State of New York
Division of Military and Naval Affairs
330 Old Niskayuna Road
MNBF - PC
Latham, New York 12110-2224

INVITATION FOR BIDS

BID OPENING DATE: **DATE: June 21, 2013** **TIME: 3:00 PM** **PLACE: Address above**	**TITLE / SERVICE ADDRESS:** Heating Ventilation and Air Conditioning (HVAC) Maintenance New York State Armory & Field Maintenance Shop #4, 174 South Street, Auburn, New York 13201
INVITATION FOR BIDS NUMBER: IFB 13-01 **Issue Date: May 1, 2013**	**SCOPE OF WORK / SPECIFICATION REFERENCE :** See Attachment 1 for Specifications and Equipment List
CONTRACT PERIOD: October 1, 2013 – September 30, 2014 with (4) optional one-year renewals. Target start date is October 1, 2013. Actual start date is contingent on date Office of the State Comptroller approves the contract.	**DESIGNATED CONTACTS:** Primary: Nancy Bik - Purchasing Agent Telephone (518) 786-4964 FAX (518) 786-6098 E-mail Address: nancy.b.bik.nfg@mail.mil Alternate: Maria Gallerie – Associate Purchasing and Contracting Administrator Telephone (518) 786-4962 FAX (518) 786-6098 E-Mail Address: maria.r.gallerie.nfg@mail.mil Website: www.dmna.ny.gov

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1. INTRODUCTION

1.1 Overview

The Division of Military and Naval Affairs (DMNA) is seeking a vendor to supply experienced staff to provide labor and materials to operate and maintain heating, ventilation and air conditioning (HVAC) systems at the New York State Armory and Field Maintenance Shop located in Auburn, New York.

The Armory Superintendent is responsible for operation and maintenance of these facilities and will oversee and monitor the HVAC services and billing.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Nancy Bik, Purchasing Agent, NYS Division of Military and Naval Affairs has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email, voice or fax for all inquiries regarding this solicitation.

Nancy Bik, Purchasing Agent
NYS Division of Military and Naval Affairs
Budget and Finance Purchasing and Contracting
330 Old Niskayuna Road
Latham, New York 12110-3514
Voice: 1-518-786-4964
Fax: 1-518-786-6098 Email: lori.a.brewster2.nfg@mail.mil

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

Maria Gallerie, Associate Purchasing and Contracting Administrator
NYS Division of Military and Naval Affairs
Budget and Finance Purchasing and Contracting
330 Old Niskayuna Road
Latham, New York 12110-3514
Voice: 1-518-786-4962
Fax: 1-518-786-6098 maria.r.gallerie.nfg@mail.mil

1.3 Key Events

The table below outlines the schedule for important action dates:

DMNA Issues Invitation For Bids (IFB)	**Wednesday, May 1, 2013**
Register for Site Visit	**Wednesday, May 29, 2013 by 1:00 pm**
Mandatory Site Visit – New York State Armory, 174 South Street, Auburn, NY 13201	**Thursday, May 30, 2013 @ 9:30 am**
Deadline for Submission of Bidder Questions	**Thursday, June 6, 2013 @ 1:00 pm**
DMNA Issues Responses to Written Questions	**Thursday June 13, 2013**
Bid Due Date/ Bid Opening Date	**Friday, June 21, 2013 @ 3:00 P.M.**
Contract Start Date (contingent upon OSC approval)	**October 1, 2013**

1.4 Minimum Bidder Requirements

The following minimum requirements must be met by each bidder:

1) Bidder shall have a PASCO Building Automation System certification, BACnet systems specialist designation or higher in the past supported by certification letters.
2) Bidder must have on staff a minimum of two technicians each with five years experience working with PASCO Backtalk 1.3 systems supported by letters of certification/reference.
3) Bidder must have two employees on staff having completed the Alerton certification. Technicians must be able to modify programming and re-download controls currently in all buildings with both types of controls.
4) Employee training and certification must be verified through letters of certification/reference for the specified manufacturers and items of equipment.
5) Only personnel qualified in accordance with the recommendations of each component manufacturer's printed maintenance literature will perform repairs and preventive maintenance (Authorized service representative for equipment listed).
6) Contractor shall have access to replacement parts for anticipated emergencies and must be available on a seven day, twenty four hour, three hundred sixty-five day per year basis.

The State of New York retains the right to request any additional information pertaining to the Contractor's ability, qualifications, and procedures used to accomplish all work under this contract, as it deems necessary to ensure safe and satisfactory work.

1.5 Mandatory Site Visit

Bidders intending to submit a bid will be required to attend a mandatory site visit which will include a tour of the buildings on **Thursday, May 30, 2013 at 9:30 am.** This is the only date and time available for inspection. Alternate dates for additional site inspections **will not** be available. Attendees will be required to sign in and provide basic company and contact information. This information will be used to verify attendance and to communicate any changes to the solicitation (addenda). Therefore, it is imperative that the provided information be legible and accurate. Failure to attend the mandatory facility site visit will result in rejection of the bid.

The facilitator of the event will publicly announce the official start time of the site visit, which announcement shall be made no sooner than the time stated in Section 1.3 of Key Events above. Prospective bidders arriving after the official start time of the site visit will be precluded from attending the site visit, and therefore unable to submit a responsive bid.

Due to security procedures, all Bidders MUST pre-register by 1:00 p.m., Wednesday, May 29, 2013, by emailing a registration form to nancy.b.bik.nfg@mail.mil. It is recommended that attendees arrive at the building at least 15 minutes prior to the scheduled time. Photo identification is required. A site visit registration form is included in Appendix C.

In accordance with State Finance Law §139-j(3)(a)(3), these mandatory site visits are covered by the permissible subject matter authorization. A vendor is authorized to speak with representatives other than Designated Contact(s) for the sole purpose of the site visit (to arrange attendance, during the conduct of the visit and to pose questions regarding the site).

The site visits will provide an opportunity for Bidders to see firsthand the existing equipment, the tasks to be performed and the special needs of the facility. Questions during the site visits will be permitted. It is suggested that the Bidder note the question and ask at the end of the tour. Verbal answers are not official answers. All questions asked at the conference or after the tour must be submitted via email to the designated contact for this solicitation no later than the date and time indicated in Section 1.3 - Key

Events. Official answers to all questions will be distributed in the form of an addendum via email to all attendees of the mandatory site visits. Only answers provided by addendum are considered official. **NOTE:** If there are any questions Bidders would like addressed at the site visit, Bidders should submit them in writing as instructed in Section 2.1 – IFB Questions and Clarifications, to the designated contact prior to the date of the site visit. Questions during the site visits will be permitted, however, only questions submitted in writing and answered via addendum will be considered official.

2. BID SUBMISSION

2.1 IFB Questions and Clarifications

Questions and requests for clarification regarding this IFB 13-01 shall only be directed to:

Nancy Bik, Purchasing Agent
Division of Military and Naval Affairs
330 Old Niskayuna Road
MNBF-PC
Latham, New York 12110

Phone: (518) 786-4964
Fax: (518) 786-6098
E-mail: nancy.b.bik.nfg@mail.mil

Questions and/or requests for clarification are only accepted via e-mail and in writing. Official answers to questions will be provided via addendum. Deadline for submission of questions will be as stated in Section 1.3 - Key Events.

2.2 Bid Format and Content

In order for the State to evaluate bids fairly and completely, bidders shall follow the format set forth herein and shall provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a bid to be considered complete.

1. **Cover Letter.** The cover letter shall confirm that: (1) the bidder understands all the terms and conditions contained in this IFB; (2) will comply with all the provisions of this IFB; and, (3) should the contract be awarded to your company, you are prepared to begin services upon the New York State Comptroller's contract approval. A bidder representative authorized to make contractual obligations must sign the cover letter.
2. **Experience.** Bidder shall describe its capabilities to provide the services requested in this IFB by providing the following:
   - ☐ Indicate the number of consecutive years bidder has been actively in business in the operation and maintenance of heating, ventilation and air conditioning (HVAC) systems.
   - ☐ Provide a current list of references with contact information and a description of contract services and equipment maintained. A minimum of three references is required.
   - ☐ Provide certifications as described in Section 1.4 – Minimum Bidder Requirements.

3. **Subcontractors.** State whether or not subcontractors will be used, and the name and address of each proposed subcontractor.

4. **Pricing.** Bidder shall submit a completed Bid Proposal Form (Attachment 2) including annual cost for all services at all buildings and the hourly labor rate and material mark-up for additional services.

5. **Required Forms.** All other required completed forms from Appendix C.

Note: DMNA reserves the right to request any additional information it deems necessary to ensure that the bidder is able to fulfill the requirements of the contract.

2.3 Bid Preparation

All bids must be completed in ink or machine produced. Bids submitted handwritten in pencil will be disqualified.

2.4 Packaging of IFB Response

Please submit **four (4) originals** of the **Bid Proposal Form, the Bid Signature Page** and the **Acknowledgement Page found in Attachment 2.** Please complete and submit one (1) original of all forms found in Appendix C – Required Forms.

The bid documents shall be submitted by mail, hand delivery, overnight carrier, or certified mail in a package showing the following information on the outside:

Bidder's name and address
Solicitation Number: IFB 13-01
Bid Due Date and Time: 6/21/13, 3:00 pm
Bid for: HVAC Maintenance Services at Auburn Armory and FMS

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

2.5 Instructions for Bid Submission

Only those Bidders who furnish all required information and meet the mandatory requirements will be considered. Submit all required bid documents including bid addenda, if any, to the DMNA Budget and Finance Directorate at the following address:

NYS Division of Military and Naval Affairs
330 Old Niskayuna Road
MNBF-PC (Attn: Nancy Bik)
Latham, New York 12110-3514

E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a contract. Bids must be received in the above office on or before 3:00 PM on the date indicated in Section 1.3 - Key Events. **Bidders assume all risks for timely, properly submitted deliveries.**

The received time of bids will be determined by the clock at the above noted location.
NO CONSIDERATION WILL BE GIVEN TO BIDS RECEIVED AFTER THE STATED DATE AND TIME. Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the bidding entity 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.

Bids must remain open and valid for 120 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS DMNA and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Bidder. This IFB remains the property of the State at all times, and all responses to this IFB, once delivered, become the property of the State.

Important Building Access Procedures for Delivered Bids:
Building access procedures are in effect at Division of Military and Naval Affairs Headquarters. Photo identification is required. All visitors must register for building access for delivering bids or attending the bid opening by calling or emailing designated contact at least 24 hours prior to the bid opening.

2.6 Examination of Contract Documents

a) Each Bidder is under an affirmative duty to inform itself by personal examination of the specifications and location of the proposed work and by such other means as it may select, of the character, quality, and extent of the work to be performed and the conditions under which the contract is to be executed.

b) Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the work will be accepted by the Adjutant General of the Division of Military and Naval Affairs or a designated representative as an excuse for any failure or omission on the part of the Bidder to fulfill every detail of all the requirements of the documents governing the work. The Bidder, if awarded a contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such contractor might have fully informed itself prior to bidding.

c) Any Bidder in doubt as to the true meaning of any part of this Invitation for Bid or the proposed contract documents shall submit to the designated contact a written request for an interpretation thereof. If a major change is involved on which all bidders must be informed, such request for interpretation shall be delivered, in writing, by email by the closing date for inquiries. Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be mailed or delivered to each potential Bidder.

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

e) Any verbal information obtained from or statements made by representatives of the Adjutant General of the Division of Military and Naval Affairs at the time of examination of the documents or site visit shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued in writing to all bidders shall become a part of the contract. The Adjutant General of the Division of Military and Naval Affairs will not be responsible for verbal instructions.

3. ADMINISTRATIVE INFORMATION

3.1 Issuing Office

This IFB is being released by the New York State Division of Military and Naval Affairs (DMNA), Budget and Finance Directorate, Purchasing and Contracting Section on behalf of DMNA's Facilities and Engineering Directorate.

3.2 Method of Award

DMNA intends to award one contract to the lowest responsive and responsible bidder. The lowest bidder shall be determined by the Grand Total Bid as represented on the Bid Proposal Form (Attachment 2).

The total bid consists of the following components:

Base Bid:

- Provide an annual price for service at the location (s). This price shall include all labor and materials needed to perform the specified services.

Additional Services:

For the purposes of the contract resulting from this Invitation for Bids, Additional Services shall be defined as work including labor and materials as requested and approved by the Facility Manager, performed by the successful bidder, and not covered in the base scope of services pursuant to this Invitation for Bids (Please refer to Section 3.16 – Additional Services).

- Hourly Labor Rate for labor not covered in the base bid. Labor cost quotes will be considered straight time costs for work accomplished during regular hours between 7:30 AM and 4:00 PM, Mondays through Fridays, excluding State holidays. Any Additional Services work performed at times other than the scheduled time is considered to be overtime and would be allowed only when approved by the Facility Manager. Scheduling of all inspections and testing shall be approved by the Facility Manager and shall not be considered overtime rates as they are a part of the base bid, unless after hours is required.

- Material Percentage Mark-up over cost for materials needed for additional services. The Material Percentage Mark-up shall remain fixed for the contract term.

Upon determination of the lowest responsive and responsible bidder, a contract document will be drawn up and is hereby incorporated by reference and made a part hereof as fully as if set forth at length herein. The contract document will be completed with the successful bidder's information and appended to this IFB and the successful bidder's bid to form the contract between the parties that will be processed for all necessary State approvals.

The Grand Total Bid amount of the successful bidder shall be used to calculate the total contract value. The total contract value shall not be exceeded.

