



**Division of Military
and Naval Affairs**

Invitation for Bid

Title: Statewide Lead Wipe Contract	
Contract Period/Term: 5 Year Contract from December 1, 2026, through November 30, 2031, Upon OSC Approval	Number: 26-20

Designated Contact(s) & Bid Submission Address

Primary

Tara Leggett,
Purchasing Agent
tara.a.leggett.nfg@army.mil
(520) 671-2058

ng.ny.nyarnq.mbx.mnbf-dmna-bids@army.mil
NYS Division of Military and Naval Affairs
Directorate of Budget and Finance
330 Old Niskayuna Rd.
Latham, NY 12110

Secondary

Lynnette Degnen-Kolawole,
Purchasing Agent
lynnette.m.degnen-kolawole.nfg@army.mil
(571) 588-8270

IFB Timeline

Action	Date/Time
IFB Release	Monday, 08/31/26
Pre-Bid Conference/Site Visit Registration Deadline	N/A
Mandatory/Optional Pre-Bid Conference/Site Visit	N/A
Questions Deadline	Tuesday, 09/22/26 3:00 PM ET
Questions Response	Monday, 09/28/26
Bids Due	Tuesday, 10/20/26 3:00 PM ET
Tentative Award	Wednesday, 10/21/26
Anticipated Purchase Order or Contract Issuance	Tuesday, 12/01/26

SUBMIT YOUR PROPOSAL ON TIME

It is the Bidder's responsibility to allow adequate time to deliver an electronic (PREFERRED) or hardcopy bid before the date and time specified. Bidders should email notification of hardcopy bid submissions to ng.ny.nyarnq.mbx.mnbf-dmna-bids@army.mil

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Key Points

- **Read this document and associated attachments in their entirety.**

Note key items such as critical dates, commodities and services required, qualifying and mandatory requirements, and proposal submission requirements.

- **Bidder proposals must completely address all qualifying and mandatory requirements.**

To ensure your proposal is valid, thoroughly read all proposal requirements and provide complete responses. Ensure all aspects of each requirement are met. **Use the forms provided to submit your response.**

- **Note the name and email of the designated contacts listed on the front page of this document.**

These are the only individuals that you are permitted to contact regarding this procurement in accordance with Procurement Lobbying Law.

- **All announcements relating to this bid will be disseminated via NYS Contract Reporter and email.**

It is the Bidder's responsibility to check the NYS Contract Reporter and their email periodically for any updates. All applicable amendment information must be incorporated into the Bidder's proposal. Failure to include any such information in your proposal may result in disqualification.

- **Take advantage of the question-and-answer periods.**

Question-and-answer periods are your opportunity to seek clarification. Please utilize this process to understand requirements, as well as raise any questions or concerns with your ability to bid. Submit your questions via email to the designated contacts by the dates listed in the timeline on the front page of this document. Responses to the questions will be sent to all potential Bidders via email. Additional information about questions and answers can be found in *Section 2.1 IFB Questions and Clarifications*.

- **Review this document and your proposal.**

Make sure all requirements are fully addressed, and all copies are identical, legible, and complete.

- **Attend the [Optional/Mandatory] Pre-Bid Site Visit.**

Not Applicable.

- **Prevailing Wages**

The work under this contract has been determined to be a public work pursuant to [Article 8/9] of the New York Labor Law. PRC# _____ **N/A** _____ has been assigned to this project.

- **Package your proposal as required.**

Make sure your proposal meets the packaging requirements. Proposals not packaged accordingly may be deemed non-responsive. Additional information about packaging and content can be found in *Section 2.4 Packaging of IFB Response* and *Section 2.5 Instructions for Hard-copy Bid Submission*.

- **Submit your proposal on time.**

It is the Bidder's responsibility to allow adequate time to deliver an electronic or hardcopy bid before the date and time specified. Electronic bid submission is preferred. Bidders should notify ng.ny.nyarnng.mbx.mnbf-dmna-bids@army.mil if a hardcopy bid is being submitted.

Bid Submission Checklist

Please use this basic checklist to ensure all documents are included within your bid submission. Failure to provide the required documents may result in being found non-responsive and your bid will not be considered for award.

- ☐ Attachment 2 – Bid Form
- ☐ Attachment 4 – References
- ☐ The information requested in *Section 1.3, Minimum Bidder Requirements*.
- ☐ Forms due at time of bid submission (*Appendix C*)
 - Non-Collusive Bidder Certification
 - Offeror's Affirmation of Understanding and Agreement
 - MacBride Fair Employment Principles
 - Sexual Harassment Prevention Certification
 - Gender-Based Violence and the Workplace Certification
 - Executive Order No. 14 and 16 Certification
 - Executive Order No. 177 Certification
 - Proof of Insurance – Workers Compensation and Disability, or CE-200 Exemption

1. INTRODUCTION

1.1 Overview

The New York State Division of Military and Naval Affairs (DMNA) is seeking a responsible vendor to conduct statewide lead wipe testing for the Armories and Readiness Centers located within the State of New York.

