practitioner/institution in a manner approved by DOH. When the contractor receives prescriptions that have been returned as being undeliverable, they shall notify the practitioner/institution that placed the order in a manner approved by DOH. All suspicious incidents involving returned prescriptions, as well as prescriptions that were lost in delivery, must be immediately reported to DOH within the same business day as the incident was identified by the contractor. Prescriptions containing errors or otherwise deemed undeliverable must be destroyed by the contractor in a manner approved by DOH and such serial numbers shall be reported to DOH.

TECHNICAL REQUIREMENTS (Cont'd)

CONTRACTOR COMPLIANCE AND RESPONSIVENESS:

The selected contractor is required to be in compliance with the contract requirements at all times. When issues arise that cause an issue that is specifically detrimental to the success of the Official NYS Prescription Program, those issues must be addressed in a timely fashion as described below. Failure to address issues may result in damages or penalties.

ISSUE (INCIDENT) MANAGEMENT:

The purpose of Issue Management is to ensure that any concerns recognized during the contract period are addressed in a timely manner and do not go unresolved until they become major problems. The contractor must employ an Issues Management process to record, assign and track issues to resolution. Each issue on the issues list must be allocated to an owner. It is crucial that the owner of any issue agrees to ownership and is empowered to respond to the specific issue being assigned to them. The date of assignment and any needed resolution date should also be identified. It is also essential that realistic dates are agreed upon for achieving resolution.

ESCALATION OF ISSUES (INCIDENTS):

Any issue that has a potentially significant negative impact upon the contract or where the required actions are overdue should be escalated to the contractor's Project Manager or DOH's Official Prescription Program manager or above. If the issue fails to be resolved between Project Managers, the Contract Manager must be made aware of the issue, the need for resolution and any negative impacts the issue has for the NYSDOH and the success of the Official NYS Prescription Contract.

There are various situations within this contract where the BNE can elect to invoke financial penalties for issues that severely impede the production and shipment of the Official NYS Prescription Forms.

INCIDENT PRIORITY:

There are three levels of incident priority that will be used by DOH to report issues to the contractor or to prioritize issues that have been brought to the attention of either DOH or the contractor by the Practitioners, Institutions, DOH Programming staff, Call Center staff or any other entity that is impacted by the performance of the system.

1. Critical - issues are those which preclude the system from continuously operating in the successful placement of orders and the successful printing and shipping of one or more types of Official NYS Prescription Forms.
2. Major - issues are those which preclude the DOH processes from successfully completing due to errors caused by the contractor provided data or the failure to provide such data.
3. Minor - issues are those which cause errors that are intermittent, non-critical or nuisance but do not impede to normal production or processing of either DOH or the contractor responsibilities.

RESPONSE TO INCIDENTS:

It is expected that the Contract Project Manager or such designee will respond to the issues immediately upon email receipt and assure the receipt and logging of all incident in an issues log. Once an issue has been logged and acknowledged each of the staff listed on the issue need to be informed of the progress and expected repair time.

1. Critical - These errors must be fixed within ONE business day as they affect the ordering or shipping of Official NYS Prescription Forms.
2. Major - These errors must be fixed within ONE week of the first reporting instance.
3. Minor - These errors must be fixed within ONE month of the first reporting instance.

TECHNICAL REQUIREMENTS (Cont'd)

LIQUIDATED DAMAGES:

It is acknowledged that the contractor's failure to ship prescription forms, within seven (7) New York State recognized business days of receipt of any order by contractor provided by the contract documents, will cause the State to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the State of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the contractor agrees that liquidated damages may be assessed and recovered by the State as against contractor and its Surety, in the event of contract non-compliance and without the State being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore contractor shall be liable to the State for payment of liquidated damages in the amount of One Thousand Dollars (\$1,000) for each day per incident that delivery is delayed beyond the contract time as adjusted for time extensions provided by the contract documents. In instances where prescription forms are unavailable for shipment (i.e., stock out), the contractor shall be liable to the State in the amount of Five Thousand Dollars (\$5,000) for each day, per item (product type). Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and contractor shall pay them to the State without limiting State's right to terminate this agreement for default as provided elsewhere herein.

CALL CENTER REQUIREMENTS:

STRUCTURE & EQUIPMENT

1. A toll-free centralized Call Center supported and managed by the chosen contractor is a business requirement.
2. For security and legal reasons, the Call Center must operate within the United States.
3. Required hours of operation are Monday through Friday 8:00am to 5:00pm Eastern Time.
4. The Call Center generally averages 200 calls per day, but must be equipped to receive and service 2,000 calls per day during peak periods if necessary.
5. Call Center equipment must have extensive tracking and reporting capabilities including Calls Offered, Calls Answered, Calls Abandoned, Average Speed of Answer, Average Talk Time, Call Reason, Call Resolution and Call Monitoring.
6. Contingency plans for equipment or service failure must be in place to ensure a maximum outage period of no more than 4 hours.
7. Call Center staff must have computer equipment capable of accessing the web-based ordering system, so that customer calls can be adequately serviced.
8. Call Center facility must have electronic locks and facility access must be controlled and audited at least annually.

STAFFING

1. Thoroughly trained staff are required to manage telephone activity.
2. Additional resources are required to adjust for peak periods. 85% of calls must be answered within 20 seconds and have an abandon rate of less than 2.5%.
3. Staff required to perform at a minimum all of the following:
 - a. Field inbound and outbound calls acting similar to a help desk.
 - b. Provide order status updates.
 - c. Provide shipment tracking information.
 - d. Perform electronic order entry for any orders not keyed directly into the system by end users.

TECHNICAL REQUIREMENTS (Cont'd)

SECURITY REQUIREMENTS:

GENERAL

1. Bid must be accompanied by a full explanation of the precautions that the bidder proposes to employ within their plant, organization or an any area where the prescription forms may be manufactured or reside to protect NYS against unlawful production of the forms.
2. Bidder, as part of this bid, must designate the means by which they propose to guard against the loss of forms during the process of manufacture, storage, imprinting and delivery to designated recipients.
3. Contractor shall guarantee that only one copy of each serially numbered set will be produced. NO DUPLICATE OR MISSING NUMBERS ARE ACCEPTABLE.
4. DOH reserves the right to enter contractor's premises without advance notice at any time to inspect methods of production, storage and handling of forms, and full compliance with all provisions of this document.
5. Bidders shall also submit with their bid, details of their system for the immediate disposal of all damaged or mutilated forms. Failure to submit the preceding may be sufficient reason for rejection of bid.
6. Before making an award, representatives of the DOH will inspect the contractor's facilities to be used for printing of these forms plus the paper stocks proposed, plus the storage and imprinting areas.

PERSONNEL

1. All new hires and temporary employees must pass a background investigation and a drug screening test.
2. All information system privileges are promptly terminated at the time an employee ceases to provide services to the company.
3. All visitors, contractors and temporary employees must enter the building through the front lobby, sign in and receive an electronic badge that must be worn at all times.
4. All visitors and contractors must be accompanied at all times when in the building.

