

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

INVITATION FOR BIDS

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

BID OPENING DATE: March 29, 2005 TIME: 11:00 AM	TITLE: Group 38232 - Hazardous Incident Response Equipment (Statewide) Classification Code(s): 41, 42, 43, 46, 85, 92
INVITATION FOR BIDS NUMBER: 19745	SPECIFICATION REFERENCE : As Incorporated in the Invitation For Bids
CONTRACT PERIOD: June 1, 2005- May 31, 2010 5 years, with two 2 year and one 1 year options to extend	ADDRESS INQUIRIES TO: Team 7 Sue Wolslegel, Purchasing Officer I Telephone No. (518) 473-9441 E-mail address: susan.wolslegel@ogs.state.ny.us

The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications) and Executive Order 127, and that all information provided is complete, true and accurate.** Bidders are requested to retain Appendix A and Appendix B for future reference. Information on Executive Order 127 may be accessed at:

<http://www.ogs.state.ny.us/legal/ExeOrder127/overview.asp>

Name of Company Bidding:	Bidder's Federal Tax Identification No.:
Street	City
State	Zip
County	
Cash Discounts will not be considered in determining low bid, but cash discounts of any size may be considered in awarding tie bids. _____% Cash Discount for payment within 15 days of delivery and/or receipt of voucher _____% Cash Discount for payment within 30 days of delivery and/or receipt of voucher	
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____	
Bidder's Signature:	Printed or Typed Name:
Title:	Date:
Phone : () - ext ()	Toll Free Phone : () - ext ()
Fax : () - ext ()	Toll Free Fax : () - ext ()
E-mail Address:	Company Web Site:

FOR PROCUREMENT SERVICES GROUP USE ONLY

P.R. #	LIT <input type="checkbox"/>	MEMO <input type="checkbox"/>	MISSING PAGES
	LET <input type="checkbox"/>	OTHER <input type="checkbox"/>	

Table of Contents

	<i>Page</i>
Purpose	3
Notice to Bidders	3
Non-collusive Bidding Certification	4
Dispute Resolution Policy	4
Electronic Payments	4
Appendix A	4
Appendix B	4
Appendix C	4
Conflict of Terms and Conditions	5
NYS Vendor Responsibility	5
Tax Law	5
Freedom of Information Law	6
Inquiries/Issuing Office	7
Scope (Bid Synopsis)	7
Price	13
Installation	13
Best Pricing Offer	14
Exclusions from contract	14
Non-State Agencies Participation in Centralized Contract	14
Extension of Use	14
Minimum Order	14
Method of Award	15
Discounts	15
Contract Changes	16
Volume Discounts	17
Procurement Procedures for State Agencies	17
Delivery	17
Performance Requirements	17
Estimated Quantities	18
Contract Period and Renewals	18
Cancellation for Convenience	19
Short Term Extension	19
Contract Migration Warranties	19
Reservation	19
Qualification of Bidder	19

	<i>Page</i>
References	20
Financial Stability	20
Internet Access to Contract and Pricing Information	20
Price Sheets and Catalogs	20
Instruction Manuals	20
Report of Contract Purchases	21
Special Reporting Requirements	21
Reasonableness of Price Documentation	21
Samples	21
Emergency Purchases	21
Use of Recycled or Remanufactured	22
Preferred Source	22
Overlapping Contract Items	22
Contract Duplication	22
New York State Procurement Card	22
"OGS OR LESS" Guidelines Apply to this Contract	22
Periodic Recruitment	22
Notes to Bidders	23
Bidder pages	24
• Bidder Disclosure of Contacts Form	31
• Instructions for Completion of Attachment 2	32
• Appendix 1- Vendor Responsibility Questionnaire	
• Appendix 2- Contractor Certification Forms	
Appendix A - NYS Standard Terms and conditions	
Appendix B - NYS Standard Terms and conditions	
Appendix C - NASPO Standard Terms and conditions	
Attachment 1-Contract Update Procedure *	
Attachment 1B- Report of Contract Purchases Form	
Attachment 2- Product Certification Matrix	
Attachment 3 - Template for price list submission (Excel format)	

(continued)

GENERAL INFORMATION

PURPOSE:

The State of New York as lead state on behalf of the National Association of State Procurement Officials (NASPO) issues this Invitation for Bid for the purpose of establishing multiple award contracts to be used by New York State, New York State Eligible Contract Users, Participating States and their eligible entities that have signed a Participating Addendum. Additional States may join at a later time by signing a Participating agreement. The resultant contracts will have an initial term of 5 years with an option to renew for 2 additional two-year periods and 1 one year period.

Participating States: New York State - Lead State- (As "Lead State" all NYS laws, regulations and requirements take precedence). Other participating States: Alaska, Arizona, Arkansas, Florida, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Rhode Island, South Carolina, South Dakota, Utah, Washington

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

NOTICE TO BIDDERS:

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

1. **BID PREPARATION**

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

2. **BID DEVIATIONS**

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

3. **BID DELIVERY**

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

- **Bid envelopes**

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

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

- **FAX transmittals**

If permitted by this solicitation, fax transmittals shall be sent to: **(518) 486-5628 ONLY**
See "Facsimile Submissions" in Appendix B, OGS General Specifications. *Not accepted for this bid*

- **Hand deliveries**

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

(continued)

GENERAL INFORMATION (Cont'd)

4. IMPORTANT SECURITY PROCEDURES

Security procedures are in effect at the Empire State Plaza. These procedures govern both parking and admittance to buildings including the Corning Tower. Photo identification is required. These security procedures may change or be modified at any time. Vendors who intend to deliver bids or conduct business with the Procurement Services Group should allow extra time to comply with the security procedures.

NON-COLLUSIVE BIDDING CERTIFICATION:

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

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

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

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

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

DISPUTE RESOLUTION POLICY:

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

ELECTRONIC PAYMENTS:

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-474-4032.

APPENDIX A:

Appendix A, Standard Clauses For New York State Contracts, dated September 2004, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference.**

APPENDIX B:

Appendix B, Office of General Services General Specifications (Commodities and Non-Technology Services), dated January 2004, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

APPENDIX C:

This document does not change the New York State order of precedence. It is the NASPO Standard Terms and Conditions and is required for multi-state procurements.

(continued)

GENERAL INFORMATION (Cont'd)

CONFLICT OF TERMS AND CONDITIONS:

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

- a. Appendix A
- b. This Invitation For Bids
- c. Appendix B
- d. Appendix C- NASPO Terms and Conditions
- e. Bidder submission

NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (Appendix 1):

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

TAX LAW § 5-A (Appendix 2):

Tax Law § 5-a, is effective with all solicitations to purchase issued by covered agencies on or after January 1, 2005. It applies to contracts where (1) the total amount of such persons' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates, subcontractors, or affiliates of subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and (2) the contracts or agreements with state agencies or public authorities for the sale of commodities or services have a value in excess of \$15,000. This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect state sales and compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the Department of Taxation and Finance (DTF). The law prohibits the Comptroller, or other approving agency, from approving a contract awarded to a vendor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to respond timely may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms, within a timely manner to ensure compliance with the law.

Vendors may call the Tax Department at 1-800- 972-1233 for any and all questions relating to Tax Law § 5-a and relating to a company's registration status with the Tax Department. For additional information and frequently asked questions, please refer to the Department of Tax and Finance web site: http://www.nystax.gov/sbc/nys_contractors.htm .

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GENERAL INFORMATION (Cont'd)

FREEDOM OF INFORMATION LAW:

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. **SHOULD YOU FEEL YOUR FIRM'S BID/PROPOSAL CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE. SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION. REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/PROPOSAL FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.**

INQUIRIES/ISSUING OFFICE:

All inquiries concerning this specification will be addressed to the following PSG Associate and issuing office:

Purchasing Officer:	Sue Wolslegel
Phone No.:	(518) 473-9441
FAX No.:	(518) 486-6867
E-Mail:	susan.wolslegel@ogs.state.ny.us

NOTE: Any requests for clarification or additional information should be addressed in writing(via e-mail), NO LATER THAN COB February 15, 2005 to: susan.wolslegel@ogs.state.ny.us. Responses will be transmitted electronically to those potential bidders registered with the OGS vendor notification system under classifications 41,42,43,46,85, 92 no later than cob, March 8, 2005.

All questions should be submitted citing the particular bid section, page number and paragraph title. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Bidders entering into a contract with New York State are expected to comply with **all** the terms and conditions contained herein. Answers to all questions of a substantive nature that would materially change the Invitation for Bids will be given to all Prospective Bidders. A formal addendum which will become part of the ensuing bid and contract will be issued.

SCOPE (BID SYNOPSIS):

The State of New York proposes to establish comprehensive, Statewide, multiple award contracts with authorized distributors or manufacturers based on the terms and conditions contained herein. The resultant contract(s) will have an initial term of 5 years with an option to renew for 2 additional two-year periods and 1, one- year period. Contracts for domestic preparedness equipment should include, but are not limited to the item categories listed below as authorized equipment.

Our intent is to contract with vendors that are able to provide equipment to fill a broad selection of the equipment specified in the categories listed herein that qualify for Homeland Security Grant Funding (SHSP) and the Law Enforcement Terrorism Prevention Program (LETPP) funding. See [Office of Domestic Preparedness funding guidelines](#).

Bidders able to supply items that fulfill 6 of the SHSP and LETPP 13 approved categories listed herein will be awarded as Level One Contractors. Bidders must show \$300,000 in sales for this kind of equipment during the past year to eligible contract users. For the addition of new vendors or products this sales requirement may waived, other proof of need may be considered.

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GENERAL INFORMATION (Cont'd)

SCOPE (BID SYNOPSIS): (cont'd)

Level Two bidders will carry a smaller more specialized catalog offering. For those vendors with a less comprehensive offering who do not qualify for Level One award but are able to show \$300,000 in sales to eligible contract users (See "Non-State Agency Participation in Centralized Contract" clause), a second group of awards may be made. These vendors will be designated as Level Two contractors. This is meant to take into account those smaller distributors or manufacturers that specialize in certain commodity lines.

Authorized equipment including the following categories and listed in the following pages as is described in the federal grant requirements is requested .

1. Personal Protective Equipment (PPE)
2. Explosive Device Mitigation and Remediation Equipment
3. CBRNE Search and Rescue Equipment
4. Detection Equipment
5. Decontamination Equipment
6. Physical Security Enhancement Equipment
7. Terrorism Incident Prevention Equipment
8. CBRNE Logistical Support Equipment
9. Medical Supplies
10. CBRNE Reference Materials
11. Agricultural Terrorism Prevention, Response and Mitigation Equipment
12. Intervention Equipment
13. Other Authorized Equipment

Offering is not limited to the items listed herein.

