



**Request for Proposals (RFP) 14-002
for**

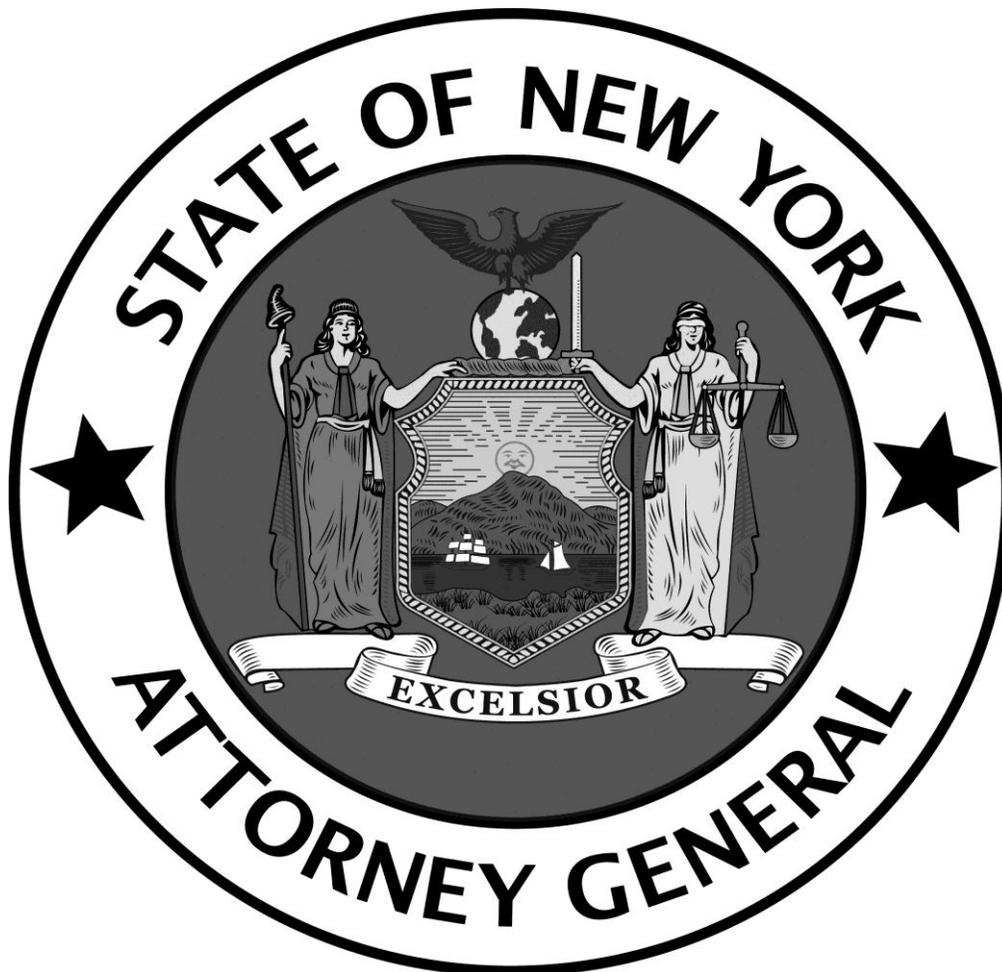
IT Personal Services

Issue Date: July 18, 2014

Due Date: August 28, 2014 by 4:00 PM*

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

**ERIC T. SCHNEIDERMAN
Attorney General**



Receipt of these proposal documents does not indicate that the NYS Department of Law, Office of the Attorney General, has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the proposal opening and will be based on our evaluation of your proposal submission compared to the specific requirements and qualifications contained in these proposal documents. Vendors currently providing these services to the OAG must respond to this RFP to receive consideration for award. We look forward to the receipt of your proposal.

(NOTE: This is a re-bid of RFP #13-006; and all bids received for that RFP are hereby cancelled)

***This is bid submission due date; bid opening date is scheduled for September 3, 2014.**

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APPENDIX B NOTES

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

Paragraph 63.a. – Limitation of Liability; which shall now read as follows:

Contractor's liability for a 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 times the amount of charges specified in the Task Assignment (said amount not to exceed a total of twelve (12) months charges payable under the applicable Task Assignment); or (ii) \$100,000; whichever is greater.

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

Paragraph 10 – Prevailing Wage Rates

The following Appendix B clauses are hereby clarified for the purposes of this solicitation:

1) Paragraph 9.b. – Confidential/Trade Secret Materials (Commissioner of Authorized User)

The contractor must guarantee protection of all confidential information that they may obtain from the OAG.

2) Paragraph 17.f. – Best Pricing Offer

If your company becomes a qualified contractor for the OAG, and participates in the Task Order (Mini-Bid) Process, you will have to offer your "best pricing" which doesn't exceed your ceiling (maximum) hourly rates for the candidates you offer on a given task order.

3) Paragraph 47.a. – Termination For Cause

State law does require the non-breaching party take reasonable steps to mitigate its damages and that both parties to the contract operate in good faith.

1. INTRODUCTION

1.1 Bid Overview

The issuing agency is the New York State Department of Law, Office of the Attorney General, Budget & Fiscal Management Bureau (OAG-BFMB). The service resulting from this bid will provide for OAG offices throughout the State of New York. The OAG has two main objectives: (1) to obtain professional, high quality services, and (2) to consolidate, streamline, and reduce the cost of existing services. The resulting contracts will also replace current agency contracts in place and due to expire on December 31, 2014.

The OAG seeks proposals from qualified bidders to establish multiple award standby agreements for information technology and analysis services. Through this bid solicitation, the OAG seeks to augment its resources and increase its capacity to support critical projects identified by OAG management. Bidders that are awarded contracts as a result of this bid solicitation will be deemed "qualified contractors."

This bid solicitation is similar to the OAG's immediate previous RFP #08-011 and #13-006, which were also not the same as MASA-type contracts previously available from the NYS Office of General Services (OGS). 1) It must still be processed as formal Request for Proposal (RFP), as the previous OGS IT Services contract allowing for Mini-Bids, Fast Track solicitations and issuing Project Definitions expired on 12/31/2012. 2) The Task Order (Mini-Bid) Solicitation process still mandates State Comptroller's Office approval before the selected candidate may begin working with the OAG. In prior arrangements, this step was not required at all – the candidate could start working immediately upon being chosen by the OAG for the given Task Assignment.

The OAG does not intend to use the OGS Hourly-Based IT Services (HBITS) contracts. The OAG is not under the auspices/control of the Governor's Office; therefore, not obligated to use the HBITS contract. We were invited to consider it, but we are not mandated to utilize it. As such, we are planning to only use contracts resulting from this bid solicitation, and it will only be for use by the OAG.

The awards will be to multiple bidders in each of six (6) categories of services: Development; Operations; Integration; Database/Application Server Administration; User Services; and Management & Analysis. These are the same categories as used on the preceding contracts. Since the OAG will contract with multiple bidders, it is not necessary for a bidder to provide services in all categories. A bidder may elect to bid on one, a few or all of the six (6) categories, as each bidder's submission on each individual category will be evaluated on its own merits, and not together with other categories.

This bid solicitation will permit OAG to contract with a pool of qualified vendors who will be eligible to participate in the secondary Mini-Bid Process (Task Order solicitation), to select candidates from a pool of qualified contractors. The Mini-Bid Process is described under Task Order Process. The Task Order solicitation will allow for the procurement of analytical/ consultant/programming support services. During the Task Order solicitation, all qualified contractors in the requested categories of services will be solicited to offer candidates at their “best and final” price, at or below the ceiling rates in their contract. The majority of position assignments will be based in Albany and New York City, and if any travel is required at any time, it will only be minimal (infrequent) travel between Albany/Troy and New York City.

This bid solicitation outlines the terms and conditions, and all applicable information required for submitting a bid. Bidders should pay strict attention to the bid timeline below to prevent disqualification.

1.2 Bid Timeline Events

Issue Date:	July 18, 2014
Bidder Submission Questions/Inquiries Deadline:	July 28, 2014
OAG Issuance to Questions/Inquiries Released:	July 31, 2014
RFP Bid Due Date:	August 28, 2014 @ 4:00 PM
(Note: Bids must be postmarked prior to this date/time or received by the OAG prior to this date/time)	
RFP Bid Opening Date:	September 3, 2014 @ 2:00 PM
Projected approval date for Contract Awards:	November 1, 2014
Task Order Solicitation (Mini-Bid) Commences:	November 2, 2014

Pre-Bid Conference

There will be no pre-bid conference scheduled as part of this Request for Proposals.

Bid Opening:

This is a public function and bidders can attend if so desired; however, we can only reveal the names of the bidders. We are not allowed to share any other information during the bid opening.

1.3 Designated Contact

In compliance with the Procurement Lobbying Law, the following is the PRIMARY contact for this solicitation and may be reached by e-mail, voice or fax for all inquiries regarding this solicitation. **Contacting anyone else other than designated herein may result in rejection of bid.**

Ron Wachenheim, *Contract Management Specialist 2*
NYS Office of the Attorney General
Budget and Fiscal Management Bureau
State Capitol
Albany, NY 12224-0341
Telephone: (518) 486-6669; Facsimile: (518) 473-1852
E-mail: ron.wachenheim@ag.ny.gov

In the event that the PRIMARY designated contact is not available, the alternate designated contact is:

Pamela Harrington, *Contract Management Specialist 1*
NYS Office of the Attorney General
Budget and Fiscal Management Bureau
State Capitol
Albany, NY 12224-0341
Telephone: (518) 402-2273; Facsimile: (518) 473-1852
E-mail: pamela.harrington@ag.ny.gov

2. BID QUESTIONS AND BID SUBMISSION

2.1 RFP Questions/Inquiries and/or Clarifications

All questions/inquiries and/or clarifications concerning this bid solicitation shall be addressed to the Office of the Attorney General (OAG) designated contact whose name appears in Section 1.3 – Designated Contact. All questions should be submitted in writing, citing the particular bid section and paragraph number. 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.

Questions/inquiries and/or requests for clarification **are only accepted via e-mail and in writing** and should be submitted to the following email address with the subject line of “Bid 14-002 Question/Inquiry”: purchase@ag.ny.gov. Official answers to questions will be provided via addendum and posted to the OAG website: <http://www.ag.ny.gov/budget-fiscal/procurement>. Deadline for submission of questions will be as stated in Section 1.2 – Bid Timeline Events.

2.2 Bid Format and Content

Bidders must follow the format set forth herein and must provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid. **Bidders must supply one (1) magnetic media (such as CD, DVD or USB Flash/Thumb Drive) and one (1) hard copy proposal containing an original copy of all documents listed below for their bid submission to be considered to be complete.** All material shall be clipped together, but in a manner to allow for ease of paper separation in evaluating proposals. Do **not** assemble bids any other way (i.e. spiral binding, post strips, etc.).

⇒ **Proposal Response Cover Form.** The form must be completed in its entirety and a bidder representative authorized to make contractual obligations must sign the Proposal Response Cover Form. By signing the Proposal Response Cover Form, the **bidder understands and agrees to all the terms and conditions contained in this RFP and will comply with all the provisions of this RFP and appendices attached herein.** Furthermore, should the contract be awarded to your company, you would be prepared to begin services on November 1, 2014.

⇒ **Bidders must describe their capabilities to provide the services requested in this Solicitation by providing the following:**

- A. **Executive Summary:** An overall strategy describing the Bidder’s understanding of the requirements presented in this bid solicitation, the State’s approach and how the Bidder can assist the State in accomplishing this effort. Include a statement explaining how the Bidder is qualified to perform IT staff augmentation services. In addition, the Overall Strategy shall describe the range of services generally provided, name the individual authorized to submit responses to the State’s Task Order Award proposal(s), and include a statement that the individual signing the signature pages is authorized to bind the company.
- B. **Corporate Structure details:** A description of the bidder’s corporation and structure, the unit(s) responsible for delivering the products/services required herein and their position in the corporate structure.
- C. **Response to Requirements:** The Proposal Response Requirements as shown in Section 4.5 – Specification Requirements. Each response must identify the specific requirement to which it corresponds and must include, minimally, the information required pursuant to the “Response Requirement” column in Section 4.5:
 - *Bidder Qualifications, as per Section 4.5.1
 - *Bidder Recruitment and Deployment, as per Section 4.5.2
 - *Bidder Administrative Requirements, as per Section 4.5.3
 - *Sub-Contractors - Optional, only if utilizing, as per Section 4.5.4
- D. **Proposer’s References and Resources Details:** Minimum of three (3) references, plus all resources (placements) information, as per Section 4.5.1.A.

NOTES:

(a) The minimum of three (3) references are independent of the twenty (20) resources (placements). The bidder has to provide at least three (3) references per category submitting a bid. For each category, provide at least twenty (20) placements, but the placements are not restricted to only placements that were provided for the references.

(b) The actual names of the resources (placements) are required. There is no flexibility on this requirement. If the bidder does not provide names of resources (placements), then the OAG would not know if the bidder actually placed any resources. However, bidders may preserve proprietary rights as to this specific information as allowed under NYS Public Officer Law §89, provided that: (i) bidder shall inform the OAG upon submission of its bid, in writing, that such records will be furnished and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) bidder shall state reasons why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by the OAG.

(c) The Reference Form appearing on Pages 39-41 provides the precise details as to what information the OAG

would like from references. The Reference Form **must** be signed by the reference contact, or it will not count toward the minimum number of references provided. The Bidder cannot re-use any previous copies or versions of the Reference Form, and one Reference Form cannot be used for multiple categories (only one per category). The Reference Form is to be provided to each reference to complete and sign, and must either be returned to Bidder for submission with its bid, or may be submitted directly to the OAG's designated contact as per Section 1.3.