3.3 Price

The bid price shall be inclusive of all costs including travel (Base Bid Scope of Services), licenses, insurance, administrative, profit and other ancillary costs. For the purposes of this contract, full service shall mean that the Contractor's bid price includes: all labor, all parts, material and equipment cost; all emergency work; complete preventive maintenance as recommended by the manufacturer or specified

herein, whichever is greater; all repairs and replacement of major or minor parts as necessary; all administrative, reporting or other requirements, all overhead costs and profit. Details of service not explicitly stated in these specifications, but necessarily attendant thereto, are deemed to be understood by the Contractor and included herein.

Bidders must submit pricing using the Bid Proposal Form (Attachment 2) contained in this document. Bidders must provide pricing for all items on the Bid Proposal Form.

The contractor agrees that from the effective date of the contract until contract termination, the rates charged by the contractor and paid for by DMNA will be equal to or lower than any rates provided by the contractor to other clients for like services.

3.4 Term of Contract

This contract will commence upon contract approval by OSC and will be in effect for one (1) year with four (4) optional one-year renewals. Target start date is October 1, 2013 with an expiration date of September 30, 2014.

The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least thirty (30) days written notice of DMNA' intent to cancel. Any cancellation by DMNA under this section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against DMNA, its agents and employees therefore for lost profits or any other damages resulting there from. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See Section 4.14 – Termination.

3.5 Price Adjustment (Escalation / De-escalation)

The Contractor is to submit a bid that will be fixed for one (1) year only. On each anniversary date of the contract, the Contractor may be granted an increase or decrease in their bid, dependent upon fluctuations in the Consumer Price Index for All Urban Consumers (CPI-U), Northeast, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Visit their website at http://www.bls.gov/cpi. Under no circumstance will the increase exceed three percent (3%).

The 'base' month for determining adjustments will be the third month prior to the start date of the contract. The base month is fixed and will not be adjusted year to year. The adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. For example, if the contract is awarded in January 2013, the 'base' month will be October. If the contract allows for an adjustment after the first year, it would be based on the difference between the October 2012 CPI and the October 2013 CPI and become effective in January 2014. The consumer price index is published around the middle of each month for the prior month (i.e. the October figure is not published until mid November). The Contractor has the sole responsibility to request, in letter form, an adjusted rate and shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease with the request. This request and documentation must be received at the below address within three months of the base month. To ensure timely delivery, certified mail is recommended. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month Consumer Price Index. Once approved, the contractor will be notified in writing. **Request and documentation must be sent to the Div of Military and Naval Affairs, 330 Old Niskayuna Road, MNBF-PC, Latham, New York 12110.**

Should a contractor fail to submit the request and supporting documentation to the proper location within three months of the applicable base month date, contractor shall be deemed to have waived its right to any increase in price, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

Please note that the Material Percentage Mark-up shall remain fixed for the contract term.

3.6 Method of Payment

For the purposes of this contract an invoice will be issued by the contractor to initiate payment processing. This invoice will contain the Contract ID number (i.e.: C000XXX) and, either in its body or as an attachment, that will **itemize work completed** during that month. Such itemization must include at a minimum: date of service, start and finish times, building where service was performed, actual number of hours worked and by how many technicians/mechanics, a detailed description of services performed (such as what equipment was serviced including the equipment ID number and details of repair or service), and an itemized cost for services provided. Materials used should be detailed to include quantities, unit prices and total prices. On parts purchases, an original parts receipt may be required.

Invoices for payment shall be submitted at the end of each month on a **company invoice** for services satisfactorily completed during that month. The armory superintendent or representative will attest to the services rendered or goods received and forward the invoice to the State Purchasing and Contracting Office.

Invoices shall be submitted to the armory superintendent. Invoices will be processed in accordance with established procedures of the Division of Military and Naval Affairs and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Invoices without the above stated information will be returned to Contractor to be completed as required above. Payment will not be issued and will not be due and owing until a corrected invoice is received and approved by DMNA State Purchasing and Contracting Office.

Additional Services Payments
Additional Services shall be first pre-approved by the Facility Superintendent. Contractor shall submit a separate Invoice for payment with any work authorization number **and all supporting documentation** as required.

All invoices must be submitted for payment to:

New York State Armory
174 South Street
Auburn, NY 13201

3.7 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Adjutant General, at the Adjutant General's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptrollers website at http://www.osc.state.ny.us/epay/index.htm or by e-mail at epunit@osc.state.ny.us, or by phone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new Statewide financial system, the Office of the State Comptroller requires all vendors doing business with New York State

agencies to complete a Substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

3.8 Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

3.9 Bid Exceptions

The Issuing Office will consider all requests to waive any bid requirement. However, bidders should be aware that failure to obtain a waiver of any bid requirement in advance of bid submission could result in rejection of Bidder's bid and disqualification from the bidding process. Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the **Questions Due Date** as identified in Section 1.3 - Key Events. The request must cite the specific section and requirement in the question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either through an addendum (if the response results in a change to the IFB), or directly to the requesting vendor.

3.10 Dispute Resolution

It is the policy of the Division of Military and Naval Affairs Budget and Finance Directorate to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations or contract awards. DMNA Budget and Finance Directorate encourages vendors to seek resolution of disputes through consultation with DMNA Budget and Finance staff. (Note: prior to the contract award, all disputes must be sent to the designated contact.) All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.

3.11 Inspection of Books

It is expressly understood and agreed that the Division of Military and Naval Affairs and the New York State Comptroller shall have the right to inspect and audit the Contractor's records covered under this Agreement, in accordance with his statutory responsibility to examine the books and accounts of every Agency. The New York State Comptroller requires, and the Contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any contract resulting from this IFB for a full six-year period.

3.12 Glossary of Terms

"Issuing Office" shall mean the Division of Military and Naval Affairs.

"Contractor"/"Vendor" shall mean a successful company awarded a contract pursuant to this IFB.

"Invitation for Bid" or "IFB" shall mean this document.

The "State" shall mean the People of the State of New York, which shall also mean the New York State

Division of Military and Naval Affairs.

"Adjutant General" shall mean the Adjutant General of Military and Naval Affairs or his/her duly authorized representative.

"Offeror" or "Bidder" shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this IFB.

3.13 Rules of Construction

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms, as used in this IFB refer to this IFB.

3.14 Prime Contractor Responsibilities

The State will contract only with the successful Proposer who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation, and the contract resulting from the solicitation.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this solicitation or the resultant contract. The Contractor accepts full responsibility for the actions of subcontractors who carry out any of the provisions of any contract resulting from this solicitation. Please also see Section 4.9 – Subcontractors.

3.15 Staffing Expectations

The Division of Military and Naval Affairs (DMNA) expects that all Contractor services will be conducted diligently and effectively with appropriate supervision. Further, it is expected that:

- Contractor's staff shall conduct themselves in a professional manner with DMNA staff and with the General Public.
- Contractor staff shall comply with all rules and requirements of this solicitation, including prohibiting the use of drugs and alcohol prior to or during any work performed under this contract.
- Failure to comply with any of the requirements of this solicitation may result in the removal from the premises.
- All personnel provided, shall have adequate experience for the function being performed. If DMNA determines that the personnel provided are not of adequate experience, DMNA has the right to request, and the contractor shall provide, satisfactory substitute personnel.
- Contractors staff assigned for any work are considered employees of that contractor, and as such are not State employees and are not eligible for any NYS benefits.

3.16 Additional Services

Additional services (repairs, upgrades, any work performed by subcontractors other than for base scope services, etc) shall only be performed when pre-approved by the armory superintendent, and shall be compensated at the time and materials rates bid.

4. CONTRACT CLAUSES AND REQUIREMENTS

4.1 Appendix A / Appendix B / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated December 2012, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein.

Appendix B – Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein and shall govern any situations not covered by this solicitation document or Appendix A.

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

1. Appendix A
2. Invitation for Bids IFB 13-01 (this document) with any addendum (s)
3. Appendix B
4. Selected Contractor's Bid

4.2 Procurement Lobbying Requirement

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DMNA 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 DMNA and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a).Designated staff, as of the date hereof, is identified on the first page of this solicitation. DMNA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:
http://www.ogs.ny.gov/aboutogs/regulations/defaultAdvisoryCouncil.html

4.3 Contractor 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, Division of Military and Naval Affairs (hereinafter referred to as "DMNA"), Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this Contract. Such Certificates shall be of a form and substance acceptable to DMNA.

Certificate acceptance and/or approval by DMNA 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 DMNA; shall be primary and non-contributing to any insurance or self insurance maintained by DMNA; shall be endorsed to provide written notice be given to DMNA, 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 Division of Military and Naval Affairs, 330 Old Niskayuna Road, MNBF-PC, Latham, New York 12110-3514 and shall name The People of the State of New York, its officers, agents, and employees as additional insured there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85** and a copy of the endorsement should accompany the certificate). The additional insured requirement does not apply to Workers Compensation, Disability or Employee Dishonesty 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 DMNA. 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 DMNA and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply to DMNA 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.

2. Coverage for the use of reasonable force to protect persons and property must be included.

b) Commercial Business 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.

c) The Contractor shall maintain, or if subcontracting professional services, shall certify that

Subcontractor maintain, Errors and Omissions Liability Insurance with a limit of not less than $5,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract.

2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.

d) WORKERS COMPENSATION / DISABILITY INSURANCE:

Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

ACORD forms are **NOT** acceptable proof of workers' compensation coverage.

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:

A) Be legally exempt from obtaining workers' compensation insurance coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan.

Contractors seeking to enter into contracts with the State of New York **shall provide <u>one of the following forms</u> to** the Division of Military and Naval Affairs at the time of bid submission or shortly after the opening of bids:

A) **Form CE-200,** *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities That New York State Workers Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website **http://www.wcb.ny.gov/** ;

or

B) Certificate of Workers' Compensation Insurance:

1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, **<u>contractor must request its carrier</u>** to send this form to the New York State Division of Military and Naval Affairs;

or

2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Division of Military and Naval Affairs;

or

C) *Certificate of Workers' Compensation Self-Insurance* - **Form SI-12,** available from the New York State Workers' Compensation Board's Self-Insurance Office;

or

D) *Certificate of Participation in WorkersCompensation Group Self-Insurance* **Form GSI-1 05.2,** available from the contractor's Group Self-Insurance Administrator.

PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:
In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, contractors shall:

A) Be legally exempt from obtaining disability benefits coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York **shall provide** **one of the following forms** to the Division of Military and Naval Affairs at the time of bid submission or shortly after the opening of bids:

A) **Form CE-200,** *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website **http://www.wcb.ny.gov/** ;

or

B) **Form DB-120.1,** *Certificate of Disability Benefits Insurance.* Contractor must request its business insurance carrier to send this form to the Division of Military and Naval Affairs;

or

C) **Form DB-1 55,** *Certificate of Disability Benefits Self-Insurance.* The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All forms must name the Division of Military and Naval Affairs – Budget and Finance Directorate, 330 Old Niskayuna Road, Latham, New York 12110, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of DMNA constitutes a material breach of contract and subjects it to liability for damages,

indemnification and a other legal remedies available to DMNA. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for DMNA's immediate termination of any contract resulting from this IFB, subject only to a five (5) business day cure period. Any termination by DMNA under this section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Division of Military and Naval Affairs, its agents and employees therefore for lost profits or any other damages.

4.4 Tax and Finance Clause

TAX LAW § 5-A:
Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than $100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

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

Contractor certification forms and instructions for completing the forms are attached to this IFB. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

4.5 MWBE & EEO Requirements

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

NEW YORK STATE LAW
Pursuant to New York State Executive Law Article 15-A, DMNA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises and the employment of minority group members and women in the performance of DMNA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that DMNA establishes goals for maximum feasible participation of New York State Certified minority and women–owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, DMNA hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that DMNA may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

For guidance on how DMNA will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and DMNA may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

A. Bidders are required to submit a MWBE Utilization Plan on Form #MWBE 100 with the bid or proposal. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State contract and a description of the Contract scope of work that the Contractor intends to structure to meet the goals on the State contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract that the Contractor intends to be performed by a NYS Certified minority or woman-owned business. Any modifications or changes to the agreed participation by NYS Certified MWBEs set forth in the Utilization Plan submitted with the bid or proposal, after the Contract award and during the term of the Contract, must be reported on a revised MWBE Utilization Plan and submitted to DMNA.

B. DMNA will review the submitted MWBE Utilization Plan and advise the Bidder of DMNA's acceptance or issue a notice of deficiency within 20 days of receipt.

C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to DMNA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DMNA to be inadequate, DMNA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #BDC

333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. DMNA may disqualify a Bidder as being non-responsive under the following circumstances:

a) If a Bidder fails to submit a MWBE Utilization Plan;

b) If a Bidder fails to submit a written remedy to a notice of deficiency;

c) If a Bidder fails to submit a request for waiver; or

d) If DMNA determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DMNA, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Monthly M/WBE Contractor Compliance and Payment Report on Form MWBE 102 to DMNA by the 10th day of the month during the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to DMNA, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of a prior criminal conviction and a prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

ALL FORMS ARE AVAILABLE AT: http://www.ogs.ny.gov/MWBE/Forms.asp

4.6 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/bid will be held in confidence and details of any bid/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.

SHOULD YOU FEEL YOUR FIRM'S BID/BID 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 EXEMPTED 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/BID 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.

4.7 General Requirements

- The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- The Bidder agrees to notify the Division of Military and Naval Affairs of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Bidder agrees that in any contract resulting from this IFB it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- The Bidder agrees that any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Adjutant General.
- For reasons of safety and public policy, in any contract resulting from this IFB, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
- For purposes of any contract resulting from this IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
- The Adjutant General's interpretation of specifications shall be final and binding upon the Contractor.
- The Adjutant General of Division of Military and Naval Affairs will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
- Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Adjutant General of Division of Military and Naval Affairs.
- INSPECTION – For purposes of any contract resulting from this IFB, the quality of service is

subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Adjutant General of Division of Military and Naval Affairs may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.