1. Personal Protective Equipment - Equipment worn to protect the individual from hazardous materials and contamination. Levels of protection vary and are divided into categories based on the degree of protection afforded. The following constitutes equipment intended for use in a chemical/biological threat environment:

Level A: Fully encapsulated, liquid and vapor protective ensemble selected when the highest level of skin, respiratory, and eye protection is required. The following constitutes Level A equipment for consideration:

- Fully Encapsulated Liquid and Vapor Protection Ensemble, reusable or disposable (tested and certified against CB threats)
- Fully Encapsulated Training Suits
- Closed-Circuit Rebreather (minimum 2-hour supply, preferred), or open-circuit Self-Contained Breathing Apparatus (SCBA) or, when appropriate, Air-Line System with 15-minute minimum escape SCBA
- Spare Cylinders/Bottles for rebreathers or SCBA and service/repair kits
- Chemical Resistant Gloves, including thermal, as appropriate to hazard
- Personal Cooling System; Vest or Full Suit with support equipment needed for maintaining body core temperature within acceptable limits
- Hardhat/helmet
- Chemical/Biological Protective Undergarment
- Inner Gloves
- Approved Chemical Resistant Tape
- Chemical Resistant Boots, Steel or Fiberglass Toe and Shank
- Chemical Resistant Outer Booties

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GENERAL INFORMATION (Cont'd)**SCOPE (BID SYNOPSIS): (cont'd)**

Level B: Liquid splash resistant ensemble used with highest level of respiratory protection. The following constitute Level B equipment and should be considered for use:

- Liquid Splash Resistant Chemical Clothing, encapsulated or non-encapsulated
- Liquid Splash Resistant Hood
- Closed-Circuit Rebreather (minimum 2-hour supply, preferred), open-circuit SCBA, or when appropriate, Air-Line System with 15-minute minimum escape SCBA
- Spare Cylinders/Bottles for rebreathers or SCBA and service/repair kits
- Chemical Resistant Gloves, including thermal, as appropriate to hazard
- Personal Cooling System; Vest or Full Suit with support equipment needed for maintaining body core temperature within acceptable limits
- Hardhat/helmet
- Chemical/Biological Protective Undergarment
- Inner Gloves
- Approved Chemical Resistant Tape
- Chemical Resistant Boots, Steel or Fiberglass Toe and Shank
- Chemical Resistant Outer Booties

Level C: Liquid splash resistant ensemble, with same level of skin protection of Level B, used when the concentration(s) and type(s) of airborne substances(s) are known and the criteria for using air-purifying respirators are met. The following constitute Level C equipment and should be considered for use:

- Liquid Chemical Splash Resistant Clothing (permeable or non-permeable)
- Liquid Chemical Splash Resistant Hood (permeable or non-permeable)
- Tight-fitting, Full Face Piece, Negative Pressure Air Purifying Respirator with the appropriate cartridge(s) or canister(s) and P100 filter(s) for protection against toxic industrial chemicals, particulates, and military specific agents.
- Tight-fitting, Full Facepiece, Powered Air Purifying Respirator (PAPR) with chemically resistant hood with appropriate cartridge(s) or canister(s) and high-efficiency filter(s) for protection against toxic industrial chemicals, particulates, and military specific agents.
- Closed-Circuit Rebreather (minimum 2-hour supply, preferred), open-circuit SCBA, or when appropriate, Air-Line System with 15-minute minimum escape SCBA
- Spare cylinder/bottles for rebreathers or SCBA
- SCBA Service and repair kits
- Equipment or system batteries will include those that are rechargeable (e.g. NiCad) or non-rechargeable with extended shelf life (e.g. Lithium)
- Chemical Resistant Gloves, including thermal, as appropriate to hazard
- Personal Cooling System; Vest or Full Suit with support equipment
- Hardhat
- Inner Chemical/Biological Resistant Garment
- Inner Gloves
- Chemical Resistant Tape
- Chemical Resistant Boots, Steel or Fiberglass Toe and Shank
- Chemical Resistant Outer Booties

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GENERAL INFORMATION (cont'd)**SCOPE (BID SYNOPSIS):** (cont'd)

Level D: Selected when no respiratory protection and minimal skin protection is required, and the atmosphere contains no known hazard and work functions preclude splashes, immersion, or the potential for unexpected inhalation of, or contact with, hazardous levels of any chemicals.

- Escape mask for self-rescue

NOTE: Federal Grant Certification Requirements: These apply to Category 1, Personal Protective Equipment, as indicated in levels A-D above.

To qualify for federal grant money, equipment meeting the following criteria for personal protective gear must be met. Items purchased by end users that have been represented as meeting Federal ODP guidelines for CBRNE, NFPA, or NIOSH standards that do not meet those standards may be returned at contractors expense for replacement or refund. All SCBAs **must** meet standards established by the National Institute for Occupational Safety and Health (NIOSH) for occupational use by emergency preparedness and response personnel when exposed to Chemical, Biological, Radiological and Nuclear (CBRN) agents in accordance with Special Tests under NIOSH 42 CFR 84.63 (c), procedure number RCT-CBRN-STP-0002, dated December 14, 2001. APRs must be certified by NIOSH as meeting NIOSH 42CFR, Part 84, Subpart G, Section 84.63 (a) (c) and (d): Federal Register, Volume 60, Number 110, June 8, 1995.

Grant recipients **must** purchase: 1) protective ensembles for chemical and biological terrorism incidents that are certified as compliant with Class 1, Class 2, or Class 3 requirements of National Fire Protection Associate (NFPA) 1994, Protective Ensembles for Chemical/Biological Terrorism Incidents; 2) protective ensembles for hazardous materials emergencies that are certified as compliant with NFPA 1991, Standard on Vapor Protective Ensembles for Hazardous Materials Emergencies, including the chemical and biological terrorism protection; 3) protective ensembles for search and rescue or search and recovery operations where there is no exposure to chemical or biological warfare or terrorism agents and where exposure to flame and heat is unlikely or nonexistent that are certified as compliant with NFPA 1951, Standard on Protective Ensemble for USAR Operations; and, 4) protective clothing from blood and body fluid pathogens for persons providing treatment to victims after decontamination that are certified as compliant with NFPA 1999, Standard on Protective Clothing for Emergency Medical Operations. For more information regarding these standards, please refer to the following web sites:

The National Fire Protection Association - <http://www.nfpa.org>

National Institute for Occupational Safety and Health - <http://www.cdc.gov/niosh>

2. Explosive Device Mitigation and Remediation - Equipment providing for the mitigation and remediation of explosive devices in a CBRNE environment:

- Bomb Search Protective Ensemble for Chemical/Biological Response
- Chemical/Biological Undergarment for Bomb Search Protective Ensemble
- Cooling Garments to manage heat stress
- Ballistic Threat Body Armor (not for riot suppression)
- Ballistic Threat Helmet (not for riot suppression)
- Blast and Ballistic Threat Eye Protection (not for riot suppression)
- Blast and Overpressure Threat Ear Protection (not for riot suppression)
- Fire Resistant Gloves
- Bomb blanket, Bomb Suppression Blanket, explosive devices blanket
- Dearmer/Disrupter
- Real Time X-Ray Unit; Portable X-Ray Unit
- CBRNE Compatible Total Containment Vessel (TCV)
- CBRNE Upgrades for Existing TCV
- Robot; Robot Upgrades
- Fiber Optic Kit (inspection or viewing)
- Tents, standard or air inflatable for chem/bio protection
- Inspection mirrors
- Ion Track Explosive Detector

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GENERAL INFORMATION (cont'd)

SCOPE (BID SYNOPSIS): (cont'd)

3. CBRNE Search and Rescue Equipment - Equipment providing a technical search and rescue capability for a CBRNE environment:

- Hydraulic tools; hydraulic power unit
- Listening devices; hearing protection
- Search cameras (including thermal and infrared imaging)
- Breaking devices (including spreaders, saws, and hammers)
- Lifting devices (including air bag systems, hydraulic rams, jacks, ropes, and block and tackle)
- Blocking and bracing materials
- Evacuation stretchers, baskets, and chairs (for evacuation of disabled personnel)
- Ventilation fans
- Rescue ropes and ladders (including rescue pulley systems)
- Confined Space Kits (such as MSA Watchman)
- Underwater equipment including: lights, metal detectors, communication and video units, lift bags, water rescue helmets, ice hooks, buoyancy compensator, and underwater scooter/DPV
- SCUBA equipment including: exposure and pressurized suites, face masks, regulators, air tanks, and pony bottles.

4. Detection Equipment - Equipment to sample, detect, identify, quantify, and monitor for chemical, biological, radiological/nuclear, and explosive agents throughout designated areas or at specific points, including equipment necessary to enhance laboratory detection capabilities:

Chemical

- M-8 Detection Paper for chemical agent identification
- M-9 Detection Paper (roll) for chemical agent (military grade) detection
- M-256 Detection Kit for Chemical Agent (weapons grade—blister: CX/HD/L; blood: AC/CK; and nerve: GB/VX) detection
- M-256 Training Kit
- M-18 Series Chemical Agent Detector Kit for surface/vapor chemical agent analysis
- Hazard Categorizing (HAZCAT) Kits
- Photo-Ionization Detector (PID)
- Flame Ionization Detector (FID)
- Surface Acoustic Wave Detector
- Gas Chromatograph/Mass Spectrometer (GC/MS)
- Ion Mobility Spectrometry
- Stand-Off Chemical Detector
- M-272 Chemical Agent Water Test Kit
- Colormetric Tube/Chip Kit specific for TICs and CBRNE applications
- Multi-gas Meter with minimum of O2 and LEL
- Leak Detectors (soap solution, ammonium hydroxide, etc)
- pH Paper/pH Meter
- Waste Water Classifier Kit
- Oxidizing Paper
- Protective cases for sensitive detection equipment storage and transport

Biological

- Point Detection Systems/Kits (Immunoassay or other technology)

(continued)

GENERAL INFORMATION (cont'd)**SCOPE (BID SYNOPSIS):** (cont'd)**Radiological/Nuclear**

- Radiation detection equipment (electronic or other technology that detects alpha, beta, gamma, and high intensity gamma)
- Personal Dosimeter
- Scintillation Fluid (radiological) pre-packaged
- Radiation monitors

NOTE: For radiation detection equipment that has been tested by the manufacturer but has not completed third party testing for ANSI N 42.33, 42.34, 42.35- Evaluation and performance of Radiation Detection for use in Homeland Security- and at a later date does not pass the third party tests vendors/manufacturers must refund, retrofit or replace equipment that has failed to meet requirements of the ODP standards at no additional cost to the end user.

5. **Decontamination Equipment** - Equipment and material used to clean, remediate, remove or mitigate chemical and biological contamination:

Chemical

- Decontamination system for individual and mass application with environmental controls, water heating system, showers, lighting, and transportation (trailer)
- Decon Litters/roller systems
- Extraction Litters, rollable
- Runoff Containment Bladder(s), decontamination shower waste collection with intrinsically-safe evacuation pumps, hoses, connectors, scrub brushes, nozzles
- Spill Containment Devices
- Overpak Drums
- Non-Transparent Cadaver Bags (CDC standard)
- Hand Carts
- Waste water classification kits/strips

Biological

- HEPA (High Efficiency Particulate Air) Vacuum for dry decontamination

6. **Physical Security Enhancement Equipment** - Equipment to enhance the physical security of critical infrastructure.

Surveillance, Warning, Access/Intrusion ControlGround

- X-Ray Units
- Magnetometers

Sensors – Agent/Explosives Detection

- Chemical: Active/Passive; Mobile/Fixed; Handheld
- Biological: Active/Passive; Mobile/Fixed; Handheld
- Radiological
- Nuclear
- Ground/Wall Penetrating Radar

Inspection/Detection Systems

- Vehicle and Cargo Inspection System – Gamma-ray
- Mobile Search and Inspection System – X-ray
- Non-Invasive Radiological/Chem/Bio/Explosives System – Pulsed Neutron Activation

(continued)

GENERAL INFORMATION (cont'd)

SCOPE (BID SYNOPSIS): (cont'd)

Explosion Protection

- Blast/Shock/Impact Resistant Systems
- Protective Clothing
- Column and Surface Wraps; Breakage/Shatter Resistant Glass; Window Wraps
- Robotic Disarm/Disable Systems

Support Equipment for Continuation of Critical Infrastructure Operations

- Self-monitoring sensors and alarms

7. Terrorism Incident Prevention Equipment (Terrorism Early Warning, Prevention, and Deterrence Equipment and Technologies) - State and local emergency preparedness, prevention and response agencies will increasingly rely on the integration of emerging technologies and equipment to improve jurisdictional capabilities to deter and prevent terrorist incidents. This includes, but is not limited to, equipment and associated components that enhance a jurisdiction's ability to disseminate advanced warning information to prevent a terrorist incident or disrupt a terrorist's ability to carry out the event, including information sharing, threat recognition, and public/private sector collaboration.

