

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

REQUEST FOR PROPOSAL

IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN

BIDS MAY BE SENT TO THE ABOVE ADDRESS

(E-Mail or Fax Bid Submissions are NOT Acceptable)

BID OPENING DATE: July 2, 2008 TIME: 11:00 AM	TITLE: Group 77018 COMPREHENSIVE TELECOMMUNICATIONS EQUIPMENT & SOLUTIONS Classification Code(s): 43, 45, 81, 83
REQUEST FOR PROPOSALS NUMBER: 21350	SPECIFICATION REFERENCE: As Incorporated Herein
CONTRACT PERIOD: Ten-Years commencing on the date of approval by OSC with an allowance for annual termination after the initial Five-Year period	
PERIODIC RECRUITMENT	
DESIGNATED CONTACTS: Team # 7	
Peter Chudzinski Telephone No. (518) 474-7955 E-mail address: Peter.Chudzinski@ogs.state.ny.us Hal Bartley, Purchasing Officer Telephone No. (518) 474-6705 E-mail address: Hal.Bartley@ogs.state.ny.us Donna McNeil, Purchasing Officer Telephone No. (518) 474-4579 E-mail address: donna.mcneil@ogs.state.ny.us	Larry Klein, Team Leader Telephone No. (518) 474-1350 E-mail address: Larry.Klein@ogs.state.ny.us Karen Rogers, Purchasing Officer Telephone No. (518) 486-9298 E-mail address: Karen.Rogers@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), Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at:**

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

Name of Company Bidding:	Bidder's Federal Tax Identification No.:			
Street	City	State	Zip	County
Cash Discounts will not be considered in determining low bid, but cash discounts of any size may be considered in awarding tie bids. _____ % Cash Discount for payment within 15 days of delivery and/or receipt of voucher _____ % Cash Discount for payment within 30 days of delivery and/or receipt of voucher				
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____.				
Bidder's Signature: Title:		Printed or Typed Name: 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. # 21350	LIT <input type="checkbox"/>	MEMO <input type="checkbox"/>	MISSING PAGES LET <input type="checkbox"/>	OTHER <input type="checkbox"/>

GENERAL INFORMATION	5
CONTRACT SCOPE	14
I.1 OBJECTIVE	14
I.2 LOTS AND CATEGORIES	15
I.2.1 LOT 1 Voice Telecommunication Systems	15
I.2.2 LOT 2 – Telecommunication System Peripherals & Accessories	15
I.2.3 LOT 3 – Telecommunication Connectivity	15
I.2.4 Coverage Areas	16
I.2.5 Maintenance of Non Contract Purchase Equipment	16
I.3 BACKGROUND	17
I.4 INQUIRIES/ISSUING OFFICE:	19
I.5 KEY EVENTS/DATES	20
I.6 CONTRACT TERM	20
I.7 PERIODIC RECRUITMENT	20
I.8 EMERGING TECHNOLOGIES	21
I.9 EXAMINATION OF CONTRACT DOCUMENTS	21
II QUALIFICATION OF BIDDER	22
II.1 GENERAL QUALIFICATIONS	22
II.2 EVIDENCE OF ABILITY/ FINANCIAL SECURITY	23
II.3 PRICING	23
II.4 PROJECT REFERENCES / CLIENT INFORMATION	25
III LOT 1 Voice Telecommunication Systems	25
III.1 Centrex	25
III.2 Key Systems	25
III.3 Private Branch Exchange	25
III.4 IP Telephony	25
III.5 E911 Systems	25
IV LOT 2 – Telecommunication System Peripherals & Accessories	26
IV.1 Area Networking Hardware & Software*	26
IV.2 Automatic Call Distribution (ACD) System	26
IV.3 Interactive Voice Response (IVR) Systems	26
IV.4 Audio Conferencing	26
IV.5 Video Conferencing	26
IV.6 Voice Mail	26
IV.7 Other Telecommunications System Peripherals & Accessories	26
V LOT 3 – Telecommunication Connectivity	26

V.1	Network Cable & Fiber Optics	26
V.2	Network Infrastructure & Accessories (Inside and Outside plant)	26
V.3	Network Test Equipment.....	27
V.4	Network Installation Tools	27
VI	PROCUREMENT AND OPERATIONAL INSTRUCTIONS	27
VI.1	CIO/OFT PLAN TO PURCHASE POLICY	27
VI.2	DEFINITION OF PURCHASE REQUIREMENTS.....	27
VI.3	IMPLEMENTATION REQUIREMENTS	28
VI.3.1	Project Manager/Contact.....	28
VI.3.2	Implementation Package	28
VI.3.3	Escalation Procedures during Implementation	28
VI.3.4	Pre-Installation Site Visits.....	28
VI.3.5	Installation Personnel Requirement.....	29
VI.3.6	Clean-up of Authorized User Site	29
VI.3.7	Restoration of Damaged Property	29
VI.3.8	Final Acceptance of Installation	29
VI.3.9	Trade-Ins	30
VI.4	MAINTENANCE.....	30
VI.4.1	Critical / Routine Maintenance.....	30
VI.4.2	Escalation Procedures during Maintenance.....	32
VI.4.3	Critical Component Availability	32
VI.4.4	Existing Component Maintenance	32
VI.5	ADMINISTRATION AND REPORTING REQUIREMENTS	33
VI.5.1	Reporting Requirements.....	33
VI.5.2	Contract Update.....	36
VI.5.3	Contractors Insurance Requirements.....	41
VI.5.4	Value Added Resellers or Distributors.....	42
VI.6	INTERFACING WITH THIRD PARTY CONTRACTORS.....	44
VI.7	PRICING & INTERNET ACCESS TO CONTRACT INFORMATION.....	44
VII	METHOD OF AWARD OF CONTRACT	48
VII.1	LOT 1 -	49
VII.2	LOT 2 -	49
VII.3	LOT 3 -	49
VIII	SPECIAL TERMS AND CONDITIONS.....	50
VIII.1	PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES	
CONTRACTS:	50
VIII.1.1	Adjustments to the Prevailing Wage Rate Schedules.....	50
VIII.2	PERFORMANCE SECURITY	51
IX	PROPOSAL FORMAT AND CONTENT.....	52
IX.1	BID DOCUMENT	53
IX.2	GENERAL QUALIFICATIONS	53
IX.3	OFFER DESCRIPTION(s), SPECIFICATION(s) and MAINTENANCE.....	53
IX.4	EVIDENCE OF FINANCIAL SECURITY	53
IX.5	COMPARABLE CONTRACTS (Reasonableness of Price).....	53

IX.6	EXTRANEIOUS TERMS	54
IX.7	QUESTIONNAIRE	57
IX.8	ACKNOWLEDGMENT PAGE	66
IX.9	PROJECT REFERENCES / CLIENT INFORMATION.....	67
IX.10	AUTHORIZED USERS	68
IX.11	PROPOSAL FORM	70
IX.12	RESPONSE MATRIX FORM	72
<i>APPENDIX A – Standard Clauses for NYS Contracts</i>		<i>73</i>
<i>APPENDIX B – General Specifications</i>		<i>81</i>
<i>APPENDIX C - Reference the NYS Cost Excel Spreadsheet.....</i>		<i>104</i>
<i>Appendix 1 - SVRQ</i>		<i>105</i>
<i>Appendix 2 – ST220-TD ST220-CA</i>		<i>111</i>
<i>Appendix D MANUFACTURER’S CERTIFICATE</i>		<i>113</i>
<i>Appendix E MANUFACTURER'S GUARANTEE</i>		<i>114</i>
<i>Appendix E-1 MANUFACTURERS GUARANTEE.....</i>		<i>115</i>
<i>Appendix F Manufacturer & Value Added Reseller/Distributor Information.....</i>		<i>117</i>
<i>Appendix G - Article 15-A Contractor's Executive Law (M/WBE) Requirements.....</i>		<i>118</i>

GENERAL INFORMATION

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

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

It is recommended that bidders use the Bidders Table of Contents and the Bidder Proposal Checklist as a guide when responding to RFP 21350 and as a final checklist prior to submitting their proposal for review and possible evaluation.

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

ONE (1) bound (Three Ring Binder) hard and TWO (2) electronic copies of the bid responses are required. **THREE (3) copies are required for original inked signature pages, including any requiring a notary are required, these are identified in section IX.1 Bid Document.** The Electronic copies **MUST** be in an UNPROTECED, application format such as: Microsoft Word or Excel. Copies of certificates, licenses, etc may be provided in electronic format such as adobe pdf.

Bidders should identify all the Telecommunications Equipment & Solutions that they offer for lots or categories being bid.

All equipment and/or associated solutions offered by the bidder must be provided to meet the requirements of this RFP along with any additional information to ensure a complete proposal of all equipment and solutions the bidder offers. This information will include but not be limited to: make, model, service type, optional service features, etc...

Bidders are **required** to provide comparison information that demonstrates the reasonableness of price offered to NYS.

Bidders are required to submit all relevant Contract/Price information in electronic format to identify comparable contacts/commercial customers utilized to support reasonableness of price.

Bidders must identify:

- The contracting entity (GSA, VA, NYS, etc...),
- Contract number
- Contract term
- Contracting entity contact name, telephone number and e-mail address
- Any terms and conditions such as; committed volume, considerations such as standardized platform or other factors that may impact comparison pricing.
- The specific Lot and/or category that the contract/price information relates to
- The page number(s) and section(s) of the contract being utilized for purposes of establishing reasonableness of price for items bid

*** THE INFORMATION MUST ALSO BE REFLECTED IN APPENDIX C**

Any modification to RFP language may result in a bidder's response being deemed non-responsive. In the event of a resultant contract award where the RFP language was found to be modified the contract will be cancelled.

2. BID DEVIATIONS

If your bid differs from the specifications explain such deviation(s) or qualification(s); **see the "Extraneous Terms" Section 13, in Appendix B, OGS General Specifications**, for the format and requirements in submitting Extraneous Terms. Responses not conforming to this section may not be reviewed or considered for inclusion in any eventual recommendation for contract award.

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 will 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**
NOT PERMITTED

- **Hand deliveries**

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

4. IMPORTANT SECURITY PROCEDURES

Effective January 30, 2006, new security procedures are in effect at the Corning Tower. While Empire State Plaza procedures govern both parking and admittance to buildings, the new Corning Tower procedures require turnstile security access. Photo identification is required. **Bidders attending bid openings are encouraged to pre-register for building access by contacting the Procurement Services Groups (PSG) receptionist at 518-474-6262 at least 24 hours prior to the bid opening.** Visitors not pre-registered will be directed to a designated phone to call the PSG Receptionist. Vendors who intend to deliver bids or conduct business with PSG should allow extra time to comply with the security procedures. These security procedures may change or be modified at any time.

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.

PROCUREMENT LOBBYING TERMINATION:

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

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

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

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 persons shown on the front of this Invitation for Bids or through the OGS website (www.ogs.state.ny.us).

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 June 2006, 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 dated July 2006, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

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

CONFLICT OF TERMS AND CONDITIONS:

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

- a. Appendix A (Standard Clauses for NYS Contracts)
- b. Mini-Bid Project Definition if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. Contract and other writing(s) setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. Bid Documents (Other than Appendix A).
 - i. Bid Specifications prepared by the Authorized User.
 - ii. Appendix B (General Specifications).

- iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- e. Contractor's Bid
- f. Unincorporated Appendices (if any).

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 .

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

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.**

MERCURY-ADDED CONSUMER PRODUCTS:

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

<http://www.dec.state.ny.us/website/dshw/redrecy/c145home.html>

EPA ENERGY STAR PROGRAM:

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from contract selected products as mandated by any NYS energy legislation that is enacted during the term of this contract. The contractor shall have no recourse with the State for such discontinuance/deletion.

CONTRACTOR RESPONSIBILITIES

The Contractor will assume sole responsibility for delivery, installation and maintenance of all materials, deliverables, equipment, supplies, software maintenance and support services offered in its proposal whether or not it is the manufacturer or producer of them. The State will consider the Contractor to be the sole point of contact with regard to contractual matters.

EXTENSION OF USE

Any contract resulting from this RFP may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Bidder. 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.

SHORT TERM EXTENSION

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the Bidder 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 Bidder, 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.

AMERICANS WITH DISABILITIES ACT (ADA)

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals.

Although it is not mandatory for bidders to have this equipment in order to receive an award, it is necessary to identify any such equipment they have which falls into the above category.

PRESS RELEASES

No brochure, news/media/press release, public announcement, memorandum other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without prior written approval from OGS, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or Federal regulators in connection to its financial activities, to financial institutions for any private or public offering.

PUBLIC INFORMATION

Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Section 87 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under that statute. Information constituting trade secrets, for purposes of FOIL, must be clearly marked and identified as such upon submission. If the Contractor intends to seek an exemption from disclosure of these materials under FOIL, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State."

ELECTRONIC BID OPENING RESULTS

The Procurement Services Group (PSG) is piloting a project to post bid information on the OGS/PSG web page. The web page makes available bid tabulations (i.e.: bidders list, photocopies

of price pages or spreadsheets) received by PSG for scheduled bid openings. Previously only available through Freedom of Information, such information is anticipated to be available online within two business days after the bid opening.

The Bid Opening Results Page is available at:

<http://www.ogs.state.ny.us/purchase/bidresults/bidresults.asp>

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

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

a. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

b. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at:

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

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 remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specifications.

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

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the

Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

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

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

CONTRACT SCOPE

I.1 OBJECTIVE

The New York State Office of General Services (OGS), Procurement Services Group (PSG) is seeking qualified and experienced vendors as defined in Section II, of this RFP to provide proposals for New Comprehensive Telecommunications Equipment & Solutions as outlined in Lots below. Proposals may be submitted for any combination of LOTS, Categories within LOTS, Statewide or by County.

The intent is to award multiple contracts, both statewide and/or by county, to provide Authorized Users the ability to obtain various Telecommunications Equipment & Solutions.

It is preferred that bidders offer entire solutions, this is defined as equipment, installation, maintenance, support, to include repairs, and any required services to effect total solutions. Bidders who are bidding equipment only must be able to demonstrate that the equipment is integral to a Telecommunications infrastructure and that they can provide any required maintenance that potential Authorized users may require for such equipment.