- STOP WORK ORDER - The Adjutant General of Division of Military and Naval Affairs reserves the right to stop the work covered by this IFB and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, the Division of Military and Naval Affairs shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the existing Contractor shall be liable to the State of New York for any such costs on account thereof. In the event that the Division of Military and Naval Affairs issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective.

- It is the Contractor's responsibility to maintain all equipment and materials provided for the work consistent with applicable public safety and health codes.

- The Division of Military and Naval Affairs reserves the right to reject any employee hired by the Contractor.

4.8 Contract Terms

All provisions and requirements of, Appendix A - Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this IFB.

Any contract resulting from this IFB shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

4.9 Subcontractors

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. **When bidding, any known / planned use of subcontractors must be disclosed in detail with bid submission.** If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. The total of all Subcontractor work during the term of the Contract, exclusive of M/WBE subcontracted work as established in the approved utilization plan, shall not exceed 10% of the total contract value. No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this IFB.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the DMNA Purchasing and Contracting Office, 330 Old Niskayuna Road, Latham, New York 12110, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Purchasing and Contracting Office may require concerning the proposed subcontractor's ability and qualifications.

4.10 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this Solicitation.
2. Disqualify a Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
4. Adjust any Proposer's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Proposer will cause the State to incur additional costs. Utilize any and all ideas submitted in the proposals received.
5. Negotiate with Proposers responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
6. Begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.
7. Waive any non-material requirement not met by all Proposers.
8. Not make an award from this Solicitation.
9. Make an award under this Solicitation in whole or in part.
10. Make multiple contract awards pursuant to the Solicitation.
11. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
12. Seek clarifications of proposals.
13. If two or more offers are found to be substantially equivalent, the Adjutant General of DMNA, at his sole discretion, will determine award.

Please Note: The State is not liable for any cost incurred by a Proposer in the preparation and production

of a proposal or for any work performed prior to the issuance of a contract.

4.11 Extent of Services

DMNA reserves the right to re-negotiate at its discretion to reduce the amount of services provided under any contract resulting from this solicitation. Any reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

4.12 Right To Know

In accordance with the New York State Toxic Substance Act (Right-to-Know Law) and the United States Occupational Safety and Health Administration's Hazard Communication Standard, before any chemical product is used on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Facility Manager before the chemical is applied.

4.13 Debriefings

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, DMNA shall, upon request, provide a debriefing which would be limited to review of that bidder's bid. After contract award, DMNA shall, upon request, provide a debriefing to any bidder that responded to the IFB, regarding the reason that the bid or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of the contract award notification.

4.14 Termination

A. Termination

The Division of Military and Naval Affairs may, upon thirty (30) days notice, terminate the contract resulting from this IFB in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement. In addition, DMNA may also terminate any contract resulting from this IFB upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of the creditors.

Furthermore, DMNA shall have the right, in its sole discretion, at any time to terminate a contract resulting from this IFB, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor. Any termination by DMNA under this Section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against the Division of Military and Naval Affairs, its agents and employees therefore for lost profits or any other damages.

B. Procurement Lobbying Termination

The Division of Military and Naval Affairs reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Division of Military and Naval Affairs may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

4.15 NYS Standard Vendor Responsibility

A. General

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by The Adjutant General of the Division of Military and Naval Affairs or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. Suspension of Work (for Non-Responsibility)

The Adjutant General of the Division of Military and Naval Affairs or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as The Adjutant General or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

C. Termination (for Non-Responsibility)

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

D. Questionnaire

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

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

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

In order to assist the State in determining the responsibility of the Bidder, the Bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date.

A Bidder's Questionnaire cannot be viewed by DMNA until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire. The Bidder agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, DMNA may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any

damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

4.16 Ethics Compliance

All proposers/contractors and their employees must comply with the requirements of §§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 Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, 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.

4.17 Extension of Use

Any contract resulting from the solicitation may be extended to additional State Agencies upon mutual agreement between the requesting agency, DMNA, and the contractor, and subject to applicable approvals. DMNA reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

4.18 Indemnification

The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to indemnify and hold harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, subcontractors or employees, or the failure by the Contractor, its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

4.19 Force Majeure

Neither party hereto will be liable for losses, defaults, or damages under any contract resulting from this solicitation which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this solicitation, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

4.20 Appendices and Exhibits

The Proposer's attention is directed to the appendices and exhibit documents attached hereto and hereby

incorporated by reference and made part hereto as fully as if it were set forth at length herein. They are part of this solicitation and will be part of the subsequent contract. The proposer is responsible for adhering to all requirements of the appendices and exhibits.

4.21 Iran Divestment Act

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew a Contract or assume the responsibility of a Contract awarded in response to the solicitation, certifies at the time the Contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the Contract, should DMNA receive information that a person is in violation of the above-referenced certification, DMNA will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then DMNA shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

DMNA reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

4.22 Prevailing Wage

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law as published by the New York State Department of Labor. Prevailing wage schedule PRC #2013003251 has been assigned to this project and is attached as Appendix D. Further information can be found in Appendix D.

Any Federal or State violation of public works laws or regulations, 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.

ATTACHMENT 1

SPECIFICATIONS / SCOPE OF WORK
EQUIPMENT LIST

SPECIFICATIONS/SCOPE OF WORK
HVAC SERVICE CONTRACT
IFB 13-01
New York State Armory & Field Maintenance Shop
Auburn, New York

SERVICE & REPAIR: Identification of HVAC equipment is enclosed.

DELIVERY OF SERVICES: Contractors responding to this bid must be able to provide service twenty four (24) hours a day, seven (7) days a week, three hundred sixty five (365) days a year, including holidays, for the duration of the agreement.

DMNA expects the Contractor to give "priority" service to any call for mechanical repairs. Response time must be stated on the Bidder's response form. Contractor must commit to Emergency Response times on the Bidder's Proposal. A loss of heat is a matter of public safety; therefore reliable Emergency Response capabilities are critical.

SPECIFICATIONS: The Contractor shall provide all personnel, management, tools, supplies, equipment, training, parts and labor necessary to inspect, maintain, service and repair, and any other necessary work required to maintain the HVAC Systems at NYSA Auburn/FMS # 4.

The intent of this contract is to furnish complete maintenance and preventive maintenance on all boilers, furnaces, unit heaters, roof top units, PTAC units, infrared systems, domestic hot water systems, air handlers, air compressors, compressor pumps, chillers, evaporators, condensers and all HVAC systems. This includes, but is not limited to, their burners and controls, control circuits, safety components, pumps and controller/starter, air conditioning equipment and systems, environmental control systems and for the equipment and systems listed in this IFB. Also included is the maintenance of the distribution systems and the labor for the replacement of the components of the distribution system to include controls, control circuits, safety components, circulating pumps, vents, piping and valves for the items listed in this IFB.

The Contractor shall be responsible for providing regularly scheduled monthly maintenance and emergency service labor in accordance with all requirements set forth in this contract.

The Contractor shall provide:

A. Factory trained and certified employees with five (5) years of experience in dealing with Direct Digital Control controls, electro-mechanical controls, pneumatic controls and chlorofluorocarbons. A minimum of 2 technicians must be currently employed by the Contractor and must submit proof of training with the bid for it to be considered. Technicians must be able to modify programming and re-download controls currently in all buildings. Contractor is responsible for all software, hardware and licenses to perform these duties. Employee training and certification must be verified through letters of certification/reference for the specified manufacturers and items of equipment. The Contractor will furnish a copy of employee certification to the State Maintenance Supervisor or representative. Only personnel qualified in accordance with recommendations of each component manufacturer's printed maintenance literature will perform all repairs and preventive maintenance. (Authorized service representative for equipment listed.)

B. Access to replacement parts for anticipated emergencies, available (ON CALL) on a seven (7) day, twenty-four (24) hour, three hundred sixty-five (365) day per year basis.

C. The ability to contact the parts vendor either by radio dispatch, beeper, or cell phone.

D. At least one (1) service technician equipped with a telephone pager (beeper), cell phone or radio dispatched for emergencies that may arise during non-business hours. Response time for such an emergency call shall be within two (2) hours.

E. All tools and test equipment necessary for the proper execution of this contract.

The HVAC systems will be operational for the heating season no later than 1 September and by 1 April for the cooling season. The Domestic Hot Water Heating systems will be serviced year round.

Upon arrival at the facility the service technician shall report to the State Maintenance Supervisor, or representative, and sign in. Upon completion of the service call the technician will report to the State Maintenance Supervisor, or representative, and sign out. If the service call requires the technician to leave the facility for parts or other reasons the technician is to report to the State Maintenance Supervisor or representative upon departure and return. After normal business hours service technicians will report arrival and departure in person to the Security Guards Station and sign in and out on the visitor roster or security log. Failure to sign in or out shall be understood to mean that the service was not performed.

The contractor shall submit to the State Maintenance Supervisor, or representative, a full report of the service call no later than two (2) working days after each service call. The report is entitled "Work Performance Form" (Appendix # 2) and is attached to this specification for compliance of this requirement.

The Preventive Maintenance check list be shall submitted to the State Maintenance Supervisor, or representative, not later than two (2) working days after each inspection or service. The reports are entitled "Annual Preventive Maintenance Form" (Appendix # 3 & 3A) and "Monthly Preventive Maintenance Form" (Appendix 4 & 4A) are attached to this specification for compliance of this requirement.

The checklist supplied on appendices 3, 3A, 4 & 4A are to be used as a guide but does not limit to all the tasks to be performed.

Supply the State Maintenance Supervisor, or representative, with Material Safety Data Sheets (MSDS) on all products used on the base. New MSDS sheets must be submitted anytime there is a change in manufacturer or product.

Hereafter the term HVAC will be defined to include but not limited to boilers, furnaces, hot water heaters, unit heaters, roof top units, infrared system air handlers, roof top units, compressors, chillers, evaporators, condenser, water towers, air handlers, PTAC units, and roof top units.

Heating Systems

A. Emergency Service

The contractor shall provide (as described in the General Requirements) emergency service on (but not limited to) the burners, ignition controls, safety control and devices, feed water pumps, fuel oil and alternate fuel equipment where applicable. Labor to repair and render the burners, controls and distribution system in operational status shall be included for all equipment.

While this contract is in effect, "Emergency Service" (where heat is not being delivered to the area or space it is intended for) shall be provided by a qualified service technician on a seven (7) day, twenty-four (24) hour basis. Response time for such an emergency call shall be within two (2) hours. A qualified service technician shall perform non-emergency calls for service no later than the next normal workday. The workday is defined between the hours of 7:30 AM and 4:00 PM, Monday through Friday. No overtime will be paid to the successful vendor when responding during this time frame, except for the following holidays: Thanksgiving, Christmas and New Years Day.

This contract shall not include replacement parts (unless indicated specifically within the contract),

pressure vessel or associated piping, or refurbishing. Replacement equipment shall be at an additional cost and shall require approval by the State Maintenance Supervisor, or representative, prior to installation. Regarding all parts, the facility maintains the right to provide the replacement parts from other sources, if it is more advantageous to the State.

B. Annual Cleaning and Inspection

The following services shall be performed as a minimum prior to the start of each heating season and include any services recommended by the equipment manufacturer. Minimum services should include but are not limited to:

1) Open access doors and panels, remove inspection plates and inspect for any visible sign of leaking, cracking stress or fatigue, or malfunctioning.

2) Clean with a wire or fiber bristle brush the fireside of boiler, furnace, unit heater and hot water heaters, sections and tubes including the crown of boiler and inside of water legs, or tube sheets and vacuum clean all areas. Remove burner to access combustion area and vacuum clean all areas. Replace oil strainers, oil filters and air filters; replace all nozzles and electrodes; and make necessary repairs to insulation.

3) Open, clean, and inspect boilers, water feed tanks, low water cut-off assemblies, gauge glasses, and access ports or hand holes to visually inspect and flush boiler watersides. Replace gaskets or seals and gauge glass to ensure water tight seal, and visibility of water level.

4) Inspect refractory, point up and wash coat all refractory to ensure safe operation of the heating component.

5) Remove the breaching as necessary to gain access to the boiler flue outlet. Vacuum clean breaching in immediate vicinity of boiler/furnace and inspect flue piping and chimney where accessible.

6) Exercise relief valves, blow-off valves, feed valves and pump controllers for functionality. Lubricate all bearings and linkage.

7) Exercise the combustion air louvers to ensure proper operation during the firing of the boiler burner. Inspect linkages and actuator(s) to ensure the units are in serviceable condition. Lubricate in accordance to manufacturer's maintenance recommendations.

8) Test all controls or safety switches in control circuits to ensure operational performance. Check & calibrate heating unit for optimum air/fuel mixture, fine tune firing and adjust to maximum combustion efficiency levels. Perform steady state combustion efficiency tests before the annual service work is begun and after the service work is completed. A legible written report will be provided to the State Maintenance Supervisor, or representative, within five (5) business days after the completion of the annual service work. The steady state combustion efficiency testing report shall include as a minimum:

    Stack temperature
    O-2 or CO-2
    Smoke
    CO
    Draft/pressure at combustion chamber test ports and breaching.

9) Services shall be performed during regular business hours 7:30 to 4:00 Monday through Friday on normal workdays as a rule. In the event services cannot be performed during normal duty hours, prior arrangements may be made through the State Maintenance Supervisor, or representative, for after hours or weekend work. In no case will this be

cause for additional charge for overtime or premium pay.

10) Knowledgeable and experienced technicians employed by the contractor and guaranteed to be first class in quality and workmanship shall perform the annual cleaning and inspection work.