- Law enforcement surveillance equipment

8. CBRNE Logistical Support Equipment - Logistical support gear used to store and transport the equipment to the CBRNE incident site and handle it once onsite. This category also includes small support equipment including intrinsically safe (non-sparking) hand tools required to support a variety of tasks and to maintain equipment purchased under the grant, as well as general support equipment intended to support the CBRNE incident response. The State should also consider procurement of software to assist in tracking and maintaining statewide equipment assets.

- Equipment trailers
- Staging tents and portable shelter units
- Weather-tight containers for equipment storage
- Software for equipment tracking and inventory
- Handheld computers for Emergency Response applications
- Small hand tools
- Binoculars, head lamps, range finders and spotting scopes (not for weapons use)
- Night vision goggles
- Light and heavy duty generators to operate search and rescue equipment, light sets, water pumps for decontamination sets
- Light sets for nighttime operations/security (including emergency light poles)
- Electrical current detectors and DC to AC inverter equipment
- Equipment harnesses, belts, and vests (including incident command vests)
- Isolation containers for suspected chemical/biological samples
- Bull horns and other PA systems
- Traffic and crowd control devices (traffic and reflective cones, arrow and zone signs, portable barriers)
- Water pumps for decontamination systems
- Bar code scanner/reader for equipment inventory control
- Badging system equipment and supplies
- Cascade system for refilling SCBA oxygen bottles
- SCBA fit test equipment and software to conduct flow testing
- Testing equipment for fully encapsulated suits and respirators
- Cooling/heating/ventilation fans (personnel and decontamination tent use)
- HAZMAT gear bag/box

9. Medical Supplies - Medical supplies required for response to a CBRNE incident at the advanced life support level. Grantees are responsible for replenishing items after shelf-life expiration date(s).

(continued)

GENERAL INFORMATION (cont'd)**SCOPE (BID SYNOPSIS):** (cont'd)

10. CBRNE Reference Materials - Reference materials and software designed to assist emergency preparedness and response personnel in preparing for and responding to a CBRNE incident. This includes but is not limited to the following:

- NFPA Guide to hazardous materials
- NIOSH Hazardous Materials Pocket Guide
- North American Emergency Response Guide
- Jane's Chem-Bio Handbook
- First Responder Job Aids

11. Agricultural Terrorism Prevention, Response & Mitigation Equipment
Equipment includes but is not limited to the following:

Diagnostic Equipment

Cleaning, Disinfection, and Fumigation

Disposal Equipment and Supplies

Burning and Incinerating Supplies

General Equipment required for terrorism prevention, response and mitigation

12. Intervention Equipment – this category allows for the purchase of specialized law enforcement equipment that is necessary to further enhance their capabilities to prevent domestic terrorism incidents. Grantees are reminded that they must comply with 28 CFR, Parts 66 and 70. In addition, when procuring any Title III equipment, grantees must strictly adhere to requirements of 18 U.S.C., Part I, Chapter 119, Section 2512, pertaining to the manufacture, distribution, possession, and advertising of wire, oral, or electronic communications interception devices. This category includes but is not limited to the following:

- Tactical entry equipment (not including weapons)
- Title III Equipment (Pin registers)

13. Other- Personnel alert safety systems, Portable meteorological stations, commercially available crisis management software, hazmat trailers, etc.

Note- any radio systems offered should be compatible with ANSI/EIAA-102 Phase I (Project 25)- standards for voice and low-moderate speed data interoperability.

PRICE:

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State (or for those vendors electing to participate in a multi-state contract any point within the participating States) as designated by the ordering agency including tailgate delivery. See "Discounts" Page 15 for additional information.

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

INSTALLATION:

Where installation by vendor is required, it is the responsibility of the end user to prepare the site for installation bringing all utilities to within 4 feet of the site.

(continued)

GENERAL INFORMATION (cont'd)**BEST PRICING OFFER:**

Price decreases shall take effect automatically during the Contract Term and apply to orders submitted subsequent to the effective dates of applicable price decreases as follows:

1. Commercial Price List reductions: Where the NYS Net Prices are based on a discount from the Contractor's list prices and the Contractor lowers its pricing to its customers or to similarly situated government customers during the contract term; or
2. Special Offers/ Promotions- General: Where the contractor generally offers more advantageous special price promotions, or special discount pricing to customers during the contract term, and the maximum price or discount associated with such offer or promotion is better than the discount or price otherwise available under this contract, such better price or discount shall apply for similar quantity transaction for the life of the general offer or promotion.
3. Special Offers/ Promotions-Specific: Contractor may offer an Authorized User competitive pricing which is lower than the Net NYS Price set forth herein at any time during the contract period and such lower pricing shall not be applied as a global price reduction under the contract pursuant to the foregoing paragraph.

EXCLUSIONS:

The New York State Office of General Services Procurement Services Group reserves the right to delete before or after award any of the products included in the contractor's catalog. Catalog may list products covered by other State contracts as well as those available from preferred sources. It is the obligation of the agencies to order from the appropriate source.

(See "Overlapping Contract Items" clause).

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

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

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (www.ogs.state.ny.us). Click on "For Government-Contracts and Purchasing," then "About Procurement," then "Non-State Agency Legal References." Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Group's Customer Services at 518-474-6717.

EXTENSION OF USE:

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

MINIMUM ORDER:

Minimum order shall be \$100.00.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the contractor's option, shipping costs from the contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the agency.

(continued)

GENERAL INFORMATION (cont'd)

METHOD OF AWARD:

Awards shall be made Statewide. Because of the varied nature of products in each catalog, award will be made to more than one vendor. Awards shall be made only to bidders whose schedule of prices indicates that equipment will be delivered at a reasonable price as determined by the New York State Office of General Services. "Reasonable prices" may be determined by reviewing discounts and net prices offered to GSA, Veteran's Administration, prices on any previously awarded NYS contract, pricing offered by other bidders for this solicitation and contracts with other state or government entities, etc.

Bidder must be financially stable and able to demonstrate the financial stability of the company. In addition to sales history, current financial statements, or other financial information deemed appropriate, must be provided within five business days of request. New York State reserves the right to reject any bidder who does not demonstrate financial stability sufficient for the scope of this contract.

Bidders able to supply items that fulfill 6 of the SHSP and LETPP thirteen approved categories listed herein will be awarded as Level One distributors. Bidders must show \$300,000 in sales for this kind of equipment during the past year to eligible contract users. For the addition of new products/manufacturers the minimum sales requirement may be waived and other proof of need may be considered. For those vendors with a less comprehensive offering who do not qualify for Level One award but are able to show \$300,000 in sales to eligible contract users (See "Non-State Agency Participation in Centralized Contract" clause), a second group of awards may be made. These vendors will be designated as Level Two distributors. This is meant to take into account those smaller distributors or manufacturers that specialize in certain commodity lines.

Level I comprehensive vendor contracts may be reviewed and awarded prior to review of Level II vendors. Level II vendors may be reviewed and recommended for award as time permits.

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

The State reserves the right to reject a bid or accept adjustments when prices are deemed to be excessive or unbalanced, or when it does not guarantee delivery of product in accordance with the "DELIVERY" clause. The State reserves the right to negotiate better pricing with all qualified bidders being considered for award.

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

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

Additional vendors may be considered for award. See "Periodic Recruitment" Clause Page 22.

NOTE: As an option, an additional discount may be offered for procurement via electronic data interchange (EDI). In no instance will higher prices be considered than those offered for manual procurement.

DISCOUNTS:

Bidder must offer discount(s) from their *nationally published(hard copy and/or electronic)* and regularly distributed catalog(s)/price lists in effect and identified at the time of the bid opening. If contract award is not made within six months and new catalogs or price updates are issued prior to the award of these contracts, the updates should be sent as soon as possible for inclusion in any resulting award.

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

1. Option I - a uniform percentage discount per catalog
2. Option II -itemized pricing based on a uniform percentage discount per product category offered. (*E.g. Contractor aligns each item offered with a category defined by a letter. All decon showers manufactured by Kleenz and hazardous waste barrels by Cooper are under "A" category. "A's have a discount of 10%. All climbing gear manufactured by Plummet and life jackets, etc. manufactured by Swimfin are under "B" category, all "B's have a*

(continued)

GENERAL INFORMATION (cont'd)

DISCOUNTS: Option II (cont'd)

discount of 15%). Bidders are encouraged to offer their best possible pricing, therefore, specific items within a category may be given additional discounts- e.g. Swimfin child's lifejackets are offered at 25%..

Please supply a category discount list that shows the minimum discount offered for each category with your offering. On page 24 of bid.

When bidding bidders must supply itemized pricing (the pricing must be supplied in hard copy as well as on disk). Disk submitted shall be 3.5" high-density floppy disk, CD, or 100 mb zip disk in Microsoft Excel 2000 using the Excel template supplied in Attachment 3. Other compatible formats may be considered, but written approval from this office is required prior to submittal of data using any other program. Requests for consideration of any other formats must be made in writing prior to the bid opening date to allow sufficient time for evaluation of a sample disk. Receipt of data in a format other than an approved format may result in rejection of the bid.

Price list title must be listed on the print out and disk (e.g. NYS price for Supplier name dated). Information required on the disks submitted will be the following:

Item number (from bidder catalog)

Item Description

Manufacturer Name (with no punctuation)

Manufacturer item number (use mfg number as mfg lists it, without spaces, dashes or any added letters not normally used by the manufacturer.)

Category

Unit of Measure

Catalog price

Discount offered

Net price each

Manufacturer Pass through discount (these are discounts that the distributor/bidder is required by the manufacturer to offer to customers under any award resulting from this contract)

Bids should be submitted using the Excel template that accompany this solicitation and is available as Attachment 3.

Discrepancies in net price between magnetic media, hard copy printout and catalog price will be resolved based on catalog list price minus the discount offered, unless the discount is obviously erroneous.

CONTRACT CHANGES:

Price list pricing must be held firm for one year from the date of award. Price list updates may be submitted on a yearly basis thereafter. The contract prices may be subject to increase or decrease during the contract period in accordance with changes made by the manufacturer or distributor in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount originally accepted for award should not be decreased during the contract period. Discount reduction will not be generally allowed unless specific documentation from the manufacturer is provided showing that a distributor cannot support the discount on that equipment without undue hardship. Reduction in discount from that originally accepted may result in deletion of item from award. Decision will be made on a case-by-case basis. Price decreases or discount increases are permitted and encouraged at any time.

New products will be considered for inclusion provided they are pertinent to the award description and offered to the State at the same terms and conditions as in the original bid and at pricing or discounts deemed to be reasonable and in the best interests of New York State.

See Attachment 1 for Contract update procedures and forms required.

(continued)

GENERAL INFORMATION (cont'd)

VOLUME DISCOUNTS:

Bidders should offer their best possible pricing through the bid format offered. However, bidders are encouraged to offer additional volume discounts. Volume discounts may be applied per purchase order, cumulatively per customer agency and/or cumulatively statewide. The bidder shall indicate the basis for applying the volume discount(s) on the bid document form. Volume discounts shall be defined and applied as follows: Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this contract.

PROCUREMENT PROCEDURES FOR STATE AGENCIES:

The purpose of this IFB and resultant contracts is to provide contract users with a means of acquiring emergency response equipment and supplies. The NYS Procurement Services Group will issue guidelines for use of these contract(s). Users should consider that there could be more than one source for the products they require and should seek the best value purchase most appropriate for their needs. End users will be given information in the contract use guidelines on contract use and seeking competition under certain circumstances. Users should be able to document their choice and maintain justification for the Procurement Record to support both the selection of the vendor and the reasonableness of the price to be paid.

DELIVERY:

Delivery shall be expressed in number of calendar days required to make delivery after receipt of a purchase order.

Product is required as soon as possible and guaranteed delivery may be considered in making awards and purchases.