No individual awards will be made for the following categories:

- Installation only
- Maintenance only
- Support, to include repairs only
- Required actions to effect solutions only

This RFP outlines the terms and conditions, as well as any Telecommunications Equipment & Solutions specifications bidders will be required to adhere to in order to be considered for a recommendation for contract award.

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

Bidders should pay strict attention to the bid submission date and time to prevent disqualification. To insure compliance with bid requirements and prevent possible disqualification, bidders should follow the format and instructions in the FORMAT AND CONTENT OF BID SUBMITTAL section of this RFP.

I.2 LOTS AND CATEGORIES

Bidders may:

- Bid by Lot(s) or Categories of Equipment or Solutions within the Lot(s)
- Statewide
- By County or Multiple Counties

Bids will be evaluated upon the verifiable demonstration of bidder's ability to perform.

I.2.1 LOT 1 Voice Telecommunication Systems

Category

- A. Centrex
- B. Key Systems
- C. Private Branch Exchange
- D. IP Telephony
- E. E911 Systems

I.2.2 LOT 2 – Telecommunication System Peripherals & Accessories

Category

- A. Area Networking Hardware & Software
- B. Automatic Call Distribution (ACD) System
- C. Interactive Voice Response (IVR) Systems,
- D. Audio Conferencing
- E. Video Conferencing
- F. Voice Mail
- G. Other Telecommunications System Peripherals & Accessories

I.2.3 LOT 3 – Telecommunication Connectivity

Category

- A. Network Cable & Fiber Optics
- B. Networking Infrastructure & Accessories (Inside and Outside plant)
- C. Network Test Equipment
- D. Network Installation Tools

For the following categories bidders are not required to offer maintenance, but also are not precluded from offering maintenance. Any item not listed requires that maintenance be provided:

LOT	CATEGORY
2	Other Telecommunications System Peripherals & Accessories
3	Network Cable & Fiber Optics
3	Networking Infrastructure & Accessories (Inside and Outside plant)
3	Network Test Equipment
3	Network Installation Tools

I.2.4 Coverage Areas

This RFP seeks to secure ubiquitous coverage within the geographic boundaries of New York State, Statewide or Regional (by county), as defined below.

To enhance competition and ensure timely acquisition of Telecommunications Equipment & Solutions the Regional awards will be made by County. New York State is divided into 62 Counties. The counties to be covered are as follows:

Albany	Herkimer	Richmond
Allegany	Jefferson	Rockland
Bronx	Kings	Saratoga
Broome	Lewis	Schenectady
Cattaraugus	Livingston	Schoharie
Cayuga	Madison	Schuyler
Chautauqua	Monroe	Seneca
Chemung	Montgomery	St. Lawrence
Chenango	Nassau	Steuben
Clinton	New York	Suffolk
Columbia	Niagara	Sullivan
Cortland	Oneida	Tioga
Delaware	Onondaga	Tompkins
Dutchess	Ontario	Ulster
Erie	Orange	Warren
Essex	Orleans	Washington
Franklin	Oswego	Wayne
Fulton	Otsego	Westchester
Genesee	Putnam	Wyoming
Greene	Queens	Yates
Hamilton	Rensselaer	

NOTICE Bidders may bid Statewide, by County or Multiple Counties

I.2.5 Maintenance of Non Contract Purchase Equipment

In addition, maintenance services for systems/equipment not purchased from contracts established for Comprehensive Telecommunications Equipment & Solutions as a result of RFP 21350 may be purchased under the following conditions:

1. Authorized Users are allowed to purchase replacement parts and monthly maintenance for systems/equipment purchased outside of the Award 21350, if the replacement parts and monthly maintenance rates for the systems/equipment are on the Contractor's NYS Net Price sheets. See bullet # 3.
2. Authorized Users would be allowed to purchase Time and Material maintenance for any products manufactured by the manufacturer, even if the specific product is not on the Contractor's NYS Net Price Sheets. See bullet #3.
3. The Contractor would be required to establish maintenance rates at or below the rates listed on their NYS Net Price Sheets and request that any rates not appearing on their NYS Net Price Sheets be added to the contract prior to sale via the contract update procedures.

4. Contractors are not obligated to provide the Authorized Users maintenance service for systems/equipment not purchased from the NYS Comprehensive Telecommunications Equipment and Solutions Contracts.
5. The Contractor will inspect the system/equipment to make a determination as to whether or not they wish to provide the Authorized User maintenance. Any rates for the inspection service will be at or below the hourly or per inspection rates listed on the Contractors' NYS Net Price Sheets. Contractors may refuse to offer maintenance on previously purchased equipment, due to age, condition, availability of parts, etc.
6. The availability of maintenance services for systems/equipment not purchased from contracts for Comprehensive Telecommunications Equipment & Solutions Contract established as a result of RFP 21350 will end at the same time as the maintenance contracts for systems/equipment purchased under Award 21350.

I.3 BACKGROUND

This RFP is intended to result in the award of contracts for Comprehensive Telecommunications Equipment & Solutions, to replace existing contracts, and add additional services and features to reflect current and future Telecommunications Equipment & Solutions needs.

Contracts resulting from this RFP will contain the underlying agreement between bidders and the State of New York for Telecommunication Equipment & Solutions each bidder is determined qualified to provide. Contracts awarded for Telecommunications Equipment & Solutions will be at the best value pricing the Contractor(s) offer to Authorized User(s).

Contracts awarded as a result of this RFP will replace the following:

<u>GROUP</u>	<u>CONTRACT TYPE</u>
77007	Cable & Fiber Optics and Cable Associated Hardware
77100	IVR Equipment
77002	Digital Centrex Equipment
77150	Video Conferencing Equipment
77004	Electronic Key Systems
77009	PBX
77507	3Com
77551	ADVA AG Optical Networking
77517	Alcatel USA Marketing
77519	Allied Telesis
77548	Allot Communications
77526	Amer.com
77529	Aprisma Management Technologies
77531	Avaya Communications
77543	Avential
77550	Avocent Corp.
77503	Cisco
77537	CoSine Communications
77513	D-Link Systems
77501	Enterasys Networks
77523	Ericsson Inc.
77505	Extreme Networks
77554	F5 Networks Inc.
77539	Fluke Networks
77553	Fortinet, Inc.
77534	Foundry Networks
77542	Juniper Networks
77509	McAfee
77549	MRV Communications
77552	Network General Corp.
77506	Nortel Networks
77515	SMC
77502	Symbol Technologies
77527	Waters Networking Systems

NOTE: The following groups were formerly awarded via the Continuous Recruitment process. These groups will now be covered by RFP 21350. Present contract holders in these groups will not be required to respond to RFP 21350 until the year preceding the expiration of any existing contracts. RFP 21350 will be reissued (annually) under the Periodic Recruitment provisions of RFP 21350. Present contract holders should contact the contract administrator for additional information.

<u>GROUP</u>	<u>Contract Type</u>
77100	Interactive Voice Response
77150	Video Conferencing
77500	Networking Hardware & Software

Present contract holders may bid on RFP 21350 if they wish to expand their contract offerings or terminate their present contract and seek new contracts to be issued as a result of RFP 21350.

Present contract holders whose contracts will expire in the next 12 to 18 months (April 2009 to October 2009) are advised to submit a proposal in response to RFP 21350 in order to prevent any lapse in contract coverage.

I.4 INQUIRIES/ISSUING OFFICE:

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

Peter Chudzinski
Telephone No. 518 474-7955
E-mail address: Peter.Chudzinski@ogs.state.ny.us

Hal Bartley, Purchasing Officer
Telephone No. (518) 474-6705
E-mail address: Hal.Bartley@ogs.state.ny.us

Karen Rogers, Purchasing Officer
Telephone No. 518 486-9298
E-mail address: Karen.Rogers@ogs.state.ny.us

All questions must be submitted in writing no later than April 18, 2008. Inquiries must cite the particular bid section, page and paragraph number.

A Pre Bid Meeting will be held on June 10, 2008. OGS will issue a Purchase Memorandum advising potential bidders of the time and location of the Pre Bid meeting.

Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Bidders entering into a contract with the State are expected to comply with all the terms and conditions contained herein. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing contract.

Only written questions or comments will receive a response.

I.5 KEY EVENTS/DATES

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
RFP Release	April 2, 2008	
Closing Date for Inquiries	April 18, 2008	
Response to Inquiries Issued	May 5, 2008	
Closing Date for Pre-Bid Meeting Inquiries	May 19, 2008	
Pre-Bid Meeting Date	June 10, 2008	
Issue Pre-Bid Meeting Minutes	June 24, 2008	
Bid Opening Date	July 2, 2008	11:00 a.m.

I.6 CONTRACT TERM

The original term of this Contract shall be Ten (10) years commencing on the date of approval by the New York State Comptroller effective upon mailing by OGS (see Appendix B, Clause 38) with an allowance for annual termination after an initial five-year period. The State shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience.

The contract term related to equipment maintenance will be in effect for (5) five years after the original equipment contract termination.

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

This document (hereinafter "Contract") sets forth the terms and conditions governing the acquisition of Telecommunication Equipment & Solutions, maintenance and other incidental services (including, but not limited to, training). Terms used in this document shall have the meanings set forth in Appendix B. Amendments or modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties and with the approval of the New York State Attorney General and Comptroller.

I.7 PERIODIC RECRUITMENT

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

Periodic Recruitment is a contracting process offered through the NYS Office of General Services which is designed to assist vendors to do business with the State of New York more easily and in a timely manner. RFP 21350 may be reissued yearly. This will be determined after a need assessment is completed prior to the reissue date.

Key objectives are:

- i. Ability to award contracts to new Bidders during the contract term
 - ii. Ability of the State to respond to fluid changes in the Telecommunications Equipment & Solutions marketplace as technology issues change;
 - iii. Ease the duplicative requirements otherwise imposed on Bidders when filing bids, and
 - iv. Allow newly emerging technologies or Bidder specialties to be quickly recognized and included by amendment to existing contracts.
- A. Periodic Recruitment is unique in that there are periodic reissues of the original RFP. This RFP will have provisions for the RFP to be reissued yearly. The goal is to have new contracts in place on the annual anniversary date of the original award. Additional contracts awarded as a result of Periodic Recruitment will have terms of 4 years, 3 years, 2 years and 1 year, with an option to renew for an additional five years.
- B. The start date for each bidder's contract will vary according to the date of bid opening, recommendation for contract award and contract approval. All contracts awarded for the initial five year period, based upon this RFP, will terminate simultaneously on the end date of the first contracts awarded by the Office of the State Comptroller (OSC). Any contracts in effect at this time that are eligible for contract renewal may be extended for an additional term of five years.
- C. All future proposals submitted under the Periodic Recruitment provisions must meet all requirements of RFP including any future additions or revisions and the submissions will be evaluated using the same evaluation criteria applied to submissions received when RFP 21350 was originally issued.

I.8 EMERGING TECHNOLOGIES

The State reserves the right to modify the terms of the RFP or any contracts issued as a result of this RFP, at any time, to allow for Emerging Technologies not identified elsewhere under this document. If there are repeated requests for an "Emerging Technology," and OGS feels it is warranted to add such technology to the list of Categories, OGS reserves the right to include such technology hereunder or to issue a formal modification or amendment to the RFP or any resulting contracts. The technology will have to have been in the commercial marketplace for a reasonable amount of time and have met with some degree of success among a substantial customer base to be considered by OGS as a new category for contract inclusion. Contract update procedures would be used to add any required "Emerging Technology".

I.9 EXAMINATION OF CONTRACT DOCUMENTS

This Request for Proposal is comprised of the Cover Sheet as the first page and pages numbered sequentially in the header. It is the Bidder's responsibility to ensure that all pages have been included in the RFP received. If it is determined that a page(s) is missing or otherwise defective, the Bidder must contact the PSG Associate identified in Section I.4, immediately so that a corrected copy can be issued to the Bidder. Incomplete proposals, which may be a result of a defective or incomplete RFP, may be subject to disqualification.

Each Bidder shall examine specifications and all other data or instruction pertaining to the RFP. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the RFP

in the execution of the associated work will be accepted by the Procurement Services Group as an excuse for any failure or omission on the part of the Vendor to fulfill every detail of all the requirements of the documents governing the work. If awarded a contract, the Vendor will not be allowed any compensation for any circumstance for which the Vendor did not obtain full information prior to bidding.

Any Bidder in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit a written request for an interpretation. Reference Section 1.5, Key events/dates. Inquiries shall be addressed to: Office of General Services, Procurement Services Group, 38th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242. ATTN: RFP 21350CTES Inquiries.

The written word shall take precedence over electronic links to sections in this RFP. If a major change is involved on which all Bidders must be informed, such request for interpretation shall be delivered, in writing, by the date for the close of inquiries stated in Section I.5. Any interpretation of the proposed documents will be made by the issuance of an addendum. A copy of the addendum will be electronically mailed to all potential Bidders prior to the date of the bid opening.

Any addendum issued during the time of bidding shall be included in bids and in closing a contract will become a part thereof.

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

II QUALIFICATION OF BIDDER

II.1 GENERAL QUALIFICATIONS

Bidders are advised that the State's intent in listing the following requirements is to ensure that only qualified and reliable vendors submit proposals and be considered for contract award. The State recognizes that there may be equally qualified, reliable Vendors who do not meet all of the requirements specifically as stated, but may in fact meet the objectives, and criteria intended in the RFP in some other manner. Bidders submitting proposals shall have the burden of demonstrating to the State's satisfaction and that they can in fact perform the work in order to be considered for contract award. Upon request by OGS, proof of these qualifications shall be in the form of written notarized statements as to the bidder's experience, references(if required by OGS), listing of contracts performed, sales, financial statements, human resources, or ability to respond such that OGS can evaluate the bidder's ability. All statements made must be able to be independently verified by OGS.

Bids will only be accepted from established Telecommunications Equipment & Solutions companies.

- Bidders must submit with their bid satisfactory evidence that they have had previous experience, adequate financial resources, and an organization, as specified, to provide the Telecommunications Equipment & Solutions for any Lot and/or Categories bid. This information is to be provided in Executive Summary format and included in the proposal.

- It is desired that bidders have at least 3-years in continuous operation and experience with the equipment and solutions being bid or provide acceptable evidence of experience and expertise in the Lot and Categories bid. Experience information must be provided in Executive Summary format.

For future contracts awarded under the provisions of the Periodic recruitment section, to obtain emerging technologies, where need is proven by authorized contract users, this requirement may be modified.