1.2 Designated Contact

Pursuant to State Finance Law §§139-j and 139-k, Tara Leggett, Purchasing Agent, 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. In compliance with the Procurement Lobbying Law, contact is limited to only the individuals listed below.

Tara Leggett, 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- (520) 671-2058
Fax: 1-518-786-4824 Email: tara.a.leggett.nfg@army.mil

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

Lynnette Degnen-Kolawole, 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 (571) 588-8270
Fax: 1-518-786-4824 Email: lynnette.m.degnen-kolawole.nfg@army.mil

1.3 Minimum Bidder Requirements

The following minimum requirements must be met by each Bidder:

1. Contractor must be Environmental Protection Agency (EPA) Lead Safe certified or equivalent state-authorized certification.
2. Contractor must have the necessary facilities, experience, capability, equipment, and financial resources to supply the items requested and to perform and services needed in a timely manner.
3. Contractor must conduct testing in accordance with the applicable lead wipe ASTM E1728/E172M-20 standards with 40 CFR 745.63 testing conducted periodically throughout the 12-month period.

All work shall be in strict compliance with all local and state codes, ordinances, laws, and policies.

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.

1.4 Mandatory Site Visit (Applicable or Not Applicable)

Bidders intending to submit a bid will be required to attend a mandatory site visit, located at **N/A**. MANDATORY site visit is scheduled for **N/A**. 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 information provided be legible and accurate. Failure to attend the mandatory site visit will result in rejection of 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 the IFB Timeline 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 **N/A** by emailing the registration form to nq.ny.nyarnq.mbx.mnbf-dmna-bids@army.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 property 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 the IFB Timeline. 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 26-20 shall only be directed to:

Tara Leggett, 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- (520) 671-2058
Fax: 1-518-786-4824 Email: tara.a.leggett.nfg@army.mil

Questions and/or requests for clarification are only accepted via email and in writing. Official answers to questions will be provided via addendum. Deadline for submission of questions will be as stated in the IFB Timeline.

2.2 Bid Format and Content

For the State to evaluate bids fairly and completely, Bidders shall follow the format set forth herein and shall provide all 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 the Bidder has been actively in business.
 - ☐ Provide certifications as described in Section 1.3 – Minimum Bidder Requirements
3. **Pricing.** Bidder shall submit a completed Bid Form (Attachment 2).
4. **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 typed. Bids submitted handwritten in pencil will be disqualified.

2.4 Packaging of IFB Response

Please submit **ONE (1) original of the Cover Letter, Bid Form, 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 preferred method of submission is via email to nq.ny.nyarnq.mbx.mnbf-dmna-bids@army.mil. If submitting a hard-copy bid, 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 26-20

Due Date and Time: 10/20/26 3:00PM

Bid For: Statewide Lead Wipe Contract

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 Hard-Copy 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
Budget and Finance, Purchasing and Contracting
330 Old Niskayuna Road
Latham, NY 12110-3514
Attention: Tara Leggett

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 EST on the date indicated in the IFB Timeline. **Bidders assume all risks for timely, properly submitted deliveries.**

The time received 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 is received in writing by the 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 the DMNA 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

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.

Each Bidder shall examine specifications and all other data or instruction pertaining to the service. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the service will be accepted by the Adjutant General of DMNA 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 Service. 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.

Any Bidder in doubt as to the true meaning of any part of this IFB 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.

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

Any verbal information obtained from, or statements made by representatives of the Adjutant General of DMNA at the time of examination of the documents 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 DMNA will not be responsible for verbal instructions

3. ADMINISTRATIVE INFORMATION

3.1 Issuing Office

This IFB is being released by DMNA, Budget and Finance Directorate, Purchasing and Contracting Section on behalf of DMNA's Environmental Compliance Branch.

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 Total Bid Cost as represented on the Bid Form (Attachment 2).

Provide pricing based on labor, parts/materials, equipment, overhead costs, and all other applicable sections for proper completion of full scope of work detailed in the specifications. Contractor shall be paid for actual hours worked, actual services rendered, and actual parts/materials required to complete the service.

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 shipping, travel, 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, material and equipment cost, 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 Form (Attachment 2) contained in this document. Bidders must provide pricing for all items on the Bid 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

The term for the contract(s) awarded in response to this solicitation will be effective December 1, 2026, through November 30, 2031, subject to approval by the OSC.

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 or email 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 contract anniversary date. To ensure timely delivery, email or 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 Division of Military and Naval Affairs, 330 Old Niskayuna Road, MNBF-PC, Latham, New York 12110 or emailed to nq.ny.nyarnq.mbx.mnbf--procurement@army.mil**

Should a Contractor fail to submit the request and supporting documentation to the proper location within three months after the applicable anniversary 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 Invoicing and Payment

The Contractor is required to provide the Authorized User with a proper invoice at the time of delivery. The invoice must include detailed line-item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Labor Rate
- Job Title

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing:

<https://bsc.ogs.ny.gov/nys-vendors>.