DOCUMENT SECURITY

1. All negotiable documents associated with this program must be stored in a secure room or caged area with restricted access at all times. Access to the secure room requires electronic controlled access consisting of proximity card and keypad with assigned pin number.
2. Sensitive material waste must be kept in locked carts with coded security seals for removal to secure destruction area of the facility. Separation of duties must be in place for the waste destruction of sensitive material.
3. All samples and test documents on secure materials must be properly "voided" before being distributed outside the production process.
4. During the process of printing, handling, imprinting, packaging and distribution, the contractor shall provide an area of limited access for security purposes.
5. All printing and imprinting plates must also be stored in a secured area in a locked safe for the duration of the contract period, and/or be destroyed after use at the direction of the.
6. A Plate Log must be maintained.
7. A Destruction Record for Plates must be maintained.
8. Building security must include controlled access with two forms of security, as described above. The security system employed must be subject to unannounced inspections by the DOH.
9. The self-contained production area must be monitored by a dedicated camera 24 hours a day, 7 days a week. Digital image recordings must be archived on a secure hard drive within the system for a minimum period of 100 days. The recordings must be at a minimum rate of 15 frames per second. All information being stored on the computer/server must be secured and meet DOH security standards for DOH database or files.
10. All areas must be accessible to a 3rd party independent quality control contractor selected by the DOH. The quality control contractor may also make unannounced/unscheduled visits to verify the security and operational aspects mandated by the DOH are being employed. The contractor will address all issues brought forth by the quality control contractor and by the DOH.
11. Plant security must include digital camera surveillance of the entire production facility. Cameras should be strategically located around the plant interior and exterior with all entrance and exit points monitored. Surveillance cameras must be color. Digital images must be archived for a minimum period of 100 days. Supervisory personnel must have the ability to monitor activities via live video and access archived video through the control equipment.

TECHNICAL REQUIREMENTS (Cont'd)

SECURITY REQUIREMENTS: (Cont'd)

TECHNICAL ENVIRONMENT/COMPUTER SECURITY

1. Robust encryption management process for managing data transfers both internally and externally must be in place.
2. Back up data must be secured at all times and must be maintained off site.
3. Back up data must be tested to ensure recoverability and procedures must be in place to request/approve restoration of data from back up.
4. If requested, prospective bidders must provide a current Statement of Auditing Standards (SAS) No. 70 formal audit report or equivalent audit report with auditor opinion for the primary production facility.
5. All systems must be equipped with password protected screen savers.
6. All systems must be protected by anti-virus software.
7. Unique user-ID must be established for every individual needing to access computer systems.
8. User ID's must be administered from a central networking group.
9. Systems must electronically enforce ID password changes every 60 days.
10. Test data must be managed with procedures that protect security and confidentiality.
11. Formal incident response program must be in place.
12. All access must be restricted to a centralized network area with appropriate firewall and virus protection.
13. All network connections from an external network (e.g. web-based) must be made through a centrally administered access point (dual firewalls) that ensures only authorized users and information packets come in contact with internal systems associated with this program.

BUSINESS RULES:

Please note that a full set of business rules will be provided to the chosen bidder, but for security reasons only a high level synopsis of the required system functionality is provided herein. The four main areas that the contractor will be required to address include: User Configuration/Profile Setup Specifications, Ordering process, Inventory Management Specifications and System Management/Interfaces.

MANDATORY APPLICATION STANDARDS (S04-001):

The NYS Office of Cyber Security & Critical Infrastructure Coordination has specific rules on communications and web page development protocols that must be adhered to by State offices and any entity that does development on behalf of NYS. Refer to Standards Requirements/Compliance section.

SYSTEM USER ROLE REQUIREMENTS:

System User Roles are needed to streamline certain types of users into specific system features and present applicable script products. System must be able to support the following user roles and the different workflows of each of these roles.

PRACTITIONER USER

1. A user currently licensed by the New York State Education Department to practice medicine in the State of New York.
2. Must be registered and verified by BNE as a practitioner doing business at a location in NYS.
3. This user has access to products and system features not available to the Institution.
4. This user is validated based on license number and DEA number (if one is on file).

INSTITUTION USER

1. An employee granted authority to order prescription products by the licensed medical facility by which he or she is employed.
2. This user has access to products and system features not available to the Practitioner.
3. This user is validated based on a shared key and a unique identifier.

ALTERNATE USER

1. A DOH Health Commerce System (HCS) user who has been granted permission to act on behalf of a Practitioner by the Practitioner User.
2. The contractor must capture all alternate HCS identifications as part of the Practitioners profile setting.
3. This user has very limited ability to make changes to key input data for the practitioner or institution he or she is working on behalf of.
4. This user is validated based on validation of the practitioner's license number and DEA number of the associated practitioner.

TECHNICAL REQUIREMENTS (Cont'd)

SYSTEM USER ROLE REQUIREMENTS: (Cont'd)

ORDER ADMINISTRATOR

1. User who has the authority to place orders on behalf of Practitioner and Institution Users.
2. Team members in the Call Center of the chosen contractor, as well as selected BNE staff, would fill this role. This user does not go through additional validation steps after the connection request has been deemed valid.

NEW YORK STATE ADMINISTRATOR

1. The only user with authority to change controlled input data (i.e., Shipping Address, DEA Number, NPI).
2. Team members in the Bureau of Narcotic Enforcement must fill this role.
3. This role has few limitations, but certain activities or changes will result in a log being created and reported.
4. This user does not go through additional validation steps after the HCS connection request has been deemed valid.

CONFIGURATION ADMINISTRATOR

1. The only user role with authority to assign NYS Administrator and Order Administrator roles and view/change other system wide settings.
2. This user cannot under any circumstances have access to create, read, update, or delete Practitioner, Institution, Order, Confirmation or Call Center information of any kind.

GROUP REQUIREMENTS:

The contractor is required to set views and ordering parameters of available prescription forms for specific user groups, based on DOH pre-determined permissions. Contractor software must be capable of altering the workflow of a specific system user role based on membership in specific groups. This capability must be dynamic to match the business environment and the ever-changing regulations and laws in the State of New York. The ability for ordering of certain prescription form products are controlled by practitioner level permissions. The following types of forms are currently controlled by these permissions: 2 part, laser sheets (4-up), intermec rolls and labels. Currently there are only two groups in the practitioner portion of the system, the basic group and the two-part scripts group, and two groups in the institution portion, the basic group and the Intermec product group. (An ordinary practitioner cannot order two-part scripts until they are added to the two-part script group.) The system must have the ability to allow for additional practitioner or institutional groups in the future.

APPLICATION SECURITY AND EXTERNAL INTERFACE REQUIREMENTS:

1. The contractor's software system must be capable of accepting and managing secure connections from the DOH HCS.
2. Only outside connections from the DOH HCS system shall be accepted, all other external requests must be rejected.
3. All connections originating outside the contractor's facility will be in the form of HTTPS form post containing a token encrypted using Triple-DES. For security reasons, the specific contents and structure of the information included in the token formulated by the DOH HCS system will only be provided to the chosen contractor. Bid responder should assume that user role is clearly indicated and used consistently.
4. Auto Login Functionality will be used when the user successfully enters the DOH HCS. The user will **not** be prompted to enter a subsequent user ID and password once the connection is passed to the contractor's system.
5. The contractor's system must inspect the inbound, encrypted connection to determine logon information. Based on the contents of the encrypted connection the contractor's system will validate the user based on License Number, DEA Number, Account Status (active/inactive) and the status of the User Profile Information. All Practitioner and Institution Users must enter the ordering system via this logon process.
6. User connections originating within the chosen contractor's facilities must provide a user ID and password before access is permitted. Only the Order Administrator and Configuration Administrator roles can connect in this manner.
7. The bidder must submit password policies and password creation guidelines with the bid response for review and approval by the DOH Security Unit.
8. All Practitioner, Institution and Alternate users must access the chosen contractor's software via the DOH HCS.
9. The process of registering and gaining permission to access the DOH HCS system will be managed by the DOH at no direct expense to the chosen contractor.
10. The contractor should expect between 2,000 and 10,000 connections daily.