- All bidders are required to provide manufacturers certificates for the product line(s) they will be bidding. (Note: Manufacturers are not required to provide their own certificates however they must provide certificates for products bid they do not manufacture)
- Bidders are required to provide yearly Sales Volume of the products by category bid for the two past fiscal years.
 - **Statewide**
Minimum of \$500,000 in verifiable total sales or completed projects in the past 24 months or since inception of the company for any equipment bid.
 - **Regional (County)**
Minimum of \$100,000 in verifiable total sales or completed projects in the past 24 months or since inception of the company for any equipment bid. Bidders submitting proposals for 3 or more regions must demonstrate a minimum of \$300,000 in total sales.

OGS retains the right to request any additional information it deems necessary to ensure that bidders meet the RFP 21350 requirements and would be able to perform under any resultant contract. Such inquiries may include but are not limited to:

- Bidders ability
- Qualifications

II.2 EVIDENCE OF ABILITY/ FINANCIAL SECURITY

Bidders are required to provide a Dun & Bradstreet (D&B) **Comprehensive Insight Plus Report**™ for small Business or **Comprehensive Report** for large business associated to the bidder's Federal Tax ID. The report must be dated no more than 6 months prior to the bid opening date.

NOTICE: Other reports available from Dun & Bradstreet are **NOT** acceptable substitutions and bids presented with out the Dun & Bradstreet Comprehensive Insight Plus Report™ / Comprehensive Report may be deemed non-responsive and not evaluated further.

In addition, Bidders are required to provide a copy of the most recent Consolidated Statement of Income and a Consolidated Balance Sheet arrived at by generally accepted accounting principles.

II.3 PRICING

- Bidders are required to submit with their proposal their NYS Net Price Schedules for any of the equipment or solutions bid. (Appendix C)

- For OGS to determine reasonableness of price, bidders holding any of the following contracts must provide pricing schedules currently in effect for all like Telecommunications Equipment & Solutions being bid.*
 1. Approved Federal Contract such as: GSA Supply Schedule or
 2. Prices on any current or previously awarded NYS contract or
 3. Contracts with other State or Government entity, etc or
 4. Pricing equal to or better than any other pricing or discount terms offered to other non-government commercial customers.

* For evaluation purposes, OGS will use contracts or pricing as indicated in 1-4 listed above. Failure to provide OGS pricing currently in effect, with the above identified entities, may deem the bidder non-responsive. OGS reserves the right to request additional information as required to determine reasonableness of price.

Bidders must demonstrate that the NYS Net Pricing offered is equal to or better than pricing offered on other contracts or to their best commercial customers. In the absence of contracts or pricing that clearly demonstrates Reasonableness of Price, bidders must offer an explanation and any supporting documentation required to demonstrate Reasonableness of Price. Additionally, for bidders not having government customers, information that the bidders proposed pricing is equal to or better than any pricing offered to other non-government customers. This must be clearly demonstrated in the proposal for NYS Net Pricing proposed with the bidder's submission. See Reasonableness of Price Questionnaire.

- Bidders are required to complete Appendix C - New York State Net Cost tables. Bidders are required to complete the required category items and may propose any additional Telecommunications Equipment & Solutions appropriately associated with each category bid (OGS reserves the right to accept or reject any portion of additional Telecommunications Equipment & Solutions offered) they offer. Bidders need to identify all component costs associated with any additional Telecommunications Equipment & Solutions offered in their proposal. Bidders are required to identify component costs in the required format. Failure to complete or provide any required New York State Net Cost table charges may result in a non-responsive bid determination for the Lot or Category of Telecommunications Equipment & Solutions bid.
 - E.g. In order to fully provide Telecommunications Equipment & Solutions, there would be requirements for some type of infrastructure, the cost of the infrastructure would not be known until the time an Authorized User contacts a contract holder. Any component costs associated with providing Telecommunications Equipment & Solutions under resulting contracts must be quantified in appendix C. If there are various construction components or auxiliary costs they should be indicated as **not to exceed pricing, noting that the actual costs will be determined at the time of purchase.** A list of all components or auxiliary charges must accompany the proposal.

The **ONLY** acceptable Cost fields will be:

- Actual Price - \$USD (United States Dollar) within 2-decimal e.g. \$9.98
- No Cost – N/C

- Not Applicable or Not Available – N/A

NOTE: Blank or other such responses i.e. – “see below”, “reference table x”, “see attachment”, To Be Determined (TBD), Individual Case Basis (ICB), Call for Quote, etc. will not be accepted without reference to a component unit cost list, otherwise the response **may be deemed non-responsive and ineligible for recommendation for contract award.**

- Bidders NYS Net pricing, includes the Telecommunications Equipment & Solutions costs and **includes** standard warranty of not less than 1-year, instruction manuals/documentation, shipping costs and delivery FOB destination where applicable by the Authorized User.
- Third party Products which are available under Contractor’s standard commercial price list may be offered for sale under this contract. Contractor is prohibited from adding third party Products under this contract unless the Product is incorporated in the Contractor’s commercial price list.

II.4 PROJECT REFERENCES / CLIENT INFORMATION

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

III LOT 1 Voice Telecommunication Systems

Bidders shall include descriptions of their offerings and specifications including maintenance offering as applicable per Category(s) bid. Include Certifications, Equipment Compliance Certifications, Professional Licenses, and Levels of certifications attained or other qualifying designations for the Equipment or Installation personnel. OGS reserves the right to make the final determination that all equipment bid per Lot and Category meets the purpose and intent of the RFP. Electronic media preferred.

III.1 Centrex

Analog, Digital or IP capable premise equipment, accessories and related network infrastructure

III.2 Key Systems

Analog, Digital or IP capable equipment, accessories and related network infrastructure

III.3 Private Branch Exchange

Analog, Digital or IP capable equipment, accessories and related network infrastructure

III.4 IP Telephony

IP Capable Telephony Equipment, accessories and related network infrastructure

III.5 E911 Systems

Emergency Response/Notification Telecommunications equipment

IV LOT 2 – Telecommunication System Peripherals & Accessories

Bidders shall include descriptions of their offerings and specifications including maintenance offering as applicable per Category(s) bid. Include Certifications, Equipment Compliance Certifications, Professional Licenses, and Levels of certifications attained or other qualifying designations for the Equipment or Installation personnel. OGS reserves the right to make the final determination that all equipment bid per Lot and Category meets the purpose and intent of the RFP. Electronic media preferred.

IV.1 Area Networking Hardware & Software*

Local, Metropolitan, Wide Area networking equipment and related software required to affect equipment operation.

IV.2 Automatic Call Distribution (ACD) System

Equipment to manage incoming calls and an associated system of handling instructions

IV.3 Interactive Voice Response (IVR) Systems

Equipment to interact with incoming calls, capture information and route calls to the appropriate area based on a set of handling instructions.

IV.4 Audio Conferencing

Equipment to provide and manage voice call sessions between multiple participants

IV.5 Video Conferencing

Equipment to provide and manage video sessions between multiple participants

IV.6 Voice Mail

Equipment to perform Voice Mail, Call Recording, Message on Hold Production/Play, etc.

IV.7 Other Telecommunications System Peripherals & Accessories

Equipment such as Paging Amplifiers & Controllers, Door Box/Phones etc.

V LOT 3 – Telecommunication Connectivity

Bidders shall include descriptions of their offerings and specifications including maintenance offering as applicable per Category(s) bid. Include Certifications, Equipment Compliance Certifications, Professional Licenses, and Levels of certifications attained or other qualifying designations for the Equipment or Installation personnel. OGS reserves the right to make the final determination that all equipment bid per Lot and Category meets the purpose and intent of the RFP. Electronic media preferred.

V.1 Network Cable & Fiber Optics

Telecommunications or Area Networking Copper, Fiber Optical or other types of communications cabling.

V.2 Network Infrastructure & Accessories (Inside and Outside plant)

Passive Telecommunications or Area Networking connectivity or support equipment components

V.3 Network Test Equipment

Telecommunications or Area Networking equipment in support of equipment components validation of proper operation

V.4 Network Installation Tools

Telecommunications or Area Networking tools in support of Network component installation

Note: If available, equipment may be accompanied with Hardware Maintenance, Repairs, Spare parts and Upgrade options.

* The only software that may be proposed and sold under this contract includes software not available through software resellers, but is sold only in conjunction with the network hardware per product categories and required for the operation of the equipment.

Maintenance entered into during the duration of this contract and whose performance and payment time frames extend beyond the duration of this contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new maintenance agreements may be executed after the contract has expired. Any contract termination or suspension pursuant to this section shall not automatically terminate any maintenance agreements already in place unless the Authorized User also terminates the maintenance agreement, which were executed pursuant to the main equipment contract.

VI PROCUREMENT AND OPERATIONAL INSTRUCTIONS

VI.1 CIO/OFT PLAN TO PURCHASE POLICY

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

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

VI.2 DEFINITION OF PURCHASE REQUIREMENTS

- A. Authorized Users shall review the list of locations to determine what region is applicable for the required equipment or solution.
- B. Authorized Users shall review the list of rates from the Contract Award Notification available in the applicable region. If there are multiple awards and unless otherwise specified, the Authorized Users shall utilize the equipment of the Bidder offering the best value, documenting in the procurement record the determination of the criteria used for the selection.
- C. Authorized Users shall contact the appropriate contractor to set up an initial meeting if required to outline the specific equipment and statement of work requested.

- D. The Contractor shall develop an itemized quote with exact cost or estimated cost if an exact cost cannot be determined at that time.
- E. The Authorized User shall issue a purchase order or other written order for work depending on the type of Solution with the appropriate contract number(s) indicated. Contract holders may authorize any reseller to accept purchase orders, issue invoices and receive payments. Note: For maintenance or solution, purchase orders may be issued for an estimated timeframe.
- F. Authorized Users will issue purchase orders or other written orders which are effective and binding on the contractor when received and acknowledged receipt of the contractor.

VI.3 IMPLEMENTATION REQUIREMENTS

VI.3.1 Project Manager/Contact

The Contractor must agree to provide at the request of the Authorized User a Project Manager/Contact appropriate to the size of the project being implemented. The Project Manager/Contact must serve as the Single Point of Contact (SPOC) for the Authorized User during the implementation period. The Contractor is required to provide the name and contact information of the Project Manager/Contact to the Authorized User.

VI.3.2 Implementation Package

The Contractor must agree to provide at the request of the Authorized User, an "Implementation Package" which contains, at a minimum, the following items:

- Name of the Project Manager and Contact Information;
- Names of the Project Team Members, Contact Numbers and Internet E-Mail Address;
- A list of implementation milestones based on the Authorized User's desired installation date;
- A list of responsibilities of the Authorized User during system implementation;
- Authorization Forms to designate Authorized Personnel with the Authorized User;
- Escalation procedures including management personnel contact numbers.

VI.3.3 Escalation Procedures during Implementation

The Contractor must agree to provide escalation procedures at the request of the Authorized User. These escalation procedures must include multiple levels of management personnel. Access to additional management personnel must be made available to the Authorized User upon request. In addition, these procedures must include:

- a list of personnel at each level of escalation (titles/positions in place of specific individual names is acceptable);
- contact numbers for the personnel listed above;
- methods by which escalation is initiated and conducted;
- criteria for escalation at each level.

VI.3.4 Pre-Installation Site Visits

The Contractor must agree to provide at the request of the Authorized User pre-implementation visits to the Authorized Users premises to ensure that the Contractor is completely familiar with the installation conditions of the Authorized Users facility.

VI.3.5 Installation Personnel Requirement

The Contractor must agree that all installation personnel assigned to install equipment or solutions appear at the Authorized Users site fully equipped to perform the installation duties required. "Fully Equipped" is described as possessing all tools, cable, connectors, ladders, test equipment, termination equipment, etc. needed to complete the required installation without requiring the Authorized User to supply such items.

The Contractor must agree that all installation personnel assigned to install equipment to the Authorized User appear at the Authorized User' site dressed in a professional manner and possessing some type of company photo identification.

The Contractor must agree that All Contractor personnel entering the premises of an Authorized User, inform the designated Authorized Users contact of their arrival. The Contractor must also inform the designated Authorized Users contact when leaving the Authorized Users premises.

The Contractor must agree that all Contractor personnel comply with the individual facilities security requirements of the Authorized User for that location in which they are performing services under this contract including the signing required log in/out forms. Should installation personnel be rejected by the Authorized User, the Contractor must provide replacement personnel immediately in order to meet assigned installation dates. Additionally, **the Contractor must provide installation personnel who will agree to security procedures, including background checks that may be required by Authorized Users (i.e., Department of Corrections, NYS Police etc.) and comply with any apparel requirements for authorized users' facilities.**

VI.3.6 Clean-up of Authorized User Site

The Contractor must agree that the Contractor must clean up and remove any and all debris and packaging material resulting from its work on Authorized Users premises on a daily basis. Upon completion of installation, the Contractor must leave the Authorized Users premises clean, orderly and ready for immediate use.

VI.3.7 Restoration of Damaged Property

The Contractor must agree that to restore to original condition any damage to Authorized Users property caused by maintenance or installation personnel.

VI.3.8 Final Acceptance of Installation

New York State defines system acceptance as the "problem free" operation of the installed equipment for a consecutive 30 day period commencing with the first day of business after equipment is fully operational at that point, the Authorized User reserves the right to test up to 30 calendar days. Should the equipment fail to operate "problem free" during the 30 day acceptance period, the Contractor will correct the problem at no cost to the Authorized User and the 30 day acceptance period will begin again. "Problem free" operation applies to the components of the installed equipment or system provided by the contractor including any necessary termination and interface hardware/systems but does not include problems caused by the failure of any Authorized User provided premise infrastructure, failure of any Authorized Users provided interface or systems or erroneous software/system programming by the Authorized User.

Authorized Users have the discretion to waive or decrease the 30 day acceptance period. The Authorized User may accept the system and notify the Contractor. Upon receipt of

notification of acceptance by an authorized user payment may be made and any system warranty can commence.

The Contractor must agree at the request of the Authorized to provide performance criteria for acceptance.

The Contractor must agree to perform at the request of the Authorized User an acceptance test which simulates normal operating conditions of the installed equipment to ensure proper performance after configuration is complete.