Delivery shall be made in accordance with instructions on Purchase Order from each contract end-user. If there is a discrepancy between the purchase order and what is listed on the contract, it is the contractor's obligation to seek clarification from the ordering end user.

PERFORMANCE REQUIREMENTS:

CUSTOMER SUPPORT

The contractor shall provide toll-free telephone support/assistance at no extra charge to all customers Agencies interested in ordering via EDI.

TOLL-FREE NUMBERS

The contractor must provide toll-free telephone numbers for the State's procurement usage. If bidder does not currently maintain toll-free numbers, the bidder must be willing to accept collect calls or to establish toll-free numbers, if awarded a contract.

PRICE LISTS AND CATALOGS

The contractor shall provide, within 30 days of request during the first 45 days of the contract period, sufficient catalogs/media to service all customers who wish to use these contracts. After the first 45 days of the contract, additional catalogs, or updated catalogs when applicable, shall be provided within 10 calendar days of request.

DISCREPANCIES

The contractor shall resolve all order and invoice discrepancies (e.g., shortages, breakages, etc.) within five business days from notification.

(continued)

GENERAL INFORMATION (cont'd)

PERFORMANCE REQUIREMENTS (cont'd)

PRODUCT RETURNS, PROBLEM PRODUCT

Products returned because of quality problems, duplicated shipments, outdated product, etc., shall be picked up by the contractor within five business days after notification with no restocking charge and shall be replaced with specified products or the agency shall be credited/refunded for the full purchase price.

PRODUCT RETURNS, AGENCY ERROR

Standard stock products ordered in error by agencies must be returned for credit within 15 days of receipt. Product must be in resalable condition (original container, unused). There shall be no restocking fee if returned products are resalable.

SUBSTITUTIONS

Unauthorized substitutions are not acceptable. Substitution of one catalog product for another catalog product shall require the approval of the ordering agency.

EMERGENCY SERVICE NUMBER AND EMERGENCY CONTACT INFORMATION

The contractor will provide a toll free product emergency service, available seven days a week, twenty-four hours a day. Given the nature of the products, an emergency contact including name, number, cell number, fax, and email must be provided.

SALE FLYERS

At the contractor's option, sale catalogs, and flyers based on the awarded catalog, that offer further price reductions, may be offered to contract users. Also, at the contractor's option, catalogs/price lists developed for a specific customer's specialized requirements may be offered.

ESTIMATED QUANTITIES:

The historical dollar value of purchases for this type of equipment for the last year was approximately \$100,000,000.00 for NYS. However, each contract shall be for the quantities or dollar values actually ordered during the contract period. The individual value of each contract is indeterminate and will depend upon the number of contracts issued and the competitiveness of the pricing offered and final number of participating States. End-users will be encouraged to purchase from contractors who offer the supplies, services, and pricing that best meet their needs in the most practical and economical manner. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

CONTRACT PERIOD AND RENEWALS:

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

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

However, the State may unilaterally cancel the contract on a monthly basis any time after the initial twelve (12) months by providing written notification at least one (1) month prior to the effective date of cancellation. The minimum term of the contract shall be twelve (12) months. This provision does not affect the State's right of suspension or cancellation contained in the "Suspension of Work" and "Cancellation" clauses in Appendix B, OGS General Specifications.

If mutually agreed between the Procurement Services Group and the contractor, the contract may be renewed under the same terms and conditions for additional period(s) in keeping with standard OGS practice.

(continued)

GENERAL INFORMATION (cont'd)

CANCELLATION FOR CONVENIENCE:

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

SHORT TERM EXTENSION:

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

CONTRACT MIGRATION:

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

WARRANTIES:

See "Warranties" in Appendix B, OGS General Specifications or manufacturer's standard warranty.

Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty.

Where accessories are to be supplied, they must be compatible with the rest of the product.

RESERVATION:

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase.

The State reserves the right to negotiate and establish contracts directly with a third party manufacturer should their sales volume warrant. Additionally, the State reserves the right to delete products from a contract offering at any time it is considered to be in the best interests of the State.

QUALIFICATION OF BIDDER:

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

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

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

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

(continued)

GENERAL INFORMATION (cont'd)

REFERENCES:

All bidders must provide a minimum of five references including references from two of the bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the:

- Name, address, contact person, telephone number, fax number, and number of years bidder has serviced the referenced account;
- Volume of business performed within the past three years for each referenced account.

FINANCIAL STABILITY:

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

INTERNET ACCESS TO CONTRACT & PRICING INFORMATION:

Access by Authorized Users to Contract products, services and pricing information may be made available and posted on the Internet. The state reserves the right to post a contractor's contract pricing on the OGS web site.

To that end, the Contractor is required to host the complete Contract pricing and product offerings at Contractor's Internet site, at Contractor's sole expense, including all subsequent changes in the Contract offerings (additions, deletions, price revisions) during the Contract term, in accordance with the Contract requirements.

Contractor is responsible for Contract and related information to be accurately and completely posted, maintained, updated and displayed in an objective (i.e.: informational only) and timely manner, which renders it clearly distinguishable from other, non-Contract offerings at Contractor's web site. Any changes (in accordance with the terms of this contract) in product offering or pricing which require pre-approval by the Procurement Services Group, may not be posted on the website prior to notification of approval. Hard copy catalog and price lists must be available to all end users who either do not have web access or prefer the optional format.

If Contractor stores, collects or maintains personal identification data electronically as a condition of accessing State Contract information, such data shall only be used internally by Contractor for the purpose of implementing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes.

PRICE SHEETS AND CATALOGS:

Contractor shall be required to furnish, without charge, catalog and price lists identical to those accepted with their bid, including any changes (additions, deletions, etc.) pursuant to the contract, to authorized users which request them. Catalogs and price lists provided must reflect all products excluded from the resultant contract either through the omission of those portions or by obvious indications within the catalogs and price lists.

Catalog and price lists, either in paper format or electronic format, must be available to all end users upon request. Price lists provided to contract users under this contract should contain Net Prices reflecting the proper discounts for appropriate product lines.

INSTRUCTION MANUALS:

Simultaneous with delivery, the contractor(s) shall furnish to the authorized user a complete instruction manual for the product and for each component supplied, if appropriate. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the product, together with layout and interconnection diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

(continued)

GENERAL INFORMATION (cont'd)

REPORT OF CONTRACT PURCHASES: *(Note: See Special Reporting Requirement listed below)*

Contractor shall furnish report of purchases made from contract the fifteenth of the month following the end of each six month period. Dates due will be listed in the contract award document.

The reports of New York State sales and Total contract sales are to be submitted to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Invitation for Bids Number, Contract Number, sales period, and contractor's name. See Attachment 1B for copy of suggested report form. This format may be used or a printout generated by the vendor showing contract sales and including information on NYS sales and participating State sales for the six month period will be accepted. NYS reserves the right to request additional information if needed.

Participating State reports should be submitted to the participating state as required by the State.

NOTE: Special Reporting Requirement

Detailed contract user purchase reports will be required for purchases made from these contracts using Federal Homeland Security or Law Enforcement Terrorism Prevention Federal grants and must be supplied within 2 business days upon request by State or Federal controlling agency.

Failure to submit the required report may be cause for disqualification of contractor for future contracts or cancellation of any contract held under this award by that vendor

Format: (other information may be required and vendor will be notified in advance)

Quantity	Brand	Model	Category	Serial number	Cost-unit pricing	Purchaser and Purchase Order number	Contract number	Ship date	Expiration date (If applicable)	Lot # (If applicable)	Calibration/Maintenance (If applicable)	Ship to information
											E.g. Leak testing, battery test	County or State agency

NOTE: REASONABLENESS OF PRICE DOCUMENTATION

Pricing/discounts received under this Solicitation will need to be justified as reasonable. To expedite review and award of contracts under this award vendors are asked to:

- Supply a copy of their federal contract along w/discounts offered to the federal government under that contract.
or
- List and supply a copy of information on two other State contracts (for States similar in size to NYS) they presently have awarded and the discounts offered.
or
- List and supply a copy of information on local government contracts (population of 100,000 or more) along with the discounts offered under those contracts.
or
- Other documentation may be considered.

SAMPLES TO BE SUBMITTED BY BIDDER/CONTRACTOR:

The bidder/contractor may be required to submit samples. See "Samples" in Appendix B, OGS General Specifications.

(continued)

GENERAL INFORMATION (cont'd)**EMERGENCY PURCHASING:**

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

USE OF RECYCLED OR REMANUFACTURED MATERIALS:

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

PREFERRED SOURCE NOTE:

All bidders should note that certain legally established preferred source suppliers, such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled have expressed an interest in supplying products/services covered by this solicitation. Therefore, one or more of these suppliers may be designated as a "Preferred Source" and as a result, we may issue no award for the products/services affected.

OVERLAPPING CONTRACT ITEMS:

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

CONTRACT DUPLICATION:

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

NEW YORK STATE PROCUREMENT CARD:

See "Procurement Card" in Appendix B, OGS General Specifications. All bidders shall indicate if they will accept the NYS Purchasing Card for orders not to exceed \$10,000 (see Questions at end of bid document).

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. This means that State agencies can purchase products from sources other than the contractor provided that such products are substantially similar in form, function or utility to the products herein and are:

1. lower in price
-and/or-
2. available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State contractor an opportunity to match the non-contract savings at least two business days prior to purchase.

(continued)

GENERAL INFORMATION (cont'd)

PERIODIC RECRUITMENT:

The State reserves the right to consider additional vendors starting one year from the contract award beginning date and at yearly intervals during the course of the contract or at any time determined by the State to be in its best interest. Vendors shall be required to submit this original bid document which may include an addendum containing additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bids shall be evaluated under similar terms and conditions. Once awarded a contract, a vendor may not resubmit a bid for future consideration until the new Invitation for Bids is issued.

NOTES TO BIDDERS:

- Bidder must supply the product offering Excel spreadsheets in Attachment 2. For more detailed instructions instructions to fill out Excel Spreadsheets under Attachment 2 go to page 32 of bid. Go to "Sheet 1" and check off areas of equipment your offering covers. If offering PPE and/or Radiation Detection Equipment go to Attachment 2 spreadsheet, "Sheet 2" and fill in information requested. Please submit three hard copies and 2 disks of these spreadsheets- both sheet 1 and sheet 2 along with bid. If they are not supplied this may delay or cause rejection of the bid.

The above information will be supplied in the contract award so that end users will be able to determine which contractors they will need to contact for pricing or product information

- Bidders are requested to provide proof of sales during the past year of \$300,000 of this type of equipment to eligible contract users (see "NON- STATE AGENCY PARTICIPATION IN CENTRALIZED CONTRACT") or other adequate "proof of need" as determined by OGS.
- Bidders are requested to supply reasonableness of pricing documentation as described on page 21.
- Bidders may offer contract pricing or better for NYS OGS contracts currently held by their suppliers as part of their product line submittal. Bidders who currently hold NYS OGS contracts must offer the pricing (or better pricing) listed in such contracts.
- Price list to be submitted with bid- Bidder must submit the following:
 1. Three copies of the current retail catalog, provided in the bidder's standard format
 2. Three hard copies and three disks or cds of the net pricing catalog provided using the Excel format in Attachment 3.
- EO127, Bidder Disclosure of Contacts- This form needs to be completely filled in supplying the name of anyone who has worked on the bid submission and/or whoever may be contacted with questions regarding the bid or any subsequent contract award. Regarding "financial interest" question on this form- It has been determined that anyone working for a company submitting a bid has a financial interest in the procurement, therefore, "yes" should be checked if that is the case.
- Records Retention - bidders are advised that they must comply with New York State records retention requirements, see Appendix A, section 10 .

Agencies shall be advised to make purchases from contracts offering the best discounted price on products that meet the agency program needs.