11) The heating or AC equipment room or area shall be left in a broom clean condition and free from all debris as a result of any work performed.

12) A checklist indicating all the tasks performed, and a report of any safety violations or recommendations, shall be provided to the State Maintenance Supervisor on each unit serviced.

13) All materials or parts (gaskets, sealant, filters etc.) requiring replacement or installation as a result of the cleaning and inspection shall be provided by and installed by the contractor. The old materials and parts shall be removed from the facility by the contractor.

14) The contractor will remove soot that is related to boiler cleaning from the facility.

Preventative Maintenance

Upon completion of HVAC systems cleaning, and at the beginning of each month of the heating season (as described in the General Requirements), the contractor shall:

A. Remove and inspect oil nozzle assembly and replace oil nozzle as necessary, inspect gas pilot assemblies, and inspect oil pump strainers and oil filters and clean/replace as necessary. Reinstall in accordance with manufacturers recommended specifications and tolerances and ensure satisfactory performance.

B. Check flame failure safeguard control for pilot and main flame ignition.

C. Check operation of blower motor, bearing assemblies and control circuitry, and lubricate in accordance with manufacturer recommendations.

D. Check operation and adjust all linkages, belts and pulleys in accordance with factory specifications.

E. Check oil pump pressures, gas pressures, and operation of all oil and gas valves and vents for proper operation and running pressures.

F. Check operation and adjust low water and/or feed water pump controls, and test control function to ensure combustion is interrupted when applicable.

G. Cycle burner and check ignition sequences and ensure all safety controls and devices are functioning properly.

H. Inspect boiler and furnace gaskets and seals to ensure no combustion products are leaking from the combustion areas and correct as required for safe and efficient operation.

I. Check combustion air louvers for proper operation.

J. Each HVAC systems burner will be checked and calibrated for optimum air/fuel mixture for each fuel, and firing to be fine-tuned and adjusted to its maximum combustion efficiency levels including various equipment modulations ranges. Testing shall include as a minimum:

(1) Stack temperature
(2) O-2 or CO-2
(3) Smoke

(4) CO
(5) Draft/pressure at combustion chamber test ports and breaching.

K. Complete combustion efficiency testing shall be monitored and recorded for each unit and submitted to the State Maintenance Supervisor, or representative, as described in paragraph B-8 above. Combustion efficiency testing will be performed at the start of the heating season and at a minimum 2 times during the heating season. If any change or repair to the boiler, furnace burner and/or heating unit performed combustion efficiency testing will be performed.

L. Check for proper thermostat function and calibration.

M. Inspect, clean, and replace feed water strainers or filters.

N. Clean sight or gauge glasses, replace if water levels are not easily visible.

O. Blow down steam boilers.

P. Replace air filters.

Q. Test all HVAC systems controls for function and calibration and ensure system is functioning properly and safely. Check all equipment related to the heating system within the boiler room and report all deficiencies or safety violations in writing to the State Maintenance Supervisor, or representative, for action.

Digital Direct Controls and Temperature Controls

A. Performance Acceptance Criteria

The primary criterion used to define acceptable performance for this site is the requirement to limit occupant complaints. The HVAC system should not be forced out of service more than 1 or 2 times per month. Occupied conditioned spaces should be kept between 68°F and 75°F year round and hot and cold drafts minimized. HVAC generated noise should not interfere with office or meeting room function. The number of comfort complaints from building user's needs to be less than 1 per month. The HVAC control system must function properly, providing easily understood graphical information that allows staff to ascertain the status of comfort and systems in the facility.

B. Indoor Environmental Quality Requirements

Provide optimum thermal comfort and indoor air, visual and sound quality over the varying facility activities.

C. Temperature

The HVAC system is to maintain thermal comfort at all hours of occupancy. When occupied, the conditioned spaces should be kept between 68°F and 75°F year round in order to maintain a comfortable atmosphere for occupants and visitors. A setpoint of 68°F winter and 75°Fsummer is preferred. Office space must be comfortable at the time of morning occupancy. Site Telecom and Server Rooms must be kept between 68°F and 73°F year around.

D. Indoor air Quality (IAQ)

The use of outdoor air for ventilation and cooling should be maximized. Internally generated pollutants including odors from shop activities, break rooms and restrooms, should be exhausted to the out of doors and not returned via the HVAC outdoor air inlets. In high-density occupancy spaces, CO_2 control should be used to improve energy efficiency.

E. Utility Cost / Energy Savings Goals

The primary energy savings goals for this site is to limit energy use where possible, taking full advantage of economizer function by maximizing the use of outdoor-air for cooling and to limit A/C and lighting function during unoccupied hours, except where needed. Control will ensure the building system of economizer function are maintained full operational at all time

F. Level of System Control Desired

The HVAC controls system will be maintained to reliably and efficiently control the HVAC system. Distribution fans and pumps must be controlled off and valves closed when the building is unoccupied. Control system caused failures to provide cooling or heating are unacceptable. Contractor must be able to ascertain the status of comfort and systems and to make adjustments in set-points and schedules using control system graphics via onsite PC's. Local-override is necessary for off-hour unscheduled use. Systems controls must be tuned and able to maintain a stable set-point.

G. Documentation and Training Needs

Contractor must be trained in accessing both manual and DDC HVAC control system information, making adjustments to set-points and schedule and diagnosing minor system upsets using trend reports. A systems manual must be provided to aid staff in conducting the daily operations and maintenance activities of the various installed systems.

H. HVAC Controls

Perform complex diagnosis and repair of the environmental controls systems, utilizing, knowledge of electronics, direct digital control, airflow, hydronics, refrigeration theory and control techniques

Confirm on at least semi-annual basis that control sequence logic, scheduling of equipment, set points and alarms are functioning as intended, making sure that system programming is not allowed to degrade, that the system clock is correct and that valve and damper actuators are operating properly. Special attention should be paid to known comfort complaints, economizer function, and that control loops remained tuned. Document in the maintenance log any adjustments or changes to the program. A qualified electrician should check all primary electrical connections to see that they are properly tightened and that no corrosion exists. Problem connections should be remedied as soon as possible. Motors should be inspected for excessive heat; if evidence of overheating is found, check phase to phase voltages and current on each phase and neutral and have a qualified HVAC technician look for system related causes. Replace motor if necessary.

Rotating elements should be inspected for excessive noise or vibration as the equipment may be miss-aligned or out of balance; lube bearings, balance or realign shaft as required

Back-up the controls program on CD at least on an annual basis. As required by the manufacture of the DDS run and install software upgrades as applicable making sure that system programming is not allowed to degrade.

Document in the Systems Manual Events Log any issues found that impact safety, energy use or comfort and any actions taken and notify the Building Superintendent. In order to operate and maintain the systems at this site, contractors personnel need to have a working understanding of each of these systems. Contractor's personnel must be able to easily ascertain the status of comfort and systems, diagnosis minor system upsets and to make adjustments in set points and

schedules via onsite or remote access to applicable controls. They must also be aware of critical maintenance requirements. Contractors must also have full understanding of the operating and maintenance issues of systems for which they are responsible. Site personnel and contractors working on these systems are expected to document actions taken and changes made.

Emergency Service

The contractor shall provide (ON CALL) twenty-four (24) hour, seven (7) day emergency service as may be required to correct any condition that may prevent heating or air conditioning equipment from functioning. All labor to repair and render heating and air conditioning in operational status shall be included.

The contractor shall provide the necessary guidance and assistance to the facility maintenance staff to develop and implement a comprehensive Preventative Maintenance Program and include a schedule of recommended changes during the course of the contract. Any materials or equipment to be replaced shall be additional and shall require the approval of the State Maintenance Supervisor, or representative.

This contract shall not include replacement parts (unless indicated specifically within the contract). Replacement equipment shall be at an additional cost and shall require approval by the State Maintenance Supervisor or representative prior to installation. Regarding all parts, the facility maintains the right to provide the replacement parts from other sources, if it is more advantageous to the State.

Chemical Treatment

The contractor shall provide full service chemicals and testing for all heating systems. Contractor shall use chemicals that are specifically developed for use in water make-up for hot water boilers. Chemicals shall be utilized to prevent pitting, acidic corrosion, and scale formation. Contractor is to provide manufacturers chemical specification and required Material Safety Data Sheets.

A. Formula

1) Supply a nitrate-borate based treatment with additional scale inhibitors, organic corrosion inhibitors and PH adjusters, in liquid form for ease of handling.
2) Shall not contain hydrazine or any other known or suspected carcinogen.
3) Shall not contain chromates or other toxic or polluting ingredients. Formula will meet all state and local regulations for discharge into the sewer system.
4) Shall not contain sulfite or other ingredients, which may create deposits upon chemical reaction within the system.
5) Shall contain inhibitors specific for the protection of copper and copper alloys.
6) Shall be colorless at use concentrations and will not stain piping if system water leaks out of system.
7) Shall not contain any ingredients which may damage pump glands, water seals, rubber hoses or valve pacing.

B. Chemical Control/Water Treatment Section

1) Formula shall be fed to maintain a nitrite concentration of 1000-2000 ppm, a pH of 10.2-10.8 and an iron level concentration of less than 1.0 ppm.
2) On site testing of each system shall be conducted monthly (minimum) during periods of system operation. Chemicals shall be added if residuals are found to be below acceptable limits. A legible report of tests conducted and any corrective actions taken shall be provided to the State Maintenance Supervisor within five (5) business days after completion of each service call.
3) Samples of each system plus the raw water shall be taken during each monthly visit. A competent laboratory shall test these samples. Test results shall be reported, in writing to the State

Maintenance Supervisor. Results shall include, but not be limited to, pH, "P" Alkalinity, Total Alkalinity, Total Hardness, Chlorides, Nitrate, Dissolved solids, and iron.

4) A technician with a degree of Bachelors of Science in Chemistry must supervise the laboratory. Supervisor must have a minimum of five (5) year's experience supervising a water treatment laboratory. References shall be submitted upon request.

5) The serviceman must have been trained and be supervised by a technician with a Bachelors of Science degree in Chemistry or Chemical Engineering and have a minimum of five (5) years experience in the chemical water treatment field.

Air Conditioning Systems

A. Emergency Service

The contractor shall provide (as described in the General Requirements) emergency service on (but not limited to) air conditioning equipment, safety controls and devices, water pumps, chillers fans and motors where applicable. Labor to repair and render the AC, controls and distribution system in operational status shall be included for all equipment.

The contractor shall provide twenty-four (24) hours, seven (7) day service for emergency repairs when notified of an emergency by the State Maintenance Supervisor or representative. Response time for such an emergency shall be within two (2) hours. All labor to repair and render air conditioning equipment and controls in operational status shall be included. All air conditioning servicemen must be certified with the Environmental Protection Agency to handle refrigerants and work on the type of equipment they are servicing. Any non-emergency call for service shall be performed by the next normal workday. A qualified service technician shall perform non-emergency calls for service no later than the next normal workday. The workday is defined between the hours of 7:30 AM and 4:00 PM, Monday through Friday. No overtime will be paid to the successful vendor when responding during this time frame, except for the following holidays: Thanksgiving, Christmas and New Years Day.

B. Annual Cleaning and Inspection

The following services shall be performed prior to the start of each air conditioning season (as outlined in the general requirements) and include any services recommended by the equipment manufacturer. Clean, test, check for tension, wear on belts, lubricate pumps and bearings, and inspect all air conditioning system components. Minimum services should include but are not limited to:

1. Service values
2. Refrigerant piping
3. Refrigerant level
4. Compressor oil level change if required
5. Clean and service air handler
6. Clean and service condensers
7. Clean and service evaporators
8. Refrigerant operating pressures
9. Air operating temperatures
10. Service and test controls and control circuits
11. Test and service compressors including motors, starters and drives
12. Clean and test condensate traps, drains and drain pans
13. Service and test chillers
14. Service and test fans, motors, starters, and drives
15. Service and test air compressors
16. Air filters to be supplied by the contractor and changed quarterly with MERV-8 pleated filters. Old filters will removed from the facility by the contractor.

17. Assess the condition of the unit and rate (1 being "in new condition" through 5 being "failure expected soon").

A complete inspection report shall be submitted to the State Maintenance Supervisor, or representative, upon completion of each inspection and will include recommendations for replacement or improvements to the systems.

C. Preventive Maintenance

Monthly during the air conditioning season (as outlined in the General Requirements), the contractor shall clean, test, check for tension and wear on belts, lubricate pump bearing linkage, and inspect all air conditioning systems components. Minimum services should include but are not limited to:

1. Service valves
2. Refrigerant piping
3. Refrigerant level
4. Compressor oil level
5. Air filters
6. Condensers including fans, motors, starters & drives
7. Evaporators
8. Refrigerant operating pressures
9. Air operating temperatures
10. Controls and control circuits
11. Compressors including motors, starters and drives
12. Condensate traps, drains and drain pans
13. Fans and motors
14. Service and test air compressors
15. Air filters are to be supplied by the contractor and changed quarterly with 40% pleated filters. Old filters will be removed from the facility by the contractor.
16. Belts are to be supplied by the contractor and changed semi-annually.
17. The overall condition of the unit should be assessed and rated (1 being "in new condition" through 5 being "failure expected soon").

A complete inspection report shall be submitted to the State Maintenance Supervisor, or representative, upon completion of each inspection and will include recommendations for replacement or improvements to the systems.