The Contractor must agree to perform at the request of the Authorized User a testing and acceptance plan for all equipment provided to the Authorized User. This acceptance criterion may include, but not necessarily be limited to, the following:

- Performance levels as provided by the contractor have been tested and met and/or exceeded;
- All contingency and recovery systems and procedures have been demonstrated;
- Equipment operability has been tested by the contractor and approved by the Authorized User.

VI.3.9 Trade-Ins

Authorized Users may trade-in equipment when making purchases from this Contract. Trade-in's must be negotiated between the Authorized User and the Contractor as there is no mandatory trade-in policy established for this contract. Contractor is prohibited from imposing any mandatory requirements or restrictions on Product disposal (e.g., prohibiting cross-brand trade-ins), other than generic environmental safety concerns. Users are obligated to actively seek current fair market value when trading equipment and must keep accurate records in the file verifying the process. For State Agencies, it may be necessary to provide this documentation to the Office of the State Comptroller.

VI.4 MAINTENANCE

The Contractor must agree at the request of the Authorized User to consult with the Authorized User to determine Authorized Users specific criteria for "Maintenance". Bidders shall include a description of their maintenance offerings as applicable. The offering should include response times, hours of operation, technician qualifications, and method of providing maintenance.

VI.4.1 Critical / Routine Maintenance

Authorized Users maintenance may be critical or routine in nature. The Bidder must describe their maintenance offering for the following categories of its proposed Telecommunications Systems.

- Critical Maintenance
- Routine Maintenance

The Contractor must agree at the request of the Authorized User to negotiate with the Authorized Users to determine the maintenance service level that is required for the equipment requested by the Authorized User. The Contractor must then inform the Authorized User of any costs associated with the maintenance solution proposed.

"Response" to a maintenance call constitutes that the Contractor begin remote testing of the installed system (*where the system permits*) or have a qualified technician, suitably equipped to service the installed system respond to the Authorized Users location.

Hours of operation vary between Authorized Users. The Contractor must determine the actual hours for maintenance required by the Authorized User. This may include a request by the Authorized User to provide service (24) hours-a-day, seven (7) days-a-week, 365 days a year.

The Bidder must include all costs associated with providing maintenance in Appendix C.

VI.4.1.1 Critical Maintenance

It is desired the Contractor provide critical maintenance for those Authorized Users that designate their system operation as critical to operations and/or public safety.

Under critical maintenance, the Contractor is to directly interface with the Authorized Users Telecommunications Services or other vendors providing IT services to resolve issues that may be related to the installed Telecommunications Equipment or components.

It is desired the Contractor meet or exceed the following requirements when providing critical maintenance:

- It is desired that the Contractor's provide a Customer Service Representative (CSR) or Technical Specialist that is dedicated to the Authorized Users specific trouble report. The reporting Authorized Users representative must be provided with a direct telephone number or extension by which to reach the assigned CSR or Technical Specialist.
- It is desired the Contractor perform and complete any remote testing that is available with the affected system or component(s) within 30 minutes of the initial service call by the reporting Authorized Users.
- Should the affected system not be accessible or repaired via remote access during the 30 minute period, a qualified technician, suitably equipped for the installed system or component, be on site at the Authorized Users location within two (2) continuous hours from the time of initial trouble report.
- In the event the Contractor experiences extraordinary obstacles to its repair of the affected Telecommunications Infrastructure system the Contractor shall notify the reporting Authorized User and provide a plan of repair, including how the Contractor will provide alternative resolution during the system operation disruption.

VI.4.1.2 Routine Maintenance

It is desirable that contractors provide routine maintenance as part of the system and as part of any subsequent maintenance contract subscribed to by the Authorized User for any system component.

The bidder must indicate their response time(s) to routine and critical maintenance issues and agree to meet the identified requirements when providing routine maintenance:

- It is desired the Contractor perform and complete any remote testing that is available with the affected system or component within six (6) hours of the initial call by the reporting Authorized User.
- It is desired the Contractor contact the reporting Authorized User within six (6) hours of the initial trouble report by the Authorized User with the results of its remote testing.

Otherwise, within six (6) hours of the original call from the Authorized User, the Contactor notify the reporting Authorized User that a technician has been dispatched and the estimated time of arrival at the Authorized User site.

- Should the system not be equipped for remote access, the Contractor must have a qualified technician, suitably equipped for the deployed system, on site at the Authorized Users location within 16 business hours from the time of initial trouble report.
- In the event the Contractor experiences extraordinary obstacles to its repair of the affected Telecommunications Infrastructure system the Contractor shall notify the reporting Authorized User and provide a plan of repair, including how the Contractor will provide alternative resolution during the system operation disruption.

VI.4.2 Escalation Procedures during Maintenance

It is desired that bidders provide in their response escalation procedures to address inadequate response to calls, frequent repetition of the same problem, inadequate repairs, etc. These described procedures must include the name and title of service and management personnel as well as criteria for escalation to a certain “level” within the Bidder’s organization.

Updated contact names and telephone numbers of the service and management positions listed/described in the above provided procedures must be made available to an Authorized User upon request.

VI.4.3 Critical Component Availability

It is desired that bidders provide in their response the procedure for ensuring that critical components are within the available area for the Authorized User.

It is desirable that the Bidder store additional critical components on-site at the Authorized Users location, upon request. Critical components will vary from Authorized User to Authorized User depending on the services, systems, hardware, software, etc. deployed. Describe how the Bidder will store such critical components on the Authorized Users premises and identify any additional cost, if any, to the Authorized User. The Bidder must also address what is required of the Authorized User.

VI.4.4 Existing Component Maintenance

Maintenance solutions for systems/equipment not purchased from contracts established for Comprehensive Telecommunications Equipment & Solutions as a result of RFP 21350 may be purchased under the following conditions:

1. Authorized Users are allowed to purchase replacement parts and monthly maintenance for systems/equipment purchased outside of the Award 21350, if the replacement parts and monthly maintenance rates for the systems/equipment are on the Contractor’s NYS Net Price sheets. See bullet # 3.
2. Authorized Users would be allowed to purchase Time and Material maintenance for any products manufactured by the manufacturer, even if the specific product is not on the Contractor’s NYS Net Price Sheets. See bullet #3.
3. The Contractor would be required to establish maintenance rates at or below the rates listed on their NYS Net Price Sheets and add to the contract prior to sale via the contract update procedures.
4. Contractors are not obligated to provide the Authorized Users maintenance service for systems/equipment not purchased from the NYS Comprehensive Telecommunications Equipment & Solutions Contracts.

5. The Contractor will inspect the system/equipment to make a determination as to whether or not they wish to provide the Authorized User maintenance. Any rates for the inspection service will be at or below the hourly or per inspection rates listed on the Contractors' NYS Net Price Sheets. Contractors may refuse to offer maintenance on previously purchased equipment, due to age, condition, availability of parts, etc.
6. The availability of maintenance services for systems/equipment not purchased from contracts for Comprehensive Telecommunications Equipment & Solutions established as a result of RFP 21350 will end at the same time as the maintenance contracts for systems/equipment purchased under Award 21350.

VI.5 ADMINISTRATION AND REPORTING REQUIREMENTS

Bidders must agree to be responsible for the completion of a variety of administrative and reporting requirements, and the cost of it shall be included in the base bid price.

VI.5.1 Reporting Requirements

Bidders must agree to furnish a semi-annual report of ALL sales activity provided under the contract. The report is to be submitted to the Office of General Services, Procurement Services Group, 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 Contractors name, Contract Number, sales period, description of equipment/solutions provided. In the event that Resellers/Distributors are utilized the contract holder is responsible for collecting and reporting all contract sales.

Additional related sales information and/or detailed Authorized User purchases may be required and must be supplied upon request.

Failure to submit the required report(s) may be cause for cancellation of the contract, incurring migration cost to alternative solutions.

In addition to the semi annual sales reports required by the Office of General Services, the Contractor may also provide a monthly report to the Authorized User, upon request, (unless Authorized User requests reports on a less frequent basis) which shall be attached to the Invoice. This report shall detail all work completed that month for that Authorized User and shall compare scheduled work versus actual work completed.

New York State Office of General Services

Procurement Services Group

Contract Usage Report

For the Semi Annual Period Ending _____ Indicate the Purchasing Officer: _____

Contractor Name: _____ Person Submitting Report: _____ Phone # _____

Address: _____ City: _____ State: _____ Zip: _____

Federal ID# of Contract Holder: _____

Group No. _____ Award No. _____ Contract No. _____ (Only one Contract # per report) ⁽¹⁾ Date

Submitted: _____

Contractor/Reseller Name	Fed ID of Contractor or Reseller	Minority or Women Owned Business (enter M or W) ⁽²⁾	Customer Name	Total NY State or Non-State ⁽³⁾ (enter S or NS)	Description of Product/Part#	Purchase Date	Total Semi-Annual Sales

Instructions:

Page/Sub-Total	
Semi-Annual Grand Total ⁽⁴⁾	

⁽¹⁾ Indicate Contract Type (PT, PS, CMS) Only One Contract Type per Page⁽²⁾ M/WB - Must be NYS Certified⁽³⁾ The summary sheet is to be used to provide a listing of resellers and their total sales to be separated by State and Non-State⁽⁴⁾ If multiple pages are required, the **last** page should reflect a Semi-Annual **grand total**

New York State Office of General Services

Procurement Services Group

Contract Usage Report-Summary Sheet

For the Semi Annual Period Ending _____ Indicate the Purchasing Officer: _____

Contractor Name: _____ Person Submitting Report: _____ Phone # _____

Address: _____ City: _____ State: _____ Zip: _____

Federal ID# of Contract Holder: _____

Group No. _____ Award No. _____ Contract No. _____ (Only One Contract # per report) ⁽¹⁾ Date

Submitted: _____

Contractor/Reseller Name	Minority or Women Owned Business (enter M or W) ⁽²⁾	NY State or Non-State (enter S or NS) ⁽³⁾	Semi-Annual Total Sales
Instructions:			Page/Sub-Total
			Semi-Annual Grand Total ⁽⁴⁾

⁽¹⁾ Indicate Contract Type (PT, PS, CMS) Only One Contract Type per Page⁽²⁾ M/WB - Must be NYS Certified⁽³⁾ The summary sheet is to be used to provide a listing of resellers and their total sales to be separated by State and Non-State⁽⁴⁾ If multiple pages are required, the **last** page should reflect a Semi-Annual **grand total**

VI.5.2 Contract Update

Bidders must agree to the Contract Update process and requirements.

- (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.

	OGS Approval Required	OSC Approval Required
Auto Add	Yes	Notification Only
- Price Reductions		
- Price Adjustments based on approved contract formula ie discount from list.		
Regular Add	Yes	Yes
- Price Increases (not within approved contract formula)		
- Addition of New Products and Services not in original scope		
- Re-bundled Product or Services		
Special Add	Yes	Yes
- other situations not covered above		

For additional information see below.

Regular and Auto Adds shall be filed with Office of General Services (OGS) as outlined below. Contractor shall update their website (if applicable) to reflect Regular and Auto Adds changes ONLY after receiving OGS approval notification and if required, the Office of the State Comptroller (OSC) approval notification.

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

A. COVER LETTERS:

Contractor must briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, and/or for new Products or services which fall into a new group or category that did not exist at the time of approval of the Contract by the State Comptroller, etc.). The cover letters must contain original signatures of an individual authorized to sign on behalf of Contractor, and an original corporate acknowledgment. In addition, the contract update must be accompanied by three (3) signed original update forms.

B. TYPES OF CONTRACT UPDATES:

In order to expedite processing of a change request, where proposed changes involve more than one category below (*Auto Add / Regular Add*), they should be submitted to OGS as separate requests.

1) AUTO ADDS / DELETIONS:

“Auto Adds/Deletions” are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a “discount from list” or pricing based on an **approved GSA-based or MSRP based price schedule**. Auto Adds include the bundling of Products / Services not previously bundled. Auto Adds cannot be submitted for price increases not based on GSA or MSRP based price schedules. Price increases not fitting the above categories must be submitted as a Regular Add.

Auto Adds/Deletions include:

- i) Adding new Products / Services within the established, previously approved pricing structure, (discounts cannot be reduced).
- ii) Lowering pricing for Products / Services previously incorporated under the Contract,
- iii) Deleting Products / Services previously incorporated under the Contract and
- iv) Modifying Value Added Reseller (VAR) lists.

MODIFICATIONS IN VAR LIST:

If the Contractor allows value added resellers to participate in the Contract in accordance with the Use of Alternate Channel Participation (Resellers/Distributors) clause of this Contract, requests to add or delete VARs or to modify VAR information must be submitted for prior approval of OGS and OSC. Contractor may request modification to the designated VAR List by submission of a completed, revised Appendix F.

- v) Updates (increases/decreases/change in titles) in the Total Hourly Rates based on NYSDOL Prevailing Wage Rates

Notice: For categories (i), (ii), (iv) and (v) Auto Adds: OGS will review the request and notify the Contractor if any of the Adds/Deletions are beyond the scope of the Contract. Contractor should note that all Auto Adds/Deletions must be approved by OGS and are subject to a post audit by OSC.

After meeting the above criteria and approval by OGS, Auto Adds/Deletions must be immediately posted electronically by the Contractor on their web site.

2) REGULAR ADD:

“Regular Adds” are requests for:

- i) Price increases for Products / Services which are already incorporated under the Contract, and retain the previously approved contract pricing formula (discount remains the same) but are not based on GSA or MSRP based price schedules, or NYSDOL Prevailing Wage Rates.
- ii) Addition of new Products / Services to the Contract which do not fall under the previously established price structure or discounts for Products / Services types previously approved under the Contract.

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. Price increases or new Product / Service offerings that do not conform to the established price structure may not be electronically posted by Contractor until after receipt of OGS approval of the “Regular Add”.

When the Contract pricing is based on GSA prices, the revised prices or prices of new Products / Services must reflect current GSA prices adjusted as necessary for any additional discounts, including an additional 0.75% (as applicable) discount representing the Industrial Funding Fee.

C. PRICE JUSTIFICATION FORMAT:

Contractor is required to submit the Products / Services and price information for the update in a spreadsheet format in hard copy and on an electronic media or 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 List 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 / Services being added

OGS or OSC 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.

D. SUPPORTING DOCUMENTATION:

Each update request must include the current U.S. commercial price list relevant to the Products / Services 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.