3.7 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.

3.8 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 the IFB Timeline. The request must cite the specific section and requirement in 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.

3.9 Dispute Resolution

It is the policy of DMNA, Budget and Finance Directorate to provide vendors with an opportunity to administratively resolve disputes or inquiries related to DMNA contract awards. Bidders are encouraged to seek resolution of disputes through consultation with the Designated Contact(s). After being notified of the results of this contract opportunity, any entity or individual that participated in the procurement may submit a protest of the resulting contract award.

3.10 Glossary of Terms

"Issuing Office" shall mean the new York State 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 the New York State Division of Military and Naval Affairs or his/her duly authorized representative.

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

3.11 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 regarding all provisions of the solicitation, and the contract resulting from the solicitation.

4. CONTRACT CLAUSES AND REQUIREMENTS

With the submission of a response to this IFB, the Bidder agrees to the proposal conditions as outlined in this section.

4.1 Order of Precedence

In the event of any inconsistency in or conflict among the document elements of the future contract identified herein, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth below:

1. Appendix A Standard Clauses for New York State Contracts
2. Appendix B General Specifications for DMNA Contracts
3. Executed Agreement
4. IFB, including all other associated Appendices, Attachments, Addenda and Questions and Answers
5. Contractor's Bid in Response to the IFB.

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 Offeror/Bidder during the procurement process. An Offeror/Bidder is restricted from making contact from the earliest notice of intent to solicit offers/bids through final award and approval of the procurement contract by DMNA and, if applicable, OSC ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this solicitation. DMNA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offeror/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 Offeror/Bidder is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found on the OGS website: <https://ogs.ny.gov/acpl/procurement-lobbying-law>.

4.3 Insurance Requirements

The Bidder shall be required to procure, at its sole cost and expense, all insurance required.

The Bidder shall be required to provide proof of compliance with the requirements, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance should be provided in accordance with Section B below;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award, the Contractor shall be required to provide proof of all insurance after policy renewal or upon request according to the timelines set forth in Section A.13 below.

Bidders and Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation/this Contract, policies of insurance as required by this section. All insurance required shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this solicitation should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. DMNA may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents

demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to DMNA evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation/Contract in a form satisfactory to DMNA. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned, or delayed, acceptance and/or approval by DMNA does not, and shall not be construed to relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation and any Contract resulting from this Solicitation/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 term of any Contract resulting from this Solicitation/the Contract.

A. General Conditions Applicable to Insurance.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via email distribution or similar means will be accepted.

DMNA requires Contractors to submit only certificates of insurance and additional insured endorsements. Contractors should refrain from submitting entire insurance policies. If an entire insurance policy is submitted but not requested, DMNA shall not be obligated to review it and shall not be chargeable with knowledge of its contents. In addition, the submission of an entire insurance policy not requested by DMNA does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation. DMNA reserves the right to request other proof of insurance, including, but not limited to, policies, and Contractors agree to comply with all reasonable requests.

All policies of insurance required by this Solicitation and any Contract resulting from this Solicitation/Contract shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B Insurance Requirements below.
2. **Policy Forms.** Except as otherwise specifically provided herein or agreed to in any Contract resulting from this Solicitation/Contract, all policies of insurance required by this Attachment shall be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, DMNA reserves the right to accept claims-made policy forms, in its sole discretion, provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.
3. **Certificates of Insurance/Notices.** Bidders and Contractors shall provide DMNA with a Certificate or Certificates of Insurance, in a form satisfactory to DMNA as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates shall name The New York State Division of Military and Naval Affairs 330 Old Niskayuna Rd. Latham, NY 12110 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to DMNA and in accordance with the New York State Insurance Law (e.g., an ACORD 25);
- Disclose any deductible, self-insured retention, aggregate limit, or exclusion to the policy that materially changes the coverage required by this Solicitation and any Contract

resulting from this Solicitation/Contract;

- Be signed by an authorized representative of the referenced insurance carriers; and
 - Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.
4. **Primary Coverage.** All Commercial General Liability, Business Automobile Liability, and Umbrella/Excess Liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.
 5. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation/the Contract shall be considered a breach of the terms of any Contract resulting from this Solicitation/the Contract and shall allow the People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation/the Contract, at law or in equity.
 6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from DMNA. Such approval shall not be unreasonably withheld, conditioned, or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
 7. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a Subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to DMNA upon request. For Subcontractors that are self-insured, the Subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to the Commercial General Liability and Business Automobile Liability policies, in the same manner that the Subcontractor would have been required to pursuant to this section had the Subcontractor obtained such insurance policies.
 8. **Waiver of Subrogation.** For all Commercial General Liability, Business Automobile Liability, Umbrella/Excess Liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this