D. Refrigerant

Disposal or Removed Refrigerant -- Removed refrigerant under this contract shall become the property of the contractor and it shall be the responsibility of the contractor to properly dispose of said materials in an environmentally safe manner in accordance with local, state and federal requirements. All recover/recycle equipment must be registered with Environmental Protection Agency. All individuals that use the equipment must be trained and certified by completing an approved Environmental Protection Agency course. Refrigerant records must be maintained in the workplace which documents the name and address of the receiving facility should recovered refrigerant be shipped off site. Records must also be maintained to document the date and type of each service activity, to include the quantity and type of refrigerant added to the appliance, with the appliances location, make and model number.

Steam Traps

Contractor will test all steam traps located within facility. Test will be accomplished using an ultrasound testing device and trap temperature differential method. Testing will be done at the start of and at the midpoint of the heating season.

Contractor, with the assistance of facility personnel, will create an inventory of steam traps located in each

facility. Inventory will include trap type, manufacturer, model, size and room number. Traps are to be identified with a numbered tag supplied by the contractor. This inventory will be kept on file by the Maintenance Supervisor. Facility personnel will be responsible for removing any obstruction to the trap.

Contractor will file a trap status report with the Maintenance Supervisor with suggested repair method and estimate. Repairs will be done utilizing re-build kits, if available. Repairs to F&T traps will include cleaning of the filter screen. Repairs or replacement of traps shall be at an additional cost and shall require approval by the State Maintenance Supervisor or designee prior to installation. The facility maintains the right to provide the repair or replacement parts from other sources if it is more advantageous to the State.

Standardization

In the interest of standardization, the contractor shall, whenever required, replace defective controls with replacement controls of the original manufacturer. The State Maintenance Supervisor, or representative, must approve exceptions.

Damages

The contractor shall be responsible for any damages to government facilities and equipment caused by his/her actions.

Appendix 1

HVAC Inventory List
NYSA Auburn

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
Boiler Room	2	Steam Boiler # 1 Steam Boiler #2	2,146 BTU/HR	28A-11	B-#1 N96-889 B-#2 N96-890	HB Smith
	2	Main Gas Regulators		RV-91		Maxitrol
	2	Main Gas Valve		Type V4550A1098		Honeywell
	2	Main Gas Modulating Valve		V4062A-1131		Honeywell
	2	Gas Pressure switch		C645A-1030		Honeywell
	2	Gas Pressure switch		C645B-1013		Honeywell
	2	Nat Gas Burners for B-1 and B-2	3508 MBH	R10. 1-G-30		Gordon-Piatt
	2	Burner Flame Control				Honeywell
	2	Burner Motors	3 ph / 208V /	cat # H736	part # B-182593-01	Magnetek / Century
	2	Ignition Transformer	10,000 V	Type 312-6A0457		Webster
	2	Pilot Gas Regulators		RV47L		Maxitrol
	2	Pilot Gas Solenoid		cat # 8040HB		Asco
	2	Air Proving Switch		P32AC-8		Johnson Controls
	2	Operating Pressuretrol		PA404A1009		Honeywell

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	2	Limit Pressuretrol		L404C117		Honeywell
	2	Low Water Cut-off		#63 Type M		McDonnell Miller
	2	Low Water / Pump Control		150 S		McDonnell Miller
	2	Safety Relief Valve		0930-H01GC		Kunkle Valve Co.
	2	Condensate Pumps	3/4 hp / 1 ph / 3450 rpm fr 48Y	C48J2EC11		AO Smith
	1	Energy Mgmt Timer		MPC-Q	J6W006	Heat Timer
	1	30 gal Air Compressor for Pneumatic Controls		52696A	L10/24/2006-664-204-36	Speedaire
	1	30 gal Air Compressor Elec Motor	3/4 hp / 1 ph / 1725 rpm fr 56	L1307M	spec 34F74W197	Baldor
	1	Air Dryer for above		PR10	0351-1A-9812-1085 G	Hankison
	1	Domestic Hot Water Tank		H1-420100	M04B5933	AO Smith
	1	Domestic Hot Water Tank Gas Valve		70000ERHC-679		Robert Shaw
	1	Domestic Hot Water Circulating Pump	160 W	PL30B / 1BL013		Bell & Gossett
	1	Domestic Hot Water Tank Expansion Tank		5T42B		Amtrol
Basement Pump Room	1	Heat Exchanger HX-1		SU- 8 4-2	ITT / Bell & Gossett	
	1	Zone Valve for HX-1		NVF24-MFT-E-US		Belimo
	1	Condensate Return Unit		Series WCD-12-20-B	160032C60	Hoffman / Watchman Bell & Gossett

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	2	Condensate Return Unit Motors	1/3 hp / 3450 rpm / 1 ph 115 V / fr 56J-65			
	2	VFD for P-1 and P-2		ACX550-UO-17A	2063900052 2063802103	ABB Inc
	1	Condensate Return Unit Float Assembly		type CG36 / Class 9038	form LZ20	Square D
	1	Expansion Tank		B200	167195	Bell & Gossett
	2	Hot Water Loop Circulators P-1 and P-2	5 hp / 208V / 3 ph / fr 184JM			Emerson- motor Bell & Gossett- pump
	2	Shaft end bearing		6207-2ZJC3		Bell & Gossett
	2	Opposite end Bearing		6205-2ZJC3		Bell & Gossett
	2	Bearing Assemblies for **P-1 and P-2**	size 80 BF 8.5	2.5 X 9.5B	C019854-01 E60 C019854-02 E60	Bell & Gossett
	2	Tiple Duty Valves	part #13122	3DS-2 1/2 SL50		Bell & Gossett
	1	Air Seperator	part #BV536303N12001	R3N		Bell & Gossett
	1	Safety Relief Valve	6,460.000 BTU/HR / 1 1/2"	model M / 174A		Watts
Mechanical Room 202	1	Air Handling Unit AHU-1		CAH0Z1FDA6		McQuay
	1	DX Coil		5EJ1104C		
	1	Blower Motor (A)	7.5 hp / 200V / 3 ph 1760 rpm / Fr 213T	cat # EM3311T-8	spec 39K057W947	Baldor
	1	Motor Sheave		(A) BK60H (B) 2B5E48		Browning

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	1	Motor Bushing		(A) 1 3/8" (B) 1 5/8"		Browning
	1	Fan Sheave		(A) BK110H (B) 2B5V80		Browning
	1	Fan Bushing		(A) H1 3/16 (B) B1 15/16		Browning
	1	Drive Bearing		(A) DPS-21954463M (B) DPS-231 MCQ		Browning
	1	Blower Motor (B)	15 hp / 200V / 3 ph 1765 rpm / Fr 2504T	cat # EM2513T-8	spec 39K057W947	Baldor
	2	Belts	5VX450			
	1	Belt	BX49			
	24	Filters	20" X 24" X2"			
	1	VSD HRW		ALTIVAR II ATVIIH018FIV		Square D
	2	Outside Air Damper OA		AS-24-SR		Belimo
	1	Hot Water Coil Circulator	214 W / 115 V/ 1 ph	PL-36 / 1PL001B60		Bell & Gossett
	1	Variable Frequency Drive **VFD- SA-F**		ACX 550 UO-046A-2		ABB Inc.
	1	Variable Frequency Drive **VFD-RA-F**		ACX 550 UO-046A-2		ABB Inc.
	1	Freezestat		A70HA1		Johnson Controls
Mechanical Room C101	1	Air Handling Unit AHU-2		CAH00FHAC		McQuay
	1	Heating Coil		5WH0902C		

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	2	Motor Sheave		(A) AK61H (B) AK34H		Browning
	2	Motor Bushing		(A) H7H (B) H18		Browning
	2	Fan Sheave		(A) AK59H (B) AK46H		Browning
	2	Fan Bushing		(A) H1 (B) H1		Browning
	2	Drive Bearing		DPS216X466M		Browning
	1	Blower Motor (A)	5 hp / 220 V / 3 ph / 1750 rpm / fr 184T	cat#EM321AT-8	spec 36G54T159	Baldor
	1	Blower Motor (B)	2 hp / 200 V / 3 ph / 1725 rpm / fr 145T	cat# EM3157T-8	35Q187T02OG1	Baldor
	2	Belts	H30 and A27			
	1 2	Damper Motors		ML4202F100 AF24-SR-05		Honeywell Belimo
	1	Hot Water Coil Circulator	225 W	PL-75 1BL034C50		Bell & Gossett
	8	Filters	24"X24"X2"			
	1	Variable Frequency Drive **VFD-EX-F**		ACX550-UO-07A5-2		ABB Inc.
	1	Variable Frequency Drive **VFD-SA-F**		ACX550-UO-017A-2		ABB Inc.
	1	Freezestat		A70HA1		Johnson Controls
	1	Hydronic Unit Heater	9 W / 115 V / 1 ph	HS-108A	M05613044001002	Sterling

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
Roof	1	Air Cooled Condensing Unit **ACCU-1**	Services AHU-1 / 27.8 Ton			McQuay
	3	Condenser Fan Motor	208 V/ 3 ph / 1 hp	cat# H696	part# 7-177644-01	AO Smith / Century
	2	Scroll Compressors	208 V / 3 ph /	ZR16M3-TWC-551		Copeland
Otside / Grade	1	Air Cooled Condensing Unit **ACCU-2**	Services ACU-A1	H529-090-3Y	5606A18828	Lennox
	1	Condenser Fan Motor	3/4 hp / 1075 rpm / 1 ph	K55HXGZG28478		Emerson
	1	Compressor		ZR94KC-TF5-250	06AA24190	Copeland
	1	ACU-A1	77.3 MBH	LAH004A		McQuay
	1	Blower Motor	208 V / 3 ph / 1 HP			
Roof	1	Air Cooled Condensing Unit **ACCU-3**	1 ton	PU12EK		Mitsubishi
	1	Condenser Fan Motor	208 V / 1 ph / 65 W			
	1	Compressor	208 V / I ph			
	1	ACU-2 Evaporative Coil for ACCU-3		PL12AK		Mitsubishi
	1	Energy Recovery Unit **ERU-1**		IAQ 3000 B-BP-HS		
		Blower Motor	1.5 HP /1380 rpm /230 v 1PH			
	4ea	Filters	20" X 20" X 2"			

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
Rm A 104	1	Variable Air Volume **VAV-1**		SDR-WC-12		Enviro-Tec
Rm A 103	1	Variable Air Volume **VAV-2**		SDR-WC-12		Enviro-Tec
Rm A 102	1	Variable Air Volume **VAV-3**		SDR-WC-10		Enviro-Tec
Rm A 101	1	Variable Air Volume **VAV-4**		SDR-WC-12		Enviro-Tec
Break Rm	1	Variable Air Volume **VAV-5**		SDR-WC-08		Enviro-Tec
Corr A 114	1	Variable Air Volume **VAV-6**		SDR-WC-08		Enviro-Tec
Corr A112, Stair A 113	1	Variable Air Volume **VAV-7**		SDR-WC-06		Enviro-Tec
Rm A 214,213,212	1	Variable Air Volume **VAV-8**		SDR-WC-08		Enviro-Tec
Rm A 211	1	Variable Air Volume **VAV-9**		SDR-WC-06		Enviro-Tec
Rm A 207,208,209	1	Variable Air Volume **VAV-10**		SDR-WC-10		Enviro-Tec
Rm A 216,217	1	Variable Air Volume **VAV-11**		SDR-WC-14		Enviro-Tec
Rm A 206	1	Variable Air Volume **VAV-12**		SDR-WC-06		Enviro-Tec
Rm A 201	1	Variable Air Volume **VAV-13**		SDR-WC-05		Enviro-Tec
Corr A221, Stair A222 Day Rm, B 102	1	Variable Air Volume **VAV-14**		SDR-WC-06		Enviro-Tec
Missle Vault	1	Dehumidifier **DH-1**	20 pts / 330 cfm / ref 134a	DC-45		Oasis

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
Rm A 116	1	Exhaust Fan **EF-1**	300 cfm / 1077 rpm / 135 W	GN-520		Loren - Cook
Rm A 110	1	Exhaust Fan **EF-2**	350 cfm / 873 rpm / 194 W	GC-620		Loren - Cook
Women's Toilet	1	Exhaust Fan **EF-3**	450 cfm / 986 rpm / 313 W	GN-640		Loren - Cook
Janitorial	1	Exhaust Fan **EF-4**	75 cfm / 1057 rpm / 46 W	GC-140		Loren - Cook
Rm A 215	1	Exhaust Fan **EF-5**	75 cfm / 1057 rpm / 46 W	GC-141		Loren - Cook
Roof	1	Exhaust Fan **EF-6**	225 cfm / 1725 rpm / 1/4 hp	ACE-B80C 3B		Loren - Cook
Roof / Vault	1	Exhaust Fan **EF-7**	300 cfm / 1725 rpm / 1/4 hp	ACE-B120C 3B		Loren - Cook
Lav / Shower	1	Exhaust Fan **EF-8**	150 cfm / 1306 rpm / 93 W	GC-160		Loren - Cook
Lav / Shower	1	Exhaust Fan **EF-9**	375 cfm / 1306 rpm / 206 W	GN-620		Loren - Cook
Rm A 115, A 219		Exhaust Fan **SF-1**	300 cfm / 1725 rpm / 1/4 hp	90 ASP		Loren - Cook
Rm A 111	1	Cabinet Unit Heater **CUH-1**		RC-02		Sterling
Rm A 110		Cabinet Unit Heater **CUH-2**		RC-02		Sterling
Rm A 107		Cabinet Unit Heater **CUH-3**		RC-02		Sterling
Rm A 115		Cabinet Unit Heater **CUH-4**		FS-02		Sterling
Rm A 105		Cabinet Unit Heater **CUH-5**		RC-02		Sterling
Rm A 219		Cabinet Unit Heater **CUH-6**		FS-02		Sterling
Rm C 113		Cabinet Unit Heater **CUH-7**		FS-02		Sterling