- E. Bidders must submit pricing using the **Proposal Quote Form** contained in this document. The rates proposed by the Bidder must be the ceiling rate for the first year of the contract, with an annual adjustment as described under Section 5.5 – Price Adjustment. These rates are not inclusive of travel. Any travel associated with task orders issued from these contracts will be stated in the associated task order and will be reimbursed at the state rates that are in effect at the time the travel takes place.

The Bidder must indicate their ceiling rate for each title they are responding to on the Hourly Rate Bid Form. Ceiling rate is the highest hourly rate the Bidder proposes for each title. The State reserves the right to impose a maximum hourly ceiling rate for any Task Order Award proposal.

The Bidder must submit pricing for all job classifications listed within each category you wish to bid on to be considered responsive. Failure to do so may result in the bid for that category to be rejected.

- F. Data Confidentiality Agreement & Assignment form (no notarization or other forms required for confidentiality; the Bidder signs and submits with the bid; and the candidate signs when submitted with a Task Order (Mini-Bid).
- G. Procurement Lobbying Form
- H. NYS Vendor Responsibility Questionnaire for Profit Business Entity, unless electronically filed
- I. ST-220-CA Contractor Certification to Covered Agency
- J. ST-220-TD Contractor Certification
- K. NYS Office of the State Comptroller Substitute W-9
- L. Acceptable Proof of NYS Worker's Compensation and Disability Coverage

Requests for exemption of the entire contents of a bid/proposal from disclosure have generally not been found to be meritorious and are discouraged. Therefore, limit any requests for exemption to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your company.

2.3 Bid Preparation

Bids shall be prepared on forms furnished by OAG; **shall be completed in ink**, and **shall be manually signed by an authorized official of the company** submitting the bid.

2.4 Bid Package

Please submit the documents, appropriate number of copies of documents and magnetic media listed in Section 2.2 – Bid Format and Content. The proposal **must** be submitted by mail, hand delivery, overnight carrier, or certified mail in a package, with all the following information labeled on the outside package/envelope:

Bidder's complete name and address
BID ENCLOSED for Proposal for: RFP #14-002 for IT Personal Services
Due Date and Time: Same as in Section 1.2 – Bid Timeline

Failure to complete all information on the proposal envelope and/or packages may necessitate the premature opening of the proposal and may compromise confidentiality.

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

2.5 Bid Submission

For all bids submitted by mail/overnight/certified mail:

NYS Office of the Attorney General
Budget and Fiscal Management Bureau
State Capitol
Albany, NY 12224-0341
Attn: Ron Wachenheim/RFP #14-002

For all bids hand delivered:

NYS Office of the Attorney General
Budget and Fiscal Management Bureau
Empire State Plaza, Agency Bldg. #4, 4th Floor
Albany, NY 12224-0341
Attn: Ron Wachenheim/RFP #14-002

3. BACKGROUND

3.1 Agency Background

As head of the Office of the Attorney General, the Attorney General is both the “People’s Lawyer” and the State’s chief legal officer. The New York State Attorney General serves as one of the four statewide officials elected by popular vote.

As the “People’s Lawyer”, the Attorney General serves as the chief guardian of the legal rights of the citizens of New York, its businesses and its natural resources. In his/her role as the State’s chief legal counsel, the Attorney General is responsible for supervising the State government’s legal affairs. The Attorney General not only advises the Executive branch of State government, but also prosecutes and defends all actions and proceedings on behalf of, and against, the State.

The Attorney General services all New Yorkers in the numerous matters affecting their daily lives. The Attorney General’s Office is charged with myriad statutory and common law duties and has concomitant enforcement powers. The Attorney General protects consumers and investors against fraud, protects the public health and the environment against polluters, enforces State civil rights laws, and works to ensure the rights of wage earners and businesses across the State are not unlawfully abridged.

The Attorney General also commences certain statewide criminal prosecutions, and directs the activities and investigations of the Organized Crime Task Force and Medicaid Fraud Control Unit. The Medicaid Fraud Control Unit investigates and prosecutes criminal actions emanating from nursing homes, hospitals and the Medicaid system in New York State. While the Attorney General acts independently of the Governor, there are cases in which the Governor may direct the Attorney General to undertake specific criminal investigations and prosecutions. The New York State Office of the Attorney General has locations in every major population area in the State, with approximately twenty-five (25) offices from Buffalo to Stony Brook.

3.2 Information Technology Bureau Background

The Information Technology Bureau has responsibility for completing technology projects of all sizes and complexities, and must maintain the current critical systems. The OAG is looking for multiple experienced service providers that can offer qualified technical resources as the need arises to supplement existing OAG staff. This multiple award bid solicitation does not guarantee work to the contractors.

4. SCOPE OF SERVICES

4.1 General IT Environment

The Information Technology (IT) Bureau maintains the information and technology resources of the Office of the Attorney General. It develops use of computer technology supporting work on the matters before the Office of the Attorney General. Its functions include long-range information resource planning, systems analysis, application development and maintenance, communications and network administration, management of the hardware and commercial software base and user support. The Bureau is responsible for implementing and enforcing the Attorney General’s information security policies.

See “**Computing Environment**” on Pages 12-14, which identifies the current platforms and technical environment of the OAG. This is for informational purposes and is not intended to be an all-inclusive list.

4.2 Scope of Work

Bidder must demonstrate the professional ability to offer staffing resources as described below for information technology matters. The IT Services involve six categories: Development; Operations; Integration; Database/Application Server Administration; User Services; and Management & Analysis.

These IT Services will all be utilized for a variety of purposes. Resources will be will used to support on-going projects supervised and controlled by OAG Information Technology staff. Services will supplement OAG Information Technology staff that work on existing projects, system enhancements, operational support, ad hoc requests, and routine maintenance for existing and new systems. Some resources will be used to replace existing OAG Information Technology technical and managerial resources that are temporarily being utilized elsewhere.

For a listing of job titles being requested, please refer to Project Manager, Programmer, Analyst and Specialist titles shown on Pages 10-11.

1. Development:

The bidders are required to show prior substantial experience (as outlined under Specification Requirements, Section 4.5.1.A through 4.5.1.D on Pages 15-16 of this RFP) in supplying Programmer/Analyst expertise for Application Development and Business Process Analysis.

Examples of the kinds of assistance that resultant contractor(s) might provide include, but are not limited to:

- a. Data Modeling and Database design and support;
- b. Design, develop and maintain new systems, add-ons or modifications to existing applications, including single platform computer systems and distributed systems;
- c. Develop functional and/or design specifications, technical writing and documentation;
- d. Provide operating system and/or applications programming recommendations, including acquisition of off-the-shelf products, or integration of custom programming products;
- e. Install, test, audit, fully integrate, and support programming or products;
- f. Identify target processes, maximize efficiencies, manage change and leverage technology investments to re-engineer the enterprise business functions;
- g. Change data from one form of representation to another within mid-range environments;
- h. Analyze current workflow processes, plan changes and improvements to these processes, implement new, more efficient workflow processes, and workflow management systems; and
- i. Mentor state personnel in these tasks.

2. Operations:

The bidders are required to show prior, substantial experience (as outlined under Specification Requirements, Section 4.5.1.A through 4.5.1.D on Pages 15-16 of this RFP) in supplying Technology Specialist expertise for Systems Management, Information Security, Local Area Network Services LAN/WAN and Telecommunications Services. These specialists would have experience in a particular technical or business application.

Examples of the kinds of assistance that a vendor might provide include, but are not limited to:

- a. Analyze existing technological environment, including hardware, software, and live operations and transaction volumes;
- b. Design, develop and support new systems, add-ons or modifications to existing architecture, including single platform computer systems and distributed systems;
- c. Research, plan, install, maintain and troubleshoot data communications and network monitoring hardware, software and systems;
- d. Provide operating system and/or applications programming, recommendations, including acquisition or off-the-shelf products, or integration of custom programming products;
- e. Install, configure, support and upgrade networks, and administer, monitor, analyze and troubleshoot network systems;
- f. Develop information security risk assessment; provide a framework, technical guidance and services to develop information security guidelines and policies;
- g. Design, plan, implement, monitor, test and certify information security systems;
- h. Maintain and/or implement Internet, Intranet and extranet systems/servers;
- i. Develop functional and/or design specifications, technical writing and documentation; and
- j. Mentor state personnel in these tasks.

3. Integration:

The bidders are required to show prior, substantial experience (as outlined under Specification Requirements, Section 4.5.1.A through 4.5.1.D on Pages 15-16 of this RFP) in supplying Programmer/Specialist expertise for Application Development, Data Conversion and Internet/Intranet Application Services. These specialists would have experience in a particular technical or business application.

Examples of the kinds of assistance that a vendor might provide include, but are not limited to:

- a. Analyze existing technological environment, including hardware, software, and live operations and transaction volumes;
- b. Develop functional and/or design specifications, technical writing and documentation;
- c. Provide operating system and/or applications programming and recommendations, including acquisition of off-the-shelf products, or integration of custom programming products;
- d. Develop, publish and maintain dynamic web pages;
- e. Install, test, audit, fully integrate & support programming or products within the OAG's environment;
- f. Change data from one form of representation to another within various mainframe, mid-range and PC environments; and
- g. Mentor state personnel in these tasks.

4. Database/Application Server Administration:

The bidders are required to show prior, substantial experience (as outlined under Specification Requirements, Section 4.5.1.A through 4.5.1.D on Pages 15-16 of this RFP) in supplying Technology Programmer/Specialist expertise for Application Development and Systems Management. These specialists would have experience in a particular technical or business application.

Examples of the kinds of assistance that a vendor might provide include, but are not limited to:

- a. Analyze existing technological environment, including hardware, software, and live operations and transaction volumes;
- b. Administration (manage: backup and recovery, performance tuning, physical structure, storage and security) and support;
- c. Design, develop and maintain new systems, add-ons or modifications to existing systems, including single platform computer systems and distributed systems;
- d. Develop functional and/or design specifications, technical writing and documentation;
- e. Provide operating system and/or applications programming recommendations, including acquisition of off-the-shelf products, or integration of custom programming products;
- f. Install, test, audit, fully integrate, and support programming or products;
- g. Mentor state personnel in these tasks; and
- h. Manage application deployments to production environments.

5. User Services:

The bidders are required to show prior, substantial experience (as outlined under Specification Requirements, Section 4.5.1.A through 4.5.1.D on Pages 15-16 of this RFP) in supplying Technology Specialist expertise for Application Development, Systems Management, Data Conversion and Help Desk Services. These specialists would have experience in a particular technical or business application.

Examples of the kinds of assistance that a vendor might provide include, but are not limited to:

- a. Respond to OAG staff requests for technical assistance, work with them toward resolving their problems, and escalate problems to other groups as dictated by OAG policy;
- b. Track and report on requests for technical assistance;
- c. Install, configure, support, upgrade and troubleshoot personal computer and peripheral hardware and software;
- d. Provide network support services such as user administration and backup administration;
- e. Test and support off-the-shelf products or integration of custom programming products;
- f. Design and develop new systems, add-ons or modifications to existing systems within off-the-shelf products;
- g. Design, develop and maintain new systems, add-ons or modifications to existing systems, including single platform computer system;
- h. Develop functional and/or design specifications, technical writing and documentation;
- i. Analyze existing technological environment, including hardware, software and live operations;
- j. Install, test, audit, fully integrate & support programming or products within the OAG's environment;
- k. Research, plan, install, maintain and troubleshoot desktop management;
- l. Install, configure, support and upgrade desktop OS and software and administer, monitor, analyze and troubleshoot desktops;
- m. Design, plan, test, implement and monitor desktop security system and policies; and
- n. Mentor state personnel in these tasks.

6. Management & Analysis:

The bidders are required to show prior substantial experience (as outlined under Specification Requirements, Section 4.5.1.A through 4.5.1.D on Pages 15-16 of this RFP) in supplying Project Managers and Specialist expertise for Business Process Analysis, IT Management & Planning, Technology Procurement (Market Watching) and Workflow Management Services.

Examples of the kinds of assistance that a vendor might provide include, but are not limited to:

- a. Coordinate the activities of cross functional project teams;
- b. Create, monitor and manage project plans, schedules, scope, risks, issues, costs, changes;
- c. Coordinate multiple service or product providers;
- d. Assist in policy formulation, re-investment decisions, external/internal resource decisions, organization, planning, learning, and effective use of the IT function;
- e. Document business process flows, create flow charts and process models describing functions; develop test data and scenarios, test systems functions and document the results;
- f. Develop training materials related to business systems implementation for users; write procedure manuals; and document business process deficiencies requiring solution during or after implementation;
- g. Provide cultural transitioning of OAG workforce to the new environment resulting from the project, including training of OAG's employees and other end users;
- h. Identify target processes, maximize efficiencies, manage change and leverage technology investments to re-engineer the enterprise business functions;
- i. Analyze current workflow processes, plan changes and improvements to these processes, implement new, more efficient workflow processes, and workflow management systems;
- j. Recommend purchasing of hardware and software in light of current technology market trends and conditions;
- k. Develop functional and/or design specifications, technical writing and documentation; and
- l. Mentor state personnel in these tasks.

4.3 Job Classifications

The following job titles apply to **Consulting Services** and describe the minimum criteria associated with each level of consultant regardless of Category of Expertise. They are: **Project Managers** (Entry level, Levels I, II, and III), **Programmer/Analysts** (Entry Level, Levels I, II and III) and **Specialists** (Entry Level, Levels I, II, and III). The higher the level, the more experience and responsibility the position requires.

Project Managers (Management & Analysis category)

Project Manager (Entry Level): Less than 2 years' experience in overseeing small scaled, non-complex projects, comprised of a small number of deliverables and/or a small number of phases; typically coordinates and delegates the assignments for the consultant project staff numbering up to 5; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements, scope changes, and issues and concerns raised by consultant staff or Issuing Entity.