(continued)

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

P P P P P P

Bidder

Option I and Option II bidders

Additional Volume Discount: (See page 15; "Discounts"):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS

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

VOLUME PRICING-PRICE BREAKS

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

VOLUME PRICING-PRICE BREAKS for aggregate contract purchases in dollars statewide:

For Options I and II please respond to the following:

Catalog pages included in bid _____

Total number of items offered _____

Guaranteed Delivery _____

Discount

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

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

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

Use additional pages as needed

_____ days A/R/O

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

P P P P P P

Bidder

Do you wish to offer Maintenance, Repair and Calibration Services?
Please submit price list(s) for services offered.
Discount from list price

_____yes _____no

_____ %Service
_____ %Maintenance
_____ %Calibration

ADDED VALUE- (please attach additional sheets as needed to your bid):

What additional services would you offer at no charge to our customers using an award resulting from this bid?

Exclusions from offering: You may attach additional pages as needed
Please list any items numbers or categories that you do not wish to offer for contract

- Are you able to establish a "Hotlink" from the OGS contract webpage to your site, if you receive an Award under this bid opening?
_____yes _____no
- Have you supplied proof of sales amounting to \$300,000 to eligible contract users during the past year?
_____yes _____no
- Have you supplied "reasonableness of price" documentation as requested herein?
_____yes _____no
- Have you filled in and included the Excel offering Spreadsheets, Attachment 2, on categories of items offered?
_____yes _____no
- Have you supplied the price list in the Excel template that is supplied in Attachment 3?
_____yes _____no
- Do you wish to participate in a multi-state contract? The following states have expressed interest in using any contracts resulting from this bid (additional states may be added in the future):
New York State, Alaska, Arizona, Arkansas, Florida, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Rhode Island, South Carolina, South Dakota, Utah, Washington
_____yes _____no

*** Note: Failure to supply all of the information requested above may lead to rejection or delay in issuing an award.**

(continued)

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

P P P P P P

Bidder

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

- Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B, OGS General Specifications.
If "NO", please explain on a separate sheet.

___ YES ___ NO

- Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply.)

___ GSA ___ VA ___ NO

If yes, will you offer New York State pricing equal to or better than your federal contract pricing?

___ GSA ___ VA ___ NO

If you have a Federal contract (VA, GSA, DOD) contract, a copy of the schedule is required.

Have you included a copy?

(GSA- General Services Administration, VA -Veterans Administration, DOD- Depart of Denfense)

___ GSA ___ VA
___ DOD ___ No contract

- Is this product available only on a "direct from the manufacturer basis" or can pricing be obtained from dealers or distributors? Check one:

___ Manufacturer ___ Other

If you are a manufacturer and have checked "Other", please attach listing of authorized dealers and distributors.

___ YES ___ NO

- Do you have your catalog available on the Internet?

___ YES ___ NO

If yes, do you have the ability to make NYS pricing available along with your catalog on line?

___ YES ___ NO

- Does bidder offer Electronic Access Ordering (EDI)?

___ YES ___ NO

- If awarded a contract, will bidder accept the New York State Procurement Card for orders not to exceed \$10,000.00?

___ YES ___ NO

- If bidder limits the maximum acceptable card amount to less than \$10,000, please indicate the maximum amount:

\$ _____

Additional discount for purchases made with the NYS Procurement Card:

___ %

- Are any products offered manufactured from recycled materials?

___ YES ___ NO

(continued)

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

P P P P P P

Bidder

NOTES TO BIDDERS: (Cont'd)

Are any products offered remanufactured (restored to its original performance standards and function)?

___ YES ___ NO

Are any products offered Energy Star Compliant? (If YES to any of the above, please attach specifics.)

___ YES ___ NO

- If awarded a contract, will bidder honor orders for less than the minimum order of \$100.?

___ YES ___ NO

If YES, will shipping costs be added in accordance with the "Minimum Order" clause?

___ YES ___ NO

OR

If YES, will bidder ship at no additional cost?

___ YES ___ NO

- Person or persons to contact for expediting New York State contract orders:

Name:

Title:

Telephone Number:

() _____

Toll Free Telephone Number:

() _____

Fax Number:

() _____

Toll Free Fax Number:

() _____

E-Mail Address:

- Person or persons to contact in the event of an emergency occurring after business hours or on weekend/holidays:

State Normal Business Hours (Specify M-F, Sat, Sun):

Name:

Title:

Telephone Number:

() _____

Fax Number:

() _____

Pager Number:

() _____

Cellular Telephone Number:

() _____

E-Mail Address:

(continued)

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

Ⓟ Ⓟ Ⓟ Ⓟ Ⓟ Ⓟ

Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Are you a New York State resident business?
2. Total number of people employed by your business:
3. Total number of people employed by your business in New York State:
4. Is your business independently owned and operated?
5. Is your business at least 51% owned and controlled by women, or 51% owned and controlled by minority group members (i.e., Black, Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native)?

If yes, have you been certified or registered?

List certification or registration authority:

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

- A. All NYS Manufacture
- B. All Manufactured outside NYS
- C. Manufactured In NYS and Outside NYS
If yes to C above, Location (State) where more than half the value is added to the product(s) bid:

7. **BIDDER'S PRINCIPAL PLACE OF BUSINESS*:**

*"Principal Place of Business" is the location of the primary control, direction and management of the enterprise.

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

MINORITY-OWNED FIRM

WOMEN-OWNED FIRM

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

State of _____

State of _____

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

P P P P P P

Bidder

8. "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES"

In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

(Answer Yes or No to one or both of the following, as applicable),

A. have business operations in Northern Ireland:

_____YES _____NO

If yes,

B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.

_____YES _____NO

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

Bidder

P P P P P P

Bidder Disclosure of Contacts Form

This form shall be completed and submitted with your bid/proposal or offer in accordance with Executive Order Number 127 (EO 127). Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127?:

Initial Filing [] Updated Filing []

The following person or organization was retained, employed or designated by or on behalf of the Bidder to attempt to influence the procurement process:
Name:
Title:
Occupation:
Company:
Address1
Address2
City
State Zip Country
Telephone Number
Does the above named person or organization have a financial interest in the procurement?:
Yes [] No []

Provide the foregoing information for each person or organization retained, employed or designated by or on behalf of the Bidder to attempt to influence the procurement process:

For information on Executive Order 127 please see:
http://www.ogs.state.ny.us/legal/ExeOrder127/overview.asp

* * * * *

(continued)

***Instructions for completion of Attachment 2
(attached Excel documents)***

Please go to Attachment 2 Excel spreadsheets- Sheet 1 and check all numbered product areas listed on the spreadsheet that you are offering in your bid and wish listed under any award resulting from the Invitation for Bids. The information will be used by contract users to choose vendors that supply the equipment they will be purchasing.

Next go to Sheet 2 if you offer Personal protective equipment or Radiation detection equipment and complete the information requested. Please list all equipment item numbers offered under personal protective gear that meets certification requirements for domestic preparedness and check the standard that they meet. The same may be done for radiation detection equipment - in this case, list equipment that has passed manufacturer testing and is presently in third party testing (it is our understanding that no equipment has yet received final certification based on third party testing). As soon as certification is received please contact this office to update the information. This Excel document should be supplied in electronic format- on disk, 2 separate copies. Copy tables Sheet 1 and Sheet 2 and submit the disks with your bid offering, submit 3 hard copies of the tables (sheet 1 and 2), as well. Once awarded a contract it is the vendors responsibility to update and submit these updated sheets as certified equipment is added or deleted from their offering.

Example: See example below (this is not an endorsement of the product, but is listed to give a concrete example of what information we require).

Bidder carries the following CBRN APR respirators that are approved by NIOSH:

NIOSH Approval Number	Model	Notes
TC-14G-0270	MSA Millennium Full Facepiece APR CBRN Cap 1	CBRN Cap 1—Capacity meets a minimum 15-minute test requirement.

NIOSH Approval Number	Model	Notes
TC-14G-0271	3M FR-M40 Full Facepiece APR CBRN CAP 11	CBRN Cap 1—Capacity meets a minimum 15-minute test requirement

Bidder would go to the Excel spreadsheet Table 1 and check off Personal Protective Equipment. Bidder will then go to Sheet 2 and list the manufacturer, part number and brief description for both respirators and check off the Standard that is met- NIOSH Standard for Chemical, Biological, Radiological, and nuclear (CBRNE) Full Facepiece Air Purifying Respirator.

The following standards adopted by the US Department of Homeland Security's Science and Technology Directorate apply to Personal Protective Equipment and Radiation and Nuclear Detection Equipment and are referenced in the Attachment 2.

NOTE: Items purchased by end users that have been represented as meeting Federal ODP guidelines for CBRNE, NFPA, NIOSH, or ANSI standards that do not meet those standards may be returned at contractors expense for replacement or refund. For radiation detection equipment that has been tested by the manufacturer but has not completed third party testing for ANSI N 42.33, 42.34, 42.35- Evaluation and performance of Radiation Detection Portal Monitors for Use in homeland Security- and at a later date does not pass the third party tests vendors/manufacturers must refund, retrofit or replace equipment that has failed to meet requirements of the ODP standards at no additional cost to the end user.

(continued)

Standards for Personal Protective Gear for First Responders

[NIOSH Chemical, Biological, Radiological and Nuclear \(CBRN\) Standard for Open-Circuit Self-Contained Breathing Apparatus](#) (December 2001)

This standard establishes performance and design requirements to certify Self-Contained Breathing Apparatus (SCBA) for use in chemical, biological, radiological, and nuclear (CBRN) exposures for use by emergency responders

[NIOSH Standard for Chemical, Biological, Radiological, and Nuclear \(CBRN\) Full Facepiece Air Purifying Respirator \(APR\)**](#)

The purpose of this standard is to specify minimum requirements to determine the effectiveness of full facepiece air purifying respirators (APR), commonly referred to as gas masks, used during entry into chemical, biological, radiological, and nuclear (CBRN) atmospheres not immediately dangerous to life or health (IDLH)

[NIOSH Standard for Chemical, Biological, Radiological, and Nuclear \(CBRN\) Air-Purifying Escape Respirator and CBRN Self-Contained Escape Respirator**](#)

The purpose of this standard is to specify minimum requirements to determine the effectiveness of escape respirators that address CBRN materials identified as inhalation hazards from possible terrorist events for use by the general working population.

[NFPA 1951, Standard on Protective Ensemble for USAR Operations](#)

Based on work begun in 1997, this standard answers the need for personal protective equipment for fire and emergency services personnel operating at technical rescue incidents involving building or structural collapse, vehicle accidents, confined spaces, trench cave-ins, scaffolding collapses, high angle climbing accidents, and similar incidents. The first edition of this standard was issued in July 2001.

[NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services](#)

Based on work begun in 1975, this standard specifies the minimum requirements for the design, performance, testing, and certification of open-circuit self-contained breathing apparatus (SCBA) and combination open-circuit self-contained breathing apparatus and supplied air respirators (SCBA/SAR) for the respiratory protection of fire and emergency responders where unknown, IDLH (immediately dangerous to life and health), or potentially IDLH atmospheres exist. The first edition was issued in July 1981 and the current edition, issued in July 2002, is the fifth edition.

[NFPA 1991, Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies](#)

Based on work begun in 1986, this standard specifies the minimum requirements for the design, performance, testing, and certification of vapor-protective ensembles and individual protective elements for chemical vapor protection for fire and emergency service personnel. Additional optional criteria are provided for ensembles and individual protective elements that provide protection for chemical flash fire escape, liquefied gas, chemical and biological warfare agents, and chemical and biological terrorism incidents. The first edition was issued in January 1990 and the current edition, issued in January 2000, is the third edition.

[NFPA 1994, Standard on Protective Ensembles for Chemical/Biological Terrorism Incidents](#)

Based on work begun in 1998, this standard specifies the minimum requirements for the design, performance, testing, and certification of protective ensembles for fire and emergency services personnel operating at domestic terrorism incidents involving dual-use industrial chemicals, chemical terrorism agents, or biological terrorism agents. The intent is that the ensembles would be available in quantity, easily donned and used, and designed for single exposure use. The first edition of this standard was issued in July 2001.