E. 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 / Services from Contracts
- remove Products / Services from Contract updates
- request additional discounts for new or existing Products / Services

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

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

INSTRUCTIONS:

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

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

<p>1. This request is an: <input type="checkbox"/> Auto Add <input type="checkbox"/> Regular Add</p> <p>See contract for an explanation of these terms.</p>	<p>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</p>
<p>3. All terms and conditions of the contract shall apply to this request. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree</p>	<p>4. All discounts as agreed to in the contract shall apply. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree</p>
<p>5. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation*</p> <p>*Prices offered are the lowest offered to any similarly situated entity.</p>	<p>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</p>

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

The following **CORPORATE ACKNOWLEDGEMENT** statement is to be included in each of the three original forms. The request must be signed by an individual given the authority to perform this action by the corporation's board of directors and the signature must be notarized.

Signature of Authorized Vendor Representative:

<u>CORPORATE ACKNOWLEDGMENT</u>	
STATE OF	}
	: ss.:
COUNTY OF	}
On the ____ day of _____ in the year _____, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.	
_____ Notary Public	

FOR STATE USE ONLY	
<u>OGS APPROVAL:</u> Approved _____ Approved as amended _____ Disapproved _____ Name: _____ Title: _____ Date _____	<u>OSC APPROVAL:</u> Approved _____ Disapproved _____ Name: _____ Title: _____ Date _____

Regular and Special Adds requests to update the contract that are not submitted in accordance with the above requirements shall be returned to the Contractor without action.

VI.5.3 Contractors Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), and Certificates of Insurance evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of form and substance acceptable to OGS.

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to OGS ; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to *(insert state agency name and exact address)* and shall name The People of the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85**). The additional insured requirement does not apply to Workers Compensation or Disability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect within 30 days, or less, following notification by OGS of the commencement date of any contract awarded as a result of RFP 21350. Insurance is to remain in full force and effect throughout the term of said Contract and as further required by this RFP. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law,

whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a) Commercial General Liability Insurance with a limit of not less than \$5,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
- 1) If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.
- b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.
- c) Commercial Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

VI.5.4 Value Added Resellers or Distributors

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

- A. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). If Reseller(s) are designated to fulfill orders under this Contract, issue invoices and receive payment, Contractor must provide OGS, in advance, with all necessary ordering, billing addresses and federal identification numbers in the format provided in Appendix F.
- B. Conditions of Reseller(s) participation is subject to the following conditions:
 1. Reseller(s) must be approved in advance by OGS as a condition of eligibility.
 2. OGS reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time.

3. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by Product line, contracting program (e.g. government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:
 - i. such qualifying criteria is uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental/ educational program criteria, and not to a particular procurement;
 - ii. all general categories of qualifying criteria must be disclosed by the Contractor to OGS, in advance, at the beginning of the Contract term;
 - iii. shall be compliant with State and Federal laws;
 - iv. those qualifying criteria met by the Reseller must be identified on the form provided in Appendix F at the time that Reseller approval is requested under this paragraph 8; and
 - v. immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term. Contractor shall not be required to add any Reseller(s) who do not meet Contractor's qualifying criteria, as defined below, or where the addition of the Reseller(s) would violate any state or federal law or regulation.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote pricing for procurements under this contract which meet their qualifying criteria. Except as otherwise set forth in the qualifying criteria contained in Appendix F, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, otherwise restrict any Reseller's participation or ability to quote pricing for a project.

4. Contractor's pricing in Appendices C constitutes a not to exceed price which shall be the maximum price payable by Authorized Users under the Contract for Product or services. Resellers may not charge more than the not to exceed rates set forth by Contractor in Appendices C, but may offer Authorized Users lower pricing than the not to exceed pricing set forth therein.
5. Where the proposed Resellers also holds an approved E-RATE contract as referenced in Clause #1 of this agreement, and the rate offered by Reseller under this Contract is lower than the rate offered under the E-RATE contract, Resellers must agree to extend and match the lower rates offered under this Contract to the E-RATE purchasers in order to be approved for participation under this contract.
6. As a further condition of participation, where Resellers wish to maintain a web-site page for Products/Services to be offered under the NYS Contract, Contractor must furnish a link to Resellers home page from the Contractor's NYS Contract home page, and Resellers must meet the following requirements at all times during the contract term:
 - i. Resellers may only list such Products and Services for which not to exceed prices are listed on the Contractor's home page; and

- ii. Resellers' pricing must be at or lower than the not to exceed rates listed at Contractor's home page; and
- iii. Resellers must individually meet and comply with the requirements of Section VI.7.

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

Although OGS will not be entering into separately executed contractual agreements with the designated Resellers, Authorized Users may place orders with and issue payments directly to the Resellers in accordance with this Section VI.5.4. Product ordered directly from Resellers is subject to all terms and conditions of this Contract. Resellers may only offer those Products and Services approved by the State for sale under the Contract.

Product (including services) purchased through Resellers must be included and reported by Contractor in the required Semi-annual Reports to OGS, and where applicable, in the Third Party Manufacturers reports required in accordance with the provisions of Section VI.5.1. In addition to inclusion of Resellers volume in the Contractor's semi-annual reporting obligation to OGS, at the request of Authorized User, Resellers shall provide Authorized User with semi-annual reports of the individual Authorized User's Contract activity with Reseller.

VI.6 INTERFACING WITH THIRD PARTY CONTRACTORS

Contractor must agree to work in conjunction with any Authorized Users Telecommunication Service, voice, data or video contractor, utilized by the Authorized User, to resolve technical issues that may arise during Authorized Users use of the Contractors communication equipment thus eliminating the need for the Authorized User to be a mediator in problem resolution. The Contractors Account Team must agree to speak directly with the other contractor, when requested by the Authorized User as the situation requires, ensuring the resolution of these technical issues by the timeframes detailed in the maintenance requirements of this RFP document. The Contractor is required to attend any contractor meeting arranged by the Authorized User to facilitate the resolution of a technical problem associated with the performance of the contracted communications network equipment. Should the contractor (or an assigned designee) fail to attend this meeting at the agreed upon date and time without sufficient notice (24 hours) to the Authorized User, the Contractor may be responsible to reimburse any other contractor(s) for the time expended for this missed meeting with the other contractor(s) rate for a two (2) hour labor charge for one (1) assigned staff member.

VI.7 PRICING & INTERNET ACCESS TO CONTRACT INFORMATION

It is the intention of the parties to facilitate access by Authorized Users to contract offering and pricing information primarily electronically via the Internet. To that end, OGS's web site shall host and update the Contract terms and conditions throughout the Contract term. The Contractor may be required to host the complete Contract, pricing and Equipment offerings at Contractor's Internet site, at Contractor's sole expense, including all subsequent changes in the Contract offerings (adds, deletes, price revisions) throughout the Contract term. Contractor may not password protect or otherwise restrict access to the site. This Contract, and Contractor's NYS Contract page, or pages required by this agreement, constitute public documents under the laws of the State of New York and Contractor cannot restrict access (e.g., through use of restrictive technology or passwords) to the

contract terms and conditions, or data, or records, and or information required to be maintained by the Contractor for the State.

Data Mining - Prohibited use of data and information collected by Contractor at Contractor's NYS Contract page, or pages. If, in addition to the data, or records, and or information required by this contract to be maintained by Contractor for the State, Contractor also electronically stores, collects or maintains other data, or records, or information, acquired by Contractor during access to the Contractor's NYS Contract page, or pages, (maintained by Contractor at Contractor's web sites), such *other* acquired data or records, and or information, shall only be used internally by Contractor for the purpose of implementing or marketing the State contract, and shall not be disseminated to third parties or used for other marketing purpose.

- A. Warranty - Contractor warrants and represents that contract related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at a Contractor's web site. Contractor may only post Equipment or Service offerings, including Equipment SKU's, part numbers and pricing on their NYS Contract web page after they have been approved by OGS. Contractor shall indemnify the Authorized Users for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post contract information in accordance with this paragraph.
- B. Price Data Retention & Audit - The parties anticipate that certain price data may fluctuate during the Contract term, and that new pricing will be posted in a timely manner. When no longer current, historical pricing information must be archived and retained for the life of the contract period by the Contractor, at Contractor's place of business at its sole cost and expense. Archived data must be retained in a manner which renders it electronically accessible on-line by the Comptroller, OGS and/or Authorized Users for the purpose of auditing payments under the Contract. While the Contractor is not required to maintain this information as live data at Contractor's web site, it may choose to do so or may permit access by remote log-on to a dedicated PC, or any other similar means.

At the end of each twelve-month period, the Contractor shall either electronically archive the information in a manner, which allows the Comptroller, OGS and/or Authorized Users to continue to access the information; or electronically transmit the information to the requestor. This does not relieve the Contractor from any audit requirements imposed by Appendix A, Clause 10, nor does it shorten the retention periods for information stated therein. In addition, annual audits of the information posted at Contractor's web site may be conducted by OSC, or by an independent auditor at Contractor's expense. The independent auditor shall be selected by:

- 1. Contractor forwarding three proposed firms acceptable to Contractor to the Comptroller and/or OGS, And
 - 2. the State making the final selection of the auditor used from that pool.
- C. Site Changes - Contractor must provide OGS with written notice of any change in URL or other information needed to access the site and/or maintain the link. Contractor hereby consents to a link to the Contractor's site from the OGS site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. OGS has the right to terminate or remove a link at any time, in its sole discretion and without advance notice, or to deny a future request for link. OGS will provide Contractor with subsequent notice of link termination or removal.

- D. Responsibility for Content - Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's web site including Contractor's NYS Contract page, or pages. Contractor is solely responsible for its actions and those of its agents, employees, or assigns, and agrees that neither it, its agents, employees, or assigns has any authority to act or speak on behalf of the State or OGS.

Contractor's NYS Contract page, or pages, must list each and every Equipment and Solution which has been approved for sale under this NYS Contract, whether such Equipment /Solution is furnished directly by Contractor or in combination with or solely by approved Resellers, and must provide the contract prices set forth in Appendices C for each such Equipment /Solution. Contractor may also provide "links" from the Contractor's NYS Contract pages to the web sites of Resellers participating under the contract.

Where Equipment and services are offered from multiple sources (Contractor and/or one or more Resellers), Contractor's NYS Contract page or pages should first list category of service, and second all multiple sources approved to provide that service under the contract. The State reserves the right, at any time during the Contract term, in the alternative to require the Contractor to host all pricing information at its site (including Reseller(s) pricing), or to require, as a condition of continued Reseller participation, Reseller may have an operational on-line Configurator if applicable at Resellers' site in accordance with the requirements of paragraph F, below.

On-line Price Configurator - It is optional for the Contractor to offer an operational on-line Configurator at the contract web site at the start of the Contract term and thereafter throughout the Contract term. If offered, Configurator shall meet the following requirements: the Configurator must incorporate the pricing for all Equipment and Solutions offering approved under Appendices C; the on-line Configurator may only configure options, Equipment, and pricing data for Equipment and services which have been approved for sale under the NYS Contract.

Directions and assistance in using the Configurator and web site in general must be available at entry. This Configurator must enable Authorized Users to:

1. view the options available for the type of Equipment or service(s) requested;
2. fully configure a system or to search and find Equipment under the approved contract list.

Information about payment, shipping, delivery and special pricing should be available. Users should have the option of printing their "shopping cart" choices; and for those users, who are positioned to do so, an option for on-line secure ordering should also be available

- E. On-Line Ordering - Contractor may offer electronic ordering capability to Authorized Users in order to facilitate the transaction electronically.
- F. Access By Non-Electronic Means - Notwithstanding the foregoing, where an Authorized User does not have the capability to access contract information electronically, it shall be the Contractor's responsibility to configure the transaction in accordance with the above, and to configure and print out the configured transaction screen and furnish by means of FAX or hardcopy the configured transaction summary to the Authorized User upon request.
- G. Responsibility for Content Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's web site. Contractor is solely

responsible for its actions and those of its agents, employees, resellers, subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. Contractor agrees to comply with Office for Technology Policy #P04-002 (<http://www.oft.state.ny.us/policy/p04-002/index.htm>), Accessibility of State Agency Web-based Intranet and Internet Information and Applications dated June 21, 2004, which requires that all New York State agencies' web sites provide universal accessibility to persons with disabilities. The State of New York has adopted the W3C Web Content Accessibility Guidelines <<http://www.w3.org/TR/WAI-WEBCONTENT/>> as a means to provide optimal access to State agency web sites and the content therein. The Contractor agrees to apply the most current version of these guidelines in the design, creation and maintenance of its linked website. Contractor agrees that its Web content shall conform with level "A", satisfying all priority one checkpoints. In addition, Contractor agrees that its site will have a contact mechanism so individuals who might have trouble accessing any portion of the site can report the problem. The Contractor agrees that the Web Accessibility Guidelines and the checkpoints and guidelines referenced therein will be used in the development of all new pages and will be the basis for bringing existing pages into compliance as required by the Office for Technology Policy #P04-002.

VII METHOD OF AWARD OF CONTRACT

Multiple awards will be made by Lot and/or per Category within the Lots. Awards will be made by region(s) (County) and statewide. Additionally OGS/PSG reserves the right to make awards for Comprehensive offerings that include all Lots and Categories of equipment contained in the LOTS.

Bid responses will first be scored for completeness of all required bid documents prior to any further evaluation.

ATTENTION:

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

1st Each required item will be scored with a 1 or 0

1 = complete 0 = not complete or not required*

Required items must be determined acceptable in the bid for further evaluation to be performed.

2nd Qualifications / Technical Ability and Product Offering items will be evaluated and scored. Items will be assigned a weight from 1 to 10. The evaluator will score each item from 0(fails to meet requirement) to 10. The weight multiplied by the evaluation score will identify a weighted score for the item. The individual weighted scores will be added together to identify a total weighted point score for the entire section. The total weighted score will be multiplied by 50 (total award points for section) then divided by the total possible weighted score. The resulting value will be between 0.00 and 50.00 and indicate the rating for this section.

Those proposals that meet Qualifications / Technical Ability and Product Offerings of the RFP will then be eligible to undergo further evaluation. Those proposals that are not qualified or technically compliant may be considered non-responsive and may be disqualified at the sole discretion of the State. Reference and financial evaluations will not be conducted on proposals that are deemed non-responsive.