Solicitation/the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. **Additional Insured.** The Contractor shall cause to be included in each of the Commercial General Liability, Business Automobile Liability, and Umbrella/Excess Liability policies required below coverage for on-going operations naming as additional insureds (via ISO coverage forms CG 20 10 12 19 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. An Additional Insured Endorsement, or the equivalent, evidencing such coverage shall be provided to DMNA pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to the Commercial General Liability and Business Automobile Liability policies, in the same manner that the Contractor would have been required to pursuant to this section had the Contractor obtained such insurance policies.
10. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of Underlying Insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
11. **Notice of Cancellation or Non-Renewal.** Policies shall be written to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide DMNA with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation/Contract.
12. **Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation/Contract shall be delivered to DMNA. If, at any time during the term of any Contract resulting from this Solicitation/the Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation and any Contract resulting from this Solicitation/Contract, or proof thereof is not provided to DMNA, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by DMNA.
13. **Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the DMNA contact identified in the Contract Award Notice after policy renewal or upon request. This requirement means

that the Contractor shall provide the applicable insurance document to DMNA as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days from request or renewal;
- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal;
- For other requested documentation evidencing coverage: 15 calendar days from request or renewal;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to DMNA, DMNA shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements.

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation/the Contract, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation/the Contract, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	No less than \$1,000,000 each occurrence	At the time of bid submission and updated in accordance with the requirements of this solicitation.
General Aggregate	\$2,000,000	
*Products-Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
Business Automobile Liability	No less than \$1,000,000 each accident	
Workers' Compensation		
Disability Benefits		

*Only required if you are the manufacturer of the product being sold.

1. **Commercial General Liability Insurance.** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage 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].

Policy shall include bodily injury, property damage and broad form contractual liability within the following:

- General Aggregate
- Products – Completed Operations Aggregate

- Personal and Advertising Injury
- Each Occurrence

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

- Premises liability;
- Independent Contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation/the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than three [1-3] years, commencing upon acceptance of the work, as required by the Contract.

2. **Business Automobile Liability Insurance.** Such insurance shall cover liability arising out of automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Bidder/Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract, the Bidder/Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract on a form provided by DMNA. If, however, during the term of the Contract, the Bidder/Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation/the Contract, the Bidder/Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to DMNA in accordance with the insurance requirements of any Contract resulting from this Solicitation/the Contract.

3. **Workers' Compensation Insurance and Disability Benefits Requirements**

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to DMNA.** Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the People of the State of New York, the New York State Division of Military and Naval Affairs, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or

Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.buinessexpress.ny.gov/app/answers/cms/a_id/2263/kw/CE200)

- Form C-105.2 (9/07), Certificate of Workers' Compensation Insurance, sent to DMNA by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to DMNA upon request from the Contractor; or
- Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.buinessexpress.ny.gov/app/answers/cms/a_id/2263/kw/CE200)
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to DMNA by the Contractor's insurance carrier upon request; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>

4.4 NYS Tax Law section 5-a

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS 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 is in excess of \$300,000 for the four (4) 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 (4) quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to DMNA certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with DMNA. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) 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 Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

4.5 Freedom of Information Law/Trade Secrets

All bids are subject to disclosure in accordance with the requirements of the Freedom of Information Law ("FOIL"). Accordingly, upon submission of the bid, the Bidder is encouraged to clearly and specifically indicate any portion of the bid believed to be a trade secret or the disclosure of which would cause substantial injury to the Bidder's competitive position and submit a written statement of the necessity for protective treatment by DMNA. Blanket assertions are insufficient. Upon receipt of a FOIL request for such records, DMNA will grant or deny access in accordance with the law.

4.6 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages, illegal drugs, or legal psychoactive drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

4.7 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

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

There is no subcontracting allowed.

4.10 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;

- H. Change any of the dates in the IFB Timeline, or in other Solicitation sections (if applicable), with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which DMNA obtains or receives from any source and determines relevant, in DMNA's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference, parameter, component, product, model, and/or code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State;
- T. Conduct Contract negotiations with the next responsible Bidder, should the State be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or Lots;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing; and
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation

4.11 Debriefings

A debriefing is available to any entity that submitted a proposal or bid in response to a solicitation ("Bidder"). A Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing. Debriefing must be requested in writing by any Bidder within fifteen (15) calendar days of DMNA notifying the unsuccessful Bidders that another vendor was selected. A Bidder's written request for a debriefing must be submitted to the designated contact listed on the cover of this IFB. The debriefing will be scheduled within ten (10) business days of receipt of written request by DMNA or as soon after that time as practicable under the circumstances.

4.12 Termination

DMNA 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.