[NFPA 1999, Standard on Protective Clothing for Emergency Medical Operations](#)

Based on work begun in 1990, this standard specifies the minimum requirements for the design, performance, testing, and certification of new single-use and multiple-use emergency medical protective clothing, including garments, gloves, footwear, and face protection devices, used by fire and emergency services personnel performing patient care during emergency medical operations for protection against exposure to blood and body fluid-borne pathogens. The first edition was issued in July 1992 and the current edition, issued in January 2003, is the third edition.

(continued)

Standards for Radiation and Nuclear Detection Equipment

Copies of the complete standards are available from IEEE. You can [search the IEEE Website by standard number](#).

ANSI N42.32: Performance Criteria for Alarming Personal Radiation Detectors for Homeland Security

This standard describes design and performance criteria along with testing methods for evaluating the performance of instruments for homeland security that are pocket sized and carried on the body for the purpose of detecting the presence and magnitude of radiation. This standard specifies the performance criteria for radiation detection and measurement instruments that may be used in a variety of environmental conditions. The performance criteria contained in this standard are meant to provide a means for verifying the capability of these instruments to reliably detect significant changes above background levels of radiation and alert the user to these changes.

ANSI N42.33: Radiation Detection Instrumentation for Homeland Security

This standard establishes design and performance criteria, test and calibration requirements, and operating instruction requirements for portable radiation detection instruments. These instruments are used for detection and measurement of photon emitting radioactive substances for the purposes of detection and interdiction and hazard assessment. The informative annexes of this standard provide reference information.

ANSI N42.34: Performance Criteria for Hand-Held Instruments for the Detection and Identification of Radionuclides

This standard addresses instruments that can be used for homeland security applications to detect and identify radio nuclides, for gamma dose rate measurement, and for indication of neutron radiation. This standard specifies general requirements and test procedures, radiation response requirements, and electrical, mechanical, and environmental requirements. Successful completion of the tests described in this standard should not be construed as an ability to successfully identify all isotopes in all environments.

ANSI N42.35: Evaluation and Performance of Radiation Detection Portal Monitors for Use in Homeland Security

This standard provides the testing and evaluation criteria for Radiation Detection Portal Monitors to detect radioactive materials that could be used for nuclear weapons or radiological dispersal devices (RDDs). Portal monitors may be used in permanent installations, in temporary installations for short-duration detection needs, or as a transportable system. These systems are used to provide monitoring of people, packages and vehicles to detect illicit radioactive material transportation, or for emergency response to an event that releases radioactive material.

(continued)

Appendix 1

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

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

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

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

(continued)

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

- 1. LEGAL BUSINESS NAME:
2. FEDERAL EMPLOYER ID NO. (FEIN):
3. D/B/A — Doing Business As (if applicable):
4. WEBSITE ADDRESS (if applicable):
5. PRINCIPAL PLACE OF BUSINESS ADDRESS:
6. TELEPHONE NUMBER:
7. FAX NUMBER:
8. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE:
9. TYPE OF BUSINESS:
10. IF NOT INCORPORATED OR FORMED IN NEW YORK STATE, PLEASE PROVIDE A COPY OF AUTHORIZATION TO DO BUSINESS IN NEW YORK STATE FILED WITH THE NEW YORK STATE DEPARTMENT OF STATE (DOS).
11. LIST NAME AND TITLE OF EACH PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), DIRECTOR AND MEMBER, as applicable:
12. AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:

(continued)

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

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

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

14. HAS THE VENDOR BEEN CERTIFIED BY THE STATE OF NEW YORK AS:
 A MINORITY-OWNED BUSINESS ENTERPRISE Yes No
 A WOMEN-OWNED BUSINESS ENTERPRISE OR Yes No
 A DISADVANTAGED BUSINESS ENTERPRISE? Yes No

If yes, provide a copy of the certification.

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

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

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

(continued)

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

- (j) a federal, state or local determination of a willful violation of any public works or labor law or regulation?
(k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license?
(l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local laws?
(m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful?
(n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles
(o) a citation, notice, violation order, pending administrative hearing or proceeding or determination for violations of:
- federal, state or local health laws, rules or regulations
- unemployment insurance or workers' compensation coverage or claim requirements
- ERISA (Employee Retirement Income Security Act)
- federal, state or local human rights laws
- federal INS (Immigration and Naturalization Service) and Alienage laws
- Sherman Act or other federal anti-trust laws
(p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity?
(q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status?
(r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract?
(s) a finding of non-responsibility by an agency or authority due to the intentional provision of false or incomplete information as required by Executive Order 127?

FOR EACH YES ANSWER TO QUESTIONS 15 a-s, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.

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

- (a) FILE RETURNS OR PAY ANY APPLICABLE FEDERAL, STATE OR LOCAL GOVERNMENT TAXES?
(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE?

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

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

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

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

[] Yes [] No

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

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

Provide the court name, address and docket number: _____

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

If closed, provide the date closed: _____

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

[] Yes [] No

STATE OF NEW YORK
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

State of)
) ss:
County of)

CERTIFICATION:

The undersigned, personally and on behalf of the vendor identified in questions 1-3 above, does hereby state and certify to the New York State Office of General Services that the information given above is true, accurate and complete. It is further acknowledged that the State of New York and the Office of General Services will rely upon the information contained herein and in any attached pages for purposes of evaluating our company for vendor's responsibility for contract award and the State may, in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination.

Name of Business

Signature of Officer

Address

Typed Copy of Signature

City, State, Zip

Title

Sworn to before me this _____
day of 20__ .

Notary Public:
Registration No:
State:

APPENDIX 2

(continued)

ST-220

(1/05)



New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law)

For more information, see Publication 222, *Question and Answers Concerning Section 5-a*.

Contractor Name			For office use only	
			Contract number	
Contractor Principal place of business		City	State	ZIP Code
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 ()		Contracting state agency		

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 that:

Part I. Contract services that are not services for purposes of Tax Law section 5-a

(Mark an X in the box if this statement is applicable. If you mark this box, you do not have to complete Parts II - V.)

- The requirements of Tax Law section 5-a do not apply because the subject matter of the contract concerns the performance of services which are not *services* within the meaning of Tax Law section 5-a.

(If you did not mark the box next to the statement in Part I, mark an X next to the applicable statement in Parts II through V.)

Part II. 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 quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law.
- As of the date 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 quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Part III. Affiliate registration status

- As of the date of this certification, 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 quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and each affiliate exceeding the \$300,000 sales threshold during such periods is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address, and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- To the best of the contractor's knowledge, the contractor has one or more affiliates and, as of the date of this certification, 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 quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

(continued)

Part IV. Subcontractor registration status

- As of the date of this certification, the contractor does not have any subcontractors.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it 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 quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300 000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it 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 quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Part V. Subcontractor affiliate registration status

- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification it has any 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 quarterly periods ending on the last day of February, May, August and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate 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 quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this _____ day of _____, 20 ____

(signature)

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

Notary Public

Registration No.

(continued)

Instructions

General information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

Commodities means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

Tangible personal property means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

Completing Form ST-220 Identification information

Contractor name: Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

Contractor's principal place of business: Enter a street address, not a PO box number.

Mailing address: Enter the address where contractor receives mail, if different than the principal place of business.

Contracting state agency: Enter the state agency awarding the contract to the contractor.

Certification statement: If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

Part I - Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an X. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, *services* means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term *services* for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term *taxable services* for New York State and local sales and compensating use tax law purposes includes, but is not limited to:

1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed manner in any other

(continued)

Page 6 of 6 ST-220 (1/05)

manner; 2) processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

Parts II through V

If the contract is covered under Tax Law section 5-a, you must mark an *X* in at least one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

Schedule A

Column A - Relationship to the contractor

The contractor should enter a *C*. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter an *A*; if a subcontractor, enter an *S*, if an affiliate of a subcontractor, enter *SA*.

Column B - Name

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

Column C - Address

Enter the street address of the person's principal place of business. Do not enter a PO box.

Column D - ID number

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

Column E - Sales tax ID number

Enter the sales tax identification number, if different from the federal identification.

Column F - Proof of registration

Enter *CA* and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTP, enter *RC*.

Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.

(continued)

Attachment 1

CONTRACT UPDATE PROCEDURE

The following guidelines are subject to change at the discretion of OGS.

- (1) **TYPES OF CONTRACT UPDATES:** In order to expedite processing of a change request, where proposed changes involve more than one category below, they should be submitted to OGS as totally separate requests. Contract update forms are supplied under Attachment 1.

a) **AUTO ADDS / DELETIONS** – “Auto Adds/Deletions” are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a “discount from list” or pricing based on an approved GSA-based price Schedule. “Auto Adds” do not include any price increases. “Auto Adds/Deletions” include: i) adding new products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. For categories (i) and (ii) Auto Adds: Contractor shall automatically update the Contract price list and may proceed with selling Products without prior approval of either OGS or the Comptroller. Contractor should note, however, that all “Auto Adds” approved by OGS are subject to a post audit by the Office of the State Comptroller. For category (iii) Auto Deletions, at the end of and subject to the period specified in Appendix B-1, Clause 80 (“Changes in Product or Service Offerings”), Contractor may automatically update the Contract price list by deleting the Product(s), without prior approval of either OGS or the Comptroller.

b) **REGULAR ADD** - “Regular Adds” are requests for i) price increases for Products which are already incorporated under the Contract, and ii) addition of new products to the Contract which do not fall under the previously established price structure or discounts for Product types previously approved under the Contract. Regular Adds include rebundled Products or Services. Regular Adds must be submitted to OGS for prior approval, and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to pre-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing.

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

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

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

- (3) **PRICE JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy in triplicate and on a floppy disk or electronically via e-mail to the OGS Purchasing Officer. The list must be dated and the format should be consistent with the format of the price list(s) included in the NYS Net Price appendix of this Contract. The price list should separately include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Price increases
- Products being added

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

(continued)

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

(5) COVER LETTERS: A Contract update must be accompanied by three (3) copies of the Contract Update Form set forth in Attachment 1. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the pricing to its Licensees generally, and/or for new Products or services which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller, etc.). Each of the three copies of the Contract Update Form must contain original signatures by an individual authorized to sign on behalf of Contractor, and an original corporate acknowledgment (see below).