Appendix 1

HVAC Inventory List
FMS # 4

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
Mechanical Room	1	Boiler B-1	500 MBH	G19-A-4		HB Smith
	1	Flow switch		FS4-3		McDonnell Miller
	1	Low Water Cut-off		PS-851M-120		McDonnell Miller
	1	Hi-Limit Aquastat (manual reset)		L4006E		Honeywell
	2	Aquastat		L4006A		Honeywell
	1	Boiler Safety Relief Valve	1,139,000 BTU/HR 3/4"	MI 40 psi		Watts
	1	Gas Burner for B-1		J15A-10	110564325	Powerflame
	1	Flame Control		ST7800A1039		Honeywell
	1	UV Sensor		C7027A1023		Honeywell
	1	Burner Relay		RH28-BU		Idec
	1	Burner Relay		type KP12V20		Square D
	1	Ignition Transformer	6,000 V	cat# 1092	type PF	Allanson
	1	Burner Motor	1/4 hp / 1 ph /3450 rpm fr 48N	CPJ48S34S2003J		Marathon
	1	Air Proving Switch		AP4078		Honeywell

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	1	Pilot Gas Regulator		RV20L		Maxitrol
	1	Pilot Gas Solenoid		cat # 80408H7	A686901	Asco
	1	Main Gas Regulator		RV61		Maxitrol
	1	Main Gas Solenoid Valve		cat # K3A562T	T680399	Asco
	1	Auto-Gas Valve		V4943A1011		Honeywell
Mechanical Room	1	Pressure Reducing Valve		B7-12	part # 110196	Bell & Gossett
	1	In-line Circulator	1 ph / 214 W	PL45	1BL002A50	Bell & Gossett
	2	Circulating Pumps P-1 & P-2	3/4 hp / 3 ph / 208 V fr 48Y	DVC48T17D173BP		Bell & Gossett
	2	Bearing Assemblies for P-1 & P-2	60 1.5X6 5625 BF .75			Bell & Gossett
	2	Variable Frequency Drive VFD for P-1 & P-2		ACX550-UO-04A6		ABB Inc
	2	Radiant Heat Circulators	214 W / 1 ph / Class B	BL36 1BL001F50		Bell & Gossett
	2	Trple Duty Valves		3DX-1 1/4"	part # 132159.0	Bell & Gossett
	1	3-way valve motor	24 V	VM3533A000		Invensys
	1	Boiler Air Seperator		part # B4536025N12001	138125	Bell & Gossett

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	1	Chemical By-pass Feeder		VTF-2HP	part # 112064	Neptune
	1	Hydronic Unit Heater		FUHH1018AA00	30010106-4718	McQuay
	1	Hydronic Unit Heater Fan Motor	1/60 hp /.78 A / 115 V / 1 ph	71639051	part # 9F10227A type U63B1	Fasco
	1	Hydronic Unit Heater Zone Valve		120NC	215S-10	Belimo
Mechanical Room	1	Air Handling Unit AHU-1			FBOU051200975 Sections 1 , 2 , & 3	McQuay
	1	Blower Motor Assembly	5 hp / 200V / 3 ph / 15 A / 1750 rpm / fr 184T	cat # EM3218T-8 spec # 36G548T-159	F0510242929	Baldor
	1	Variable Frequency Drive VFD AHU-1		ACX550-UO-017A	5063200490	ABB Inc
	2	Bearings	DE OPPOSITE	6206 6205		Browning
	1	Motor Sheave		1VP65X 1 1/8"		Browning
	1	Fan Sheave		BX90 X 1 3/16"		Browning
	1	Drive Bearing		VPS-21954463M		Browning
	1	Belt Size	BX43			
	3	Filters	20" X 24" X 2"			

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	1	Condensing Unit		ACLO16AC12ER11	STNUOS1200213	McQuay
	2	Scroll Compressors		ZRT180K3TWC271		Copeland
	2	Condersor Fan Motors	208V / 3ph / 1 hp	H696 cat # CA10-31	part # 7177644-01	Century / AO Smith
Telecom Rm 109 A	1	Evaporative Unit		MS12TN	4001442	Mitsubishi
	1	Condensing Unit		MU12TN		Mitsubishi
Mechanical Room	1	Domestic Hot Water Tank	100 Gals / 240,000 BTU/HR	BTH250970	B06M005130	AO Smith
	1	Cyclone Power Vent				AO Smith / Honeywell
	3	Air Proving Swithes		193361-000 194706-000 193357-000		Cleveland Controls
	1	Power Vent Blower Motor				
	1	Gas Valve	24 V	36C68	type 809 part # 192454-000	AO Smith
	1	Gas Regulator		325-5AL		Maxitrol
	1	Domestic Hot Water Circulating pump	160 W	PL-30B	Part # 1BL513	Bell & Gossett
	1	Domestic Hot Water Expansion Tank		DET-35-MIA		Watts
Work Bay Area / Ceiling	1	MUA-1	5,000 CFM / 500 MBH			Rapid
	1	MUA-1 Blower motor	3hp / 208 V			

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	1	Gas Regulator		ES297DA		Maxitrol
	2	High & Low Gas Pressure Switches				Honeywell
	1	Air Flow Switch		DDP-106-214		Cleveland Controls
	1	Gas Solenoid				Asco
	2	Motorized Gas Valves		MVD512 / 6		Dungas
	1	Burner Control				Honeywell
	1	Pilot Gas Regulator		R4-005		Maxitrol
	1	Pilot Gas Solenoid		V4045C1821		Honeywell
	1	Clogged Filter Swith		JD-2		
	4 ea	Filters	20" X 60"		part # 20883	
Mechanical Rm 109	1	Unit Heater UH-1	120 V / 1/60 hp / 1550 rpm			McQuay
Rm 118	1	Unit Heater UH-2	120 V / 1/60 hp / 1550 rpm			McQuay
Rm 119	1	Unit Heater UH-3	120 V / 1/60 hp / 1550 rpm			McQuay
Rm 120	1	Unit Heater UH-4	120 V / 1/60 hp / 1550 rpm			McQuay
Rm 121	1	Unit Heater UH-5	120 V / 1/60 hp / 1550 rpm			McQuay

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
		Inlet Size/ Outlet Size/ Configuratin				
Rm 108	1	8 / 8 / B		VCCF		Trane
Rm 107	1	4 / 5 / B		VCCF		Trane
Rm 104 a	1	5 / 6 / B		VCCF		Trane
Rm 106	1	8 / 8 / B		VCCF		Trane
Rm 105	1	5 / 6 / B		VCCF		Trane
Rm 101	1	8 / 8 / B		VCCF		Trane
Rm 102	1	10 / 10 / B		VCCF		Trane
Rm 104 b	1	6 / 6 / B		VCCF		Trane
Rm 103	1	10 / 10 / B		VCCF		Trane
	1	Cabinet Unit Heater CUH - 1		S03-CHF W/TOP Discharge		McQuay
	1	Cabinet Unit Heater CUH - 2		S03-CHB W/Front Wall plate		McQuay

Room	Quantity	Component	Rating/BTU	Model#	Serial#	Manufacturer
	1	Exhaust Fan EF-1		135 ACE 135C5B		Cook
		Motor	0.5 hp / 1725 rpm / 115 V			Marathon
		Belt	A20 (4L220)			
		Exhaust Fan EF-2		100 ACE 100C3B		Cook
		Motor	0.5 hp / 1725 rpm / 115 V			Marathon
		Belt	4L170			
		Exhaust Fan EF-3		100 ACE 100C3B		Cook
		Motor	.250 hp / 1725 rpm / 115 V			Marathon
		Belt	4L170			
		Exhaust Fan EF-4		70 ACE 70C3B		Cook
		Motor	.250 hp / 1725 rpm / 115 V			Marathon
		Belt	4L175			
		Exhaust Fan EF-5		120 ACE 120C3B		Cook
		Motor	.250 hp / 1725 rpm / 115 V			Marathon
		Belt	4L210			

Appendix 1

HVAC Inventory List
NYSA Auburn & FMS # 4

AUBURN ARMORY FILTER & BELT SCHEDULE

LOCATION	UNIT	FILTER QTY	FILTER SIZE	BELT
Rm. 202	AHU-1	24	20" X 24" X 2"	(2)5VX450
				(1)BX49
Rm. C101	AHU-2	8	24" X 24" X 2"	H30 & A27
	ERU-1	4	20" X 20" X 2"	
	RTU-1	2	16" X 25" X 2"	
	RTU-2	2	16" X 25" X 2"	
	RTU-3	2	16" X 25" X 2"	
	RTU-4	2	16" X 25" X 2"	
	RTU-5	2	16" X 25" X 2"	

AUBURN FMS #4 FILTER & BELT SCHEDULE

LOCATION	UNIT	FILTER QTY	FILTER SIZE	BELT
FMS#4	AHU-1	3	20" X 24" X 2"	BX42
FMS#4	MUA-1	2	20" X 60" #20883	
FMS#4	EF-1			4L220
FMS#4	EF-2			4L170
FMS#4	EF-3			4L170
FMS#4	EF-4			4L175
FMS#4	EF-5			4L210

Appendix 1

HVAC Inventory List
NYSA Auburn – Steam Traps

Room Number	Manufacturer	Size	Model (F & T or Cage Unit)	Radiator Valve & Operator
First Floor				
Room # 1	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Room # 1	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Exit near Room #1	Hoffman 8C	3/4"	Thermostatic	Keyed Radiator Valve
Room #2 B110	N/A	N/A	N/A	N/A
Room # 3	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Room # 3	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Room # 4 B109	N/A	N/A	N/A	N/A
# 5	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
# 5	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
#6 Corridor B111	N/A	N/A	N/A	N/A
Room # 7	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A

Room Number	Manufacturer	Size	Model (F & T or Cage Unit)	Radiator Valve & Operator
Room # 7	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 8 B107 Men's Latrine	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
B108 Stairwell	Hoffman 8C	3/4"	Thermostatic	Keyed Radiator Valve
Room # 9	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Room # 9	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Room #10 A	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room #10 A	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room #10 B	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room #10 B	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # B103 Ladies Latiine	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # B103 Ladies Latiine	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 11	N/A	N/A	N/A	N/A
Room # 12	N/A	N/A	N/A	N/A

Room Number	Manufacturer	Size	Model (F & T or Cage Unit)	Radiator Valve & Operator
Room # 13 B102 Club	Hoffman 8C	3/4"	N/A	None
Room # B104	N/A	N/A	N/A	N/A
Room # 14 B101 Supt	N/A	N/A	N/A	N/A
Room # 15	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 16a	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 16b	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 16b	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 16b Bathroom	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 17	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 17	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 18 Mess Hall Ceiling	Hoffman FT015H-3	3/4"	Float & Thermostatic	N/A
Room # 19	N/A	N/A	N/A	N/A
Room # 20 Garage	Barnes & Jones 54 Repair Kit FT53 / Ft54	3/4"	Float & Thermostatic	

Room Number	Manufacturer	Size	Model (F & T or Cage Unit)	Radiator Valve & Operator
Room # 20 Garage	Barnes & Jones 54 Repair Kit FT53 / Ft54	3/4"	Float & Thermostatic	
Room # 20 Garage	Barnes & Jones 56	1-1/4"	Float & Thermostatic	
Room # 20 Garage	Hoffman 54T	1"	Float & Thermostatic	
Room # 20 Garage	Hoffman 54T	1"	Float & Thermostatic	
Room # 22	N/A	N/A	N/A	N/A
Room # 23	N/A	N/A	N/A	N/A
Room # 24	N/A	N/A	N/A	N/A
Room # 25	N/A	N/A	N/A	N/A
Room # 26	N/A	N/A	N/A	N/A
Room # 27	N/A	N/A	N/A	N/A
Room # 28	Barnes & Jones 56	1-1/2"	Float & Thermostatic	
Drill Hall	Barnes & Jones 56	1-1/2"	Float & Thermostatic	
Drill Hall	Barnes & Jones 56	1-1/2"	Float & Thermostatic	
Drill Hall	Hoffman 8C	3/4"	Thermostatic	
Drill Hall	Hoffman 8C	3/4"	Thermostatic	

Room Number	Manufacturer	Size	Model (F & T or Cage Unit)	Radiator Valve & Operator
Drill Hall	Hoffman 8C	3/4"	Thermostatic	
Drill Hall	Hoffman 8C	3/4"	Thermostatic	
Drill Hall	Hoffman 8C	3/4"	Thermostatic	
Boiler Room Basement	Sarco Spirax	1-1/2"	Float & Thermostatic	
Boiler Room Basement	Watts WFTC	1-1/2"	Float & Thermostatic	
Boiler Room Basement	Watts WFTC	1-1/2"	Float & Thermostatic	
Pump Room Basement	Hoffman FT015H-3	3/4"	Float & Thermostatic	
Pump Room Basement	Hoffman FT015H-6	1-1/2"	Float & Thermostatic	
Pump Room Basement	Hoffman 54T	1-1/4"	Float & Thermostatic	
Pump Room Basement	Hoffman 54T	1-1/4"	Float & Thermostatic	
Second Floor				
Room # 30 B206	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 31 B207	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 31 B207	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A

Room Number	Manufacturer	Size	Model (F & T or Cage Unit)	Radiator Valve & Operator
Room # 31 B207	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 31 B207	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 32	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 33	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Room # 33	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 34	Hoffman 8C	3/4"	Thermostatic	No Valve
Room # 35	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 36	Hoffman 8C	3/4"	Thermostatic	Pnuematic Valve
Room # 37	N/A	N/A	N/A	N/A
Room # 38	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 39 B204	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
B205 Stairwell	Hoffman 8C	3/4"	Thermostatic	Keyed Radiator Valve