TECHNICAL REQUIREMENTS (Cont'd)

INPUT DATA VALIDATION:

Input data must be validated to ensure it is correct and appropriate. The checks performed on the client side must also be performed at the server to ensure data integrity. Checks will be performed on all data fields unless specified otherwise for a specific field. The following controls must be available and implemented in the system:

1. Dual input or other input checks to detect the following errors.
2. Out-of-range values.
3. Invalid characters in data fields.
4. Missing or incomplete data.
5. Exceeding upper and lower data volume limits.
6. Unauthorized or inconsistent control data.
7. Contractor must provide documentation of manual and automated procedures for responding to validation errors.
8. Contractor must provide procedures for testing the plausibility of the input data.

COMMUNICATION/DATA INTERFACE REQUIREMENTS:

Each business day, the contractor must retrieve profile account information about all practitioners and institutions that were added or changed during the current business day. This information will be available in an electronic format on DOH HCS. The contractor will be provided a detailed field mapping and the associated exception processing that must be performed as part of the business rules. The contractor's software must handle exception processing and must ensure all records are either transacted successfully or a report of failures sent back to the New York State Department of Health in the same business day.

Each business day, the contractor must upload profile account information that was changed by practitioners on their profile during order processing. This information must be uploaded daily by the contractor in an electronic format to the DOH HCS. The contractor will be provided a detailed field mapping of those data fields that are able to be updated by the practitioner on the ordering site as part of the business rules.

Each business day, the contractor must upload order file information containing all orders that were entered and the corresponding information on filling those orders. This information must be uploaded daily by the chosen contractor in an electronic format to the DOH HCS. The contractor will be provided a detailed field mapping of those data fields that are able to be updated by the practitioner on the ordering site as part of the business rules.

The contractor must provide a secure computer communication link such as a web address between the DOH and the contractor, separate from the ordering system, designed to allow NYS Administrative staff access to view the status of all information regarding orders. The information displayed, as well as the communication system, shall be customized to meet the needs of the DOH in the monitoring the status of all orders placed by practitioners, contractor staff or NYS Administrators. This access will be read only and will provide up to date information reports based on date, prescription form type and status of orders.

USER PROFILE REQUIREMENTS:

Every Practitioner or Institution user connecting to the contractor provided software must be linked to a unique profile. Order Administrator and New York Administrator are not required to have profiles in the contractor provided software, but these roles must have authority to work on behalf of Practitioner and Institution users.

1. Practitioner Profile data consists of information that is relative to each individual Practitioner who will be ordering or receiving imprinted prescriptions. The information includes, but is not limited to, license number, DEA number, NPI number, ship-to-address that includes name and title, telephone number, fax number, email address, profession code, specialty codes if applicable, other practice locations and other practitioners they may want to be included on the imprinted prescriptions, as well as two free-form text lines that will be imprinted above the practitioner's name.
2. Institution Profile data consists of information that is relative to each Institution that will be ordering or receiving imprinted prescriptions for their practitioners. The information includes, HCS Institution identification number, the institution status, two facility name lines, primary address, telephone number, fax number, email address, an "Attention" line, as well as other facility locations and other practitioners they may want to be included on the imprinted prescriptions, as well as two free-form text lines that will be imprinted above the institution's name.

TECHNICAL REQUIREMENTS (Cont'd)

ORDER MANAGEMENT REQUIREMENTS:

The system must provide robust management information capabilities to the user such as Viewing Order History, Searching for an Order by various elements, Display of Previous Order Details including a PDF proof of the prescription layout, as well as the flexibility to place a Reorder based on any past order that is still viewable on the system. Previous Order History must be made available for a minimum of 2 years.

1. Order History - the system must be capable of maintaining order history for each Practitioner, Institution, Alternate and DOH user. The system must present the user with a list of orders that can be sorted by order date, order number, or order status. A search engine should be deployed as part of the order history feature that allows user to search for an order by the above criteria. When an order is selected from the order history page, the details of the order should be presented. Details should include the prescription numbers associated with that order, shipping tracking number and estimated delivery date and the visible PDF proof of the actual order.
2. Order Search - a search engine should be deployed as part of the order history feature that allows user to search for an order by the above criteria. Users must have the ability to search based on order date, prescription numbers, tracking number, and order status.
3. Ordering Approval Queue - the system shall provide a means by which DOH office staff can control the current day's orders. The system must provide a standalone system not tied to a practitioner or profile and must be robust enough in scale and content to allow flexibility in setting ordering limits based on criteria the DOH would deem acceptable. The system will provide the DOH staff with the ability to modify or reject the orders queued based on the criteria set. An email notification containing suitable contact information will be forwarded to the practitioner or institution in question with an informative message that may be configurable and must be approved by the DOH as to why an order was amended or rejected.
4. Order Detail - when an order is selected from the Order History Page, the details of the order should be presented including the prescription numbers associated with that order, shipping tracking number and estimated delivery date and the visible PDF proof of the actual order script information that was printed as part of the associated order.
5. Reorder - the user must have the ability to place a reorder for any order still active in the Order History Page. All business rules, especially those relating to active practitioners and account status, need to be reapplied to any new order placed via the Reorder functionality.

ORDER PROCESS REQUIREMENTS:

At a minimum the following System functionality is required in the processing of prescription orders:

1. List of Products – the system will present the user with a method by which they can view a visual presentation of products that are available for ordering based on the users group and role settings. An order may consist of one or more prescription form items.
2. Order Quantity - allow for User/Practitioner to specify order quantity for each respective Item. System limits may be set by the DOH for minimum and maximum order quantities. The order limits must be fully customizable and maintainable by the DOH with no charge for alterations. Currently, there are no maximum limits on the number of items that can be ordered. However, there can be limits set on the total number of prescription forms that can be ordered at any given time.
3. DEA Number Printing – when allowed, the user must have the ability to select the option of having their DEA number imprinted on their prescription pads. (This option is available for web-based ordering only.)
4. View Proof – for all prescription form products the contractor must display a proof to users that accurately represents the appearance of the final product.
5. Shopping Cart - system must maintain a shopping cart that includes all products that have been selected and tailored by the user as described herein.
6. Check Out Process - once all products have been ordered, the user should be directed to a Check Out process. The check out process must provide the user with the tracking information and estimated delivery date for their order. Any practitioners listed on the prescription, including the ordering practitioner, must receive a notification via email.

TECHNICAL REQUIREMENTS (Cont'd)

PRODUCT NUMBERING REQUIREMENTS:

1. The bidder must explain as part of their bid response how they will ensure every prescription provided to a practitioner or institution in the State of New York will be uniquely numbered (regardless of product type).
2. Duplicate, missing, or skipped numbers are not acceptable.
3. Disposition of all prescription form numbers utilized during production must be accounted for and reported to the DOH.
4. Product numbering must be automated to minimize the potential for errors.
5. Product numbering must support the base 31 numbering algorithm that has been designed by DOH. The algorithm will be shared with the chosen contractor.

INVENTORY CONTROL REQUIREMENTS:

The contractor must provide within their system and facility for a complete Inventory Control Management System. This would include allocation of serialized numbers across all prescription products, movement of prescription product inventory within the contractor warehouses and contractor facilities, reporting to DOH on the disposition of each the serialized numbers, tracking prescription product returns and cancellations of products that have already consumed serialized numbers.