(continued)

STATE OF NEW YORK
 EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
 PROCUREMENT SERVICES GROUP
 Corning Tower – 37th Floor
 Empire State Plaza
 Albany, New York 12242

CONTRACT UPDATE FORM	
OGS CONTRACT NO.: _____	DATE OF SUBMISSION: _____
CONTRACT PERIOD: From: _____ To: _____	VENDOR CONTACT: NAME: _____ PHONE NO.: _____ FAX NO.: _____ E-MAIL: _____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

1. *This form is to be used for all contract updates. The form is to be completed **in triplicate** and submitted to the OGS Procurement Services Group for final approval. Vendors shall complete, sign, and notarize where indicated, and attach this form to a cover letter written on standard company letterhead. Any submission that is not complete or signed **in triplicate** will be rejected.*
2. *Contractor may be required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy and on a floppy disk and/or electronically via e-mail to the OGS Purchasing Officer.*
3. *To expedite the processing of updates that qualify as Auto Adds, do not combine Auto Adds with Regular Adds. **If more than one type of update is being submitted, they should be submitted as totally separate requests.***
4. *The list must be dated and the format should be consistent with the format of the price list(s) included in the Pricing Appendix of the Contract.*
5. *The contract update must be accompanied by either the GSA Price List and revised NYS Net Price List incorporating all changes or the US Commercial Price List and revised NYS Net Price List incorporating all changes, whichever is applicable.*

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

1. This request is an: <input type="checkbox"/> Auto Add <input type="checkbox"/> Regular Add See contract for an explanation of these terms.	2. The intent of this submittal is to: <input type="checkbox"/> Add new products <input type="checkbox"/> Delete products <input type="checkbox"/> Increase pricing <input type="checkbox"/> Reduce pricing <input type="checkbox"/> Amend VAR list
3. All terms and conditions of the contract shall apply to this request. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree	4. All discounts as agreed to in the contract shall apply. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree
5. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation* *Prices offered are the lowest offered to any similarly situated entity.	6. Attached documentation includes: <input type="checkbox"/> Current approved GSA (labeled "For information only") <input type="checkbox"/> Current commercial price list (labeled "For information only") <input type="checkbox"/> Revised NYS Net Price List

(continued)

7. If other than an auto-ad, describe the Nature and Purpose of the update:

8. For a regular add, please explain how pricing has been restructured to customers, and/or identify and describe new Products or services, which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller. If not applicable, state NA:

FOR STATE USE ONLY

OGS APPROVAL:

Approved _____ Approved as amended _____

Disapproved _____

Name: _____

Title: _____

Date _____

OSC APPROVAL:

Approved _____ Disapproved _____

Name: _____

Title: _____

Date _____

NYS Office of General Services
 Procurement Services Group
 Corning Tower
 Empire State Plaza
 Albany, New York 12242

**PERIODIC REPORT
 OF
 CONTRACT PURCHASES**

INSTRUCTIONS TO CONTRACTOR

1. Report should be submitted in accordance with instructions in the Contract Award Notification.
2. Please enter all information requested (Name and Address, Group Number, Period, etc.) in areas provided.
3. In the report columns, provide information in similar format as shown in the Contract Award Notification for item number, description, "unit", etc. The description may be paraphrased or abbreviated, but should include the stock number or model number, if applicable. Quantities should be reported as **totals**. It is not necessary to show an invoice by invoice accounting for each product shipped or service provided.

For example, if you shipped orders for product ABC @ \$100 each to the following agencies:

NYS Dept. of Education	- 100
NYS Dept. of Labor	- 50
NYS Dept. of Transportation	- 20
City of Buffalo	- 10
County of Albany	- 15
Broome County Community College	- 5

your report should be submitted as follows:

Item/ SubItem No.	Brief Description (incl. Stock or Model No. if applicable)	"Unit" Shipped (if applicable) (cs., lb., etc.)	Total Quantity Shipped To		Total \$ Value
			All State Agencies	Political Subdivisions and Others Authorized By Law	
V,2-a (as shown in contract)	Widget No. ABC	Ea.	170	30	\$20,000

4. If no purchases are made, submit a report stating "No Purchases."
5. Do not overlap report periods from any prior report. Do not carry over amounts previously reported.
6. Please submit a separate report for each contract held (do not report different contracts on the same form).
7. It is important that complete records be kept of all orders against the contract. Therefore, if you are a manufacturer and shipments are made from distributor's or agent's stocks, be sure to report them.
8. Reports should be sent to the address at the top of this page to the attention of the contact individual for "State Agencies and Vendors" shown on the front page of the Contract Award Notification.
9. Any questions regarding the submission of your report should also be directed to the contact individual shown on the Contract Award Notification.

Failure to submit timely reports or falsification of such reports may result in cancellation of contract and disqualification of contractor for future contracts.

(continued)

Attachment 2 - Sheet 1
Category Checklist

Attachment 2 - Sheet 2
Product Certification Matrix

Attachment 3 - Template
Price List Submission
(MS Excel Format)

(continued)

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

TABLE OF CONTENTS

1. Executory Clause
2. Non-Assignment Clause
3. Comptroller's Approval
4. Workers' Compensation Benefits
5. Non-Discrimination Requirements
6. Wage and Hours Provisions
7. Non-Collusive Bidding Certification
8. International Boycott Prohibition
9. Set-Off Rights
10. Records
11. Identifying Information and Privacy Notification
12. Equal Employment Opportunities For Minorities and Women
13. Conflicting Terms
14. Governing Law
15. Late Payment
16. No Arbitration
17. Service of Process
18. Prohibition on Purchase of Tropical Hardwoods
19. MacBride Fair Employment Principles
20. Omnibus Procurement Act of 1992
21. Reciprocity and Sanctions Provisions
22. Purchases of Apparel

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

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

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

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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

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

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

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

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

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

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

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

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

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APPENDIX B

**GENERAL SPECIFICATIONS
(Commodities and Non-Technology Services)**

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

TABLE OF CONTENTS**GENERAL**

1. Applicability
2. Governing Law
3. Appendix A
4. Ethics Compliance
5. Conflict of Terms
6. Definitions

BID SUBMISSION

7. International Bidding
8. Bid Opening
9. Bid Submission
10. Facsimile Submissions
11. Authentication of Facsimile Bids
12. Late Bids
13. Bid Contents
14. Extraneous Terms
15. Confidential/Trade Secret Materials
16. Prevailing Wage Rates
17. Taxes
18. Expenses Prior to Contract Execution
19. Advertising Bid Results
20. Product References
21. Recycled or Recovered Materials
22. Products Manufactured In Public Institutions
23. Pricing
24. Drawings
25. Site Inspection
26. Procurement Card
27. Samples

BID EVALUATION

28. Bid Evaluation
29. Conditional Bid
30. Clarification/Revisions
31. Prompt Payment Discounts
32. Equivalent or Identical Bids
33. Performance Qualifications
34. Disqualification for Past Performance
35. Quantity Changes Prior To Award
36. Release of Bid Evaluation Materials
37. Timeframe for Offers

TERMS & CONDITIONS

38. Contract Creation/Execution
39. Participation in Centralized Contracts
40. Modification of Contract Terms
41. Scope Changes
42. Estimated/Specific Quantity Contracts
43. Best Pricing Offer
44. Purchase Orders
45. Product Delivery
46. Weekend and Holiday Deliveries
47. Shipping/Receipt of Product
48. Title and Risk of Loss
49. Re-Weighing Product
50. Product Substitution
51. Rejected Product
52. Installation
53. Repaired or Replaced Product/Components
54. On-Site Storage
55. Employees/Subcontractors/Agents
56. Assignment/Subcontractors
57. Performance/Bid Bond
58. Suspension of Work
59. Termination
60. Savings/Force Majeure
61. Contract Billings
62. Default - Authorized User
63. Interest on Late Payments
64. Remedies for Breach
65. Assignment of Claim
66. Toxic Substances
67. Independent Contractor
68. Security/Confidentiality
69. Cooperation With Third Parties
70. Contract Term - Renewal
71. Warranties

GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Appendix B shall govern such procurements or contracts unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

3. **APPENDIX A** The terms of Appendix A (*Standard Clauses for New York State Contracts*) are expressly incorporated herein.

4. **ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the *Public Officers Law*, and other State codes, rules and regulations 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.

5. **CONFLICT OF TERMS** Conflicts between procurement or contract documents shall be resolved in the following order of precedence:

- a. **Appendix A** (*Standard Clauses for NYS Contracts*)
- b. **Contract/Clarification Documents**
Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractor's Bid or Mini-bid.
- c. **Mini-Bid Project Definition** (If any)
- d. **Bid Documents** (Other than Appendix A)
 - i. Bid Specifications prepared by the Issuing Entity
 - ii. Appendix B (*General Specifications*)
- e. **Contractor's Bid or Mini-Bid Proposal**

6. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

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

ATTORNEY GENERAL Attorney General of the State of New York.

AUTHORIZED USER(S) Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other

entity shall be held solely responsible for liabilities or payments due as a result of its participation.

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated contract term.

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

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

BID SOLICITATION The notice or advertisement of an intent to purchase a specified Product by or on behalf of Authorized User(s).

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

b. **Centralized Contracts** Single or multiple award contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded 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.

c. **Back-Drop Contracts** Multiple award centralized contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users.

Bids may be submitted either at a date and time certain or may be accepted on a continuous recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor from among back-drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a mini-bid among qualified back-drop contract holders, or such other method as set forth in the Bid Document.

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

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

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

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

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

GROUP A classification of Product (commodities, services or technology).

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

ISSUING ENTITY The Office of General Services or Authorized User who issues the Bid Documents for a procurement.

LATE BID For purposes of bid openings held and conducted by OGS, a bid not received in such place as may be designated in the Bid Specifications or 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 Issuing Entities 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.

LETTER OF ACCEPTANCE 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).

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

LICENSEE One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who

took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred.

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

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

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

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

OGS The New York State Office of General Services

PROCUREMENT RECORD Documentation by the Issuing Entity of the decisions made and approach taken during the procurement process.

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

PURCHASE ORDER The Authorized User's fiscal form or format which is used when making a purchase.

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

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

RESPONSIBLE BIDDER A Bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Commissioner.

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

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

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

STATE State of New York

BID SUBMISSION

7. 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.

8. 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.

9. 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 taped onto the outside of the sealed box or package with the bid inside. If using a commercial delivery company which requires use of their shipping package or envelope, Bidder's sealed bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the bid is not prematurely opened.

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

"BID ENCLOSED (bold print, all capitals)

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

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

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

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

11. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, including an executed

signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

12. LATE BIDS 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 Issuing Entity. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Issuing Entity, shall not excuse late bid submissions.

13. 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.

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

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) which 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 which meet all the following requirements will be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, 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) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a contract or Purchase Order unless submitted in accordance with the above and the Commissioner 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).

15. CONFIDENTIAL / TRADE SECRET MATERIALS 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. 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, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

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

- a. **“Public Works” and “Building Services” - Definitions**
- i. **Public Works** *Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the contract. The wage and hours provision applies to any work performed by Contractor or subcontractors.*
- ii. **Building Services** *Labor Law Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.*
- b. **Prevailing Wage Rate Applicable to Bid Submissions** *A copy of the applicable prevailing wage rates to be paid or provided are attached to the solicitation. 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. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, 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 which fail to comply with this requirement will be disqualified.***
- c. **Wage Rate Payments / Changes During Contract Term** *The wages to be paid under any resulting contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the contract term that apply to the classes of individuals supplied by the Contractor on any projects which result from this contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the contract term as required by law.*
- d. **Public Posting & Certified Payroll Records** *In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:*
- 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 sub-contractors 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 sub-contractors on public*

works projects must submit monthly payroll transcripts to the issuing entity which 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 issuing entity, 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 building services contracts.**

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

e. **Day’s Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law)** *No laborer, worker or mechanic 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 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.*

17. TAXES

a. *Unless otherwise specified in the Bid Specifications, 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 where required. 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 such taxes, 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.*

18. EXPENSES PRIOR TO CONTRACT EXECUTION *The Issuing Entity is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract execution.*

19. ADVERTISING BID RESULTS A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial advertising without the prior written approval of the Commissioner.

20. PRODUCT REFERENCES

a. “Or Equal” In all Bid Specifications the words “or equal” are understood to apply where a copyright 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 therein which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

21. RECYCLED 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 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. 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.

Refurbished or remanufactured components or items may only be accepted at the discretion of the Commissioner, or upon the conditions set forth in the Bid Specifications.

Items with recycled, recovered, refurbished or remanufactured content must be identified in the bid or will be deemed new Product.

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

23. 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, 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 grouping 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. COPS or Third Party Financing If acquisition of Product is financed through Certificates of Participation (COPS) or 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.

24. 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.

25. 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 or pre-existing deficiencies in the installed product, equipment or environment, 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 with its bid a detailed explanation if additional work is required under this clause in order to properly complete the delivery and installation of the required Product.

26. PROCUREMENT CARD The State of New York has entered into agreements for purchasing and travel card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing the Purchase Orders or Purchase Authorizations currently required. 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 unsatisfactory, defective or faulty Product in accordance with other contract requirements, the Contractor shall immediately credit a cardholder’s account for Products deemed unsatisfactory, defective or faulty.

27. 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 Documents.