Project Manager I: Minimum of 2 years' experience in overseeing small scaled, non-complex projects, comprised of a small number of deliverables and/or a small number of phases; typically coordinates and delegates the assignments for the consultant project staff numbering up to 10; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements, scope changes/extensions, and issues and concerns raised by consultant staff or Issuing Entity.

Project Manager II: Minimum 4 years' experience in overseeing medium scaled projects comprised of sub-projects and distinct deliverables; typically coordinates and delegates the assignments for the consultant project staff numbering over 10; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements; scope changes/extensions, and financial, administrative, and technical issues and concerns raised by consultant staff or Issuing Entity.

Project Manager III: Minimum 8 years' experience in overseeing medium to large scaled projects comprised of sub-projects and distinct deliverables; typically coordinates and delegates the assignments for the consultant project staff numbering over 20; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements, scope changes/extensions, and financial, administrative, and technical issues and concerns raised by consultant staff or Issuing Entity.

Program Manager (for IT Management & Planning only): Minimum 8 years' experience in overseeing medium to large scaled operations; typically coordinates and delegates assignments for staff numbering over 20; focal point of contact for operations regarding projects, meetings, reporting requirements, scope changes/extensions, and financial, administrative, and technical issues and concerns raised by staff.

Programmer/Analysts (Development, Integration and Database/Application Server Administration categories)

Programmer/Analyst (Entry Level): Less than 2 years' experience with writing application software, data analysis, data access, data structures, data manipulation, databases, design, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid-range, personal computers, laptops.

Programmer/Analyst I: Minimum of 2 years' experience with writing application software, data analysis, data access, data structures, data manipulation, databases, design, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid-range, personal computers, laptops.

Programmer/Analyst II: Minimum of 4 years' experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid-range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

Programmer/Analyst III: Minimum of 8 years' experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid-range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

NOTE: The Programmer and Analyst titles are different, but the descriptions are interchangeable; thus, was written together as one group. The bid price page indicates the task assignment order will likely specify either a Programmer or Analyst.

Specialists (Operations, Integration, Database Analysis, User Services and Management & Analysis categories)

The Specialist Title should be considered a "catch-all" job title, which should cover all skill sets not covered by the Project Managers and Programmer Analyst job titles.

Specialist (Entry Level): Less than 2 years' experience in a particular technical and/or business application, which is beyond the requirements addressed in the Programmer/Analyst (Entry level) Job Classification/Title, as defined in a Project Definition/Specifications.

Specialist I: Minimum of 2 years' experience in a particular technical and/or business application, which is beyond the requirements addressed in the Project Manager I and Programmer/Analyst I Job Classification/Title, as defined in a Project Definition/Specifications.

Specialist II: Minimum of 4 years' experience in a particular technical and/or business application, which is beyond the requirements addressed in the Project Manager II and Programmer/Analyst II Job Classification/Title, as defined in a Project Definition/Specifications.

Specialist III: Minimum of 8 years' experience in a particular technical and/or business application, which is beyond the requirements addressed in the Project Manager III and Programmer/Analyst III Job Classification/Title, as defined in a Project Definition/Specifications.

4.4 OAG Computing Environment

Component	OAGnet™
COMMUNITY	
<i>Users</i>	2200
<i>Locations (cities)</i>	<i>Albany - Empire State Plaza (4 building locations)</i> <i>Albany - 146 State Street</i> <i>Binghamton</i> <i>Centereach - SUNY Stony Brook Medical Center</i> <i>Buffalo – Downtown</i> <i>Buffalo - Roswell Park Memorial Institute</i> <i>Hauppauge</i> <i>Mineola</i> <i>New York City - Downtown</i> <i>New York City - Harlem</i> <i>Plattsburgh</i> <i>Poughkeepsie</i> <i>Rochester</i> <i>Syracuse - Downtown</i> <i>Syracuse - SUNY Health Science Center</i> <i>Troy</i> <i>Utica</i> <i>Watertown</i> <i>White Plains</i> <i>(Some sites are intentionally not listed)</i>
<i>LANs (physical, i.e. separately switched or routed)</i>	<i>OAGnet</i>
LANs (logical sub-networks)	60
Master Network Control Center	Troy
Operations staff location	Troy, NYC
Call Center staff location	Troy
Direct user support	Troy, NYC (dispatched)
Development staff location	Troy, NYC
IMPLEMENTED POLICY STANDARDS	
Security decision-making	Division of Administration; Bureau of Information Technology
OPERATING SYSTEMS	
Operating System - Desktop	Microsoft Windows 7
Operating System - File Server	Windows 2008 R2, Windows 2012, Linux
Operating System - Database Server	Oracle Solaris, Oracle Linux, Microsoft Windows
Operating System – Special Use	VMWare 5.x, EMC VNX SAN Management
NETWORK PROTOCOLS	
Network Packet Protocol	IP v4
Local Network Architecture	100BaseT, Gigabit Ethernet, 10G
Long lines Network Protocol	Point-to-Point, MAN
DIRECTORY SERVICES	

Component	OAGnet™
Network Directory Services	Microsoft Active Directory
DATABASE SERVER HARDWARE	
Database Server	Oracle Solaris, Oracle Linux, Microsoft Windows
NETWORK HARDWARE	
Backups Disk & Tape Drives	EMC Avamar Backup Gird Netbackup/HP Tape Library DLT3
Data Communications	Cisco Router Cisco Catalyst 6509's Core Switches Cisco 2960 Edge Switches Cisco Wireless Controllers & Access Points
Desktop Management Server	Microsoft System Center Configuration Manager 2012
Desktop Endpoint Security	McAfee ePO Server 5.0
Incident Handling Server	Microsoft System Center Configuration Manager 2012
Desktop Workstation	Dell, Hewlett-Packard
Networked Printers, Copiers	Hewlett-Packard, Xerox
Networked Scanners	Fujitsu, Xerox
File, Print, Mail, Test & Utility Servers	Windows Servers Back-end Servers Sun Solaris/Oracle
Firewall	CheckPoint on Nokia Appliance
Intrusion Detection	Outside Monitoring
Network Monitoring	Cisco Smartcare Monitoring Services, Scrutinizer, Sniffer Probes
OTHER HARDWARE	
Laptops/Tablets	Dell, Hewlett-Packard, Samsung
Mobile Hand Held OS	IOS, Android and Windows 8
Mobile Hand Held HW	BlackBerry, Nokia, Motorola and Apple
Video Conferencing	Multipoint Control Unit AT&T services End Points HDX800, VSX 7000
DATABASE SERVER UTILITIES	
Backup & Recovery	EMC Avamar, RMAN
COMMERCIAL OFFICE AUTOMATION SOFTWARE	
Accounting	Quicken QuickBooks (stand-alone install)
Browser	IE 8, Firefox 25.01, Chrome
Connectivity (network services)	Microsoft Azure (2 factor authentication) and UAG
Ad Hoc Reporting	Crystal Reports
Diagramming, Drawing, Charting & Graphing	Visio 2007 and Visio 2010
Desktop Endpoint Protection	McAfee Anti-Virus 8.8
Desktop Patch Management	Lumension

Component	OAGnet™
Desktop Management Agent	Microsoft System Center Configuration Manager Client
Document Assembly	HotDocs 10
File Indexing and Searching	HotDocs 10
Imaging	HP PrecisionScanPro
Electronic Discovery	Concordance 8 and 10, Symantec Clearwell, Law Pre-Discovery
Misc.	PitneyBowes ShipRequest, Brief Bank, Deedplotter, Hostexplorer
Multimedia	Real Audio, Quicktime, Shockwave, Final Cut Pro
OCR	OmniPage Pro, Adobe Acrobat Professional
Office Suite	Microsoft Office 2010
PDF	Adobe Acrobat Pro 11
Table of Authorities	Best Authority
Web applications development	Oracle JDeveloper
COMMERCIAL GROUPWARE	
Call Center	Microsoft System Center – Service Manager
Document Management	FileNet P8, SharePoint, Drupal
Electronic mail server	Microsoft Exchange
Electronic mail, calendaring	Microsoft Exchange – Outlook
Project Management	Microsoft Project
DEVELOPER TOOLS	
Programming	Java, PHP
Computer Aided Software Engineering	Oracle Designer, Oracle Developer
Enterprise Database	Oracle RDBMS , Microsoft SQL Server
Web Applications	Adobe Acrobat, Adobe Creative Suite, Final Cut Studio Pro, Macromedia Drewamweaver, Macromedia Fireworks, Oracle JDeveloper, Drupal
IN-HOUSE DEVELOPED APPLICATIONS	
Case Management	Oracle (SilverCase)
Charities registration and enforcement	Oracle/FileNet P8 (CHR)
Investor Protection registration and enforcement	Oracle (IPI)
Real Estate Financing registration and enforcement	Oracle (REF)
Intake Tracking	Apex (LGR)
Credit Collection Accounting System	Oracle (SilverCar)
NYOpen Government	Oracle (NYO)
Paper Archive Management	Oracle (PAM)

4.5 SPECIFICATION REQUIREMENTS

1. Bidder Qualifications	
Requirements	Response Requirements
<p>A. The Bidder must have a strong background in providing staffing services at the levels requested in this bid solicitation. The Bidder must be able to hire, deploy and manage staff in the quantities and within the timeframe required by OAG-issued task orders. Bidder experience should also include deployment of large numbers of staff to single/multiple geographic locations.</p>	<p>The Bidder must have a successful history in providing staffing services including variations in numbers of staff, as well as a successful history that includes hiring, recruiting, retaining and managing staff. Bidders should highlight experience related to deploying staff to demonstrate the Bidder’s capacity to undertake, manage, and complete assignments promptly and to the satisfaction of the OAG.</p>
<p>B. The Bidder must possess and/or demonstrate legal authority to do business in New York State, which supports its ability to bring staff resources into the State from multiple areas inside and outside of New York State.</p>	<p>The Bidder must describe the extent to which it has and/or will acquire legal authority to do business throughout New York State, including the Bidder’s operational units as well as previously established business relationships with other business entities.</p>
<p>C. The Bidder must be a financially stable entity with resources adequate to support the efforts required under this procurement.</p> <p>All documentation provided should be certified/verified by someone (or some other company) who has no direct interest in the company; thereby acceptable as being independently certified. Without any certifiable financial documentation, a Bidder cannot be a State contractor.</p>	<p>If publicly traded: the Bidder must include with Bid its last two annual reports.</p> <p>If not publicly traded: the Bidder must include with Bid its two most recent annual/compiled financial documents (statements) as normally mandated by the NYS Tax Department, IRS and NYS Department of State. All documents should be signed by someone who can independently certify/verify these financial documents.</p> <p>NOTE: To reduce paper, it is acceptable to submit these documents on electronic media (CD, DVD, etc.).</p>

<p>D. The Bidder must have been in business of providing IT resources for a period of three (3) years, and must have provided a <u>minimum</u> of twenty (20) IT resources (placements) actually put into place per category being bid within the last three years (cannot count the same resources placed multiple times in same category). You may list more than twenty if so desired, but it does not necessarily make for a more favorable bid submission. Placements can be documented by listing them with required information. Technical resumes for placements are not required, nor is there any standard format or template necessary to submit placement information.</p> <p>All resources that were actually put into place, whether short or long term, are acceptable. Resources who have completed their contracts, or placed before three years ago but still on billing can count toward the twenty placements. Helping place individuals who become full-time employees cannot be counted. Bidders providing less than twenty resources (placements) in any single category will not receive any further consideration only in that single category.</p> <p>The placements must be <u>unique</u> to each category. Only in the “Development” and “Integration” categories may the resource appear in multiple categories. Information to be provided: resource (placement) name (listed <u>alphabetically</u> by last name), category, company/agency name, their contact info & nature of project. Placements do not need experience in all title levels and will not be rated differently if only qualified in one or a few titles.</p> <p>If two vendors are partnering, placements must be submitted by, and come from, only the primary Bidder. The primary Bidder must also list how placement numbers were compiled. The other vendor cannot bid.</p> <p>If the Bidder contracted with another entity (sub-contracted) for some of the placements, then that information must be documented in the placement listing and has to include the name of the sub-contractor. If the Bidder is not partnering with another entity, and is listing placements which were sub-contracted (and has to be listed as noted in previous sentence), the sub-contractor can still submit their own bid and list the same placements. However, the sub-contractor must state these placements were provided to the company awarded the contract; and must list that company’s name as well.</p> <p>Reference Form appears on Pages 39-41 of this RFP to supply the required information (if needed, using additional sheets of paper is acceptable). The reference contact person shall sign the form certifying information is true and accurate. We <u>may</u> contact the references for verification.</p> <p>The resources (placements) do not need to be listed on the Reference Form, but shall submit as per Section 2.2.D of this RFP. The Reference Form may be submitted with the bid in original, photocopied or facsimile version.</p>	<p>The Bidder must include in its proposal a description of its experience providing IT resources for each category being submitted. The Bidder must identify three (3) distinctly different project/client references from three (3) distinctly different project/client sites/locations for each category being submitted for each project. The same reference may be used for more than one category. All three Reference Forms being reviewed for each category will be scored. It is the responsibility of the Bidder to verify phone numbers are current and references are available. Submitted references:</p> <ul style="list-style-type: none"> • cannot be currently employed by the OAG (former OAG employees are acceptable); • can use OGS references, as long as it does not include the OAG; • cannot be employed by an organization identified as a sub-contractor of the bidder; and • at least one reference must be from government entity at the state, federal, or local level but not from the OAG. (If the Bidder sub-contracted through a prime contractor, the Bidder may use a reference from the awarding government entity) <p>The references may be contacted by phone only if verification of any information provided by the reference is needed. If a phone call is needed, a <u>maximum</u> of five attempts will be made to contact the reference during normal business hours. Any reference submitted not meeting these requirements, or unreachable if called, will not be scored.</p> <p>The Bidder may include references for projects where sub-contractors identified in Section 4.1 provided staff resources to projects. These reference(s) must be from the contracting party awarded the bid, and not employed by, or associated with, the sub-contractor during the project time period. Primary and sub-contractors cannot provide references for each other. References must be from three separate engagements. Partners may contribute their unique references to meet the minimum number.</p> <p>A vendor who is listed as a sub-contractor by another bidder, but is not partnering with that bidder, can submit a bid as the primary Bidder.</p> <p>It is preferred the Bidder and sub-contractor to have worked on other engagements prior to this RFP, but a Bidder will not be disqualified for teaming with a sub-contractor for the first time (no existing prior relationships) and have used their placements and references to meet the requirements of this RFP.</p>
<p>E. The Bidder must demonstrate an organizational philosophy that includes effective strategies for attracting, recruiting and retaining human capital.</p>	<p>The Bidder must include in its proposal a description of its philosophy, strategies and outcomes in attracting, recruiting and retaining employees, including a description of the specific strategies that will be utilized under this RFP.</p>