1. The contractor must develop a complete inventory control system for the allocation, tracking and reporting of serial numbers and ranges. This system must also contain the location/disposition of the script product such as in stock, emergency warehouse stock or returned stock. The disposition must be reported to DOH in a format currently in use by DOH as dictated in the business rules.
2. The contractor must be able to provide a report of all prescription serial numbers and the disposition of any serial number when requested by DOH.
3. There can be no gaps in serial numbering allocations within the prescription preparation process.
4. There can be no duplicate, missing or skipped numbers. The disposition of each script number must be reported to DOH. No gaps in script serial numbers are permitted.
5. Each number must be accounted for and the disposition reported in the format currently in use by DOH as dictated in the business rules.
6. The numbers (ranges) allocated to each product must be reported to DOH in an agreed upon format and frequency.
7. The prescription product numbering must be automated.
8. The prescription product numbering must be in the same format currently employed by DOH and is a base 31 numbering scheme.
9. The contractor must develop an automated system to track returns and destruction of prescription products.
10. All products returned to the contractor must be reported to DOH with an appropriate reason code. The serialized numbers must be provided in the format set forth in the business rules.
11. Customized prescription products (Items 1 and 6) that are returned must be destroyed in an agreed upon manner and timeframe as set forth by DOH.
12. EMR products (Items 2,3,4,5 and 7) that are returned **unopened and undamaged** must be held in the secure returned stock inventory and reallocated to a subsequent order.
13. If product is returned, it must be kept separate from normal stock in a secure area until such time as returns for a prescription product type have amassed to the level that can be used for filling daily orders.
14. DOH must be contacted and approve the use of returned stock prior to the contractor using any of this stock to fill orders. DOH reserves the right to inspect the returned stock prior to the release to ensure it meets DOH standards for re-use.
15. While returned stock is being used to fill orders, the contractor's system cannot also use in stock prescription products due to invoicing issues.
16. An order cannot be filled with both in stock and returned stock prescription information (no split shipments from in stock and returned stock can occur).

TECHNICAL REQUIREMENTS (Cont'd)

ORDER REPORTING REQUIREMENTS:

1. Currently DOH receives order information in three parts, Order Reports, Confirmation Reports and Tracking Reports. This allows DOH to ensure that all orders placed are subsequently accounted for in the printing and shipping processes. These reports should represent **all** of the previous business day's activity.
2. Order Reports consist of information pertaining to the placement of an order, such as the name of the person who placed the order, the method used to place the order, all order specific information printed on the prescription such as practitioner's name, the practice address(es), the date the order was placed, the type of product ordered and the quantity of product ordered.
3. Confirmation Reports consist of information pertaining to the printing of the order such as the prescription numbers assigned to the order and the date the prescription forms were actually printed and shipped.
4. Tracking Reports consist of information pertaining to the shipment of the order, such as the address to where the prescriptions are shipped and the tracking number. This information may be used the DOH, a practitioner, the chosen contractor or the shipper to track the order in the instance failed or delayed delivery.
5. Each business day, the chosen contractor must provide the DOH specific information about all products ordered the previous business day, printed the previous business day and all products shipped the previous business day.
6. This information will be sent in an electronic format via the DOH (HCS) secure web site.
7. Specific details on the required Order, Confirmation and Tracking information will be given to the chosen contractor as part of the business rules.

INVOICING/PAYMENT:

1. Invoicing will occur on a monthly basis by the 15th of the month with the format to be determined by DOH.
2. An invoice shall be sent to DOH for the prior month's shipped products (products on order, but not shipped shall not be invoiced or paid).
3. A single invoice will be presented by product type for the number of prescription forms shipped in the invoice month. A total price will be calculated for all product types for the month. These totals will be verified by the DOH prior to payment
4. Payment will be based on the total number of prescription products shipped to the ultimate user.

DOCUMENTATION:

1. The contractor will be responsible for fully documenting the System in an electronic format using either third party software that can be read and utilized by the DOH, or will, at the contractor's cost and approval by the DOH, provide all necessary software to permit the DOH to fully utilize the files in the format provided. The documentation will be based on the contract implementation plan as agreed to by the contractor and the DOH.
2. The contractor will develop a detailed Technical Design Document (TDD) based on the System requirements set forth in the bid within the time frames required. The TDD will include:
 - a) Detailed system overview including an overview of key processes.
 - b) Technical architecture description including system hardware and software requirements.
 - c) List, description and specifications of programs.
 - d) List, description and specifications of job streams.
 - e) Data flow diagrams at all levels of system operation.
 - f) List and description of parameter data.
 - g) List, description, and layout of files.
 - h) List of reports, report layouts, and specifications.
 - i) List of screens, screen layouts, and specifications.
 - j) Finalized data elements dictionary (including edit criteria and key fields specified).
 - k) Error message descriptions.
 - l) Security and internal control descriptions.
 - m) Functional requirements cross reference list.
 - n) Communications System Design - The contractor will provide a complete detailed description of the communications system to be utilized.

TECHNICAL REQUIREMENTS (Cont'd)

DOCUMENTATION: (Cont'd)

3. As part of the acceptance testing process, the contractor will provide the DOH with a copy of the complete documentation including, but not limited to, the following items:
 - a) Functional requirements list,
 - b) TDD,
 - c) Help desk user manuals,
 - d) System change list.
4. The contractor will make such revisions as are deemed necessary by the DOH to conform with the terms of the bid, and provide the DOH with a copy of any revised documentation at no additional charge throughout the term of the contract.

ACCEPTANCE TESTING:

1. Testing Methodology -The contractor will provide to the DOH a description of the procedures utilized to test the System and a description of the methods used in System testing which must at least meet the DOH's own testing standards.
2. Develop Test Data -The contractor will develop and document a comprehensive test data file that will test every aspect of the system before it is presented to the DOH. Where appropriate, automated tools for testing will be utilized.
3. Conduct Acceptance Testing - The contractor will set up and demonstrate an operating version of the system configuration at a location selected by the DOH. The system will be demonstrated to representatives of the DOH and the DOH's Quality Control Contractor. The demonstration(s) is intended to assure that the system operates in the way that was agreed with the contractor in the initial phases of discussion involving the functional requirements and to familiarize the DOH staff with the operation of the system. This operating system will:
 - a) Be used by the contractor to demonstrate all aspects of the system.
 - b) Be stress tested, using test files devised by the contractor that are of sufficient volume, and diversity and appropriately dated to clearly demonstrate portions of the system sensitive to date and System activity including any processing required at the end of the day, end of month, and end of year.
 - c) The contractor will incorporate any revisions as are deemed necessary by the DOH so that the system conforms to the bid.
 - d) If revisions are necessary, the DOH may require additional rounds of preliminary acceptance testing and further revisions until successful completion of the preliminary acceptance testing.
 - e) Upon successful completion of preliminary acceptance testing, the DOH shall certify that the preliminary acceptance testing has been completed. Such certification will not preclude the DOH from requiring the contractor to make additional corrections that may be necessary to resolve problems (for example, internal inconsistencies) identified as a result of the further testing provided for elsewhere in this bid and system operation.

CHANGE CONTROL:

Any changes in software should be reported to the DOH regardless of the severity of the change. Contractor should detail how version control is performed on software changes, as well as how documentation on changes will be supplied to DOH.

TECHNICAL REQUIREMENTS (Cont'd)

REVERSION PROCESS:

This Deliverable consists of a reversion plan and reversion process which must be approved by the DOH.

REVERSION PLAN:

1. The contractor will provide a Reversion Plan detailing how the System could be turned over to the DOH or to another specified contractor at the end of the contract period or when such a change is warranted.
2. The Reversion Plan will:
 - a) Provide for an orderly and controlled transition to either the DOH or to a successor contractor;
 - b) Be designed so there is no disruption of processing and services provided to the medical community;
 - c) Provide for the transfer to the DOH of the following State purchased items:
 - i. Documentation,
 - ii. Data,
 - iii. Test data, and
 - iv. Procedures including Help Desk Procedures.
 - d) Develop and provide a specific plan to detail the cut off and transition of prescription form numbering.
 - e) Provide for the destruction of all duplicate data or materials deemed to be confidential remaining in the contractor's possession at the end of the contract; and
 - f) Provide turnover training for the successor contractor's management in the operation and maintenance of the System.