Room Number	Manufacturer	Size	Model (F & T or Cage Unit)	Radiator Valve & Operator
Room # 40	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 40	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 41 Toilet Room B202	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 41 Toilet Room B202	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
North Corridor B203 Stairwell	Hoffman 8C	3/4"	Thermostatic	Keyed Radiator Valve
North Corridor B203 Stairwell	Hoffman 8C	3/4"	Thermostatic	Keyed Radiator Valve
Room # 42 Locker Room B208	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 42 Locker Room B208	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A
Room # 43	Hoffman 8C	3/4"	Thermostatic	3/4"Valve V110E Control T104A

Appendix 2

Work Performance Form
NYSA Auburn / FMS # 4
REPAIR/SERVICE WORK ORDER

LOCATION/BUILDING:_____ Equipment:_____

Requested by: _____ Date & Time Called: _____

Problem:_____
Name Technician: _____

Date _____ Time In _____ Time Out _____

Type of Service:
- ❑ Emergency
- ❑ Non-Emergency/Scheduled Repair

Heating
Air Conditioning

(This Section To Be Completed by Service Technician)

DESCRIPTION OF WORK PERFORMED:

REPLACEMENT PARTS USED OR NEEDED:

Parts to be supplied by: State Contractor (See below)

Purchase Approved by: _____ Date: _____
(Signature of DMNA Rep)

RECOMMENDATION FOR ADDITIONAL WORK TO BE PERFORMED:

List any refrigerants and/or chemical solutions used:

Has Contractor supplied necessary MSDS: Yes No

EXIT CONFIRMATION:

Signature of Armory Rep	**Date**	**Time**
Signature of Service Rep	**Date**	**Time**

All parts and/or materials required to be replaced or installed, as a result of the preventive maintenance shall be provided by the contractor

Appendix 3
NYSA Auburn / FMS # 4
Annual Preventive Maintenance Form

BUILDING/LOCATION: _____Equipment:_____ Date: _____

Name of Technician: _____ Time In: _____

Clean, test, inspect & lubricate all systems components, including, but not limited to those listed below. Check off all services performed below:

- ❑ Service valves
- ❑ Refrigerant piping
- ❑ Refrigerant level
- ❑ Compressor oil level
- ❑ Air filters
- ❑ Condensers including fans, motors, starters & drives
- ❑ Evaporators
- ❑ Refrigerant operating pressures
- ❑ Air operating temperatures
- ❑ Controls and control circuits
- ❑ Compressors including motors, starters and drives
- ❑ Condensate traps, drains and drain pans
- ❑ Fans, motor starter and drivers
- ❑ Air Compressors
- ❑ *Safety violations or deficiencies were noted as listed below:*
- ❑ *Recommendations for additional work:*
- ❑ *Condition of the equipment, 1. being in new condition through 5. expected failure. #__*

EXIT CONFIRMATION:

_____	_____	_____
Signature of Armory Rep	**Date**	**Time**
_____	_____	_____
Signature of Service Rep	**Date**	**Time**

All parts and/or materials required to be replaced or installed, as a result of the preventive maintenance shall be provided by the contractor.

Appendix 3A
ANNUAL PREVENTIVE MAINTENANCE
NYSA Auburn / FMS # 4

LOCATION/BUILDING: _____ **Equipment:** _____ **Date:**_____

Name of Technician: _____ Time In: _____

Check off all services performed below. Services to be performed in accordance with manufacturers' specifications, including, but not limited to the following:

- ❑ Open access doors and panels, remove inspection plates and inspect for any visible signs of leaking, cracking, stress, fatigue or malfunctioning.
- ❑ Open fire side of heating units clean with a wire or a fiber bristle brush the fireside of boiler sections or tubes including the crown of the boiler and inside of water legs or tube sheets. Remove burner to access combustion area and vacuum clean.
- ❑ Tune up burner assembly; replace nozzles, electrodes and gaskets.
- ❑ Open, clean and inspect low water cut-off assemblies, gauge glasses, and access ports or hand holes to visually inspect boiler waterside. Replace gaskets seals or site glass as necessary.
- ❑ Inspect refractory, point up and wash coat all refractory as necessary.
- ❑ Inspect combustion air louvers for proper operation during the firing of the boiler (s). Inspect louver linkages and actuators for damage to ensure proper closure.
- ❑ Remove the smoke pipe and breaching as necessary to gain access to the boiler flue outlet. Vacuum breaching in immediately vicinity of boiler and inspect flue piping and chimney where accessible.
- ❑ Exercise relief valves, blow-off valves, feed valves and pump controllers for functionality.
- ❑ Test all controls or safety switches in control circuits to ensure operational performance.
- ❑ Check & calibrate heating unit for optimum air/fuel mixture, fine tune firing & adjust to maximum combustion efficiency levels. Perform combustion efficiency.
- ❑ Broom clean boiler room and remove all debris from work performed.

Safety violations or deficiencies were noted as listed below:

Recommendations for additional work:

EXIT CONFIRMATION:

_____ _____ _____
Signature of Armory Rep ***Date*** ***Time***

_____ _____ _____
Signature of Service Rep ***Date*** ***Time***

All parts and/or materials (gaskets, sealant, etc.) required to be replaced or installed, as a result of the cleaning and inspection shall provide by the contractor.

Appendix 4
MONTHLY PREVENTIVE MAINTENANCE
NYSA Auburn / FMS # 4

LOCATION/BUILDING: _____ **Equipment:** _____ **Date:** _____

Name Technician: _____ Time In: _____

Check off all service performed below:
Remove & inspect oil nozzle assembly & replace as necessary. Inspect gas pilot assemblies & inspect oil pump strainers and oil filters. Clean and replace as necessary.

- ❑ Check flame failure safeguard control for pilot and main flame ignition.
- ❑ Check supply voltage to motor and controls.
- ❑ Check operation of linkages, pulleys, belts, motors & bearing assemblies and lubricate.
- ❑ Check oil and gas pressures and operation of fuel pumps and valves.
- ❑ Check safety controls and circuits and exercise safety and relief valves.
- ❑ Inspect and exercise low water cut-off valves and feed water valves.
- ❑ Test burner ignition and function.
- ❑ Inspect combustion air louvers for proper operation during the firing of the boiler (s). Inspect louver linkages and actuators for damage to ensure proper closure.
- ❑ Inspect boiler/furnace gaskets and seals. Replace as necessary.
- ❑ Check & calibrate heating unit for optimum air/fuel mixture, fine tune firing & adjust to maximum combustion efficiency levels. Testing shall include as a minimum:
- ❑ Stack temperature
- ❑ O-2 or CO-2
- ❑ Smoke
- ❑ CO
- ❑ Draft/pressure at combustion chamber test ports & breaching
- ❑ Check thermostat function & calibration

MONTHLY PREVENTIVE MAINTENANCE
NYSA Auburn / FMS # 4

- ❑ Inspect and clean/replace feed water strainers or filters.
- ❑ Clean site or gauge glasses. Replace if water levels are not clearly visible.
- ❑ Replace air filters.
- ❑ Monitor & record combustion efficiency testing for submission to facility Rep.
- ❑ Test all heating controls for function and calibration.
- ❑ *The following deficiencies or safety violations were noted:*

.

- ❑ *Recommendations for additional work:*

EXIT CONFIRMATION:

_____ _____ _____
Signature of Armory Rep **Date** **Time**

_____ _____ _____
Signature of Technician **Date** **Time**

All parts and/or materials required to be replaced or installed, as a result of the monthly preventive maintenance shall be provided by the contractor

Appendix 4A
MONTHLY PREVENTIVE MAINTENANCE
NYSA Auburn / FMS # 4

BUILDING/LOCATION: _____ **Equipment:**_____ **Date:** _____

Name of Technician: _____ Time In: _____

Clean, test, inspect & lubricate all systems components, including, but not limited to those listed below. Check off all services performed below:

- ❑ Service valves
- ❑ Refrigerant piping
- ❑ Refrigerant level
- ❑ Compressor oil level
- ❑ Air filters
- ❑ Condensers including fans, motors, starters & drives
- ❑ Evaporators
- ❑ Refrigerant operating pressures
- ❑ Air operating temperatures
- ❑ Controls and control circuits
- ❑ Compressors including motors, starters and drives
- ❑ Condensate traps, drains and drain pans
- ❑ Air Compressors
- ❑ *Safety violations or deficiencies were noted as listed below:*
- ❑ *Recommendations for additional work:*

EXIT CONFIRMATION:

_____ _____ _____
Signature of Armory Rep **Date** **Time Out**

_____ _____ _____
Signature of Service Rep **Date** **Time Out**

All parts and/or materials required to be replaced or installed, as a result of the preventive maintenance shall be provided by the contractor

ATTACHMENT 2

- BID PROPOSAL FORM
- BID SIGNATURE PAGE
- ACKNOWLEDGMENT

BID PROPOSAL

IFB # 13-01 DATE: _____

COMPANY NAME _____

(Bid proposals are due by 3:00 PM on Friday, June 21, 2013).

HVAC preventive maintenance and additional services to be performed at:
New York State Armory and Field Maintenance Shop #4, 174 South Street, Auburn, New York 13201

Bid Amount as specified in Scope of Work (SOW) and Additional Services as outlined in Section 3.2 Method of Award:

A. Base Bid. Provide an annual price for service.
This price shall include all labor and materials needed to perform all services specified in SOW:
Monthly Cost: $ _____ x 12 = $ _____ ANNUAL COST

Additional Services:

B. Straight Time Hourly Rate
$_____x 100 hours (hrs estimated) = $ _____

C. Overtime Hourly Rate
$_____x 100 hours (hrs estimated) = $ _____

D. Percentage of Mark-up on Parts
_____% x $5,000 in parts = $ _____ + $5,000 = $ _____

GRAND TOTAL (A+B+C+D) $ _____

Quantity of service hours and parts amount are estimates only and not binding on the State. Contractor shall only be paid for actual services rendered, actual hours worked and actual parts received.

BID SIGNATURE FORM

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 (DMNA General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the DMNA procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

Procurement Lobbying: http://www.ogs.ny.gov/aboutogs/regulations/defaultAdvisoryCouncil.html

Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Street City State Zip County	
NYS Vendor Identification Number (see NYS vendor file registration clause): _____ Federal Tax Identification Number (do not use social security number): _____	
If applicable, place an "x" next to each that apply: _____ Small Business _____ Minority-owned Business Enterprise (MBE) _____ Woman-owned Business Enterprise (WBE)	
Phone # : Fax # : Email Address: Company Web Site Address:	
Bidder's Signature: Date:	Printed or Typed Name: Title:

ACKNOWLEDGMENT PAGE

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 (DMNA General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the DMNA procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

Procurement Lobbying: http://www.ogs.ny.gov/aboutogs/regulations/defaultAdvisoryCouncil.html

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }
: **SS.:**
COUNTY OF }

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

[Check One]

(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

(☐ **If a corporation):** _he is the _____ of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

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

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

_____

Notary Public
Registration No.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

December, 2012

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
http://esd.ny.gov/MWBE/directorySearch.html

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

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

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

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

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

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

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

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

APPENDIX B

GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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GENERAL

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

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

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

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

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

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

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

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OGS The New York State Office of General Services.

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York.

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

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

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

BID SUBMISSION

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

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

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

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

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

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

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

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

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

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

9. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability

or responsibility and makes no guarantee whatsoever with respect to the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

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

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

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

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

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

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

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

a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and

b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and

c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. TAXES

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

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

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

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

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

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

21. PRODUCT REFERENCES

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

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

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

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

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

24. PRICING

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

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

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

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

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

f. Best Pricing Offer During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a 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 e 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

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APPENDIX C

REQUIRED FORMS

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- **NON-COLLUSIVE BIDDING CERTIFICATION**
- **VENDOR RESPONSIBILITY DISCLOSURE**
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- **MACBRIDE FAIR EMPLOYMENT PRINCIPLES**
- **ST-220-TD TAX & FINANCE CONTRACTOR CERTIFICATION**
- **ST-220-CA TAX & FINANCE COVERED AGENCY CERTIFICATION**
- **SUBSTITUTE W-9**
  (Required only if vendor is recommended for contract award and does not yet have a 10-digit NYS vendor ID number)

SITE VISIT
PRE-REGISTRATION FORM

IFB 13-01
HVAC Maintenance Service
New York State Armory and Field Maintenance Shop
174 South Street
Auburn, NY 13201

SITE VISIT: Thursday, May 30, 2013
9:30 AM

Late arrivals will not be permitted on site
Drivers License or Picture ID must be brought to site visit.

_____
NAME OF COMPANY

_____
INDIVIDUAL ATTENDING – FULL NAME W/ MIDDLE INITIAL (PRINT)

_____
SIGNATURE

_____
TELEPHONE NUMBER / EMAIL ADDRESS

_____
DRIVER'S LICENSE NUMBER WITH ISSUING STATE

_____
DATE OF BIRTH / PASSPORT # IF APPLICABLE / CITIZENSHIP

PRE-REGISTRATION FORM SHALL BE EMAILED OR FAXED TO DIVISION OF MILITARY AND NAVAL AFFAIRS BY Wednesday, May 29, 2013, 1:00 pm
Fax to (518) 786-6098 or Email to nancy.b.bik.nfg@mail.mil

NON-COLLUSIVE BIDDING CERTIFICATION
REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

SECTION 139-D, Statement of Non-Collusion in bids to the State:

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

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

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

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

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York,
this _____ day of _____ , _____ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS	LEGAL RESIDENCE
_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES	LEGAL RESIDENCE
_____	_____
President	
_____	_____
Secretary	
_____	_____
Treasurer	
_____	_____
President	
_____	_____
Secretary	
_____	_____
Treasurer	

Identifying Data:

Potential Contractor: _____

Street Address:

_____

City, Town, etc.