Furthermore, DMNA retains the right to cancel this contract for convenience, provided that the Contractor is given at least sixty (60) days written notice of DMNA's 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.

4.13 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 DMNA 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 DMNA 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 OSC's website, <http://www.osc.state.ny.us/vendrep/index.htm> or to enroll, go directly to the VendRep System online at <https://onlineservices.osc.state.ny.us/Enrollment/login?0>

For direct VendRep System user assistance, the Office of State Comptroller's Help Desk may be reached at (866)370-4672 or (518)408-4672 or by email at ciohelpdesk@osc.state.ny.us. 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.

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 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.

4.14 Ethics Compliance

All Bidders/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.

4.15 Indemnification

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Agency from suits, actions, proceedings, claims, losses, damages and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by an intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this contract, without limitation; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Agency.

The Agency shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify the Agency, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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

Such indemnity shall not be limited to the insurance coverage herein prescribed by 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.

4.16 Force Majeure

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, embargos, strikes, fires, explosions, actions of the elements, floods, epidemics or pandemics, quarantines, or other similar causes beyond the control for the

Contractor of the Agency in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

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

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

- DMNA may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the products which are the subject of the delay, which purchases may be deducted from the contract quantities without penalty or liability to the State, or
- The Contractor will provide DMNA with access to products first to fulfill orders placed before the force majeure event occurred. DMNA may accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor DMNA 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 DMNA 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 DMNA where the delay or failure will significantly impair the value of the contract to the State or to DMNA, the Agency may terminate the contract or the portion thereof which is subject to delays and thereby discharge any unexecuted portion of the contract or the relative part thereof.

In addition, DMNA reserves the right, in his or her sole discretion, to make an equitable adjustment to 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 to the Contractor.

4.17 Attachments and Appendices

The Bidder's attention is directed to the attachments and appendices 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 Bidder is responsible for adhering to all requirements of the attachments and appendices.

4.18 Prevailing Wage

Work being bid is subject to prevailing wage rate provisions of New York State Labor Law as published by the New York State Department of Labor. Prevailing wage schedule **[N/A]** has been assigned to this project. Further information can be found in Appendix B.

Any Federal or State violation of public works laws or regulations, labor law or regulations, or any OSHA violation deemed serious or willful may be grounds for a determination of vendor non-responsibility and rejection of bid.

Attachment 1 - STATEMENT OF WORK (SOW)

Project: Perform Lead Wipe Testing at Armories in New York State

Location: See Statewide Armories Lead Wipe Testing List below

General Description of Work and Background:

The State of New York, Department of Military & Naval Affairs (DMNA), Environmental Compliance Branch is requesting quotes to have Armories within the State of New York at various locations to be tested for the presence of lead on interior surfaces. Testing will be conducted in accordance with the applicable lead wipe ASTM E1728/E1728M-20 standards which are consistent with HUD guidelines and 40 CFR 745.63. Testing work will be conducted periodically throughout the calendar year on an as needed basis. The number of samples and locations to be tested vary based on preliminary testing results completed by others. The bidder should include a per site cost to conduct a sampling event and associated reporting in their proposals. Historically, similar testing events have required less than 10 tests including 1 Blank per sampling event. Work areas to be tested are in readily accessible spaces such as offices, conference rooms, kitchens, classrooms, drill halls, converted indoor firing range spaces, family areas, etc. Each batch of tests will include 1 Blank sample for QA/QC purposes, a list of testing results and a brief report for each sampling event. Due to recent reduction in test passing thresholds from 40 ug/ft² to 10 ug/ft² cleaning and testing are needed more often.

Vendor Responsibilities:

1.0 Project Management

Coordination and management of project activities, including regular meetings with DMNA's compliance branch representatives to discuss progress, address any issues, etc. will be required as part of this project.

2.0 Coordination

When testing is needed during the calendar year the chosen contractor will coordinate with DMNA's compliance branch POC and the affected facilities' operations staff on the logistics of retesting events as needed. If locations included in the retesting events fail testing provided by the contractor, the areas must be recleaned by DMNA staff and retested until passing results are achieved. Passing results must be <10 ug/ft². DMNA is requesting that the chosen contractor strategically coordinates and schedules tests by regions or areas if to save on travel and other costs. Also, since DMNA staff will need to reclean and prepare areas to be tested, proper coordination and communication between all parties is key to this project's success and efficiency.

3.0 Site Visits

Site visits are not required but can be arranged if needed for bidding purposes. The winning bidder will need to conduct Site visits to collect all samples needed for retesting.

4.0 Deliverables

The contractor will provide NYARNG Environmental with sample results and a brief report summarizing the sampling event completed at each location for each event. The contractor will also manage invoicing as part of the contract needed for payment.

5.0 End Deliverable Formats

The contractor will prepare final deliveries in agreed-upon formats to present the findings of the project. As aforementioned, sampling results and an accompanying brief report for each sampling event must be provided. The format for this report should be in a PDF version.