REVERSION PLAN IMPLEMENTATION:

1. The contractor will set all aspects of the Reversion Plan in place and will certify that the plan is ready for use at any time upon approval of the Reversion Plan by the DOH.
2. The DOH will, as part of its routine monitoring of contractor performance, review contractor preparations for possible reversion.

OFFICIAL NEW YORK STATE PRESCRIPTION FORMS GENERAL REQUIREMENTS

ESTIMATED QUANTITY:

An estimated minimum of 14,500,000 forms per month of all the different Items specified herein will be required. The DOH estimates that a minimum of 348,000,000 forms cumulatively of all the different Items listed herein will be required during the course of the two-year contract term. The DOH will dictate the design of the form for each respective item. Base printing must be done on an offset printing press and NOT by means of laser, ink jet or toner type reproduction. Chosen contractor must produce the following products and have the capability to produce new product lines or modify existing products as EMR requirements for practitioners or institutions change.

PRODUCT REQUIREMENTS:

The following specifications apply to all Items.

SECURE STOCK:

All controlled security paper utilized in the production of the Official New York State Prescription Forms must be manufactured under tightly controlled security conditions, restricted in its use and distribution, and not readily available on the open market. Bidders must supply a list of the built in security features contained in their proposed security paper as part of this bid.

NUMBERING/BARCODING:

The contractor shall adhere to the current base 31 numbering scheme that has been developed and employed in the current contract period. Numbering sequence should begin where the previous contractor left off. The numbering scheme shall include a code 3 of 9 barcode and be in a format that can be easily data entered by the dispensing pharmacy and shall be approved by DOH.

A unique man readable consecutive number (Alphanumeric) and matching linear barcode (code 3 of 9) must be applied to each individual prescription form in an established numbering scheme approved by DOH. The contractor selected must be able to guarantee no duplicate numbers across the entire range of product types (7 Items described herein). Each individual prescription must have a unique number and matching code 3 of 9 barcode printed in black. Forms held in storage for New York State shall be consecutively numbered/barcoded in fluorescent ink to facilitate inventory accountability by the contractor.

COMPOSITION:

Contractor will be required to set all new copy on each prescription design. There are multiple versions that require design. Placement of design elements and security features must be consistent across all versions. A safety VOID pantograph background is required on each design except Item 7. The document shall include substantial protection against reproduction by color copiers. Preferred methods include darker and lighter gradually changing tones that provide significant color copy protection across a full range of copier settings. The word "VOID" shall appear on any copies made across a wide variety of copier settings. Lighter tones should appear in areas intended for data entry to permit easy reading of information without comprising copy protection. The contractor will be required to add or revise prescription security features throughout the contract to guard against chemical washing of forms. Security features must reveal an attempt to alter forms by the use of chemicals and solutions, including but not limited to acetone, gasoline, turpentine, ink remover, ethanol, isopropyl alcohol. Such features may include the creation of hidden text message or other enhancement as required by the DOH. Samples of forms produced by prospective bidder incorporating this feature must be submitted with the bid for performance testing prior to awarding the contract.

OFFICIAL NEW YORK STATE PRESCRIPTION FORM GENERAL REQUIREMENTS (Cont'd)

REORDER FORMS (DOH 250):

Three (3) different versions of practitioner, institutional (Item 1) and two-part (Item 6) reorder forms will be required. One reorder form must accompany each shipped order.

Stock: 20# xerographic bond in colors specified by DOH.

Size: 8-1/2" x 11", no bleeds.

Presswork/Ink: Prints black ink front and back.

Variable Information: Reorder forms to be personalized with individual practitioner's/institution's applicable contact information.

Perforation: a full horizontal perforation is required.

SHIPPING CONTAINER:

All forms shall be wrapped in a secure manner suitable for shipping, as approved by DOH. All packaging must be of such strength, substance and construction suitable for shipping. Contractor to set all type required to imprint containers with carton sequence numbers including return address of contractor and phrase "NOT A SAMPLE".

HISTORICAL ORDERING AND SHIPPING INFORMATION:

Historical Information for Estimation Purposes**
Shipment and Ordering of Forms

Item Description	Item 1	Item 2	Item 3	Item 4	Item 5	Item 6	Item 7
	One-Part Prescription Pads	Laser Sheets-1 Up	Laser Sheets-4 Up	Thermal Rolls	Intermec Thermal Rolls	Two-Part Carbonless Pads	Serialized Secure Labels
Package Size	100 forms	500 sheets/ream	500 sheets/ream	500 forms/roll	500 forms/roll	50 forms	1,000 labels
Minimum Order	100 forms	2,000 forms	2,000 forms	2,000 forms	2,000 forms	100 forms	2,000 labels
Average Order	1,500 Practitioners 3,900 Institutions	4,600	9,800	4,100	31,000	1,400	24,200
Most Common Order Number (Mode)	2000	2,000	2,000	2,000	2,000	2,000	20,000
Single Order Max (Estimate)	2000 Practitioners 25,000 Institutions	20,000	20,000	24,000	300,000	2,000	80,000
2010 Orders	68,511 Practitioners 3,470 Institutions	6,368	861	2,100	113	393	22
2010 Total Forms Ordered	106,435,000 Practitioners 13,419,700 Institutions	29,706,000	8,118,000	8,880,000	3,210,000	651,600	510,000

**Not a guarantee of forms to be ordered and purchased

OFFICIAL NEW YORK STATE PRESCRIPTION FORM SPECIFICATIONS

ITEM 1 - ONE PART PRESCRIPTION PADS (TWO TYPES - PRACTITIONER & INSTITUTION):

PRODUCT CUSTOMIZATION:

Note that this item contains individual personalized information printed by the contractor for individual practitioners and institutions. This product must be imaged using an ink jet process. A toner process is unacceptable and will be rejected. (See section entitled "Initiation of Custom Printing" for details.)

SIZE: 4-1/4 "x 5-1/2" overall, no bleeds.

PERFORATIONS: Not Applicable

STOCK:

24 Lb. white controlled security paper containing invisible eradicator sensitive ink that shows a "VOID" or equivalent printed pattern if chemical tampering or alteration is attempted using a broad range of chemicals. A simple stain is not sufficient. Stock samples must be submitted with bid for testing.

PRESSWORK/INK:

FRONT

Prints 3 colors (black plus colors to be specified by DOH BNE including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy VOID Pantograph as described under COMPOSITION. There shall also be a tamper evident coating containing a hidden void feature. Under normal conditions, the feature is invisible. An erasure/abrasion attempt will activate the coating and the word VOID will appear.

BACK

Prints 3 colors (gray, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed at a 45 degree angle. This feature also fluoresces green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled.

CONSTRUCTION/BINDERY:

Pads are edge glued in sets of 100 prescriptions for shipment to practitioners and institutions across New York State. A verification cover sheet and a chipboard backer are required for each pad.

PACKAGING:

Prescription forms must be bundled for shipping in a secure manner to maintain integrity and to protect forms from loss.

OFFICIAL NEW YORK STATE PRESCRIPTION FORM SPECIFICATIONS (Cont'd)

ITEM 2 - LASER SHEETS (1-UP VERSION):

SIZE: 8-1/2" x 11", no bleeds.