_____

Telephone: _____ Title: _____

If applicable, Responsible Corporate Officer Name

_____

Title

_____

Signature

Joint or combined bids by companies or firms must be certified on behalf of each participant:

_____ Legal name

of person, firm or corporation

By _____

(Name)

_____

Title

_____

Street Address

_____

City and State

_____

Legal name of person, firm or corporation

By

_____

(Name)

_____

Title

_____

Street Address

_____

City and State

Agency Policy and Prohibitions Regarding Permissible Contacts Between Vendors and Division of Military and Naval Affairs

The New State Finance Law (SFL) 139-j restricts "**contacts**" by **offerers** with any **governmental entity** regarding **procurement contracts.** Subject to certain exceptions set forth in SFL 139-j(3), contacts between offerers and State agency/authority personnel, other than the official agency/authority designated contact person or persons, are prohibited during the **restricted period** of the procurement.

State Finance Law (SFL) 139-j(1)(c) defines "**contacts**" as "any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement."

State Finance Law (SFL) 139-j(l)(h) defines "**offerer**" as "the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement."

State Finance Law (SFL) 139-j(1)(a) defines "**governmental entity**" as "(1) any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (2) each house of the state legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation , at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (7) a subsidiary or affiliate of such a public authority."

State Finance Law (SFL) 139-j(1)(f) defines "**restricted period**" as "the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a governmental entity (and terminating) with the final contract award and approval by the governmental entity and, where applicable, the state comptroller."

I have been made aware of the Division of Military and Naval Affairs policy on "Permissible Contacts and affirm that I understand and agree to comply with the procedures relating to permissible contacts during this procurement.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____
(Signature)

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

_____

Offerer's Certification of Compliance with State Finance Law §139-k(5)

Offerer Certification:

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

_____ _____

_____

Termination Provision

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

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

_____

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____ Date: _____

1. 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? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

_____

Date of Finding of Non-responsibility:

_____

Basis of Finding of Non-Responsibility:

_____

_____

_____

(Add additional pages as necessary)

5. Has any Governmental Entity or other 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? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

_____

_____

_____

_____

_____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By:_____ Date:_____

Signature

Name:_____Title: _____

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NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

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

COMPLETION & CERTIFICATION

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

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

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

DEFINITIONS

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

RESPONSES

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

REPORTING ENTITY

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

ASSOCIATED ENTITY

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

STRUCTURE OF THE QUESTIONNAIRE

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

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

I. LEGAL BUSINESS ENTITY INFORMATION			
Legal Business Entity Name*		EIN (*Enter 9 digits, without hyphen*)	
Address of the Principal Place of Business (street, city, state, zip code)		New York State Vendor Identification Number	
		Telephone ext.	Fax
E-mail		Website	

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years and the status (active or inactive).

Type	Name	EIN	Status

1.0 Legal Business Entity Type – Check appropriate box and provide additional information:

☐ Corporation (including PC)	Date of Incorporation	
☐ Limited Liability Company (LLC or PLLC)	Date of Organization	
☐ Partnership (including LLP, LP or General)	Date of Registration or Establishment	
☐ Sole Proprietor	How many years in business?	
☐ Other	Date Established	

If Other, explain:

1.1 Was the Legal Business Entity formed or incorporated in New York State?	☐ Yes ☐ No

If 'No,' indicate jurisdiction where Legal Business Entity was formed or incorporated and attach a Certificate of Good Standing from the applicable jurisdiction or provide an explanation if a Certificate of Good Standing is not available.

☐ United States State _____

☐ Other Country _____

Explain, if not available:

1.2 Is the Legal Business Entity publicly traded?	☐ Yes ☐ No

If "Yes," provide CIK Code or Ticker Symbol

1.3 Does the Legal Business Entity have a DUNS Number?	☐ Yes ☐ No

If "Yes," Enter DUNS Number

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

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

I. LEGAL BUSINESS ENTITY INFORMATION

1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State? (Select "N/A," if Principal Place of Business is in New York State.)	☐ Yes ☐ No ☐ N/A
If "Yes," provide the address and telephone number for one office located in New York State.	
1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)? If "Yes," check all that apply: ☐ New York State certified Minority-Owned Business Enterprise (MBE) ☐ New York State certified Women-Owned Business Enterprise (WBE) ☐ New York State Small Business (SB) ☐ Federally certified Disadvantaged Business Enterprise (DBE)	☐ Yes ☐ No

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

Name	Title	Percentage Ownership (*Enter 0% if not applicable*)

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

II. REPORTING ENTITY INFORMATION

The Reporting Entity for this questionnaire is:

Note: Select only one.

☐ Legal Business Entity

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

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

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

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

IDENTIFYING INFORMATION

a) Reporting Entity Name

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

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

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number? ☐ Yes ☐ No

If "Yes," enter DUNS Number

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

Name	Title

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

INSTRUCTIONS FOR SECTIONS III THROUGH VII

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

III. LEADERSHIP INTEGRITY **WITHIN THE PAST FIVE (5) YEARS, HAS ANY CURRENT OR FORMER REPORTING ENTITY OFFICIAL OR ANY INDIVIDUAL CURRENTLY OR FORMERLY HAVING THE AUTHORITY TO SIGN, EXECUTE OR APPROVE BIDS, PROPOSALS, CONTRACTS OR SUPPORTING DOCUMENTATION ON BEHALF OF THE REPORTING ENTITY WITH ANY GOVERNMENT ENTITY BEEN:**	
3.0 Sanctioned relative to any business or professional permit and/or license?	☐ Yes ☐ No ☐ Other
3.1 Suspended, debarred, or disqualified from any government contracting process?	☐ Yes ☐ No ☐ Other
3.2 The subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?	☐ Yes ☐ No ☐ Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	☐ Yes ☐ No ☐ Other
For each "Yes" or "Other" explain:	

IV. INTEGRITY – CONTRACT BIDDING **WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:**	
4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, debarment for a violation of New York State Workers' Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	☐ Yes ☐ No
4.1 Been subject to a denial or revocation of a government prequalification?	☐ Yes ☐ No
4.2 Been denied a contract award or had a bid rejected based upon a non-responsibility finding by a government entity?	☐ Yes ☐ No
4.3 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	☐ Yes ☐ No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a government entity?	☐ Yes ☐ No
4.5 Initiated a request to withdraw a bid submitted to a government entity in lieu of responding to an information request or subsequent to a formal request to appear before the government entity?	☐ Yes ☐ No
For each "Yes," explain:	

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

V. INTEGRITY – CONTRACT AWARD **WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:**	
5.0 Been suspended, cancelled or terminated for cause on any government contract including, but not limited to, a non-responsibility finding?	☐ Yes ☐ No
5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?	☐ Yes ☐ No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity?	☐ Yes ☐ No
For each "Yes," explain:	

VI. CERTIFICATIONS/LICENSES **WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:**	
6.0 Had a revocation, suspension or disbarment of any business or professional permit and/or license?	☐ Yes ☐ No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of Minority-Owned Business Enterprise, Women-Owned Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership?	☐ Yes ☐ No
For each "Yes," explain:	

VII. LEGAL PROCEEDINGS **WITHIN THE PAST FIVE (5) YEARS, HAS THE REPORTING ENTITY:**	
7.0 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation?	☐ Yes ☐ No
7.1 Been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime?	☐ Yes ☐ No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	☐ Yes ☐ No
7.3 Had a government entity find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	☐ Yes ☐ No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any government entity involving a violation of federal, state or local environmental laws?	☐ Yes ☐ No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by government entities which in the aggregate total $25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity?	☐ Yes ☐ No
For each "Yes," explain:	

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

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

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

IX. ASSOCIATED ENTITIES
THIS SECTION PERTAINS TO ANY ENTITY(IES) THAT EITHER CONTROLS OR IS CONTROLLED BY THE REPORTING ENTITY.
(SEE DEFINITION OF "ASSOCIATED ENTITY" FOR ADDITIONAL INFORMATION TO COMPLETE THIS SECTION.)

9.0 Does the Reporting Entity have any Associated Entities? Note: All questions in this section must be answered if the Reporting Entity is either: – An Organizational Unit; or – The entire Legal Business Entity which controls, or is controlled by, any other entity(ies). If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.	☐ Yes ☐ No
9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	☐ Yes ☐ No
If "Yes," provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over $50,000?	☐ Yes ☐ No
If "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.3 Within the past five (5) years, has any Associated Entity:	
a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?	☐ Yes ☐ No
b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?	☐ Yes ☐ No
c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?	☐ Yes ☐ No
d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of $500,000?	☐ Yes ☐ No
e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?	☐ Yes ☐ No
f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?	☐ Yes ☐ No
g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	☐ Yes ☐ No
For each "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

X. FREEDOM OF INFORMATION LAW (FOIL)	
10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	☐ Yes ☐ No
Indicate the question number(s) and explain the basis for the claim.	

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE		
Name	Telephone ext.	Fax
Title	Email	

NYS Vendor ID: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

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

Signature of Owner/Officer _____

Printed Name of Signatory _____

Title _____

Reporting Entity Name _____

Address _____

City, State, Zip _____

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

_____ Notary Public

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes_____ or No_____

If Yes:

(2) shall take unlawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes_____ or No_____

_____

Signature

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New York State Department of Taxation and Finance

Contractor Certification

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

ST-220-TD

(5/07)

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

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address *(if different than above)*			

Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )

Covered agency or state agency	Contract number or description	Estimated contract value over the full term of contract (but not including renewals) $
Covered agency address		Covered agency telephone number

General information

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

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

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

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

Mail completed form to:

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

Privacy notification

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

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

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

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

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

Need help?

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

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

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

To order forms and publications:	1 800 462-8100
Sales Tax Information Center:	1 800 698-2909
From areas outside the U.S. and outside Canada:	(518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only):	1 800 634-2110

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

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

of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

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

Section 1 — Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 — Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 — Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ___ day of _____ , 20 ____

_____ _____
(sign before a notary public) *(title)*

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

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

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

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

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

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

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___ , before me personally appeared _____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_ he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

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

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the _____

of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a _____

of _____ , the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

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

_____
Notary Public

Registration No. _____

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)

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

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

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

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an **X** *in only one box)*

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this____ day of _____, 20 _____

_____ _____
(sign before a notary public) *(title)*

Instructions

General information

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

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

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

When to complete this form

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

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

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

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

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the _____

of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a _____

of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

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

_____
Notary Public

Registration No. _____

Privacy notification

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

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

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

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

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

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

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

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

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

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

AC 3237 (12/09)

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

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

Part I: Vendor Information

1. Legal Business Name:	2. If you use a DBA, please list below:

3. Entity Type (Check one only):

☐ Sole Proprietor ☐ Partnership ☐ Limited Liability Co. ☐ Business Corporation ☐ Unincorporated Association/Business ☐ Federal Government

☐ State Government ☐ Public Authority ☐ Local Government ☐ School District ☐ Fire District ☐ Other _____

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

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

2. Taxpayer Identification Type (check appropriate box):

☐ Employer ID No. (EIN) ☐ Social Security No. (SSN) ☐ Individual Taxpayer ID No. (ITIN) ☐ N/A (Non-United States Business Entity)

Part III: Address

1. Physical Address:	2. Remittance Address:
Number, Street, and Apartment or Suite Number	Number, Street, and Apartment or Suite Number
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country

Part IV: Exemption from Backup Withholding and Certification

For payees exempt from Backup Withholding, check the box below. Valid explanation required for exemption. See instructions.

☐ **Exempt from Backup Withholding**

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding. Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN).

Sign Here:

_____ _____
Signature Date

_____ _____ _____
Print Preparer's Name Phone Number Email Address

Part V: Contact Information – Individual Authorized to Represent the Vendor

Vendor Contact Person: _____ Title: _____

Contact's Email Address: _____ Phone Number: _____

DO NOT SUBMIT FORM TO IRS - SUBMIT FORM TO NYS ONLY AS DIRECTED
By FAX (518) 473-4392, Email VMU@osc.state.ny.us or mail to:
110 State Street Mail Drop 10-4 Albany, NY 12236-0001

FOR OSC USE ONLY

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

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

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

Part I: Vendor Information

1. **Legal Business Name**: For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **DBA (Doing Business As)**: Enter your DBA name.
3. **Entity Type**: Mark the Entity Type doing business with New York State.

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

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

Part III: Address

1. Physical Address: List the location of where your business is physically located.
2. Remittance Address: List the location where payments should be delivered.

Part IV: Exemption from Backup Withholding and Certification

Generally, reportable payments made by New York State are subject to Backup Withholding. Exemption from Backup Withholding applies to government and non-United States Business Entities[3]. Please sign, date, provide the preparer's name, telephone and email address. The preparer should be employed by your organization.

Part V: Contact Information

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

---

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

[2] An ITIN is a nine-digit number used by the United States Internal Revenue Service for individuals not eligible to obtain a Social Security Number, but are required to file income taxes. To obtain an ITIN, submit a completed W-7 to the IRS. The IRS will notify you in writing within 4 to 6 weeks about your ITIN status. In order to do business with New York State, **you must submit IRS Form W-8** along with our Substitute Form W-9 showing your ITIN. IRS Form W-8 certifies your foreign status. To obtain IRS FormsW-7 and W-8, call 1-800-829-3676 or visit the IRS website at www.irs.gov.

[3] In order to do business with New York State, **you must submit IRS Form W-8** along with our Substitute Form W-9. IRS Form W-8 certifies your foreign status and exempts you from United States information return reporting and backup withholding rules. To obtain IRS Form W-8, call 1-800-829-3676 or visit the IRS website at www.irs.gov.