Assumptions:

1. DMNA staff will provide access to armories to be tested.
2. Testing work will be conducted Monday-Friday on non-holiday days.
3. Contractor will provide its staff with all the required training needed to conduct this work.
4. Contractor should provide a per sampling visit cost in their proposal.
5. When preparing the proposals DMNA is requesting that contractors include verbiage saying the quote is valid until... Note: This testing work is estimated to begin in Nov. - Dec. 2025 and will continue until all sites have passing tests.

Statewide Armories Lead Wipe Testing List:

- | | |
|---|---|
| • A-LI Farmingdale | 25 Baiting Place Rd., Farmingdale, NY 11735 |
| • A-LI Ronkonkoma | 201 Schaefer Drive, Ronkonkoma, NY 11779 |
| • A-LI Jamaica | 93-05 168th Street, Jamaica, NY 11433 |
| • A-LI Staten Island | 321 Manor Road, Staten Island, NY 10314 |
| • A-NYC BRONX | 10 West 195th Street, Bronx, NY 10468 |
| • A-NYC Fifth Ave/Harlem | 2366 5th Ave, New York, NY 10037-1097 |
| • A-NYC Lexington Ave | 68 Lexington Ave, New York, NY 10010 |
| • A-NYC Park Ave | 643 Park Avenue, New York, NY 10021 |
| • A-NYC Whitestone | 150-74 6th Ave, Queens, NY 11357-1299 |
| • A-NYC Yonkers | 2 Quincy Place, Yonkers, NY 10701-2708 |
| • B-Camp Smith Training Center
10567 | 11 Bear Mountain Bridge Road, Cortlandt Manor, NY |
| • B-Glenmore Road | 137 Glenmore Road, Troy, NY 12180 |
| • B-KINGSTON | 25 Kiersted Avenue, Kingston, NY 12401 |
| • B-Leeds | 2515 State Route 23, Leeds, NY 12451 |
| • B-Morrisonville | 6 Fair Grounds Road, Morrisonville, NY 12962 |
| • B-New Windsor | 910 Raz Avenue, New Windsor, NY, 12553 |
| • B-Orangeburg | 84 Old Orangeburg Road, Orangeburg, NY 10962 |
| • B-Peekskill | 955 Washington Street, Peekskill, NY 10566 |
| • B-Queensbury | 65 Stone Quarry Road, Queensbury, NY 12804 |
| • B-South Lake Troy | 99 South Lake Avenue, Troy, NY 12180 |
| • B-WALTON | 55 South Street, Walton, NY 13856 |
| • C-AUBURN | 74 South Street, Auburn, NY 13021 |
| • C-BINGHAMTON | 85 West End Avenue, Binghamton, NY 13905 |

• C-FORT DRUM Readiness Center	Bldg. P-855, Oswego Ave, Fort Drum, NY 13602
• C-FORT DRUM MATES	4900 Main Tank Road, Fort Drum, NY 13602
• C-GENEVA	300 Main Street, Geneva, NY 14456
• C-GLOVERSVILLE	87 Washington Street, Gloversville, NY 12078
• C-HORSEHEADS	128 Colonial Drive, Horseheads, NY 14845
• C-ITHACA	1765 Hanshaw Road, Ithaca, NY 14850
• C-OGDENSBURG	225 Elizabeth Street, Ogdensburg, NY 13669
• C-SYRACUSE	6900 Thompson Road, Syracuse, NY 13211
• C-UTICA	1700 Parkway East, Utica NY 13501
• D-Conn St. Buffalo	184 Connecticut Street, Buffalo, NY 14213
• D-DUNKIRK	1 Newton Street, Dunkirk, NY 14048
• D-GENESEO	34 Avon Road, Geneseo, NY 14454
• D-HORNELL	100 Seneca Street, Hornell, NY 14843
• D-JAMESTOWN	34 Porter Avenue, Jamestown, NY 14701
• D-LOCKPORT	158 Willow Street, Lockport, NY 14094
• D-MASTEN AVE, Buffalo	27 Masten Avenue, Buffalo, NY 14204
• D-Olean	119 Times Square, Olean, NY 14760
• D-HENRIETTA WAY, Rochester	1500 Henrietta Rd, Rochester, NY 14623
• D-PATRIOT WAY, Rochester	76 Patriot Way, Rochester, NY 14624
• DMNA HQ-Latham	330 Old Niskayuna Road, Latham, NY 12110
• DMNA HQ-Saratoga Museum	61 Lake Avenue, Saratoga Springs, NY 12866

Attachment 2 - Bid Form

Enter your price for each, Price Per Test (A), Parts/Material Cost (B), Overhead Cost (C), Estimated Annual Tests (50 x A) (D), Maximum Annual Cost (B+C+D) (E), and Total Bid Cost (E x 5) into the boxes listed below.