2. Bidder Recruitment and Deployment	
Requirements	Response Requirements
A. The Bidder must have the capability to recruit, hire, maintain and reduce staff in accordance with the OAG’s schedule and qualifications requirements.	<p>Recruitment and Deployment Strategy:</p> <p>In its Technical Proposal, the Bidder must describe how the Bidder will recruit, interview, hire, maintain and replace staff with the qualifications and in the numbers required by the OAG, including identifying the plan for the sources and locations of recruitment, screening and review/interview mechanisms, and procedures and timeframes for acquiring new staff. The Bidder must provide a sample of relevant standards and procedures.</p>
B. The Bidder must provide a plan for remediation of staff performance deficiencies identified by either the Bidder or OAG Project Management. The OAG reserves the right to terminate the services of any specific Bidder staff immediately per verbal request to the Bidder’s Project Manager. The Bidder will have five (5) business days to replace Bidder staff, whether terminated at the OAG’s request or unilaterally vacating their position. The Bidder must maintain a resume library for all labor categories to provide a pool of potential replacement staff. The resumes of potential replacement candidates must be consistent with the staff qualifications described herein.	<p>Describe the Bidder’s proposed procedures and standards for remediation of staff performance deficiencies.</p> <p>Describe how the Bidder’s resume library will function, the numbers to be maintained, and the procedures for initiating and executing staff replacement, including all relevant time frames.</p>
C. The Bidder shall not recruit for the purposes of fulfilling its obligations under the contract resulting from this bid solicitation staff currently assigned to other OAG projects.	Affirm understanding and agreement.
D. Specialized training is the responsibility of the vendor to provide before and during the length of the engagement as required by the OAG. The contractor will <u>not</u> be allowed to bill the OAG while the contract staff is in training. The Bidder is responsible for any training/preparation (and all related costs) as may be required prior to the consultant starting work for the OAG.	Affirm understanding and agreement.

3. Bidder Administrative Requirements	
Requirements	Response Requirements
A. The Bidder’s Staff will report to OAG Information Technology Bureau Project Managers in accordance with the Organization Chart.	Affirm understanding and agreement

<p>B. The Bidder's Staff (consultants) will meet weekly with the OAG Project Manager or designee to present a written report identifying the current status of the project, including Bidder (consultant) staff hours expended for each accomplishment, progress on issues, outstanding issues, forecast of future steps and analysis of the impact of technical and environmental trends on implementation plans, and other topics as may be identified by the OAG Project Managers. The Bidder's Staff (consultants) will be required to submit a weekly time sheet, in addition to the status report, to the OAG Project Managers for verification of hours worked and payment recognition. The pay week covers Thursday thru Wednesday (State standard payroll period) and time sheets must be submitted by close of business each Friday to the appropriate OAG designee.</p>	<p>Affirm understanding and agreement.</p>
<p>C. The Bidder's Staff (consultants) are required to work during normal business hours (Monday through Friday, 8:30 a.m. to 5:00 p.m.) and are expected to accomplish their required tasks within a 40 billable-hour workweek. Occasional (infrequent) overtime will be required, at the discretion of the OAG Project Manager or designee. Working in excess of 40 hours in a given workweek may be billed at the Bidder's proposed hourly rate. Such overtime work must have the prior written approval of the OAG Project Manager. Overtime will not be paid for any other Bidder staff position.</p> <p>Bidders must abide by all Federal labor laws (i.e., must take a 30-minute lunch)</p>	<p>Affirm understanding and agreement.</p>
<p>D. The Bidder shall be required to conduct, at a minimum, industry standard criminal history background checks and sound screening practices for each project staff member hired. The Contractor shall be required to report the results to OAG Information Technology Bureau Project Manager.</p>	<p>Affirm understanding and agreement.</p> <p>An affirmation of what background checks/screenings were performed, and that they were successful, is sufficient.</p>

<p>4. Sub-Contractors (Optional)</p>	
<p>A. The Bidder may utilize sub-contractors for providing the services requested in this bid solicitation. However, the OAG requires that the Bidder notify and receive prior written approval from the OAG for all sub-contractors prior to their use. The Bidder assumes all responsibility for sub-contractors, as the OAG will only work with the primary contractor. The OAG encourages partnering with NYS certified small/minority/woman-owned business enterprises.</p> <p>If two companies are partnering, references and placements must be submitted by, and come from, only the primary Bidder. The primary Bidder must also list how placement numbers were compiled; and the primary Bidder is responsible for the contract/project.</p>	<p>Affirm understanding and agreement.</p> <p>In its Technical Proposal, the Bidder must identify all proposed sub-contractors with bid submission, and provide a description of how and to what extent Bidder proposes to utilize subcontractors.</p> <p>NOTE: If the Bidder proposes to add the use of a sub-contractor after a contract award is issued, it is considered a material change and it requires the approval of the OAG.</p>

5. OAG Responsibilities	
A. The OAG reserves the right to provide direct supervision to Bidder staff on all activities and tasks.	Affirm understanding and agreement.
B. The OAG will determine where and when staff will be deployed via the Task Order Process.	Affirm understanding and agreement.

5. ADMINISTRATIVE INFORMATION

5.1 Method of Award

As the OAG fully expects to engage the services of multiple vendors, the OAG will enter into a contract with each of the vendors selected for each of the six (6) categories as a result of this bid solicitation. As such, a vendor may bid on one, a few, or all categories. The number of categories a bidder elects to bid on will not provide any additional benefit. There is no guarantee, implied or otherwise, that a vendor will receive any actual work as a result of any contract award resulting from this bid solicitation.

The State encourages vendors, regardless of size, to submit a bid in response to this bid solicitation and encourages vendors, when sub-contracting, to consider partnering with NYS small businesses and/or certified minority/woman-owned business enterprises.

A response to the solicitation is an offer to contract with the OAG based on the terms and conditions contained therein. Bids do not become contracts until they are accepted by the OAG through issuance of a duly executed contract signed by both parties, and the New York State Office of the State Comptroller. The general terms and conditions in this solicitation, the applicable requirements and provisions of the RFP, and other provisions required by the OAG shall be included in any resulting contract. Upon final approval a fully executed copy of the contract will be issued to the contractor.

5.2 Bidder Debriefing

A bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Prior to contract award, the OAG shall, upon request, provide a debriefing which would be limited to review of that bidder’s proposal or bid. After contract award, the OAG 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 notification of the contract award.

5.3 Price

The Prices Quoted shall be inclusive of all costs including licenses, insurance, administrative, and other ancillary costs. For the purposes of this contract, full service shall mean that the Contractor's bid price includes: all labor and equipment cost; reporting or other requirements; all overhead costs and profit. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed to be understood by the Contractor and included herein.

Bidders must submit pricing using the Proposal Quote Forms contained in this document. **All fields must be completed.** Additionally, **pricing shall be submitted only on the Proposal Quote Form.** **No other (additional) charges beyond the services specified herein (those listed on that page) shall be permitted by the Contractor, nor will they receive any consideration.**

The OAG expects that the bill rates proposed shall be competitive and reflect the current marketplace or other contracts for similar services to other governmental entities. The Contractor warrants that pricing offered to the OAG is the same as or lower than that offered to its customers who are similarly situated with respect to IT consulting services.

5.4 Term of Contract

It is the intention of the State to enter into a contract from October 15, 2014 to October 14, 2019, subject to approval by the OAG and the Office of the State Comptroller (OSC), except that, the commencement and termination dates may be adjusted forward unilaterally by the State for any resulting contract for up to two calendar months.

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.

5.5 Price Adjustment Clause

On each anniversary date of the awarded contract, the Contractor or Office of the Attorney General may request an hourly rate change (increase or decrease) to the Ceiling (Maximum) Hourly Rates, based upon fluctuations in the latest published Consumer Price Index (CPI) for all urban consumers (CPI-U), as published by the U.S. Department of Labor, Bureau of Labor Statistics. The price adjustment is subject to either no change or a maximum increase shown in the CPI-U, or five percent (5%), whichever is less.

Price adjustments involve changing the base payment by the percent change reflected in the CPI between the reference and subsequent time period. The price adjustment shall be calculated as follows: Take the CPI for the 3rd month prior to the start date of the contract, and subtract this figure from the CPI value for the 3rd month prior to the anniversary date of the contract (i.e.: if the contract begins in April, use the January CPI). That sum is then divided by the original CPI value, with this result being multiplied by 100 to equal the percent change, which is the price adjustment value. This percentage increase/decrease shall be applied to the next contract year, effective on the anniversary date of the contract. The following example illustrates this calculation:

CPI – 3 rd month prior to anniversary date:	136.0
Less CPI at 3 rd month prior to contract start date	129.9
Equals index point change	6.1
Divided by previous period CPI	129.9
Equals	0.047
Result multiplied by 100	0.047 x 100
Equals Percent Change	4.7%

NOTE: Any price escalation requests made under Force Majeure are only permitted if it can be proven it is an industry-wide situation and must also be approved by the Office of the State Comptroller.

Price decreases are permitted at any time.

5.6 Invoicing and Payment

Payments are made each month against encumbrance documents or other written orders.

Billings must be made no more frequently than once a month based on services provided. All records regarding service and billings to the OAG under this contract shall be retained as per Appendix A, Clause #10 – Records and may be subject to audit by appropriate State officials upon written notice.

Invoices for payment shall be submitted to the Office of the Attorney General, Accounts Payable Unit, at the end of each month on a company invoice for services satisfactorily completed during that month. Please note this contract is based on payment by hourly rates, not objective standards. The invoice shall contain the Contract ID number (i.e.: C103XXX); the name of the Office of the Attorney General; the location and site where service was performed; either in its body or as an attachment shall contain the number and type of service(s) performed and unit price, as well as the NYS Vendor Identification Number.

Invoices can be submitted by mail, e-mail or fax:
NYS Office of the Attorney General,
Budget & Fiscal Management Bureau - Payments Unit
The Capitol
Albany, NY 12224-0341

Fax: (518) 474-0714
E-Mail: payments@ag.ny.gov.

5.7 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and OSC. Payment 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 payment 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 OSC's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by phone at (518) 474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with OSC's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new statewide financial system, OSC requires all vendors doing business with New York State agencies to complete a Substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

5.8 Hours of Operation and Legal Holidays

The Contractor shall be available to provide services during OAG hours, up to forty (40) hours per week, Monday through Friday, with occasional (infrequent) nights and weekends, except holidays.

The following are a list of State holidays that need to be considered during the course of providing services under any resulting contract:

- | | |
|--------------------------------|--------------------------|
| ⇒ New Year's Day | ⇒ Labor Day |
| ⇒ Martin Luther King Day | ⇒ Columbus Day |
| ⇒ Lincoln's Birthday (Floater) | ⇒ Election Day (Floater) |
| ⇒ President's Day | ⇒ Veteran's Day |
| ⇒ Memorial Day | ⇒ Thanksgiving Day |
| ⇒ Independence Day | ⇒ Christmas Day |

5.9 Appropriated Funds

The purchase of service or product, which arises from this solicitation, is contingent upon the availability of appropriated funds. The OAG shall have the right to terminate the resulting contract at the end of the current or each succeeding fiscal year if funds are not appropriated by the Legislature and Governor for the next fiscal year that would permit continuation of the resulting contract. If funds are withdrawn or do not become available, The OAG reserves the right to terminate the contract by giving the contractor a thirty (30) day written notice of its intention to terminate without penalty or any further obligations on the part of the OAG or the contractor. Upon termination of the contract, the OAG shall not be responsible for any payment of any service or product received that occurs after the end of the current contract period or the effective date of termination, whichever is the earlier to occur. The OAG's fiscal year begins on April 1st and ends on March 31st.

6. PROPOSAL EVALUATION PROCESS

The OAG will evaluate and score proposals based best value and upon the criteria set forth in this Section.

The OAG Budget and Fiscal Management Bureau (BFMB) will initially determine on a pass/fail basis whether the proposals are responsive to the requirements of the Solicitation and whether the bid will be further evaluated. Each contractor's bid submission must first meet all the mandatory qualifiers before the Office of Attorney General Technical Evaluation team can review the bid submission against technical and financial components. As per Appendix B, Paragraph #31, corrections/clarifications are allowed, but must be provided within two (2) business days of request by the OAG. Failure to meet all the mandatory qualifiers will result in the bid submission being disqualified and will not be evaluated.

The following **Mandatory Requirements** apply to this bid solicitation:

- *Format and Content
- *Completeness Review

Format and Content: In the first phase of the evaluation, the bidder's Technical and Financial proposals will be examined, on a pass/fail basis, to determine compliance with Section 2.2 – Bid Format and Content requirements. Failure to meet any format and content requirement specified in this bid solicitation *may* result in a bidder's removal from further consideration.