STOCK:

24 Lb. white controlled security paper containing invisible eradicator sensitive ink that shows a "VOID" or equivalent printed pattern if chemical tampering or alteration is attempted using a broad range of chemicals. A simple stain is not sufficient. Stock samples must be submitted with bid for testing.

PERFORATIONS:

Laser cross perforations (full horizontal & full vertical) divide each sheet into 4 equal sections that measure 4-1/4"x 5-1/2". Perforations must be compatible with a laser printing environment; the paper must feed effectively and operate trouble-free across a wide range of laser devices by various manufacturers. Note that only one prescription form will be printed in only one section of the 8-1/2" x 11" sheet (upper left quadrant of the sheet).

PRESSWORK/INK:

FRONT

Prints 3 colors (black plus colors to be specified by DOH including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy VOID Pantograph as described under COMPOSITION. An additional coating is required on the face to insure toner adhesion to the paper. This feature is commonly referred to as "toner grip" or "laser lock".

BACK

Prints 3 colors (gray, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed at a 45 degree angle. This feature also fluoresces green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled.

CONSTRUCTION/BINDERY: Not applicable.

PACKAGING:

Prescription forms must be wrapped for shipping in a secure manner to maintain integrity and to protect forms from loss.

OFFICIAL NEW YORK STATE PRESCRIPTION FORM SPECIFICATIONS (Cont'd)

ITEM 3 - LASER SHEETS (4-UP VERSION):

SIZE: Four individual 4-1/4" x 5-1/2" forms up on an 8-1/2" x 11" sheet, no bleeds. Each individual form has its own number and barcode.

STOCK & PRESSWORK/INK:

All specifications the same as Item 2.

PERFORATIONS:

Laser cross perforations (full horizontal & full vertical) divide each sheet into 4 equal sections that measure 4-1/4"x 5-1/2". Perforations must be compatible with a laser printing environment the paper must feed effectively and operate trouble-free across a wide range of laser devices by various manufacturers.

CONSTRUCTION/BINDERY: Not applicable.

PACKAGING:

Prescription forms must be wrapped for shipping in a secure manner to maintain integrity and to protect forms from loss.

OFFICIAL NEW YORK STATE PRESCRIPTION FORM SPECIFICATIONS (Cont'd)

ITEM 4 - THERMAL ROLLS:

SIZE: Individual form size is 4-1/4 "x 5-1/2", no bleeds.

STOCK:

A heavy weight, high sensitivity, direct thermal paper grade with an average basis weight of 20.4 lbs. (76.8 grams/m²). The thickness should be an average of 3.26 Mils (82.8 Microns). The grade should have an enhanced coating design with resistance to reasonable environmental conditions, such as 24 hour immersion in water. The grade should provide a clear, dark image that is consistent and suitable for high quality bar code imaging. The optimum activation temperature at 194+/- 9 degrees F (90 +/- 5 degrees C) should result in a density reading of 1.3 ODU. The thermal grade should have an image stability or archivability rating such that after imaging with reasonable storage, the image will remain human readable for a minimum of 10 years. Stock samples must be submitted with the bid for testing.

PRESSWORK/INK:

FRONT

Prints 3 colors (black plus colors to be specified by DOH including a friction activated ink.). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy VOID Pantograph as described under COMPOSITION.

BACK

Prints 4 colors (gray, black, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed at a 45 degree angle. This feature also fluoresces green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled. Two timing marks are also printed in black ink on the back of each individual prescription.

PERFORATIONS: Not applicable.

CONSTRUCTION/BINDERY:

This is a direct thermal roll product that requires winding 500 prescriptions on each roll. Scripts are wound on a roll that utilizes a 1" plastic core. A core made of cardboard or other material is not acceptable. In addition to the 500 prescriptions on each roll, each roll will also contain two printed leader sheets for loading purposes. These leader sheets must not contain serial numbers or barcoding.

PACKAGING:

Rolls are to be individually wrapped in a manner that will sufficiently protect the integrity and long term viability of the rolls and then rolls are packed and bulk shipped in cartons.

OFFICIAL NEW YORK STATE PRESCRIPTION FORM SPECIFICATIONS (Cont'd)

ITEM 5 - INTERMEC THERMAL ROLLS:

SIZE: Individual form size is 4-1/4" x 5-1/2", no bleeds.

STOCK:

A heavy weight, high sensitivity, direct thermal paper grade with an average basis weight of 20.4 lbs. (76.8 grams/m²). The thickness should be an average of 3.26 Mils (82.8 Microns). The grade should have an enhanced coating design with resistance to reasonable environmental conditions, such as 24 hour immersion in water. The grade should provide a clear, dark image that is consistent and suitable for high quality bar code imaging. The optimum activation temperature at 194+/- 9 degrees F (90 +/- 5 degrees C) should result in a density reading of 1.3 ODU. The thermal grade should have an image stability or archivability rating such that after imaging with reasonable storage, the image will remain human readable for a minimum of 10 years. Stock samples must be submitted with the bid for testing.

PRESSWORK/INK:

FRONT

Prints 3 colors (black plus colors to be specified by DOH including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy VOID Pantograph as described under COMPOSITION.

BACK

Prints 4 colors (gray, black, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed at a 45 degree angle. This feature also fluoresces green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled. A timing mark that extends horizontally across the back of each script is printed in black ink.

PERFORATIONS: Not applicable.

CONSTRUCTION/BINDERY:

This is a direct thermal roll product that requires reverse winding of 500 prescriptions on each roll. Prescriptions are wound on a roll that utilizes a 1" plastic core. A core made of cardboard or other material is not acceptable. In addition to the 500 prescriptions on each roll, each roll will also contain two printed leader sheets for loading purposes. The leader sheets must not contain serial numbers or barcoding.

PACKAGING:

Rolls are to be individually wrapped in a manner that will sufficiently protect the integrity and long term viability of the rolls and then rolls are packed and bulk shipped in cartons.

OFFICIAL NEW YORK STATE PRESCRIPTION FORM SPECIFICATIONS (Cont'd)

ITEM 6 - TWO-PART CARBONLESS FORM:

PRODUCT CUSTOMIZATION:

Note that this item contains individual personalized information printed by the contractor for individual practitioners and institutions. This product must be imaged using an ink jet process. A toner process is unacceptable and will be rejected. (See section entitled "Initiation of Custom Printing" for details.)

SIZE: 4-1/4" x 5-1/2", no bleeds.

STOCK:

Part 1 - Minimum of 20 lb White CB carbonless bond. The paper must contain an invisible coating that stains when bleach is applied.

Part 2 - Minimum of 20 lb Canary CF carbonless bond.

PRESSWORK/INK:

FRONT:

Part 1 prints 3 colors (black plus colors to be specified by DOH including a friction activated ink). The friction activated (thermochromic) ink on the face should be printed in blue and should change color or disappear when warmed (reacts to body heat). It should return to its original color (blue) when cooled. Must also contain color copy VOID Pantograph as described under COMPOSITION. An additional coating is required on the face to insure toner adhesion to the paper.

BACK:

Part 1 prints 3 colors (gray, white fluorescent & a friction activated ink). "Enhanced" Laid lines - unevenly spaced and sized diagonal lines printed in gray ink across the back of each prescription. The back shall also contain an artificial watermark printed in white or transparent non-penetrating ink, which is visible to the human eye when viewed at a 45 degree angle. This feature also fluoresces green under a black light. A friction activated (thermochromic) ink must be present in several locations on the back of each prescription. The ink shall be printed in orange and should change color or disappear when warmed (reacts to body heat). It should return to its original color (orange) when cooled. The back of Part 2 is unprinted.

NUMBERING:

A press or crash numbering methodology may be utilized to apply the crash numbering to part 2.