3rd *OGS reserves the right to request references. In the event references are required, Project Reference checks will be performed. If yes, references are required, **they will not scored, although they may be used to make a determination of responsibility with respect to a recommendation for contract award.**

4th Bidders financial stability will be evaluated. Sales history, current financial statements, or other financial information provided will be utilized to make a determination of financial stability. New York State reserves the right to reject any Bidder who does not demonstrate sufficient financial stability. The resulting value will be between 0.00 and 10.00 and indicate the rating for this section.

5th Price will be evaluated. Pricing must be reasonable and equal to or better than any other pricing or discount terms offered to other similarly situated customers.

"Reasonable prices" may be determined by reviewing discounts and net prices offered to:

- Approved Federal such as: GSA Supply Schedule or
- Prices on any previously awarded NYS contract or
- Contracts with other state or government entities, etc or
- Pricing equal to or better than any other pricing or discount terms offered to other similarly situated non-government customers.
- Pricing offered by other Bidders responding to this RFP

The resulting value will be between 0.00 and 40.00 and indicate the rating for this section.

VII.1 LOT 1 -

Multiple awards will be made based upon the following:

Qualifications / Technical Ability / Product Offerings	50
Price Considerations	40
Project References*	0
Financial Stability	<u>10</u>
	100

*if required

VII.2 LOT 2 -

Multiple awards will be made based upon the following:

Qualifications / Technical Ability / Product Offerings	50
Price Considerations	40
Project References*	0
Financial Stability	<u>10</u>
	100

VII.3 LOT 3 -

Multiple awards will be made based upon the following:

Qualifications / Technical Ability / Product Offerings	50
Price Considerations	40
Project References *	0
Financial Stability	<u>10</u>
	100

*if required

Note: The State 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 the States 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 11 of Appendix B.

The State reserves the right to reject a bid or accept adjustments when prices are deemed to be excessive or unbalanced.

VIII SPECIAL TERMS AND CONDITIONS

VIII.1 PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS:

PREVAILING WAGE RATE

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

To Obtain the Prevailing Wage Rates, for various occupations, and to review General Provisions of Laws Covering Workers on Article 8 Public Work Contract:

- Access the following NYS Department of Labor website: <http://www.labor.state.ny.us>
- On the right side of the page under Quick Links heading click Prevailing Wage.
- Click Public Work Prevailing Wage.
- Under Prevailing Wage Schedule Links: Click Online View of Existing Prevailing Wage Schedule with PRC#.
- Insert PRC# 2008001062 in the box provided and click Submit.
- Click Original Wage Schedule located underneath the main header of this page. (**Depending on your computer speed this download may take a few minutes**).
- Review General Provisions of Laws Covering Workers on Article 8 Public Work Contracts (pages 3 through 6).
- To obtain the Prevailing Wage Rate for a specific occupation type that occupation in the find box and press enter. (If there is more than one reference to the specific occupation in this document it may be necessary to click the pull down arrow next to the find box and continue to click Find Next until the Prevailing Wage Rate for the specific occupation is located).

Note: This Website is subject to change. Therefore, the instructions above are accurate at the time of the RFP release and may differ at a latter date.

VIII.1.1 Adjustments to the Prevailing Wage Rate Schedules

On the date of adjustments to Prevailing Wage Rates by the NYS Department of Labor, the Contractor may be granted an increase or decrease in the contract wage rates dependent upon fluctuations in the latest published Prevailing Wage Rates published by the NYS Department of Labor.*

The price adjustment shall be calculated as follows:

NOTE: THE FOLLOWING IS FOR PURPOSES OF EXAMPLE ONLY BE SURE TO USE ACTUAL RATES IN EFFECT AT THE TIME OF BID SUBMISSION

(Prevailing Wage + Supplemental Benefits) * Percentage Markup

Example: Electrician Lineman Teledata Region A

Prevailing Wage	
Installer/Repairman	\$20.45
Supplemental Benefits	
(\$2.80+(3% of Wage .61) = \$3.41)	<u>+ 3.41</u>
	\$23.86

Contractor's Bid Percentage Markup = 35%

(Percentage Markup includes all Statutory Benefits regulated by Law, Overhead, Profit and any other ancillary costs)

$$23.86 \times 35\% = \$32.21 \text{ Contractor's Hourly Charge to NYS}$$

*The contractor has the sole responsibility to submit a request for a price adjustment to the Office of General Services on the applicable anniversary date and shall provide a copy of both the original and new wage rate schedules and other supporting documentation necessary to support the increase or decrease. See Contract Update procedures for additional information when requesting wage rate adjustments. Should the contractor fail to submit adjusted invoices and/or supporting documentation within three (3) months after the applicable anniversary date, the contractor shall be deemed to have waived its right to any increase in price, but the State reserves the right to make the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

VIII.1.1.1 ADJUSTMENTS TO LABOR RATES NOT COVERED BY PREVAILING WAGE RATE SCHEDULES

Requests for adjustments to labor rates for titles not covered by prevailing wage rate schedules issued by the Department of Labor may be submitted after the first anniversary of contract award utilizing the regular add process. These types of adjustments will be limited to the CPI or 5%, whichever is less.

Any increase in the Total Hourly Rates not based on a NYSDOL Prevailing Wage Rate requires a Regular Add Update. These increases will only be permitted on the yearly anniversary of Contract Award by the Office of the State Comptroller.

VIII.2 PERFORMANCE SECURITY

Bidders must agree that when an Authorized User procures Telecommunications Equipment & Solutions offered under the Contract, a right has been reserved in the Contract so that the Authorized User may require the Contractor to furnish, at a cost to be negotiated, a performance or payment bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the telecommunications equipment & solutions being acquired. Contractor understands and agrees that the cost for such bond or security will be reasonable and consistent with the market for such bonds or other security. Where required, such bond or other security shall be in the form prescribed by the Authorized User.

IX PROPOSAL FORMAT AND CONTENT

FORMAT AND CONTENT OF BID SUBMITTAL:

Bidder **MUST** supply **ONE (1) ORIGINAL Hard and TWO (2) Electronic Copies of their PROPOSAL. Three (3) original signed and notarized copies of all required signature pages (see list below*), 2 soft copy on CD/DVD or equivalent and include as part of their proposal all items listed below. Proposals must be submitted in the following format, with the TABLE OF CONTENTS as indicated in Section IX.1. Proposals are to be submitted in binders with each item listed below as a separate section marked with index tabs as section dividers. E-Mail or Fax Bids will NOT be accepted.**

Bidders must submit with their bid, the entire offering on paper and **electronic media**. Electronic media shall be on CD/DVD or equivalent in a **unprotected native MS-Windows application format (e.g. MS-Word and/or MS-Excel).** Label appropriately.

BIDDER'S Table of Contents

IX.1 BID DOCUMENT

Electronic Information Note: Links or references to information located on the Internet are NOT acceptable. Electronic information must be accessible via a CD/DVD or equivalent physical media included in the bid package.

**Three (3) Original Signature Hard copies and
TWO (2) Electronic versions of the following are required (1-7)**

- 1) The completed and signed Signature Page (Front Page of RFP)
- 2) The completed, signed and notarized IX.8 Acknowledgment Page
- 3) If applicable, insert signed Addenda (Addendum # 1, Addendum # 2, etc.)
- 4) The completed and signed IX.10 Authorized Users Tables
- 5) The completed IX.11 Proposal Form Page(s)
- 6) The completed and signed Appendix 1
- 7) The completed and signed Appendix 2

ONE (1) Hard copy and TWO (2) Electronic versions of the following are required (8-14)

- 8) The completed Bidder Proposal Checklist
- 9) The completed IX.7 Questionnaire
- 10) The completed IX.12 Response Matrix Form with attached response documentation
- 11) The completed Appendix C – Reference NYS Cost Spreadsheet
- 12) The completed Appendix D – Manufacturer's Certificate
- 13) The completed Appendix E/E-1 – Manufacturer's Guarantee
- 14) The completed Appendix F – Manufacturers & VAR/Distributor Information

IX.2 GENERAL QUALIFICATIONS

ONE (1) Hard copy and TWO (2) Electronic versions of the following:

- General Qualifications Response
Reference Section II

IX.3 OFFER DESCRIPTION(s), SPECIFICATION(s) and MAINTENANCE

TWO (2) Electronic Media copies of the following:

- Offering Descriptions, Specifications and Maintenance offering (as applicable)
Reference Sections III, IV, V and VI (as applicable)

IX.4 EVIDENCE OF FINANCIAL SECURITY

ONE (1) Hard copy and TWO (2) Electronic versions of the following:

- A Company Dunn & Bradstreet (D&B) Comprehensive Insight Plus Report TM /
Comprehensive Report
Reference Sections II.2

IX.5 COMPARABLE CONTRACTS (Reasonableness of Price)

ONE (1) Hard copy and TWO (2) Electronic versions of the following:

- Copies of comparable contracts. (Reference Section – II.3 Pricing)

IX.6 EXTRANEOUS TERMS

ONE (1) Hard copy and TWO (2) Electronic versions of the following:

- Exceptions to the terms and conditions listed herein

Reference Appendix B section 13 “EXTRANEOUS TERMS” clause

NOTE: Exceptions not included in this section may not be reviewed and subsequently disregarded.

Exceptions must for formatted in the following manner and provided in hard and electronic versions:

- Issue number
- RFP Section and page number
- The complete excerpted RFP language
- Bidder’s exception, including alternative proposed

The electronic version must be in unprotected MS Word or equivalent (no tables).

FAILURE TO SUBMIT ANY OF THE ABOVE INFORMATION IN THE REQUIRED FORMAT MAY BE CAUSE FOR REJECTION OF THE BID.

Bidder Proposal Checklist

RFP Number: _____ Bid Date: _____

Bidder Name: _____

Reviewer(s): _____

The Bidder Proposal Checklist is provided to assist the Bidders in preparing their bid submissions. PSG reserves the right to request any additional information required to evaluate the bids submitted.

Section IX.1 Bid Document

For items 1-7, bidders are required to provide Three (3) original completed, signed, and notarized forms in their original proposals and TWO (2) Electronic versions such as a PDF format. Bidders should use both black or blue ink, and original seals/stamps.

- | | | |
|--|--------------------------|-----|
| 1. The completed and signed Signature Page (Front Page of RFP) | <input type="checkbox"/> | Yes |
| 2. The completed, signed and notarized IX.8 Acknowledgment Page | <input type="checkbox"/> | Yes |
| 3. If applicable, insert signed Addenda (Addendum # 1, Addendum # 2, etc.) | <input type="checkbox"/> | Yes |
| 4. The completed and signed IX.10 Authorized Users Tables | <input type="checkbox"/> | Yes |
| 5. The completed IX.11 Proposal Form Page(s) | <input type="checkbox"/> | Yes |
| 6. The completed and signed Appendix 1 | <input type="checkbox"/> | Yes |
| 7. The completed and signed Appendix 2 | <input type="checkbox"/> | Yes |

For items 8-14, bidders are required to provide ONE (1) hard copy and TWO (2) Electronic versions.

- | | | |
|--|--------------------------|-----|
| 8) The completed Bidder Proposal Checklist | <input type="checkbox"/> | Yes |
| 9) The completed IX.7 Questionnaire | <input type="checkbox"/> | Yes |
| 10) The completed IX.12 Response Matrix Form | <input type="checkbox"/> | Yes |
| 11) The completed Appendix C – Reference NYS Cost Spreadsheet | <input type="checkbox"/> | Yes |
| 12) The completed Appendix D – Manufacturer's Certificate | <input type="checkbox"/> | Yes |
| 13) The completed Appendix E/E1 – Manufacturer's Guarantee | <input type="checkbox"/> | Yes |
| 14) The completed Appendix F – Manufacturers & VAR/Distributor Information | <input type="checkbox"/> | Yes |

Section IX.2 GENERAL QUALIFICATIONS☐ Yes**ONE (1) Hard copy and TWO (2) Electronic versions of the following:**

- General Qualifications Response
- Reference Section II

Section IX.3 OFFER DESCRIPTION(s), SPECIFICATION(s) and MAINTENANCE ☐ Yes**Two (2) Electronic Media copies of the following:**

- Offering Descriptions, Specifications and Maintenance offering (as applicable)
- Reference Sections III, IV, V and VI (as applicable)

Section IX.4 EVIDENCE OF FINANCIAL SECURITY☐ Yes**ONE (1) Hard copy and TWO (2) Electronic versions of the following:**

- A Company Dunn & Bradstreet (D&B) **Comprehensive Insight Plus Report** TM / **Comprehensive Report**
- (Reference Sections II.2)

Section IX.5 COMPARABLE CONTRACTS (Reasonableness of Price)☐**Yes**

- (Reference Section – II.3 Pricing)

Section IX.6 EXTRANEIOUS TERMS☐**Yes****ONE (1) Hard copy and TWO (2) Electronic versions of the following:**

- Exceptions to the terms and conditions listed herein

Reference Appendix B section 13 “EXTRANEIOUS TERMS” clause

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

IX.7 QUESTIONNAIRE

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", 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 GSA or VA pricing?

_____ GSA _____ VA _____ NO

If yes, a corresponding copy of the GSA or VA schedule is required.

_____ GSA _____ VA

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

___ Manufacturer ___ Dealers or Distributors

If you are a manufacturer and have checked "Dealers or Distributors", 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 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 \$15,000?

_____ YES _____ NO

If bidder limits the maximum acceptable card amount to less than \$15,000, indicate the maximum amount:

\$ _____

Additional discount for purchases made with the NYS Procurement Card:

_____ %

Are any products offered manufactured from recycled materials?

_____ YES _____ NO

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

Are any products offered remanufactured (restored to its
original performance standards and function)?
Are any products offered Energy Star Compliant?
(If YES to any of the above, attach specifics.)

If awarded a contract, will bidder honor orders
for less than the minimum order?

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

OR

If YES, will bidder ship at no additional cost?