Please make sure all entries are neat and legible. The Total Cost is to include the cost of furnishing all said services, travel time, mileage, parts/materials, equipment, supplies, labor, and all other ancillary costs associated in completing the work as outlined in the Scope of Work. DMNA reserves the right to request a detailed cost proposal breakdown from the apparent low Bidder. This could include estimated amount of labor hours, job titles and hourly rates, parts/material itemized breakdown and markup percentage, etc. Failure to provide this information to DMNA within 5 business days of request may result in disqualification for being non-responsive.

Any alterations to the cost proposal form could result in your bid being disqualified.

Price Per Test (A)	\$
Parts/Material Cost (B)	\$
Overhead Cost (C)	\$
Estimated Annual Tests (50 x A) (D)	\$
Maximum Annual Cost (B+C+D) (E)	\$
Total Bid Cost (E x 5)	\$

Note: All bids must be valid for at least 120 days.

Bidder Certification			
By completing this bid form, the Bidder certifies that it has carefully examined the bidding and contract documents, has a full understanding of DMNA's requirements, and agrees to fulfil this contract and to provide all goods and / or services, labor, material and equipment necessary for this contract at the bid price offered, if so awarded.			
Company Name:		Federal ID No.:	
Doing Business As:		SFS ID No.:	
☐ NYS Small Business ¹ # Employees	☐ NYS Certified Minority-Owned Business	☐ NYS Certified Women-Owned Business	☐ NYS Service-Disabled Veteran Owned Business
Address:		City	
		State	
		Zip Code	
Name of Official:		Title:	
Email		Telephone:	
Signature		Date	

¹ A "New York State Small Business" is defined as a company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. There is no certification process to be considered a New York State Small Business.

Bidder Certification Signature MUST be completed in ink.

Attachment 2 - Bid Form

ACKNOWLEDGEMENT 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 Bid, 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.

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

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.

Attachment 3 - No Bid Form

If your firm has chosen not to bid on this procurement opportunity, please use the space below to briefly explain why and return this form to: nq.ny.nyarnq.mbx.mnbf-dmna-bids@army.mil

Reason(s) for Not Bidding

Certification	
Company Name:	
Doing Business As:	
Address:	City
	State
	Zip Code
Name of Official:	Title:
Email	Telephone:

Attachment 4 – References

Bidder Name:

Per IFB *Section 1.3-Minimum Bidders Requirements*, please provide three (3) satisfactory client references for whom the Bidder has performed services similar to those defined in this IFB in the past five (5) years. Please provide phone number, email, and address for all references.

Reference 1

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
Email Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

Reference 2

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
Email Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

Reference 3

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
Email Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

Appendix A - Standard Clauses for New York State Contracts

June 2023

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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, if this contract exceeds \$50,000 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 \$25,000, 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 (2 NYCRR § 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 Part 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, upgrading, 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 clause. 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: <mailto:mwbebusinessdev@esd.ny.gov>
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirector.y.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach

and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of

such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.

Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Appendix B - General Specifications for DMNA Contracts

GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the New York State Division of Military and Naval Affairs ("DMNA" or the "Agency"), or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Appendix B shall govern such procurements or contracts unless expressly modified or amended by the terms of a Bid Specification, Solicitation, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

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

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

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

5. **DEFINITIONS** Terms used herein shall have the following meanings:

a. **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, then that entity shall be considered an Affiliate hereunder.

b. **AGENCY** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York, including the Division of Military and Naval Affairs (DMNA).

c. **ATTORNEY GENERAL** Attorney General of the State of New York.

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

e. **BID** A response to the Solicitation submitted by a Bidder to provide Products.

f. **BIDDER** Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

g. **BID SPECIFICATIONS** A written description drafted by DMNA setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, 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 this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

h. **COMMISSIONER** The Adjutant General of the New York State Division of Military and Naval Affairs (DMNA), or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User of his or her authorized representative.

i. **COMPTROLLER** Comptroller of the State of New York.

j. **CONTRACT** The writings that contain the agreement of the Agency and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

1. **Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Agencies.

2. **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 group of states that is adopted and extended for use by DMNA in accordance with the requirements of the State Finance Law.

3. **Contract Letter** A letter to the successful Bidder 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 the Contractor should not take any action with respect to actual Contract deliveries

except on the basis of Purchase Orders sent from Authorized Users.

j. CONTRACT AWARD NOTIFICATION

An announcement to Bidders that a Contract has been recommended for award prior to any negotiation and approval by the Office of the New York State Comptroller.

k. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the New York State Division of Military and Naval Affairs (DMNA).

l. DMNA The New York State Division of Military and Naval Affairs.