PERFORATIONS: Not applicable.

CONSTRUCTION AND BINDERY:

Pads are edge glued in sets of 50 two-part prescriptions for shipment to practitioners and institutions across New York State. A chipboard or tag stock backer is required for each pad and is to be fan glued to the back of each pad. An additional chipboard or tag stock insert (size 4-1/4" x 5-1/2") is shipped with each pad. Since these are carbonless 2-part pads, the chipboard or tag stock insert will be used to prevent writing through to other ply(s) when completing forms. An instruction sheet printed one color black describing how to use the chipboard or tag stock insert must also accompany each shipment. In lieu of a separate instruction sheet, the inserts themselves may contain written instructions on their use

PACKAGING:

Prescription forms must be bundled for shipping in a secure manner to maintain integrity and to protect forms from loss.

OFFICIAL NEW YORK STATE PRESCRIPTION FORM SPECIFICATIONS (Cont'd)

ITEM 7-SERIALIZED SECURE LABELS:

SIZE: Individual label size is 3/4" x 2"

LABEL STOCK:

Self adhesive stock is comprised of the following components from top to bottom: Face, Adhesive, Release Coating and Liner. Stock samples must be submitted with the bid for testing.

PERFORATIONS: Label liners must contain a fold after each 6th label to allow for an accordion fold.

FACE:

Must be a film based material in which a serial number and barcode are imprinted. The face must also contain a pharmacist test area containing thermochromic ink. Prints 1 color (black). The friction activated (thermochromic) ink should be printed in blue and must change color or disappear when warmed (reacts to body heat). It should return to color (blue) when cooled.

ADHESIVE: The adhesion type must be permanent as it is applied to paper.

RELEASE COATING: Silicone or equivalent as approved by the DOH .

LINER:

A film material or equivalent as approved by the DOH. Must be perforated between each label.

CONSTRUCTION AND BINDERY:

The labels must be produced in sheet format containing only one column. After each 6th label, a fold must occur at the perforation in the liner to form an accordion folded packet. Package size is 1000 labels. Minimum ordering quantity is 2000 labels.

PACKAGING:

Prescription forms must be bundled for shipping in a secure manner to maintain integrity and to protect forms from loss.

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

OFFICIAL NEW YORK STATE PRESCRIPTION FORM

Including applicable reorder forms for Items 1 and 6 (as described herein)

NOTE: Bidder should insert the price per unit specified and the price extensions, not to exceed two decimal places for each item

	Estimated Quantities (Two Years)	Unit Price	Total
ITEM 1: ONE-PART PRESCRIPTION FORMS (100 forms per pad - minimum order is 1 pad) Quote Price Per Pad of 100	240,000,000 Forms (2,400,000 Pads)	\$_____/Pad	\$_____
ITEM 2: LASER SHEETS (1-UP VERSION) (1 form per sheet - 500 sheets per ream) (Minimum order - 2,000 forms) Quote Price Per Ream	60,000,000 Forms (120,000 Reams)	\$_____/Ream	\$_____
ITEM 3: LASER SHEETS (4-UP VERSION) (4 forms per sheet - 500 sheets per ream) (Minimum order - 2,000 forms) Quote Price Per Ream	19,200,000 Forms (9,600 Reams)	\$_____/Ream	\$_____
ITEM 4: THERMAL ROLLS (500 forms per roll – minimum order is 2,000 forms) Quote Price Per Roll	19,200,000 Forms (38,400 Rolls)	\$_____/Roll	\$_____
ITEM 5: INTERMEC THERMAL ROLLS (500 forms per roll – minimum order is 2,000 forms) Quote Price Per Roll	7,200,000 Forms (14,400 Rolls)	\$_____/Roll	\$_____
ITEM 6: TWO-PART CARBONLESS FORMS (50 form sets per pad - minimum order is 2 pads) Quote Price Per Pad of 50	1,200,000 Forms (24,000 Pads)	\$_____/Pad	\$_____
ITEM 7: SERIALIZED SECURE LABELS (1000 labels per accordion folded packet - 2 packets per order) (Minimum order - 2,000 labels) Quote Price Per Thousand Labels	1,200,000 Labels	\$_____/M	\$_____

GRAND TOTAL BID: \$_____

Guaranteed Delivery: _____

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Bidder

Brand Name of Security Paper to be furnished:

Manufacturer of Stock:

Built In Security Features:

Brand Name of Carbonless Bond to be furnished:

Manufacturer of Stock:

Brand Name of Thermal Roll Stock to be furnished:

Manufacturer of Stock:

Brand Name of Label Stock to be furnished:

Manufacturer of Stock:

Will these items be printed by the company named
on the front page of this bid?

_____ YES _____ NO

City and State of Plant where items will be printed:

Do you guarantee no missing numbers?

_____ YES _____ NO

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
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Bidder

NOTES TO BIDDERS:

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

- Has Bidder completed the New York State Vendor Responsibility Questionnaire
- If Bidder completed the questionnaire online, has Bidder certified or recertified the Vendor Responsibility Questionnaire no more than six (6) months prior to the bid opening date?
- Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B, OGS General Specifications.
If "NO", please explain on a separate sheet.
- Does bidder offer Electronic Access Ordering (EDI)?
- If awarded a contract, will bidder accept the New York State Procurement Card for orders up to \$15,000.00?
- Additional discount for purchases made with NYS Procurement Card.
- Bidders are advised that their legal business name listed herein should be the exact legal business name of their company and should match the name associated with the bidder's Federal Identification Number (FEIN). This information should be consistent throughout the bid. Has the bidder listed their exact legal business name where requested and is this information consistent throughout all of the bid documents?
- Person or persons to contact for processing New York State contract orders:

_____ YES, filed online
or
_____ YES, paper copy attached

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ %

_____ YES _____ NO

Name: _____
Title: _____
Telephone Number: _____
Toll Free Telephone Number: _____
Fax Number: _____
Toll Free Fax Number: _____
E-Mail Address: _____

PLEASE USE BLACK INK OR TYPEWRITER WHEN
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Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

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

_____YES _____NO

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

_____YES _____NO

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

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

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

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

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

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

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

_____YES _____NO

"Small Business Concern" means a business which:

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

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

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Bidder

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

5. **PLACE OF MANUFACTURE OF PRODUCT(S) BID:**
(Indicate Yes or No for either A, B or C)

A. All NYS Manufacture

_____YES _____NO

B. All Manufactured outside NYS

_____YES _____NO

C. Manufactured In NYS and Outside NYS

_____YES _____NO

If yes to C above, Location (State) where more than
half the value is added to the product(s) bid:

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

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

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)