Completeness Review: In this second phase of the evaluation, the bid submissions will be examined, on a pass/fail basis, to determine completeness of information provided for each of the specification requirements found under Sections 2.2 Bid Format and Content and Section 4.5 – Specification Requirements of this bid solicitation. Failure to meet any mandatory requirement in this section may result in a bidder's removal from further consideration.

OAG also reserves the right to award personal services awards for each category. The following chart provides the minimum, preferred and maximum number of contracts that may be awarded for each Personal Service category:

Category	Minimum	Preferred	Maximum
Development	3	5	8
Operations	3	5	8
Integration	3	5	8
Database/Application Server Administration	3	5	8
User Services	3	5	8
Management & Analysis	3	5	8

Bid submissions meeting the mandatory requirements will proceed to the technical and cost evaluations.

Technical Component (70% of total score):

The result of the technical evaluation will be a point total, with a maximum possible score of 70 points. In turn, this value will count as 70% of the combined technical/financial score.

A committee of OAG Information Technology (IT) employees will subsequently evaluate and assign scores for each responsive proposal for the following four (4) areas:

1. Qualifications of Contractor and Staff: Maximum of fifteen (15) points
2. Past experience in deploying staff resources that were of quality required to perform requested Overall Strategy: Maximum of twenty-five (25) points
3. Management/Organizational Support: Maximum of ten (10) points
4. Recruitment and Deployment Strategy: Maximum of twenty (20) points

NOTES:

- (a) Qualifications of Contractor and Staff refer to the technical resources only (not the Bidder’s organization key members including recruiters, account managers and administrative staff). Resumés of key members are not required to demonstrate qualifications here, but it is up to the Bidder to provide enough information to maximize their score.
- (b) Past experience (Reference scoring) is a compilation of placements information provided with the bid and references. References are part of the maximum of 25 points allowed. Therefore, we cannot give any specific point value to each reference. Failure to provide three (3) references will result in bid rejection for that specific category.

The Technical Evaluation will be completed independent of the Financial Evaluation and will comprise seventy (70) percent of the total evaluation score. All scoring will be done independently for each and every bidder. They will not be weighed against one another. Scoring will be based on well-written and very detailed responses, which would basically leave the OAG with few or no questions about the bidder’s capabilities to fulfill the OAG’s needs.

Financial Component (30% of total score):

The OAG BFMB will evaluate all cost proposals from responsive proposers. The cost proposal with the lowest grand total will be awarded the maximum possible points as follows:

The average rate will be calculated by taking the sum of all the ceiling rates offered within the category being evaluated, and dividing by the number of titles also within that category. The average rate of the offer will be evaluated on a ratio basis with the lowest average rate proposal awarded the maximum financial component score of 30 points. Remaining financial proposals will receive a proportional number of points based upon the ratio of the proposal’s average rate to the lowest average rate according to the following formula: (Lowest Average Rate Offer / Proposal being Evaluated) x 30 = Financial Component score.

Each of the cost proposal points will be added to the score from the OAG IT Bureau for the Technical Component above, and the bidder having the highest score will be ranked number one; the bidder with the second highest total score will be ranked number two and so on.

After the evaluation, all bidders will be notified of the name of the selected bidders. The selected bidders will be notified their submitted proposal has been selected and that a contract will be forthcoming for execution. The original proposal, and any additions or deletions to the proposal become part of the contract.

7. TASK ORDER SOLICITATION (MINI-BID) PROCESS

Upon issuance of the new contract awards to create the new pool of qualified contractors, the ceiling (maximum) hourly rates offered by all winning qualified contractors in each category becomes public information and will be available to all parties.

When a need for staffing is determined, a task order will be issued to all qualified contractors with a contract within the applicable category. These contractors will then submit the “best and final” rate that they can offer for their candidate(s). This rate will then be scored and ranked and combined with the technical score for the resume(s) submitted for such task order. The award is based upon the highest combined (financial and technical) score. The Hourly Rate for the candidate(s) selected to work in the OAG shall be firm for the duration of the task order.

The Standard work week for Contractor staff for work performed under these contracts shall be up to forty (40) hours, excluding lunch, unless otherwise stated in the Task Order. The standard workweek will begin on Monday and end on Friday, unless otherwise stated in the Task Order.

This Section is intended to provide a general informational overview of the State’s business practices as they are anticipated to apply in the recruitment of services to be obtained through contracts awarded under this bid solicitation. As program requirements for services develop, the State reserves the right to make adjustments to procedures and bidder requirements at its sole discretion, for each task order assignment.

A. Task Order Solicitation (Mini-Bid) Procedures

1. Qualified contractors for the personal service category and job title being requested in the Task Order solicitation process will be notified of the proposed request. This notification may be e-mailed or mailed, and will include Candidate Submission and Hourly Rate Forms, engagement duration, bid deadlines, and other relevant information.
2. The OAG will send a “Task Assignment (Mini-Bid) Notice” form. This notice will include:
 - The mandatory required experience/skills for the category of service and number of positions requested;
 - Additional work-related experience or education may be substituted, at the discretion of the OAG, on a one-for-one basis, if explicitly stated in the Task Order solicitation. The Task Order may also specify that one or more mandatory qualifications for a given job title have been waived for the solicitation;
 - The specific experience desired for assignment completion; and
 - The proposed duration of time (start and end date) the personnel are expected to be utilized. The estimated average length of assignment is eight (8) months.
3. OAG anticipates receiving competitive rates based on the skill level of the resources requested.

The hourly rate bid is designed to provide the State with the bidder’s proposed hourly rate for each candidate being submitted in the Task Order Award solicitation. The hourly rate bid must be all-inclusive (i.e., fringe, overhead, overtime, etc.), and shall not exceed the ceiling rate proposed by the bidder in its response to the original bid solicitation. The hourly rate for each candidate will be considered final for the position being bid. No further negotiation of rates will be considered. The State reserves the right to impose a maximum hourly rate for any subsequent Task Order solicitation.

4. Upon receiving the “Assignment Notification” determines it has appropriate staffing resources can be provided as requested, a response with the individual resumes and the hourly cost per resource, of the staff offered must be provided by the response date indicated. Candidates submitted need to be physically able to be placed in Albany, Troy and New York City offices (no telecommuting is permitted). For critical requests, staff resumes may be required to be made available (by fax, electronic mail or U.S. mail) to OAG within five (5) business days, or OAG may deem the vendor is not responsive for that request. For normal requests, the typical time permitted between release of a Task Order and the required date of submission will be no more than two (2) weeks.

The qualified contractor interested in submitting candidates shall complete the following documentation:

- a. Candidate Submission Form: All fields on the Candidate Submission Form must be completed and all candidates submitted must meet the mandatory requirements.

- b. Candidate Resumé: Resumés should detail candidate experience as it relates to the specific expertise requested on the Position Recruitment Form.
- c. A minimum of two (2) references for the candidate need to be submitted. References should have a direct knowledge of the candidate’s work experience. References will be checked.
- d. Hourly Rate per Candidate
Note: Travel costs are not to be included in any hourly rate bids that are submitted as a result of a task order. Travel, if any, will be indicated in the task order and will be reimbursed at the state rate in effect on the day the travel takes place. If an hourly rate bid exceeds the ceiling rate indicated in the bid solicitation, the bid will be considered non-responsive and will be disqualified.

The following forms will also need to be included with each Candidate submission:

- e. Procurement Lobbying Guidelines (Contractor must sign this form)
- f. Data Confidentiality Agreement (Candidate must sign this form)

The following must be completed only for the selected Candidate(s):

- g. Background Check Requirements

The Contractor shall be obligated to undertake and complete background checks for each Candidate tentatively selected by the OAG, and prior to the start of the engagement. The Contractor shall perform the background checks at no cost to the OAG.

When a contractor proposes a candidate, any previously completed background check shall be furnished with such candidate’s resume and Master File at the time of candidate submission. If the OAG tentatively selects such candidate, and the prior background check was completed more than six (6) months before the OAG’s tentative selection, then the contractor shall perform an updated background check and provide the results thereof to the OAG. If there was no previous background check, the contractor shall perform a complete background check and provide the results thereof to the OAG.

The Contractor is responsible for completing background checks at no cost to OAG on each candidate prior to such candidate beginning work. The completion of a background check of a given candidate shall not provide a given candidate with clearance to secured areas. A contractor is required to maintain records of background checks for the duration of the contract, to include them in the candidate’s Master File, and make such records available to the State when requested.

At a minimum, the background check must include the following:

- Undertaking a criminal history record check including:
 - a) a national criminal history check, and
 - b) state and county criminal checks using the NYS Office of Court Administration (NYSOCA) and comparable searches of states where the person lived, worked or attended school during the past five (5) years.
 Alternatively, a contractor may elect to obtain the record of convictions from NYSOCA directly and from their equivalents from other states where the person lived, worked or attended school;
- Undertaking a sex offender record check to determine if the candidate is listed on the NYS Sex Offender Registry. The contractor is responsible for communicating these circumstances to OAG
- Verification of previous employment for the past five years
- Verification of educational background
- Verification of social security number and U.S. citizenship or legal resident status
- OAG reserves the right to conduct additional background checks as necessary.

After the completion of the background check, the contractor shall provide the results to the OAG. The OAG shall review the information and make a determination about the suitability of the candidate for the position in accordance with the relevant statutory and contractual provisions.

To ensure that the State receives only the best available candidates, OAG is limiting the number of candidates to two per position, per contractor. In the event that a contractor submits more than two candidates per position, OAG will select the two lowest hourly rate candidates. If two or more candidates are proposed with the same hourly rate, OAG will alphabetize the candidate’s last names and take the first two.

SPECIAL NOTE ON CURRENT OAG CONSULTANTS: Any and all current contractors who ultimately become part of the new pool of qualified contractors will have an opportunity to submit their current incumbents as candidates to remain in the OAG. However, it will **not** provide current incumbents (both the candidates and contractors) any special advantage over all other candidates who could be submitted by other qualified contractors. All candidates will be reviewed on an equal basis. All current contractors will be given instructions from the OAG when/how to apprise their current incumbents of their work status.

5. Once candidate resumes are submitted, OAG will review and, if necessary, conduct interviews and/or conduct competency testing, to determine whether the resources satisfy the level of expertise and skill sets stipulated in the notification, at the hourly rate proposed for the assignment as set forth in the response, and that the candidates are available for the duration of the services needed.

6. The qualified contractor with the highest evaluation rank will be notified of position award by the OAG's issuance of a Purchasing Memorandum with confirming information on the Task Order. Qualified contractors whose candidate(s) are not selected will be notified by e-mail that the position(s) has been filled. The typical "lag" time between candidate interviews and start date is approximately 3-4 weeks.

If a qualified contractor declines a task, or if the agency rejects the candidate(s) submitted by the qualified contractor, it may go to the next qualified contractor, then the next, etc. Please note declining a task does not affect receiving future task assignment opportunities.

B. Post-Task Order Solicitation (Mini-Bid) Award

- Once resources are accepted by OAG, they will be expected to be available to perform the services as requested or for a time mutually agreed to by the vendor and OAG. They will be required to submit time sheet records for approval on a weekly basis.
- Changes in staff will require the written consent of OAG. Once the resource(s) are being employed by OAG, the vendor may not unilaterally remove the resource except for exceptional circumstances. Those circumstances will be reviewed with OAG, and a mutually acceptable transition plan will be agreed upon. Replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate, and up to twenty days of no cost transition time will be provided to OAG. The OAG reserves the right to reject replacements.
- Unless otherwise approved in writing by the OAG, the qualified contractor shall comply with the terms of the OAG Personal Services Solicitation bid solicitation.
- All documentation provided to the consultants to assist in their efforts will be turned over to OAG when their work has been completed.
- **Employee Removal:** If a contractor becomes aware that any employee it has provided to work under this contract becomes a potential unacceptable risk to the State, the contractor shall immediately notify the OAG, and the OAG will decide if it is necessary to remove that employee from the site. When an employee is removed, the contractor will propose a qualified substitute candidate within one (1) week. The OAG may waive the removal of an employee by providing a written waiver to the contractor. Should the OAG find an employee to be an unacceptable risk to the State, the OAG shall notify the contractor and may request the contractor provide a qualified replacement candidate.

If the resource is not providing the mandatory/desired experience spelled out in the task assignment and/or not completing the required project(s) to the satisfaction of the OAG, and if this occurs with three (3) consecutive resources provided by the contractor to the OAG, the OAG reserves the right to terminate the contractor from receiving future task order solicitations. Current resources will stay until their assignment is completed.

Please note it is only in instances where the OAG had a resource working in our agency that was not meeting our needs does this count as one of the three (3) unsuccessful attempts.

C. Disqualification of Task Order (Mini-Bid) Solicitations

The State, at its sole discretion, reserves the following rights when conducting the Task Order Award solicitation:

1. Non-compliance includes incomplete or late submissions, which do not clearly indicate that the qualified contractor or the qualified contractor's candidate(s) meet the mandatory service requirements for the Personal Service title being bid, and incomplete Forms;

2. Award the Task Order solicitation to another participating qualified contractor after a disqualification has been made. This may be done without receiving a rebuttal from the disqualified the qualified contractor; and
3. Reject all candidate submissions and not award the Task Order (Mini-Bid) solicitation.