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

d. Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all conditions and terms, performance related and otherwise, specified in the Bid Documents. 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 Documents, 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.

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

28. BID EVALUATION The Commissioner reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and contract award may be

made in compliance with the Bidder's conditional or revocable terms in the offer.

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

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

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

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

33. PERFORMANCE QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Documents. Contractor shall at all times during the contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product bid. If the Commissioner determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Commissioner may reject such bid or terminate the contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Commissioner to make an investigation either before or after award of a contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

35. 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 to conform with requirements. In the event such right is exercised, the lowest responsible Bidder meeting specifications will be advised of the revised requirements 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 requirements.

36. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after contract award. Written requests should be directed to the Commissioner.

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the *State Finance Law*, upon receipt of all required approvals 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 of: i) a Letter of Acceptance; ii) a fully executed contract; or iii) a Purchase Order authorized by the Commissioner.

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

a. Agencies All State Agencies may utilize and purchase under any state centralized contract let by the Office of General Services Procurement Services Group, unless the Bid Specifications limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than state agencies are permitted to make purchases through state centralized contracts where permitted by law, the contract or the OGS Commissioner.

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

d. Responsibility for Performance Participation in New York State centralized contracts by Authorized Users is permitted upon the following conditions: a) 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; b) 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; c) 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 d) each non-state agency Authorized User and Contractor guarantees to save the

State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the contract.

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

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

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

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

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.

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

43. 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 vehicle upon the same or similar terms and conditions as that of this contract at a lower price, the price under this contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or canceled 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. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

If, with respect to an agency specific contract let by the OGS Commissioner, a Purchase Order is not received within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify 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 canceling of such requirement by the OGS Commissioner with, at the OGS Commissioner's discretion, a corresponding reduction in the contract quantity and price.

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

46. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product for daily consumption or where an emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authorized User shall govern.

47. SHIPPING / RECEIPT OF PRODUCT

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

b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB 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 are understood to 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 insuring that the Bill of Lading states "charges prepaid" for all shipments.

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

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title and 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. 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 which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

50. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Force Majeure Clause below) a Product deemed by the Commissioner to be equal to or better than that specified 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 approval may be cause for cancellation of contract.

51. REJECTED PRODUCT When product is rejected, it must be removed by the Contractor from the premises of the receiving entity within ten calendar days of notification of rejection by Authorized User. Upon rejection notification, 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 the items 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.

52. INSTALLATION Where installation is required, Bidder shall be responsible for placing and installing the equipment in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or replace 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 to its original condition. Work shall be performed so as to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all

debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PRODUCT / COMPONENTS

Where the Contractor is required to repair, replace or substitute products or components under the Contract, the repaired, replaced or substituted products shall be subject to all terms and conditions for new products set forth in the contract, including product warranties.

54. ON-SITE STORAGE Materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk and only with the approval of the Authorized User.

55. EMPLOYEES / SUBCONTRACTORS / AGENTS

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

56. ASSIGNMENT / SUBCONTRACTORS 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, other than the assignment of the right to receive money due, without the prior written consent of the Issuing Entity. Prior to an assignment of the right to receive money becoming effective, Contractor shall file a written notice of such assignment simultaneously with the NYS Comptroller, the Issuing Entity, and participating Authorized User(s).

The Commissioner reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit minority and women's business enterprises (M/WBE) bidders for the subcontract.

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

58. 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 State or Issuing Entity. 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 on State spending, declaration of emergency, or other such

circumstances. Upon issuance of such notice, the Contractor is not to accept any purchase orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of work.

59. TERMINATION

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

If the annual volume of business done by the Contractor is less than the minimum annual volume criteria established for the Contract for two consecutive contract years, the Contract may be terminated for cause. For purposes of this paragraph, contract year is defined as the first full four quarters reported after award, in accordance with the Reporting/Monitoring Contract Performance clause included in the Contract, and each of the same four quarterly periods thereafter until contract termination.

b. Reserved

c. For Violation of Executive Order Number 127: The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the contract.

60. SAVINGS/FORCE MAJEURE The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Commissioner, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractor's sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given the Commissioner, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Commissioner that the delay will significantly impair the value of the contract to the State or to Authorized Users, whereupon the Commissioner may:

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

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

c. Terminate the contract or the portion thereof which is subject to delivery 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: (1) the volatility is due to causes outside the control of Contractor; (2) the volatility affects the marketplace or industry, not just the particular contract source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects Contractor's performance that continued performance of the contract would result in a substantial loss.

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

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

62. DEFAULT - AUTHORIZED USER An Authorized User's breach shall not be deemed a breach of the centralized contract. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its contract and the State or Authorized User may thereafter utilize any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

a. **State Agencies** The payment of interest on certain payments due and owed by a State agency may be made in accordance with Article 11-A of the *State Finance Law* and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation).

b. **By Non-State Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State Authorized Users. Neither is the Office of General Services nor the Office of the State Comptroller 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*.

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

a. **Cover / Substitute Performance** In the event of Contractor's material breach, the Commissioner may, with or without formally bidding same:

i. Purchase from other sources; or

ii. If, 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 is unsuccessful, the Commissioner may acquire acceptable replacement product or service of lesser or greater quality.

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

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

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

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

d. **Deduction / Credit** Sums due as a result of these remedies may be deducted or offset by the State or 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 State or Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the contract.

65. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all its claims for overcharges associated with this contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, et seq. and the antitrust laws of the State of New York, G.B.L. Section 340, et seq.

66. 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 user agency representative.

67. 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 State or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

68. SECURITY / CONFIDENTIALITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State and any Authorized User(s) in performance of the Contract.

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

69. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

70. 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 (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES Where Contractor or Product manufacturer generally offers additional or more advantageous warranties than set

forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

- a. **Product Performance** Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.
- b. **Indemnification** To fully indemnify and save harmless the State, Authorized Users and their respective officers, agents and employees without limitation from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract including: i) personal injury, damage to real or personal tangible property, ii) negligence, either active or passive, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual proprietary rights, provided that the State or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (c) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or Authorized User may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.
- c. **Title and Ownership Warranty** Full ownership, clear title free of all liens, or the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the State and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.
- d. **Contractor Compliance** To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the bid/ contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.
- e. **Product Warranty** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Every Product, including any substituted or replacement Product delivered, must be unconditionally guaranteed against faulty material and workmanship for a period of one year from and after the date the Product is accepted unless otherwise specified by the

Commissioner. Furthermore, the Contractor agrees to extend its warranty period by the cumulative periods of time, after notification, during which the Product requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers or employees. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective goods during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor. This warranty shall survive any termination of the contract in accordance with the warranty term.

- f. Replacement Parts Warranty Where the provision of services requires the replacement or repair of Product, any replaced or repaired component, part or Product shall be new and shall, if available, be replaced by the original manufacturer's component, part or Product. Remanufactured components meeting new product standards may be permitted by the Commissioner or Authorized User. All proposed substitutes for the original manufacturer's installed Product must be approved by the Authorized User before installation. The Product or part shall be equal to or of better quality than the original Product being replaced. Any Product replaced by the Contractor under the contract shall be guaranteed for the remainder of the warranty period under (d) above and replaced at no cost to the Authorized User if found defective during that time.
- g. Date/Time Warranty Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

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

APPENDIX C
NASPO STANDARD TERMS AND CONDITIONS
(National Organization of State Procurement Officials
terms for cooperative procurements)

NASPO STANDARD TERMS AND CONDITIONS
Standard Contract Terms and Conditions
National Association of State Procurement Officials (NASPO) Cooperative
Procurements

PARTICIPANTS: The National Association of State Procurement Officials (“NASPO”) is a national association of Chief Procurement Officers that has created a guide for national cooperative procurement for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the NASPO Member States and territories of the United States. Obligations under contracts that result from this cooperative procurement are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting price agreement(s) will be permissive.

DEFINITIONS:

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting price agreement with the permission of the NASPO Member States.

“Offer” or “Bid” or “Proposal” refers to the offer submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise. “Bidder” or “Offeror” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

“Permissive price agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by the contractor and a Participating State (or a political subdivision with the consent of its state’s chief procurement officer) that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a member of NASPO who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.

NASPO STANDARD TERMS AND CONDITIONS (cont'd)

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

QUANTITY ESTIMATES: Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers’ numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says “no substitute.” Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS: The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

SAMPLES: Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror’s request, transportation collect.

CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

PATENTS, COPYRIGHTS, ETC: The Contractor shall release, defend, indemnify, and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor’s use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

NASPO STANDARD TERMS AND CONDITIONS (cont'd)

AWARD: Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

TERMINATION: Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.

DEFAULT AND REMEDIES:

A. Any of the following shall constitute cause to declare the contract or any order under this contract in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this contract.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

NASPO STANDARD TERMS AND CONDITIONS (cont'd)

DEFAULT AND REMEDIES: (cont'd)

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the contract or any portion thereof, including any orders issued against the contract;
- (3) Impose liquidated damages, as specified in the solicitation or contract;
- (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

REPORTS: The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

HOLD HARMLESS: The contractor shall release, defend, indemnify and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any

NASPO STANDARD TERMS AND CONDITIONS (cont'd)

claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

DELIVERY: The prices offered shall be the delivered price to any NASPO state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

WARRANTY (including Year 2000): The contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Purchasing Entity under this contract. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, including year2000 compatibility and fitness, (d) the product will be suitable for any *special purposes* that the Purchasing Entity has relied on the contractor's skill or judgment to consider when it advised the Purchasing Entity about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Purchasing Entity has not been warned. "Year 2000 compatibility and fitness" means: (1) the product warranted by the contractor will not cease to perform before, during, or after the calendar year 2000, (2) the product will not produce abnormal, invalid, and/or incorrect results before, during, or after the calendar year 2000, (3) will include, but not be limited to, date data century recognition, calculations that accommodate same century and multi-century formats, date data values that reflect century, and (4) accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations. If problems arise, the contractor will repair or replace (at no charge to the Purchasing Entity) the product whose noncompliance is discovered and made known to the contractor in writing. Nothing in this warranty will be construed to limit any rights or remedies the Purchasing Entity may otherwise have under this contract with respect to defects.

AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Contract Administrator of the Lead State.

NASPO STANDARD TERMS AND CONDITIONS (cont'd)

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Contract Administrator of the Lead State.

NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or not in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

PAYMENT: Payment for completion of an contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. Payments will be remitted by mail. Payments may be made via a Purchasing Entity's "Purchasing Card".

NASPO STANDARD TERMS AND CONDITIONS (cont'd)

FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

PROPOSAL PREPARATION COSTS: NASPO is not liable for any costs incurred by the offeror in preparation of the bid or proposal.

CERTIFICATION REGARDING CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of NASPO or Participating States to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for NASPO or the states, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the NASPO participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

CERTIFICATION REGARDING DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by NASPO.

RECORDS ADMINISTRATION: The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

NASPO STANDARD TERMS AND CONDITIONS (cont'd)

AUDIT OF RECORDS: The contractor agrees to allow NASPO, State and Federal auditors, and state agency staff access to all the records related to this contract, and the right to copy those records, for audit, inspection and monitoring of services. Such access will be during normal business hours, or by appointment.

PRICES AS CEILING:

Price agreement prices represent ceiling prices for the supplies and services priced in the price agreement. The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity, and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders under similar terms and conditions..

STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:

Apart from the Lead State conducting the solicitation, the States indicated on page 2 under "PURPOSE", Participating States have signified their intent to enter into a price agreement and, except where the solicitation requires execution of a Participating Addendum, are considered Participating States for purposes of this solicitation and the resulting contract. Attachment A of the Solicitation includes any significant modifications to these terms and conditions or State-specific provisions required by the laws, regulations, or procurement practices of the State(s).

Additional States may be added with the consent of the contractor and the Lead State (on behalf of the NASPO Participating States) through execution of a Participating Addendum.