SEAL	NEW YORK STATE OFFICE OF GENERAL SERVICES-PROCUREMENT SERVICES SUBSTITUTE FORM W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATIONS										
<i>TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.</i>											
Part I: Vendor Information											
1. Legal Business Name	2. If you use a DBA, please list below										
3. Entity Type (Check one only) ☐ Sole Proprietor ☐ Partnership ☐ Limited Liability Corporation ☐ Business Corporation ☐ Unincorporated Association/Business ☐ Federal Government ☐ State Government ☐ Public Authority ☐ Local Government ☐ School District ☐ Fire District ☐ Other											
Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type											
1. Enter your TIN here: (DO NOT USE DASHES) <table border="1" style="display: inline-table; width: 150px; height: 30px; vertical-align: middle;"> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table>											
2. Taxpayer Identification Type (check appropriate box) ☐ Employer ID No. (EIN) ☐ Social Security No. (SSN) ☐ Individual Taxpayer ID No. (ITIN) ☐ N/A (Non-United States Business Entity)											
Part III: Address											
1. Physical Address: Number, Street, and Apartment or Suite Number	2. Remittance Address: Number, Street, and Apartment or Suite Number										
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country										
Part IV: Exemption from Backup Withholding and Certification											
For payees exempt from Backup withholding, check the box below. Valid explanation required for exemption. See instructions. ☐ Exempt from Backup Withholding The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding. Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN). Sign Here: <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; text-align: center;"> _____ Signature </td> <td style="width: 50%; text-align: center;"> _____ Date </td> </tr> <tr> <td style="width: 33%; text-align: center;"> _____ Print Preparer's Name </td> <td style="width: 33%; text-align: center;"> _____ Phone Number </td> <td style="width: 33%; text-align: center;"> _____ Email Address </td> </tr> </table>		_____ Signature	_____ Date	_____ Print Preparer's Name	_____ Phone Number	_____ Email Address					
_____ Signature	_____ Date										
_____ Print Preparer's Name	_____ Phone Number	_____ Email Address									
Part V: Contact Information - Individual Authorized to Represent the Vendor											
Vendor Contact Person: _____	Title _____										
Contact's Email Address: _____	Phone Number: () _____										
DO NOT SUBMIT FORM TO IRS - SUBMIT FORM TO NYS OFFICE OF THE STATE COMPTROLLER											
FOR OSC USE ONLY											

IFB CHECKLIST

Pursuant to the bid requirements, the following information is to be provided with bid submission. Failure to provide the following will delay the evaluation of your bid and may result in rejection of your bid.

1. Provide a summary description [two (2) pages maximum] of the bidder's organizational structure. See ORGANIZATIONAL STRUCTURE – Pg 13.
2. Identify Key Personnel. See PROJECT TEAM REQUIREMENTS – Pgs 13 and 14.
3. Provide information detailing integration of bidder's operations with existing DOH operations. See INTEGRATION – Pg 15
4. Provide a high level plan and timeline detailing the development, testing and implementation of the ordering system. See ORDERING SYSTEM TIMELINE-DEVELOPMENT, TESTING AND IMPLEMENTATION – Pg 18 and CALL CENTER REQUIREMENTS – Pg 21.
5. Bid must be accompanied by a full explanation of the security precautions which the manufacturer proposes to employ within their facilities and organization to protect the State against unlawful production of the forms. Bidder must designate the means by which they propose to guard against the loss of forms during the process of manufacture, storage, imprinting and delivery to designated recipients. Bidders must also submit details of their system for the immediate disposal of all damaged or mutilated forms. See PRODUCTION CONTROL SPECIFICATION AND SPECIAL DELIVERY REQUIREMENTS – Pg 19 and SECURITY REQUIREMENTS – Pgs 22 and 23.
6. Bidders must submit password policies and password creation guidelines with the bid response for review and approval by the DOH Security Unit. See APPLICATION SECURITY AND EXTERNAL INTERFACE REQUIREMENTS – Pg 24.
7. Bidders must submit an explanation of how they will ensure every prescription provided to a practitioner or institution in the State of New York will be uniquely numbered (regardless of product type). See PRODUCT NUMBERING REQUIREMENTS – Pg 27.
8. All controlled paper utilized in the production of the Official New York State Prescription Forms must be manufactured under tightly controlled security conditions, restricted in its use and distribution, and not readily available on the open market. Bidders must supply a list of the built in security features contained in their proposed security paper. See SECURE STOCK – Pg 31.
9. Bidders must submit samples of forms produced by prospective bidder incorporating the VOID pantograph with the bid for performance testing prior to awarding the contract. See COMPOSITION – Pg 31.
10. Bidders must submit stock samples of proposed stocks for ITEMS 1-7 – See Pgs 33 - 39.

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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.

Page 2 of 4 ST-220-TD (5/07)

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)

Schedule A - Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration In Progress

Column A - Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B - Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C - Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D - ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E - Sales tax ID number - Enter only if different from federal EIN in column D.

Column F - If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Page 4 of 4 ST-220-TD (5/07)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
COUNTY OF _____ } SS.:

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:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- 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).

Page 2 of 2 ST-220-CA (6/06)

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 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.

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.

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Need Help?



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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually

agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **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 and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies,

equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of

the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will

indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX B
GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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

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

resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

15. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or

factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner.

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

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

a. "Public Works" and "Building Services" - Definitions

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

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

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

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

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

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

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

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

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

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

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

Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

18. TAXES

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

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

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

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

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

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

21. PRODUCT REFERENCES

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

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

22. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or

recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

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

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

24. PRICING

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

b. Net Pricing Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. "No Charge" Bid When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid "no charge" on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. Third Party Financing If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.

f. Best Pricing Offer During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

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

(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, the date Contractor

lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

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

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

25. DRAWINGS

a. Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

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

additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

27. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase 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-responsive.

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

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

TERMS & CONDITIONS

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

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

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

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

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

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

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

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

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

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed

order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

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

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

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

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

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

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of

the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

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

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

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

47. SHIPPING/RECEIPT OF PRODUCT

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

b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the

Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

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

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

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

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

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

52. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be

performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PARTS / COMPONENTS

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

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

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

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

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment

of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

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

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

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

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

60. TERMINATION

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

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

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

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

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

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

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

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

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

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

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

that continued performance of the Contract would result in a substantial loss.

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

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

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

63. DEFAULT – AUTHORIZED USER

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

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

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

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

64. INTEREST ON LATE PAYMENTS

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

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

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

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

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

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

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

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

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

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

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim

or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the

Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Authorized User and secure a continuance to permit the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

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

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

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

interest in any trademark, trade name, or service mark is granted hereunder.

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

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

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

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

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

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

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

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

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional

license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

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

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

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

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as

authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

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

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

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

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

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

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

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

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

2. Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed

Product”), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner’s standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User’s satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User’s Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV’s owner’s standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

(ii.) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor’s business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee (“Trustee”) as collateral where required by the terms of the financing agreement. Trustee’s sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee’s rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee’s rights in such Licensed Product shall terminate immediately and Authorized User’s prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User’s sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

e. Contractor’s Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV’s standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor’s sole cost and expense.

82. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer’s certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

83. PRODUCT VERSION Purchase Orders shall be deemed to reference Manufacturer’s most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

84. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor

ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.

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

85. NO HARDSTOP/PASSIVE LICENSE MONITORING

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37

I N D E X

	<u>Paragraph</u>		<u>Paragraph</u>
<u>A</u>	<u>No.</u>	<u>M</u>	<u>No.</u>
Additional Warranties	72	Modification of Contract Terms	40
Advertising Results	20		
Applicability	1	<u>N</u>	
Assignment	56	No Hardstop/Passive License Monitoring	85
Assignment of Claim	66		
Audit of Licensed Product Usage	80	<u>O</u>	
Authentication of Facsimile Bids	10	On-Site Storage	54
		Ownership/Title to Project Deliverables	81
<u>B</u>		<u>P</u>	
Bid Contents	12	Participation in Centralized Contracts	39
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Bid Opening	7	Performance/Bid Bond	58
Bid Submission	8	Prevailing Wage Rates Public Works & Building Services Contracts	17
		Pricing	24
<u>C</u>		Procurement Card	27
Changes to Product or Service Offerings	84	Product Acceptance	79
Clarification/Revisions	31	Product Delivery	45
Confidential/Trade Secret Materials	14	Product References	21
Conflict of Terms	4	Product Substitution	50
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Contract Billings	62	Products Manufactured in Public Institutions	23
Contract Creation/Execution	38	Prompt Payment Discounts	32
Contract Term - Renewal	71	Proof of License	82
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