D. Miscellaneous Task Order Solicitation (Mini-Bid) Process Information

As a courtesy to all bidders, we are providing the ceiling (maximum) rates in place for all our current (existing) contracts in all six (6) categories. Ceiling rates are listed in order from top to bottom (Entry Level, Level I, Level II & Level III):

Category & Job Classification	COMSYS LLC	DynTek Services	Knowledge Builders	NTT Data	Tailwind Associates	TEJ Technologies	Trigyn Technologies
Development; Programmer	---	---	\$40.00	\$42.00	\$20.00	\$45.00	\$47.00
			\$44.00	\$60.00	\$48.00	\$65.00	\$50.00
			\$74.00	\$73.00	\$78.00	\$79.50	\$60.00
			\$78.00	\$91.00	\$88.00	\$88.00	\$65.00
Development; Analyst	---	---	\$40.00	\$42.00	\$20.00	\$45.00	\$43.00
			\$44.00	\$60.00	\$48.00	\$65.00	\$45.00
			\$74.00	\$73.00	\$78.00	\$80.00	\$55.00
			\$80.00	\$91.00	\$88.00	\$90.00	\$65.00
Operations; Specialist	\$69.85	---	---	\$37.00	\$20.00	---	\$45.00
	\$83.35			\$55.00	\$44.00		\$50.00
	\$90.95			\$69.00	\$77.00		\$55.00
	\$104.45			\$87.00	\$88.00		\$60.00
Integration; Programmer	---	\$60.00	---	\$42.00	\$30.00	\$45.00	\$47.00
		\$64.00		\$60.00	\$45.00	\$65.00	\$50.00
		\$70.00		\$73.00	\$78.00	\$79.50	\$60.00
		\$77.00		\$91.00	\$90.00	\$88.00	\$65.00
Integration; Specialist		\$72.00	---	\$37.00	\$30.00	\$45.00	\$47.00
		\$80.00		\$55.00	\$45.00	\$65.00	\$50.00
		\$110.00		\$82.00	\$78.00	\$80.00	\$60.00
		\$115.00		\$96.00	\$90.00	\$90.00	\$65.00
Database Administration; Programmer	\$69.80	---	\$40.00	\$42.00	---	\$46.00	---
	\$90.75		\$45.00	\$60.00		\$67.00	
	\$104.45		\$75.00	\$73.00		\$85.50	
	\$111.75		\$85.00	\$100.00		\$99.00	
Database Administration; Specialist	\$62.85	---	\$45.00	\$42.00	---	\$46.00	---
	\$69.75		\$50.00	\$64.00		\$70.00	
	\$83.80		\$108.00	\$78.00		\$95.50	
	\$104.90		\$120.00	\$101.00		\$108.00	
User Services; Specialist	\$27.95	\$65.00	---	\$33.00	\$20.00	---	---
	\$41.90	\$85.00		\$46.00	\$30.00		
	\$48.90	\$92.00		\$55.00	\$45.00		
	\$62.95	\$97.00		\$64.00	\$48.00		
Management & Analysis; Project Manager	\$69.85	\$80.00	---	\$55.00	\$25.00	---	\$52.00
	\$83.85	\$82.00		\$68.00	\$50.00		\$55.00
	\$125.45	\$87.00		\$82.00	\$80.00		\$60.00
	\$181.25	\$97.00		\$100.00	\$90.00		\$70.00
Management & Analysis; Program Manager	\$214.50	\$115.00	---	\$113.00	\$80.00	---	\$80.00
Management & Analysis; Specialist	\$76.75	\$97.00	---	\$46.00	\$25.00	---	\$43.00
	\$83.65	\$103.00		\$60.00	\$50.00		\$45.00
	\$97.80	\$107.00		\$73.00	\$80.00		\$55.00
	\$111.25	\$115.00		\$82.00	\$90.00		\$65.00

8. CONTRACT CLAUSES AND REQUIREMENTS

8.1 Appendix A/Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated January 2014 attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein.

The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

- A. Appendix A (Standard Clauses for NYS Contracts)
- B. Contract
- C. OAG RFP 14-002, **Appendix B** (June 2014 edition) and any other addendum
- D. Selected Contractor(s) Bid
- E. Unincorporated Appendices

8.2 Appendices

The Bidder's attention is directed to the appendices documents attached hereto, and hereby incorporated by reference and made part hereto as fully as if it were set forth at length herein. They are a part of the contract and the Bidder is responsible for adhering to all requirements of all attachment and appendices.

8.3 Procurement Lobbying Requirements

State Finance Law §§139-j and 139-k imposes certain restrictions on communications between the OAG and the bidder during the procurement process. The bidder is restricted from making contacts from the date of bid advertisement in the NYS Contract Reporter through final approval of the contract award by the Office of the State Comptroller, with anyone other than designated OAG staff; certain exceptions to this restriction are set forth in State Finance Law §139-j(3)(a). OAG employees are also required to obtain certain information when contacted during the "restricted period" and to make a determination of responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award, and in the event of two such findings within a four-year period, the bidder is debarred from obtaining State contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

8.4 Procurement Rights

State of New York reserves the right to:

- A. Amend the RFP: If the OAG elects to do so, notification of the amendment will be provided on a Purchasing Memorandum to all prospective bidders.
- B. Withdraw the RFP at its sole discretion.
- C. Disqualify any Bidder whose conduct and/or bid proposal fails to conform to any mandatory requirements.
- D. Require clarification at any time during the procurement process and/or correct any math or other apparent errors to ensure a full & complete understanding of a Bidder's proposal and compliance with requirements.
- E. Reject any or all proposals received in response to this RFP at its sole discretion.
- F. Change any of the scheduled dates indicated in this RFP.
- G. Establish program and legal requirements to meet the OAG's needs; and to modify/correct/clarify any such requirements at any time during the procurement process, so long as such actions would not materially benefit or disadvantage any particular Bidder.
- H. Eliminate any requirement(s) unmet by all Bidders.
- I. Use the proposal, information obtained through any interviews and/or the OAG's own research of a Bidder's qualifications, experience, ability and/or financial standing, and any other material/information submitted by the Bidder in response to the OAG's request for information during evaluation and/or selection under this RFP.
- J. Consider any and all ideas/suggestions submitted in the proposals received by the successful Bidders.
- K. Request best and final offers.
- L. Negotiate with Bidders responding to this bid within the bid requirements to serve the best interests of the State.
- M. Should the State be unsuccessful in negotiating a contract with the selected contractor within 45 days, the State may begin contract negotiations with another bidding contractor in order to serve the best interest of the State.
- N. Select and award the contract to other than the lowest bidder in the event of unsuccessful negotiations.
- O. OAG has the right to all interpretation issues with respect to the content/language and meaning thereof the RFP and contract.

8.5 Dispute Resolution

It is the policy of the Office of the Attorney General, Budget & Fiscal Management Bureau, to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations, contract awards and contract administration. The Budget & Fiscal Management Bureau encourages vendors to seek resolution of disputes informally, through consultation with agency staff, prior to commencing a formal dispute process. All such matters will be accorded impartial and timely consideration.

8.6 Procurement Lobbying Termination

As stated in Section 8.11 – NYS Vendor Responsibility Questionnaire For-Profit Business Entity and/or “Termination – for Cause” in Appendix B, General Specifications and/or New York State Finance Law Section 139-k, the Office of the Attorney General reserves the right to terminate a contract by providing ten (10) days written notification to the Contractor, for cause in the event of determination made after an award with respect to vendor non-responsibility, or in the event of determination that certification filed in accordance with State Finance Law Section 139-k was intentionally false or intentionally incomplete.

8.7 Subcontracting

The State reserves the right to reject any proposed subcontractor for bona fide business reasons, which may include, but are not limited to: that the proposed subcontractor is on the Department of Labor’s debarred list; the State determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided.

A subcontractor shall be defined as any firm or person who is not a full time employee of the Contractor, engaged or assigned to perform work under the Contract. All agreements between the Contractor and its subcontractors shall be by bona fide written contract. Any costs associated with subcontracting are the obligation of the Awarded Contractor.

Contractor shall be fully responsible to OAG for the acts and omissions in the performance of services under the Contract of the subcontractor and/or persons either directly or indirectly employed by it or by the subcontractors, as it is for the acts and omissions in the performance of services under the Contract or persons directly employed by the Contractor. Contractor shall not in any way be relieved of any contractual or financial responsibility under the Contract by its agreement with any subcontractor or by an OAG approval of such an agreement with a subcontractor.

8.8 Security and Confidentiality

This RFP and its resulting contract is strictly limited to permitting the Contractor to courier services and storage of the OAG’s records and/or evidence. The Contractor acknowledges that any and all information, records, files, documents or reports contained in the boxes provided by the OAG, or which may be otherwise encountered by Contractor shall be considered extremely confidential and shall be handled accordingly at all times. Neither the Contractor nor any of its employees, servants, subcontractors, agents or volunteers shall at any time be permitted to utilize such confidential information for any purpose outside the scope of any resulting agreement without the express prior written authorization of the OAG. Any breach of this confidentiality by the Contractor or by any of its employees, servants, subcontractors, agents, or volunteers may result in the immediate termination of any resulting agreement by the OAG and may subject Contractor to further penalties

8.9 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.

8.10 Surety Bond

There are no BONDS required for this contract.

8.11 New York State Vendor Responsibility Questionnaire For-Profit Business Entity (hereinafter the “Questionnaire”)

The OAG conducts a review of prospective contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. Which form is completed depends on what type of company the Bidder is (for-profit, not-for-profit, construction, etc.); but for the most part, only the for-profit questionnaire is required to be completed. 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.

OAG 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 the OAG 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, the OAG 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.

8.12 Tax Law § 5-A (Amended April 26, 2006):

Tax Law § 5-a, as amended on April 26, 2006, requires certain contractors who are awarded state contracts for commodities and/or services valued at more than \$100,000 (over the full term of the contract, excluding renewals) to certify to the Department of Taxation and Finance (DTF) they are registered to collect New York State (NYS) and local sales and compensating use taxes. The law applies to contracts where the total amount of the contractor’s sales delivered into NYS exceed \$300,000 for the four quarterly periods immediately preceding the quarterly period when the certification is made; and with respect to any affiliates and subcontractors whose sales delivered into NYS also exceed \$300,000 in the same manner as noted above for the contractor.

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.

The OAG 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 OAG may exercise its termination right by providing written notification to the Contractor.

Vendors may call DTF at 1-800-698-2909 for any and all questions relating to Tax Law § 5-a and relating to a company’s registration status with DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>

8.13 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 and regulations adopted pursuant thereto, OGS may establish separate goals for participation of New York State Certified minority and women-owned business

enterprises, at the time of the acquisition, if the acquisition will result in a State contract (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. As a condition of award of the Contract, the 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.

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.esd.ny.gov/mwbe.html>.

8.14 Iran Divestment Act of 2012

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the OAG receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the OAG will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the OAG shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The OAG reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

8.15 Contractor Insurance Requirements

Upon tentative award, Bidder shall be required to procure at its sole cost and expense all required insurance. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York ("Authorized Carriers") with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of the Attorney General (OAG) and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OAG evidence of such policies in a form acceptable to OAG. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OAG

does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

General Conditions

- A. **Conditions Applicable to Insurance.** All policies of insurance required by this Contract must meet the following requirements:
1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B Insurance Requirements below.
 2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OAG, policies must be written on an occurrence basis.
 3. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OAG, upon tentative award and within three (3) business days of request. Certificates shall reference the Contract Number. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The New York State Office of the Attorney General, Budget and Fiscal Management Bureau, State Capitol, Albany NY 12224 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder). Certificates shall be submitted to the Office of the Attorney General, Budget and Fiscal Management Bureau, State Capitol, Albany, NY 12224; Attention: Ron Wachenheim.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to OAG. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply S updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

1. Be in the form approved by OAG.
2. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
3. Specify the Additional Insured and Named Insured as required herein.
4. Refer to this Contract by number and any other attachments on the face of the certificate, and
5. Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OAG or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OAG or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in OAG or the Authorized User's own policy of insurance.
5. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OAG than the expiring policies shall be delivered to OAG in the manner required for service of notice in Paragraph A.3. Certificates of Insurance/Notices above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OAG, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OAG.

Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OAG, shall not give rise to a delay claim or any other claim against OAG. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OAG or Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract.

6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OAG. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this contract the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OAG.

All insurance required by the Contract shall name The People of the State of New York, its officers, agents, and employees as additional insured hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 or the equivalent). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

B. **Insurance Requirements:** The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. **Commercial General Liability Insurance** with a limit not less than **\$2,000,000.00** each occurrence. Such liability shall be written on the ISO occurrence form **CG 00 01 01 96**, or a substitute form providing equivalent cover ages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
 - a. If such insurance contains an aggregate limit, it shall apply separately on a per job basis.
 - b. Policy shall include bodily injury, property damage and broad form contractual liability coverage.
 - c. General Aggregate \$2,000,000.00
 - d. Products-Completed Operations Aggregate \$1,000,000.00
 - e. Personal and Advertising Injury \$1,000,000.00
 - f. Each Occurrence \$2,000,000.00

Coverage shall include, but not be limited to, the following:

- premises liability,
- independent contractors,
- blanket contractual liability, including tort liability of another assumed in a contract,
- defense and/or indemnification obligations, including obligations assumed under this contract,
- cross liability for additional insureds
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract
- explosion, collapse, and underground hazards and
- contractor means and methods.

The following ISO forms must be endorsed to the policy:

- a. **CG 00 01 01 96** or an equivalent – Commercial General Liability Coverage Form
- b. **CG 20 10 11 85** or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name The People of the State of New York and the New York State Office of the Attorney General as Additional Insured's, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the “ Each Occurrence” limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insured's, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by OAG. Any other insurance maintained by OAG shall be excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the “Other Insurance” clause contained in either party's policy of insurance.

- a. **Comprehensive Business Automobile Liability Insurance** with a limit of not less than **\$2,000,000.00** each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- b. If providing professional occupation job titles, the Contractor shall maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.
 - 1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
 - 2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OAG prior to the policy's expiration or cancellation.

C. 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.

Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the OAG 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 RFP #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 the Attorney General, 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 the Attorney General.
- 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 New York State Office of the Attorney General 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 RFP #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 the Attorney General; 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.