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

Person or persons to contact for 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 Repair/Trouble

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

Name:

Title:

Telephone Number:

()

Fax Number:

()

Pager Number:

()

Mobile Telephone Number:

()

E-Mail Address:

Person or persons to contact for Escalation

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

Name:

Title:

()

Telephone Number:

()

Fax Number:

()

Pager Number:

()

Mobile Telephone Number:

E-Mail Address:

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

BIDDERS 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 _____

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

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

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

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

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

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

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

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

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

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

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

"Small Business Concern" means a business which:

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

_____ YES _____ NO

_____ YES _____ NO

MINORITY-OWNED
WOMEN-OWNED
MINORITY AND WOMEN-OWNED

_____ 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

9. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Pursuant to Procurement Lobbying Law (SFL §139-j)

- A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

_____YES _____NO

If yes, please answer the following question:

- B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

_____YES _____NO

- C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

_____YES _____NO

If yes, please provide details regarding the finding of non-responsibility:

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-Responsibility:
(add additional pages if necessary)

- D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

_____YES _____NO

If yes, please provide details:

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:
(add additional pages if necessary)

REASONABLENESS OF PRICE QUESTIONNAIRE

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

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

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

Please provide the following information (one sheet per category
bid)

LOT No. #:

Category:

Do you have a contract with the General Services Administration
(GSA), Veterans Affairs (VA), Department of Defense (DOD), or
other Federal Government Agency for products offered? (Check all
that apply.)

____ GSA ____ VA
____ DOD ____ Other
____ NO

If yes, a copy of the GSA, VA, DOD, or other Agency comparable
contract pricing information as outline in section II.3?

____ GSA ____ VA
____ DOD ____ Other

Have you included an electronic copy of comparable contract pricing
information as outline in section II.3?

____ YES ____ NO

If yes to having GSA, VA, DOD, or other Federal Agency contract,
will Bidder offer New York State pricing equal to or better than your
GSA, VA, DOD, or other Federal Agency pricing?

____ YES ____ NO

If no to above, an explanation of why equal to or better pricing is not
being offered is required. Have you attached a written explanation?

____ YES ____ NO

If Bidder has state contract for products offered, please provide the
name of the state:

If State was completed above, an electronic copy of the comparable
contract pricing information as outline in section II.3. Have you
included an electronic copy?

____ YES ____ NO

For state contract referenced above, will Bidder offer New York
State pricing equal to or better than your state contract pricing?

____ YES ____ NO

If no to above, an explanation of why equal to or better pricing is not
being offered is required. Have you attached a written explanation?

____ YES ____ NO

If Bidder has a contract for products offered with a best commercial
customer outside of GSA, VA, DOD, another Federal Agency, or a
state, please provide the name of the customer:

If best commercial customer was completed above, an electronic
copy of the customer's comparable contract pricing information as
outline in section II.3. Have you included an electronic copy?

____ YES ____ NO

RFP 21350

PROCUREMENT SERVICES GROUP

version June 4, 2008

For best commercial customer contract referenced above, will Bidder offer New York State pricing equal to or better than the pricing for the best commercial customer?

_____ YES

_____ NO

Have you designated Resellers/Distributors to be listed?

_____ YES

_____ NO

If yes, are they authorized to accept purchase orders, issue invoices and receive payments?

_____ YES

_____ NO

If yes, have you indicated which reseller/distributors are Authorized as indicated above, as required in Section VI.5.4

_____ YES

_____ NO

Notary Public Registration No.

Signature: _____ Date: _____
Print Name: _____

IX.9 PROJECT REFERENCES / CLIENT INFORMATION

ONLY REQUIRED IF REQUESTED

REFERENCE FORM

(Submit one form per reference)

BIDDERS INFORMATION

Bidding Company / Contact Person: _____/ _____

Contact Person Telephone Number: _____

PROJECT REFERENCE / CUSTOMER'S INFORMATION

Customer Name _____

Customer Address _____

Contact Person _____

Telephone Number _____

Facsimile Number _____

E-Mail Address _____

Date Range of Service _____ thru _____

Dollar Value of Project / Contract _____

Description of Equipment/Solution provided: _____

IX.10 AUTHORIZED USERS

NYS Laws Extending Use of State Centralized Contracts for
Purchases by Non-State Agencies

Table One

**These groups are eligible to purchase through
OGS Commodity, Information Technology and Service Centralized Contracts.**

- Any officer, board or agency of a political subdivision, or of a district therein (counties, cities, towns, villages, public school districts) -- Section 163 of the State Finance Law and Sections 100 and 104 of the General Municipal Law.
- Volunteer fire companies -- Sections 100 and 104 of the General Municipal Law.
- Boards of Cooperative Educational Services -- Section 100 of the General Municipal Law.
- Institutions for instruction of the deaf and the blind -- Section 163 of the State Finance Law and Section 4201 of the Education Law.
- Non-profit public television corporations -- Section 236 of the Education Law.
- Voluntary ambulance services -- Sections 100 and 104 of the General Municipal Law.
- Non-profit public radio corporations -- Section 236 of the Education Law.
- Any public authority or public benefit corporation of the State -- Section 163 of the State Finance Law.
- Non-public, non-profit elementary and secondary schools -- Section 109-a of the General Municipal Law.
- Certain public associations -- New York State Association of Counties, Association of Towns of the State of New York, New York State Conference of Mayors and other Municipal Officials, New York State School Boards Association, Inc., the New York Planning Federation and Association of Fire Districts of the State of New York -- Section 109-a of the General Municipal Law.

Table Two

These groups are eligible to purchase **ONLY** through
OGS Commodity Centralized Contracts.

Note: OGS Services and Technology contracts may be available to these groups through voluntary extension by the Vendor.

- Non-profit independent colleges and universities -- Section 6404 of the Education Law.
- Certain non-profit museums, historical societies, zoological gardens, botanical gardens, arboreta, and aquariums -- Section 258-a of the Education Law.
- Certain not-for-profit corporations that receive federal funds for provision of transportation services -- Section 31-a of the Transportation Law.
- The Interstate Environmental Commission -- Section 163 of the State Finance Law
- Charitable non-profit agencies for the blind and other severely disabled -- Section 163 of the State Finance Law.
- Non-profit, non-public hospitals, residential health care or mental hygiene facilities -- Section 163 of the State Finance Law.
- Non-profit cemetery corporations -- Section 1509 of the Not-for-Profit Corporation Law
- Non-profit county, town or other agricultural societies and youth fairs or expositions held by county extension service associations -- Chapter 741 of the Laws of 1985 and as amended by Chapter 90 of the Laws of 1992.
- Certain charitable organizations -- Chapter 741 of the Laws of 1985 and as amended through Chapter 134 of the Laws of 1994.

Bidder has read the aforementioned statement and agrees that entities listed in **Table One and Table Two** may participate in and make purchases as provided for in the RFP and the resulting contract awards.

Acknowledged, Agreed and Accepted.

Signature: _____ Date: _____

Printed Name: _____

- OR -

Bidder has read the aforementioned statement and agrees that **only** the entities listed in **Table One** may participate in and make purchases as provided for in the RFP and the resulting contract awards.

Acknowledged, Agreed and Accepted.

Signature: _____ Date: _____

Printed Name: _____

IX.11 PROPOSAL FORM

Bidder: _____

NOTE: Proposal Form must be completed and signed in triplicate herein.

_____ agrees to provide all necessary service, equipment,
(Company)
maintenance, inspections, and annual operation in accordance with the specifications in this Request For Proposals and any Project Definition which is issued subsequent to the contract award.

It is acknowledged that the Contract is comprised of this Request for Proposals 21350, the proposal submitted by this company and all documentation resulting from the evaluation process.

Proposals are being submitted for the following:

Lot _____ Category Bid _____
(Replicate 1 sheet for each Category Bid)

Bidder: _____

Statewide: _____

or

Regional: Check ALL that apply:

Albany	_____	Franklin	_____	Oneida	_____	Seneca	_____
Allegany	_____	Fulton	_____	Onondaga	_____	St. Lawrence	_____
Bronx	_____	Genesee	_____	Ontario	_____	Steuben	_____
Broome	_____	Greene	_____	Orange	_____	Suffolk	_____
Cattaraugus	_____	Hamilton	_____	Orleans	_____	Sullivan	_____
Cayuga	_____	Herkimer	_____	Oswego	_____	Tioga	_____
Chautauqua	_____	Jefferson	_____	Otsego	_____	Tompkins	_____
Chemung	_____	Kings	_____	Putnam	_____	Ulster	_____
Chenango	_____	Lewis	_____	Queens	_____	Warren	_____
Clinton	_____	Livingston	_____	Rensselaer	_____	Washington	_____
Columbia	_____	Madison	_____	Richmond	_____	Wayne	_____
Cortland	_____	Monroe	_____	Rockland	_____	Westchester	_____
Delaware	_____	Montgomery	_____	Saratoga	_____	Wyoming	_____
Dutchess	_____	Nassau	_____	Schenectady	_____	Yates	_____
Erie	_____	New York	_____	Schoharie	_____		
Essex	_____	Niagara	_____	Schuyler	_____		

Additional Detail:

AGENCY CERTIFICATION (In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.)

Principal place of business is the location of the primary control, direction and management of the enterprise.

State of _____

Bidder's Principal Place of Business

AGENCY SIGNATURE ①

DATED _____

Reviewed by
PROCUREMENT SERVICES GROUP _____

VENDOR'S SIGNATURE ①

PRINT NAME ①

TITLE ①

COMPANY ①

ADDRESS ①

CITY ①

STATE/ZIP ①

TELEPHONE NUMBER ①

FEDERAL I.D. NUMBER ①

DATE ①

**NEW YORK STATE
ATTORNEY GENERAL'S SIGNATURE** ①

DATED _____

**NEW YORK STATE
COMPTROLLER'S SIGNATURE** ①

DATED _____

IX.12 RESPONSE MATRIX FORM

		Proposal Section	Proposal Page		Accept/Decline	Response /Explain
VI.1	OFT Notification					
VI.2	Definition of Requirements					
VI.3.1	Project Manager/Contact					
VI.3.2	Implementation Package					
VI.3.3	Escalation Procedures during Implementation					
VI.3.4	Pre-Installation Site Visits					
VI.3.5	Installation Personnel Requirement					
VI.3.6	Cleanup of Authorized User Site					
VI.3.7	Restoration of Damaged Property					
VI.3.8	Final Acceptance of Installation					
VI.3.9	Equipment Trade-In					
VI.4	Maintenance					
VI.4.1	Critical / Routine Maintenance (as applicable)					
VI.4.1.1	Critical Maintenance (as applicable)					
VI.4.1.2	Routine Maintenance (as applicable)					
VI.4.2	Escalation Procedures during Maintenance (as applicable)					
VI.4.3	Critical Component Availability (as applicable)					
VI.4.4	Existing Component Maintenance (as applicable)					
VI.5	Administration and Reporting Requirements					
VI.5.1	Reporting Requirements					
VI.5.2	Contract Update					
VI.5.3	Contractors Insurance Requirements					
VI.5.4	Value Added resellers or Distributors					
VI.6	Interfacing with Third Party Contractors					
VI.7	Pricing & Internet Access to Contract Information					
VIII.1	Prevailing Wage Rate					
VIII.2	Performance Security					

APPENDIX A – Standard Clauses for NYS Contracts

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

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

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

subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

RFP 21350

PROCUREMENT SERVICES GROUP

version June 4, 2008

(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

RFP 21350

PROCUREMENT SERVICES GROUP

version June 4, 2008

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
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development

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

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

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

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

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

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

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

22. 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.

THIS PAGE IS INTENTIONALLY LEFT BLANK

APPENDIX B – General Specifications

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

TABLE OF CONTENTS

GENERAL

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

BID SUBMISSION

6. International Bidding
7. Bid Opening
8. Bid Submission
9. Facsimile Submissions
10. Authentication of Facsimile Bids
11. Late Bids
12. Bid Contents
13. Extraneous Terms
14. Confidential/Trade Secret Materials
15. Release of Bid Evaluation Materials
16. Freedom of Information Law
17. Prevailing Wage Rates - Public Works and Building Services Contracts
18. Taxes
19. Expenses Prior to Contract Execution
20. Advertising Results
21. Product References
22. Remanufactured, Recycled, Recyclable Or Recovered Materials
23. Products Manufactured in Public Institutions
24. Pricing
25. Drawings
26. Site Inspection
27. Procurement Card
28. Samples

BID EVALUATION

29. Bid Evaluation
30. Conditional Bid
31. Clarification/Revisions
32. Prompt Payment Discounts
33. Equivalent or Identical Bids
34. Performance and Responsibility Qualifications
35. Disqualification for Past Performance
36. Quantity Changes Prior To Award
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

TERMS & CONDITIONS

43. Emergency Contracts
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
57. Subcontractors and Suppliers
58. Performance/Bid Bond
59. Suspension of Work
60. Termination
61. Savings/Force Majeure
62. Contract Billings
63. Default - Authorized User
64. Interest on Late Payments
65. Remedies for Breach
66. Assignment of Claim
67. Toxic Substances
68. Independent Contractor
69. Security
70. Cooperation with Third Parties
71. Contract Term - Renewal
72. Additional Warranties
73. Legal Compliance
74. Indemnification
75. Indemnification Relating to Third Party Rights
76. Limitation of Liability
77. Insurance

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

78. Software License Grant
79. Product Acceptance
80. Audit of Licensed Product Usage
81. Ownership/Title to Project Deliverables
82. Proof of License
83. Product Version
84. Changes to Product or Service Offerings
85. No Hardstop/Passive License Monitoring
86. Source Code Escrow for Licensed Product

GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

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

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

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. **Appendix A** (Standard Clauses for NYS Contracts)
- b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. **Bid Documents** (Other than Appendix A).
 - i. Bid Specifications prepared by the Authorized User.
 - ii. Appendix B (General Specifications).
 - iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- e. **Contractor's Bid or Mini-Bid Proposal**.
- f. **Unincorporated Appendices** (if any).

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

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RFP 21350

PROCUREMENT SERVICES GROUP

version June 4, 2008

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

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

"BID ENCLOSED (bold print, all capitals)

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

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

Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified,

packaged or labeled in accordance with the foregoing requirements.

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

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

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

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

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

12. BID CONTENTS Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid.

Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening, may not be considered.

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

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

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

15. RELEASE OF BID EVALUATION MATERIALS

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

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

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

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

i. Public Works Labor Law Article 8 applies to contractors for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school

district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.

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

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

c. Wage Rate Payments / Changes During Contract Term

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

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

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For "agency specific" Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work.

RFP 21350

PROCUREMENT SERVICES GROUP

version June 4, 2008

Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.

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

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

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

18. TAXES

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

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

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

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

19. EXPENSES PRIOR TO CONTRACT EXECUTION

The Commissioner and any Authorized User(s) are not liable for

any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid or best and final offers or for any work performed prior to Contract execution.