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State of New York
Office of the Attorney General
Budget & Fiscal Management Bureau
State Capitol
Albany, NY 12224-0341
<http://www.ag.ny.gov>

ERIC T. SCHNEIDERMAN Attorney General
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PROPOSAL RESPONSE COVER FORM

BID NUMBER: 14-002 BID ISSUED: July 18, 2014	BID TITLE: IT Personal Services (Note: this is a re-bid of RFP #13-006; and all bids received are hereby cancelled)
BID OPENING: September 3, 2014 @ 2:00 PM (Bids are due by August 28, 2014 @ 4:00 PM)	CONTRACT PERIOD: January 1, 2015 to December 31, 2019
Complete this form and bid submittal forms in their entirety using ink or typewriter and return to designated address bid submission address. The bid must be fully and properly executed by an authorized person. Bids must be signed. For submission of bid, please read Paragraphs 2.4 & 2.5 on Pages 6-7 of the RFP.	
Bidder's Federal Tax Identification #:	NYS Vendor Identification #:
Legal Business Name of Company:	
Street	City
State	County
Zip Code	
The undersigned certifies that they are duly elected and authorized officer of the company and that, as such, are authorized to sign this Request for Proposal (RFP), on behalf of the company, to obligate the company to comply with all of the terms and conditions placed on this RFP, and in connection with this RFP to make, execute and deliver on behalf of the company all appendices, contract agreements, representations and instruments of every kind.	
The undersigned certifies that your company has the experience, financial resources, capabilities and licenses (if applicable) to perform the type, magnitude, and quality of work as specified in this RFP.	
The undersigned certifies full knowledge and acceptance of Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and Chapter 1 of the Laws of 2005 (Procurement Lobbying Act), and that all information provided is complete, true and accurate. Bidders are requested to retain Appendix A and Appendix B for future reference.	
Bidder's Printed or Typed Name:	Bidder's Signature:
Title:	Date:
Phone: Extension Fax: Extension	Email Address:
E-Mail or Facsimile Bid Submissions Will Not Be Accepted for this Request for Proposal	



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ERIC T. SCHNEIDERMAN Attorney General
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PROPOSAL QUOTE FORM

The cost/unit pricing shall cover all costs as outlined on the bid price page(s) herein. The quantities listed throughout this RFP and in the Proposal Quote Form are estimates only and no minimum/ maximum usage from any job/expertise classification is guaranteed or implied. **All pricing submitted pursuant to this Request for Proposal (RFP) shall include all direct and indirect (physical and administrative) costs for the performance of services; including, but not necessarily limited to, all administrative, reporting or other requirements; overhead, fees, profit and any other ancillary fees and costs including permits, licenses, insurance, etc.; and services not explicitly stated in the RFP, but necessarily attendant thereto as and as applicable to the associated item for which the rate is being quoted.**

Rates/fees as quoted should be expressed in decimals, not to exceed two places for each item quoted. **All fields must be completed.** Additionally, **pricing shall be submitted only on, and in the form prescribed by, this Proposal Quote Form.** No other (additional) charges beyond the services specified herein (those listed on this page) shall be permitted by the Contractor, nor will they receive any consideration.

Personal Service <u>Category</u>	Job/Expertise <u>Classification</u>	Annual Est. <u>No. of Hours</u>	Ceiling (Max.) <u>Hourly Rate</u>	Total <u>Cost</u>	
Development	Programmer, Entry Level	2,000	\$ _____	\$ _____	
	Programmer, Level I	2,000	\$ _____	\$ _____	
	Programmer, Level II	2,000	\$ _____	\$ _____	
	Programmer, Level III	2,000	\$ _____	\$ _____	
	Analyst, Entry Level	2,000	\$ _____	\$ _____	
	Analyst, Level I	2,000	\$ _____	\$ _____	
	Analyst, Level II	2,000	\$ _____	\$ _____	
	Analyst, Level III	2,000	\$ _____	\$ _____	
Operations	Specialist, Entry Level	2,000	\$ _____	\$ _____	
	Specialist, Level I	2,000	\$ _____	\$ _____	
	Specialist, Level II	2,000	\$ _____	\$ _____	
	Specialist, Level III	2,000	\$ _____	\$ _____	
Integration	Programmer, Entry Level	2,000	\$ _____	\$ _____	
	Programmer, Level I	2,000	\$ _____	\$ _____	
	Programmer, Level II	2,000	\$ _____	\$ _____	
	Programmer, Level III	2,000	\$ _____	\$ _____	
	Specialist, Entry Level	2,000	\$ _____	\$ _____	
	Specialist, Level I	2,000	\$ _____	\$ _____	
	Specialist, Level II	2,000	\$ _____	\$ _____	
	Specialist, Level III	2,000	\$ _____	\$ _____	
Database/Application	Programmer, Entry Level	2,000	\$ _____	\$ _____	
	Programmer, Level I	2,000	\$ _____	\$ _____	
Server Administration	Programmer, Level II	2,000	\$ _____	\$ _____	
	Programmer, Level III	2,000	\$ _____	\$ _____	
	Specialist, Entry Level	2,000	\$ _____	\$ _____	
	Specialist, Level I	2,000	\$ _____	\$ _____	
	Specialist, Level II	2,000	\$ _____	\$ _____	
	Specialist, Level III	2,000	\$ _____	\$ _____	
	User Services	Specialist, Entry Level	2,000	\$ _____	\$ _____
		Specialist, Level I	2,000	\$ _____	\$ _____
Specialist, Level II		2,000	\$ _____	\$ _____	
Specialist, Level III		2,000	\$ _____	\$ _____	
Management & Analysis	Project Manager, Entry Level	2,000	\$ _____	\$ _____	
	Project Manager, Level I	2,000	\$ _____	\$ _____	

Project Manager, Level II	2,000	\$ _____	\$ _____
Project Manager, Level III	2,000	\$ _____	\$ _____
Program Manager (IT Mgmt. only)	2,000	\$ _____	\$ _____
Specialist	2,000	\$ _____	\$ _____
Specialist, Level I	2,000	\$ _____	\$ _____
Specialist, Level II	2,000	\$ _____	\$ _____
Specialist, Level III	2,000	\$ _____	\$ _____

NOTE: The annual estimated number of hours represents maximum per person/resource.

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Data Confidentiality Agreement & Assignment

Definition

Throughout this agreement, the NYS Office of the Attorney General may also be referred to as NYS OAG, OAG, Agency and/or Data Custodian.

Third party represents either a service provider, consultant, outside agency, partner or company working with or for the NYS Office of the Attorney General.

Covered Data and Information (CDI) includes paper and electronic record information supplied by NYS OAG or any of its associates to the third party organization.

Terms

I, the undersigned, agree to the following:

All information shall be treated as strictly confidential and shall not be disclosed or provided to any company, employee, contractor, or other third party who has not signed a Data Confidentiality Agreement with the NYS Office of the Attorney General (OAG).

In addition, access to such data shall be allowed only if necessary in the performance of that persons work responsibilities & responsibilities agreed upon by the third party and OAG. All other access must be authorized in writing by the OAG.

Below outlines the data security terms for inclusion in contracts with third party organizations regarding the use of Covered Data and Information (CDI) as defined by this Data Confidentiality Agreement.

Acknowledgment of Access to CDI

Third party acknowledges that the agreement allows the third party access to CDI.

Protection of Confidential Data

Third party agrees to strictly abide by the limitations on re-disclosure of personally identifiable information or data deemed confidential only for the purposes for which the disclosure was made. By signing this agreement, third party agrees to abide by HIPAA, PPI, and other regulations related to State and Federal mandates.

Prohibition on Unauthorized Use or Disclosure of CDI

Third party agrees to hold CDI in strict confidence. Third party shall not use or disclose CDI received from or on behalf of NYS OAG (or its associates) except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by the agency. Third party agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

Remedies

If the NYS OAG reasonably determines in good faith that the third party has materially breached any of its obligations under this contract, the Agency, in its sole discretion, shall have the right to require the third party to submit to a plan of monitoring and reporting; provide third party with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible. Before exercising any of these options, NYS OAG shall provide written notice to third party describing the violation and the action it intends to take.

Maintenance of the Security of Electronic Information

The third party shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of the Agency or associates. These measures will be extended by contract to all subcontractors used by the primary third party.

Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information

The third party shall, within one day of discovery, report to the NYS OAG any use or disclosure of CDI not authorized by this agreement or in writing by the agency. The third party report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the third party has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and

(v) what corrective action the third party has taken or shall take to prevent future similar unauthorized use or disclosure. The third party shall provide such other information, including a written report, as reasonably requested by the NYS OAG.

Indemnity

The third party shall defend and hold the NYS OAG harmless from all claims, liabilities, damages, or judgments involving additional third party organization, including NYS OAG costs and attorney fees, which arise as a result of third party's failure to meet any of its obligations under this Agreement.

Return or Destruction verification of CDI

Upon request, termination, cancellation, expiration or conclusion of the agreed upon use of confidential data, third party shall return all CDI to the Agency or, if return is not feasible, third party will be required to destroy any and all CDI rendering the data unrecoverable. If the third party destroys the information in lieu of returning it, the third party shall provide written verification confirming the date of destruction of the data and the method used to ensure its permanent destruction.

In Agreement with the terms hereof, the undersigned has executed this Agreement as above written.

Signature: _____
Name (Print): _____
Title: _____
Organization/Company Name: _____
Date: _____

REFERENCE FORM

(Please submit one form per reference)

YOUR COMPANY (BIDDER) INFORMATION

Bid Category: Development Operations Integration Database User Services Management

Bidder Name: _____

Street Address: _____

City, State, Zip: _____

Year Business Began: _____ / _____ / _____ No. of Years in Business: _____

(PAGES 39-41 ARE TO BE GIVEN TO THE REFERENCE TO COMPLETE AND RETURN TO BIDDER)

REFERENCE (CUSTOMER) INFORMATION

Name: _____

Address: _____

Contact Person: _____

Telephone Number: _____

Dates of Service: _____ / _____ / _____ through _____ / _____ / _____

Maximum/Annual Dollar Value of Contract: _____

1) Please provide a summary of the work provided by this bidder:

(More Questions Appear on Next Page)

2) Did the bidder successfully recruit and retain IT staff according to your needs? Yes No

If "Yes", a) How many placements? _____

b) Length of contract? _____

c) On average, how did the placement(s) meet your expectations?

1 2 3 4 5 (1-below, 3-met, 5-exceeded)

If "No", please provide detail:

3) Did the placements work with any of the following technologies or environments? (check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> IBM Websphere Administration | <input type="checkbox"/> Microsoft Windows & Active Directory |
| <input type="checkbox"/> IBM FileNet (P8) | <input type="checkbox"/> Microsoft Exchange & Outlook |
| <input type="checkbox"/> Unix Admin | <input type="checkbox"/> Microsoft IIS |
| <input type="checkbox"/> Oracle Database Admin | <input type="checkbox"/> Microsoft SQL Server |
| <input type="checkbox"/> Oracle Application Server Admin | <input type="checkbox"/> Microsoft SharePoint |
| <input type="checkbox"/> Oracle Forms & Reports | <input type="checkbox"/> Cisco Routers & Switches |
| <input type="checkbox"/> Oracle Designer | <input type="checkbox"/> CheckPoint Firewalls |
| <input type="checkbox"/> Oracle jDeveloper | <input type="checkbox"/> SSL VPN |
| <input type="checkbox"/> XML | <input type="checkbox"/> HTML Web Page Development |

4) Did you encounter any staffing deficiencies or interruptions with the bidder's placements? Yes No

If "Yes", please provide the detail and how the situation was handled:

(More Questions Appear on Next Page)

5) Please rate the performance of the bidder with your company/agency on a scale of 1-5 (with 1 being the lowest score):

1 2 3 4 5

Please provide any additional information you wish on this bidder (use additional sheets of paper if necessary):

Reference: Please print & sign your name certifying the above information is complete, true and accurate:

(Print Name)

(Signature)

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

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

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

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

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

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX B
GENERAL SPECIFICATIONS

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GENERAL

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

2. DEFINITIONS Terms used herein shall have the following meanings:

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

b. AUTHORIZED USER(S) Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

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

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

- 1. Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).
- 2. Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.
- 3. Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid

among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

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

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

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

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

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

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

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

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

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

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

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

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

o. LICENSEE(S) One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for

purposes of compliance with an individual license, the term "Licensee(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

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

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

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

s. OGS The New York State Office of General Services.

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

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

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

w. REQUEST FOR PROPOSALS (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

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

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

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

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

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

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

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

ee. STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

“**BID ENCLOSED** (bold print, all capitals)

- Group Number

- IFB or RFP Number
- Bid Submission date and time”

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

Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

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

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

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

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

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

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license

agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

9. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

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

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

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

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

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

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

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

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

11. TAXES

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

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

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

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

13. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor

shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

14. PRODUCT REFERENCES

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

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

15. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS

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

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

16. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

Bids offering Products that are manufactured or produced in public institutions will be rejected.

17. PRICING

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

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

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

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

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

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

g. Specific price decreases:

(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

h. Cost Proposal Revisions A Contractor may be solicited prior to contract award to propose the best possible offer for the Product or service being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

18. DRAWINGS

a. Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings

and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

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

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

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

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

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

21. SAMPLES

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

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

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

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

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

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

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

BID EVALUATION

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

23. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

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

25. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

TERMS & CONDITIONS

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

27. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

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

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a

breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

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

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

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

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

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

Estimated quantity contracts, also referred to as indefinite delivery / indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

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

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

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

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

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, JUNE 2014

the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

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

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

35. SHIPPING/RECEIPT OF PRODUCT

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

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

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

36. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by

Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

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

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

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

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

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

43. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

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

44. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

45. PERFORMANCE / BID BOND The Commissioner reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable

irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

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

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

47. TERMINATION

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

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

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

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

e. For Non-Responsibility: The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

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

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

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

48. SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence:

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

b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

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

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

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

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

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

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

50. DEFAULT – AUTHORIZED USER

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

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

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

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

51. PROMPT PAYMENTS

a. **State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency

may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement
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Product shall be deducted from the Contract quantity without penalty or liability to the State.

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

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

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

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

55. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

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

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

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

59. WARRANTIES

a. Product Performance Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the

documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

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

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty for Deliverables During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

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

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

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

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

e. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

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

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

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

g. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

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

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

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

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, JUNE 2014

liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

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

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

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount

not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

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

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

64. DISPUTES

a. Informal Dispute Resolution Process

1. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

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

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

4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section JUNE 2014

shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

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

b. Formal Disputes

1. Definitions

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

b. Dispute means a written objection by Contractor to any of the following:

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

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

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

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

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

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

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

2. Submission of Disputes

a. A formal dispute by Contractor must be filed in writing to OGS by mail, email or facsimile.

3. The dispute must include:

a. Name, address, e-mail address, fax and telephone numbers of the filer.

b. Solicitation or Contract number.

c. Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.

d. Copies of relevant documents.

e. Request for a ruling by the agency.

f. Statement as to the form of relief requested.

g. All information establishing that the filer is an interested party for the purpose of filing a dispute.

h. All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of OGS New York State Procurement (NYSPRO) at the following address:

New York State Office of General Services

Director, NYSPRO

38th Floor, Corning Tower

Empire State Plaza

Albany, NY 12242

Facsimile: (518) 474-2347

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

4. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed

procurement/Contract action prior to issuance of a formal dispute decision.

2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.

3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

4. OGS reserves the right to consider or reject the merits of any dispute.

5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

5. Appeals

a. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

Chief Procurement Officer
New York State Office of General Services
NYSPRO
 38th Floor, Corning Tower
 Empire State Plaza
 Albany, NY 12242
 Facsimile: (518) 474-2347

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

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

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

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

6. **Legal Appeals** Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or JUNE 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Copy the Product;

(ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;

(iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

66. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

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

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

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

Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

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

68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the JUNE 2014

Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

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

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

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

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase(s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required

by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

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

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

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

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

71. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under JUNE 2014

the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

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

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

72. NO HARDSTOP/PASSIVE LICENSE MONITORING

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

73. SOURCE CODE ESCROW FOR LICENSED PRODUCT

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

updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

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

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I. INTRODUCTION

The Guidelines have been issued pursuant to the New York State Finance Law, which prohibits lobbying on procurement contracts. The Guidelines, which apply to all Office of Attorney General (OAG) procurement contracts, limit communications between offerers and the OAG during the Restricted Period of a Governmental Procurement. During the Restricted Period, an Offerer may only communicate with the person or persons designated by the OAG to receive communications regarding such Governmental Procurement.

II. STATUTORY DEFINITIONS¹

Article of Procurement: A commodity, service, technology, public work, construction, revenue contract, the purchase sale or lease of real property or an acquisition or granting of an interest in real property that is the subject of a governmental procurement.

Contact: Any oral, written or electronic communication with the OAG under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement.

Governmental Entity: All New York State agencies and authorities, both houses of the Legislature, the Unified Court System, municipal agencies and their respective employees.

Governmental Procurement: shall mean: (i) the preparation of terms of the specifications, bid documents, requests for proposals, or evaluations criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the Comptroller, as applicable), renewal or extension of procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer.

Offerer: The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that communicates with the OAG about a **Governmental Procurement** or seeks to participate in a **Governmental Procurement**.

Procurement Contract: Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, Article 11-B State Finance Law Contracts, Intergovernmental Agreements, Railroad and Utility Force Accounts, Utility Relocation Project Agreements or Orders of Eminent Domain Transactions shall not be deemed **Procurement Contracts** in these Guidelines.

Restricted Period: The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a **Procurement Contract** with the OAG and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

III. EXEMPTIONS

Certain communications are exempt from the Guidelines. These include: (i) submissions in response to an invitation for bid, a

request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

In addition, any communication received by the OAG from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact**.

IV. VIOLATIONS

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person or persons designated by the OAG to receive communications for the particular **Governmental Procurement**. This includes instances where the **Offerer** **Contacts** the OAG regarding **Governmental Procurements** of other **Governmental Entities**.

Attempts by an **Offeror** to influence a **Governmental Procurement** in a manner that would result in a violation of the Public Officer's Law, the Executive Orders of the Attorney General, or any other applicable ethics code shall also be a violation of these Guidelines.

V. PROCEDURES

A. Notifying Vendors of Procurement Lobbying Guidelines
 1. For each **Procurement Contract**, the OAG Budget and Fiscal Management Bureau will designate a person or persons to receive communications from **Offerers** concerning the **Procurement Contract**.

2. The OAG Purchasing Team will incorporate a summary of the policy and prohibitions regarding permissible communications during a **Governmental Procurement** in its documents relating to the **Procurement Contract** and provide a copy of these Guidelines.

3. The OAG Purchasing Team shall seek written affirmation from all **Offerers** as to the **Offerer's** understanding of and compliance with these Guidelines (Appears at the end of this guideline).

B. Making Determinations of Responsibility

1. Prior to award of a **Procurement Contract**, the OAG must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**. The **Offerer** must disclose in the Vendor Responsibility Questionnaire whether it has been found non-responsible within the last five years by any **Governmental Entity** for: (1) failure to comply with State Finance Law §139-j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to the OAG is complete, true and accurate (Appears at the end of this guideline).

2. The **Procurement Contract** shall include a provision allowing the OAG to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of

the Offerer by the OAG. The OAG can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

C. Recording Contacts

1. All OAG employees must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the procurement that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form should be used to record all **Contacts**.

2. Examples of **Contacts** for which a Record of Contact must be completed include:

- a. During the **Restricted Period**, an **Offerer Contacts** an OAG employee (other than the employee designated to receive such communications) to discuss the **Offerer's**, cost-competitiveness or its suitability to be selected for a contract
- b. A court reporter, expert witness or any other vendor offers an OAG employee a gift of any monetary value during the **Restricted Period**.

3. Examples of permissible communications for which there is no need to prepare Record of Contact include:

- a. Inquiries as to the status of the procurement process
- b. Requests to be included on the OAG's **Offerer's** list
- c. Receipt of advertising material
- d. Intra-agency communications of administrative details concerning the procurement
- e. Responses to OAG issued Requests for Information
- f. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement
- g. Complaints about the procurement process or outcome
- h. Participation in an **Offerer's** conference as provided in a request for proposal or invitation for bid
- i. Submission of a bid in response to a request for proposal or invitation for bid
- j. Contract negotiations
- k. Debriefing of a **Offerer** after a contract award has been made

4. If an OAG employee is in doubt about whether a communication was intended to influence the **Governmental Procurement**, he/she should record the communication on the Record of Contact Form and submit it to ProcurementLaw@OAG.State.NY.US for further investigation

5. The OAG Purchasing Team will be required to include all Records of Contact in the procurement record for the related **Procurement Contract**.

D. Investigation of Contacts/ Penalties for Violations

1. All reported **Contacts** will be immediately investigated by the OAG Ethics Officer or his or her designee. If the OAG Ethics Officer finds sufficient cause to believe that an **Offerer** has violated these Guidelines, the **Offerer** will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as

not to delay the progress of the **Governmental Procurement**.

2. If the OAG Ethics Officer should find at the conclusion of the investigation that the **Offerer** knowingly and willfully made prohibited **Contact** in violation of these Guidelines, then the **Offerer** shall be disqualified as non-responsible, unless the OAG makes a finding that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

¹Defined terms are in bold

Bidder Understanding & Compliance with State Finance Law Section 139-j & 139-k:

Bidder affirms that it understands and agrees to comply with the procedures of the Office of the Attorney General relative to permissible contacts as required by State Finance Law Section 139-j (3) and Section 139-j (6) (b); and that all information provided to the Office of the Attorney General, with respect to State Finance Law Section 139-k is complete, true and accurate.

Signed By: _____

Date: _____

Name (Print): _____

Title: _____

Bidder Name: _____

Bidder Address: _____

Bidder Disclosure of Prior Non-Responsibility Determinations:

Has any NYS agency/authority made a finding of non-responsibility regarding the Offerer in the last 5 years?:
 Yes No

Has any NYS agency/authority terminated a procurement contract with the Offerer due to intentional provision of false or incomplete information?:
 Yes No

If "Yes" to either/both questions, please provide details; such as: NYS Agency/Authority, Basis for Finding, Year of Finding/Termination, and Facts Underlying Finding/Termination.



Contractor Certification

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

ST-220-TD

(12/11)

For information, consult Publication 223, *Questions 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 or state agency	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			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). See *Need help?* for more information on how to obtain this publication.

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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



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, call the information center.

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, and 3 below. Make only one entry in each section.

Section 1 — Contractor registration status

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

Section 2 — Affiliate registration status

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

Section 3 — Subcontractor registration status

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
 : SS.:
COUNTY OF _____ }

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

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

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

Notary Public

Registration No. _____



Contractor Certification to Covered Agency

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

ST-220-CA

(12/11)

For information, consult Publication 223, *Questions 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 ST-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. 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.

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

When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

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

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

Notary Public

Registration No.

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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



- Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



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, call the information center.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at ciohelpdesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. LEGAL BUSINESS ENTITY INFORMATION			
<u>Legal Business Entity Name</u> *		<u>EIN</u>	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>)		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No,' indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States State _____			
<input type="checkbox"/> Other Country _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," Enter <u>DUNS</u> Number			

* All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," which can be found at www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. LEGAL BUSINESS ENTITY INFORMATION

1.4 If the <u>Legal Business Entity</u> 's <u>Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
--	--

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise</u> (MBE), <u>Women-Owned Business Enterprise</u> (WBE), <u>New York State Small Business</u> (SB) or a federally certified <u>Disadvantaged Business Enterprise</u> (DBE)? If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <input type="checkbox"/> <u>New York State Small Business</u> (SB) <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)

Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)

IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone

ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

Yes No

If “Yes,” enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.
For each person, include name and title. Attach additional pages if necessary.

Name

Title

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

III. LEADERSHIP INTEGRITY

Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:

3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other

For each “Yes” or “Other” explain:

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the reporting entity:

4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the reporting entity:

- | | |
|---|--|
| 5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the reporting entity:

- | | |
|---|--|
| 6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

VII. LEGAL PROCEEDINGS

Within the past five (5) years, has the reporting entity:

- | | |
|--|--|
| 7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious</u> or <u>willful</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Other than previously disclosed:
a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or
b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” explain:

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY	
8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as “Initiated,” “Pending” or “Closed.” Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal, state or local tax laws</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If “Yes,” did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes” to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

IX. ASSOCIATED ENTITIES

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.
(See definition of “associated entity” for additional information to complete this section.)*

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> - An <u>Organizational Unit</u>; or - The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies). <p>If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <ul style="list-style-type: none"> a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the <u>Associated Entity</u>, his/her relationship to the <u>Reporting Entity</u>, relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s).</p>	
<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u>, New York State, New York City or New York local <u>government liens</u> or <u>judgments</u> (not including <u>UCC filings</u>) over \$50,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity</u>’s name(s), <u>EIN</u>(s), primary business activity, relationship to the <u>Reporting Entity</u>, relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien</u>(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any <u>federal</u>, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any <u>federal</u>, New York State, New York City or New York local <u>government contract</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>For each “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity</u>’s name(s), <u>EIN</u>(s), primary business activity, relationship to the <u>Reporting Entity</u>, relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If "Yes," indicate the question number(s) and explain the basis for the claim.

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

Name	Telephone	Fax
	ext.	
Title	Email	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public



NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
SUBSTITUTE FORM W-9:
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name:

2. Business name/disregarded entity name, if different from Legal Business Name:

3. Entity Type (Check one only):

- Individual Sole Proprietor
 Partnership
 Limited Liability Co.
 Corporation
 Not For Profit
 Trusts/Estates
 Federal, State or Local Government
 Public Authority
 Disregarded Entity
 Other _____

Exempt Payee

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: *(DO NOT USE DASHES)*
 See instructions.

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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:

2. Remittance Address:

Number, Street, and Apartment or Suite Number

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: Certification and Exemption from Backup Withholding

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (TIN), and
- I am a U.S. citizen or other U.S. person, and
- (Check one only):

I am not subject to backup withholding. *I am (a) exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding), or*

I am subject to backup withholding. *I have been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, and I have not been notified by the IRS that I am no longer subject to backup withholding.*

Sign Here:

Signature	Title	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 ONLY AS DIRECTED

NYS Office of the State Comptroller Instructions for Completing Substitute Form W-9

New York State (NYS) must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding.¹ We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

Part I: Vendor Information

1. **Legal Business Name:** For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **Business name/disregarded entity name, if different from Legal Business Name:** Enter your DBA name or another name your entity is known by.
3. **Entity Type:** Check the Entity Type doing business with New York State.

Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type

The TIN provided must match the name in the "Legal Business Name" box to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, refers to IRS W-9 instructions for additional information. For other entities, it is your employer identification number (EIN). If you do not have a number or if the account is in more than one name, refer to IRS W-9 instructions for additional information.

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN) or Employer Identification Number (EIN).
2. **Taxpayer Identification Type:** Check the type of identification number provided.

Part III: Address

1. **Physical Address:** Enter the location of where your business is physically located.
2. **Remittance Address:** Enter the address where payments should be mailed.

Part IV: Certification and Exemption from Backup Withholding

Check the appropriate box indicating your exemption status from backup withholding. Individuals and sole proprietors are not exempt from backup withholding. Corporations are exempt from backup withholding for certain types of payments. Refer to IRS Form W-9 instructions for additional information. The signature should be provided by the individual, owner, officer, legal representative, or other authorized person of the entity listed on the form. Certain exceptions to the signature requirement are listed in the IRS instructions for form W-9.

Part V: Contact Information

Please provide the contact information for an executive at your organization. This individual should be the person who makes legal and financial decisions for your organization.

¹ According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.