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

21. PRODUCT REFERENCES

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

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

22. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS

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

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

23. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

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

24. PRICING

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

b. **Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the

Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

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

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

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

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

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

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

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor’s list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

g. Best and Final Prices As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the

Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

25. DRAWINGS

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

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

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

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

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

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

28. SAMPLES

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

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

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

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

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

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

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

BID EVALUATION

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

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

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

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

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

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

not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

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

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

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

TERMS & CONDITIONS

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

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

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

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

c. Voluntary Extension Purchase Orders issued against a State Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at

its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163 (3) (iv) of the State Finance Law.

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

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

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

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

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

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering,

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

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

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

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

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

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

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

the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

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

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

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

47. SHIPPING/RECEIPT OF PRODUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

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

57. SUBCONTRACTORS AND SUPPLIERS

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

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

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

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

60. TERMINATION

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

b. For Convenience: By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other

early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

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

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

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

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

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

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

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

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

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

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

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

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

63. DEFAULT – AUTHORIZED USER

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

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

c. Notice of Breach. Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the

breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

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

64. INTEREST ON LATE PAYMENTS

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

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

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

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

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

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

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

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

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

the Contractor, all costs and expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

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

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

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

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

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

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

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

70. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or

Subcontractors of the Authorized User, as necessary to ensure delivery of Product or coordination of performance of services.

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

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

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

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

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

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

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced

by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

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

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

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

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

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

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

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in

an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

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

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

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

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

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

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

infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

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

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

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

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

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

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

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

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

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

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

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

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

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

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

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

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support

and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

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

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

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

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or

other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

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

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

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

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

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

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

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

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

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

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

additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

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

(i) Existing Products:

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

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

board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

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

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

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

e. **Contractor's Obligation with Regard to ISV (Third Party) Product** Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the

purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

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

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

84. **CHANGES TO PRODUCT OR SERVICE OFFERINGS**

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

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

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

b. **Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered

on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

85. NO HARDSTOP/PASSIVE LICENSE MONITORING

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

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT

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

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

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

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

INDEX

	<u>Paragraph</u>		<u>Paragraph</u>
<u>A</u>	<u>No.</u>	<u>M</u>	<u>No.</u>
Additional Warranties	72	Modification of Contract Terms	40
Advertising Results	20		
Applicability	1	<u>N</u>	
Assignment	56	No Hardstop/Passive License Monitoring	85
Assignment of Claim	66		
Audit of Licensed Product Usage	80	<u>O</u>	
Authentication of Facsimile Bids	10	On-Site Storage	54
		Ownership/Title to Project Deliverables	81
<u>B</u>			
Bid Contents	12	<u>P</u>	
Bid Evaluation	29	Participation in Centralized Contracts	39
Bid Opening	7	Performance and Responsibility Qualifications	34
Bid Submission	8	Performance/Bid Bond	58
		Prevailing Wage Rates Public Works	
<u>C</u>		& Building Services Contracts	17
Changes to Product or Service Offerings	84	Pricing	24
Clarification/Revisions	31	Procurement Card	27
Confidential/Trade Secret Materials	14	Product Acceptance	79
Conflict of Terms	4	Product Delivery	45
Conditional Bid	30	Product References	21
Contract Billings	62	Product Substitution	50
Contract Creation/Execution	38	Product Version	83
Contract Term - Renewal	71	Products Manufactured in Public Institutions	23
Cooperation with Third Parties	70	Prompt Payment Discounts	32
		Proof of License	82
<u>D</u>		Purchase Orders	44
Default - Authorized User	63		
Definitions	5	<u>Q</u>	
Disqualification for Past Performance	35	Quantity Changes Prior to Award	36
Drawings	25		
		<u>R</u>	
<u>E</u>		Rejected Product	51
Emergency Contracts	43	Release of Bid Evaluation Materials	15
Employees/Subcontractors/Agents	55	Re-Weighing Product	49
Equivalent or Identical Bids	33	Remanufactured, Recycled, Recyclable or	
Estimated/Specific Quantity Contracts	42	Recovered Materials	22
Ethics Compliance	3	Remedies for Breach	65
Expenses Prior to Contract Execution	19	Repaired or Replaced Product/Components	53
Extraneous Terms	13		
		<u>S</u>	
<u>F</u>		Samples	28
Facsimile Submissions	9	Savings/Force Majeure	61
Freedom of Information Law	16	Scope Changes	41
		Security	69
<u>G</u>		Site Inspection	26
Governing Law	2	Shipping/Receipt of Product	47
		Software License Grant	78
<u>I</u>		Source Code Escrow for Licensed Product	86
Indemnification	74	Subcontractors and Suppliers	57
Indemnification Relating to Third Party Rights	75	Suspension of Work	59
Independent Contractor	68		
Installation	52	<u>T</u>	
Insurance	77	Taxes	18
Interest on Late Payments	64	Termination	60
International Bidding	6	Timeframe for Offers	37
		Title and Risk of Loss	48
<u>L</u>		Toxic Substances	67
Late Bids	11		
Legal Compliance	73	<u>W</u>	
Limitation of Liability	76	Weekend and Holiday Deliveries	46

APPENDIX C - Reference the NYS Cost Excel Spreadsheet
Separate Microsoft® EXCEL File

Appendix 1 - SVRQ

{Revised: December 2006}

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

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

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

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

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

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

New York State
Standard Vendor Responsibility Questionnaire

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

New York State
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

13. DOES THE VENDOR USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, OR D/B/A OTHER THAN WHAT IS LISTED IN QUESTIONS 1-3 ABOVE?

☐ Yes ☐ No

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

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

- (a) a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

- (b) a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

- (c) an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency?

☐ Yes ☐ No

- (d) an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency?

☐ Yes ☐ No

- (e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?

☐ Yes ☐ No

- (f) a federal, state or local government suspension or debarment from the contracting process?

☐ Yes ☐ No

- (g) a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract?

☐ Yes ☐ No

- (h) a federal, state or local government denial of a lease or contract award for non-responsibility?

☐ Yes ☐ No

- (i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease?

☐ Yes ☐ No

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

New York State
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

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

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

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

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

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

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

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

New York State
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: _____

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

☐ Yes ☐ No

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

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

Provide the court name, address and docket number: _____

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

If closed, provide the date closed: _____

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

☐ Yes ☐ No

New York State Standard Vendor Responsibility Questionnaire

VENDOR FEIN:_____

State of _____)
County of _____) ss:

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 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, 210.35 or 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 – ST220-TD ST220-CA

New York State Department of Taxation and Finance

Contractor Certification

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

ST-220-TD

http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

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

ST-220-CA (6/06)

http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf

Appendix D MANUFACTURER'S CERTIFICATE

NOTE TO BIDDERS:

This "Manufacturer's Certificate" is to be removed from the RFP, forwarded to each manufacturer offered by the bidder, completed and returned to the bidder by the manufacturer(s), and submitted with the bidder's offer.

(See "QUALIFICATION OF BIDDERS" clause.)

BIDDER'S COMPANY NAME: _____

STREET ADDRESS: _____

CITY, STATE ZIP: _____

The manufacturer executing this certificate by signature below does hereby attest to the accuracy and validity of the responses to the following questions:

1. Is the bidder listed above an authorized dealer or representative? _____ Yes _____ No
2. Do you as a manufacturer agree to supply the dealer/representative with all quantities of products ordered pursuant to any resulting contract with the State? _____ Yes _____ No

MANUFACTURER'S COMPANY NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

E-MAIL ADDRESS: _____

PRINTED OR TYPED COPY OF SIGNATURE

SIGNATURE OF AUTHORIZED
MANUFACTURER'S REPRESENTATIVE

DATE

TITLE

* * * * *

Appendix E MANUFACTURER'S GUARANTEE

MANUFACTURER'S GUARANTEE

Part A * - The vendor must secure from the manufacturer, if the bidder is not the manufacturer, a written guarantee executed by the manufacturer that the manufacturer, in the event that the contractor is unable to complete an acceptable installation or to provide continuing maintenance within the terms and conditions of such contract, **will perform or cause to be performed all installation and maintenance obligations of the contractor for the awarded contract at a cost to the State no greater than manufacturer's then prevailing rates for similarly situated customers***.

** Manufacturers have been requested to supply and have supplied a guarantee in accordance with and in acceptable form with this requirement under RFP. Bidders who supply a manufacturer's guarantee at variance with the sample referenced here should note any changes in such manufacturer's guarantee in their bid. Non conformance with the sample or filed manufacturer's guarantee may constitute grounds for rejection of the bid in the sole discretion of the State.

Part B -For five years from last date of manufacturer for subscriber units and user equipment and seven years from last date of manufacturer for infrastructure equipment pursuant to the terms of the contract the manufacturer's guarantee will also include the following:

1. Parts supply.
2. Manufacturing field support and maintenance to protect the issuer from interruption of service due to the inability of the bidder to meet its service obligations. This maintenance will be provided at the then current service rates of the manufacturer to similarly situated customers. The determination of what constitutes inability of the bidder to meet service obligations under the contract will be that of the State in its sole discretion.

Part C - The above referenced manufacturer's guarantee must be submitted with a proposal.

Part D - In the event the bidder proposes to supply principal components of the system from different manufacturers, separate written guarantees from the manufacturers must be supplied as required above. Bidders must request directions from the State if a question is raised as to whether an item comprises a principal component requiring a separate manufacturer's guarantee.

MANUFACTURER'S GUARANTEE STATEMENT

IN WITNESS WHEREOF, the undersigned hereunto affixes its corporate seal and causes these presents to be signed by its duly authorized officer. **

(Manufacturer)

(Signature of Representative)

(Date)

(Title)

* To comply with this requirement, Manufacturers who do not provide installation or maintenance will be required to identify firms who can provide any required services in the event that the contractor is unable to complete an acceptable installation or to provide continuing maintenance within the terms and conditions of contracts awarded as a result of RFP 21350.

** Insert the name of the manufacturer and the title of the authorized officer and AFFIX THE CORPORATE SEAL or Notarized statement on Company Letterhead.

Appendix E-1 MANUFACTURERS GUARANTEE

In response to RFP 21350, _____, (insert bidders name), hereinafter referred to as “Guarantor”), as distributor for _____ (attach list)_ (hereinafter referred to as “Manufacturer”) hereby guarantees the following:

1. That they will either provide Manufacturer's Guarantees, in the substantially the same format as provided in this Request for Proposals, Appendix E, from all manufacturers that they represent, or certify that they will comply with the terms and conditions of the Manufacturer's Guarantee included in the Request for Proposals; and
2. That during the term of this contract they will provide authorized users and/or staff of the Office of General Services with the contact information for an individual or entity that can complete an installation in accordance with the terms and conditions of the contract, and/or fulfill any outstanding maintenance obligations that exist under the contract, at contract prices in effect at time of notice. The distributor agrees that such information will be provided within five business days from the date a request is received, unless a request is made in an emergency situation in which case such information will be responded to immediately upon receipt of a request.

This Guarantee shall be absolute and unconditional, shall be continuing and shall not be discharged or terminated so long as any claim remains outstanding. Guarantor agrees to remain bound by this Guarantee notwithstanding any extension of time of performance, the granting of any indulgence or waiver to the manufacturer or any modification or revision of the Agreement.

The obligations of Guarantor hereunder and the obligations of the manufacturers under the Agreement are joint and several. Prior suit or action against a manufacturer shall not be a condition precedent to the Guarantor's obligations under this Guarantee or to the enforcement of any rights under this Guarantee.

By: _____
Title: _____

CORPORATE ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 200, before me personally came:
to me known, who, being by me duly sworn, did depose and say that he resides in
_____; that he is
_____ (the President or other officer or director or attorney in fact duly
appointed) of _____, the corporation described in and which executed the above guarantee; and that he
signed his name thereto by authority of the board of directors of said corporation.

Signature and Office of Person Taking Acknowledgment

Bidder Types

Type 1

Manufacturer	No Appendix D Required
	No Appendix E or E-1 Required

Type 2

Reseller (Product from Manufacturer)	Manufacturer's Certificate (Appendix D) from the Manufacturer Naming the Bidder
	Manufacturer's Guarantee (Appendix E) from the Manufacturer Naming Bidder (Per lot and category requirements))

Type 3

Reseller (Product from Distributor)	Manufacturer's Certificate (Appendix D) from the Distributor Naming the Bidder. (A Manufacturer's Certificate signed by the Manufacturer given to the Distributor then given to the Bidder is also acceptable)
	Manufacturer's Guarantee (Appendix E) from the Manufacturer Naming the Bidder
	OR
	Manufacturer's Guarantee (Appendix E-1) from the Distributor Naming the Bidder

Type 4

Distributor (Product from Manufacturer)	Manufacturer's Certificate (Appendix D) from the Manufacturer Naming the Bidder
	Manufacturer's Guarantee (Appendix E) from the Manufacturers (1-10 Manufacturers Represented) naming the Bidder (see section I.2 for Maintenance Requirements)
	OR*
	Manufacturer's Guarantee (Appendix E-1) signed by the Distributor. If the Distributor is offering more than 10 Manufacturers in their Bid (see section I.2 for Maintenance Requirements)

*Note: Distributors may submit Manufacturers Guarantees (Appendix E and/or Appendix E-1 as applicable)

Appendix F Manufacturer & Value Added Reseller/Distributor Information

Manufacturer/Contractor Information (for Ordering and Contract Administration Purposes)			
Company Name:			
Address:			
Federal ID #:			
Contract Administrator Name:			
Title:			
Telephone Number:			
E-mail:			
FAX:			
Orders Placed Directly with Contractor <input type="checkbox"/> Orders Placed Directly with VAR <input type="checkbox"/>			
Contract "Toll" Free Support Number:		Guaranteed Product Delivery Timeframe:	_____ days ARO

Value Added Reseller/Distributor Information	
Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller Qualifying Criteria:	

Value Added Reseller/Distributor Information	
(2) Company Name:	
Address:	
Federal ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller Qualifying Criteria:	

**Appendix G - Article 15-A Contractor's Executive Law (M/WBE)
Requirements**

**Article 15-A
Contractor's Executive Law
(M/WBE) Requirements**

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

a. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

b. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at:

[http://www.empire.state.ny.us/Small and Growing Businesses/mwbe.asp](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp)

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, OGS hereby establishes a goal of 4% for minority business enterprises (MBE) participation and 4% for women-owned business enterprises (WBE) participation.

GOALS - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.