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

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

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

p. 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.

q. 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.

r. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

s. ISSUING ENTITY The Agency who issued the Solicitation for a procurement.

t. LATE BID A bid not received in the location established in the Bid Specifications on or before the date and time of the submission deadline specified in the Solicitation.

u. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

v. LICENSEE The Agency who acquires 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 Agency 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.

w. LICENSE EFFECTIVE DATE The date Product is delivered to the Agency. 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.

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

y. NEW LICENSED SOFTWARE RELEASES (Licensed Software Revisions) Any commercially released revisions to the licensed version of Licensed Software as may be generally offered and available to the Agency that is currently on technical support/maintenance. New Licensed Software Releases involve a substantial revision of functionality from a previously released version of the Licensed Software. Updates are provided when available, and Contractor is under no obligation to develop any future Product or functionality.

z. PROCUREMENT RECORD Documentation by the Issuing Entity of the decisions made and approach taken during the procurement process, including but not limited to a copy of the Solicitation, any modification and justification for same, and any documentation considered necessary for contract review purposes by the Office of the New York State Comptroller.

aa. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

bb. PROPRIETARY Owned by a private individual, corporation or governmental entity under copyright, trademark, trade secret or patent laws.

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

dd. REQUEST FOR PROPOSALS (RFP) A type of Solicitation which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law.

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

ff. 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 Agency. 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.

gg. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the Agency.

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

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

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

kk. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications for DMNA Contracts), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

ll. 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.

mm. STATE State of New York.

nn. STATE 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, including DMNA.

oo. SUBCONTRACTOR Any individual or 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.

pp. 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.

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

7. LATE BIDS REJECTED 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 Solicitation 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 Agency. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with the Solicitation. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Agency, 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 Agency.

8. 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 Solicitation. Changes may be ignored by the Agency 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 Agency after the time specified for the bid opening, may not be considered

9. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Solicitation. 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 terms 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;
- b.** The writing must identify the particular Solicitation requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c.** The Bidder shall enumerate the proposed addition, deletion, counter-offer, deviation, or modification from the Solicitation, and the reasons therefor.

No extraneous terms, whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Agency expressly accepts each such terms in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of extraneous terms.

11. CONFIDENTIAL/TRADE SECRET MATERIALS

a. BIDDER/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/Contractor. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by the Agency 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/Contractor. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The Agency’s receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder/Contractor will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. AGENCY Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or the Agency hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Agency. 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 Agency, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

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

a. PREVAILING WAGE RATE APPLICABLE TO BIDS A copy of the applicable prevailing wage rate schedule is attached to the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

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

provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

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

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

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in the 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 Contracts must submit monthly payroll transcripts to the Agency issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

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

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

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

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

13. TAXES

a. Unless otherwise specified in the Solicitation, 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 the Agency 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. 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.

14. EXPENSES PRIOR TO CONTRACT EXECUTION The Agency is not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

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

16. PRODUCT REFERENCES

a. "Or Equal" In all Solicitations or 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 Agency'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 Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

17. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS Upon the conditions specified in the Solicitation 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 Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, 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.

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

19. PRICING

a. Unit Pricing If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed two places for each item unless otherwise specified, in the Solicitation. 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 Agency, such unit pricing is obviously erroneous.

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

c. 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 Agency.

d. 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 Agency, shall be immediately reduced to the lower price.

e. Specific Price Decreases:

(i) GSA Changes: Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

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

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing 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 the Agency: Contractor may offer the Agency, under either this Contract or any other

contracting vehicle, competitive pricing which is lower than the net pricing 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 Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from the Agency without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

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

20. DRAWINGS

a. Drawings Submitted With Bid When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation and shall, when approved by the Agency, 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 Agency'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, or carrying out any other requirements of the intended scope of work.

21. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that 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 that 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 provide the required Product.

22. PURCHASING CARD The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables the Agency to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Agency. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

23. SAMPLES

a. Bidder Supplied Samples The Agency 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 the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Agency 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 Agency 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.

b. 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 Agency may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

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

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

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

BID EVALUATION

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

considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

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

26. QUANTITY CHANGES PRIOR TO AWARD The Agency 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 Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements 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.

27. CLARIFICATION / REVISIONS Prior to award, the Agency reserves the right to seek clarifications on Bids, request revisions to Bids, 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.

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

29. DEBRIEFINGS Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by DMNA that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

TERMS & CONDITIONS

30. 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 Solicitation, a Contract shall be deemed executed and created with the successful Bidder(s) upon the Agency'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 Agency.

31. OFFICIAL USE ONLY/NO PERSONAL USE The Contract is only for official use by the Agency. Use of the Contract for personal or private purposes is strictly prohibited.

32. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by the

Agency under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Agency and Contractor.

The Contractor may, however, offer the Agency 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 Agency by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Agency 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 the Agency unless authorized by the Agency 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 the Agency's subsequent acceptance of Product, or that the Agency has subsequently processed such document for approval or payment.

33. SCOPE CHANGES The Agency reserves the right, unilaterally, to require, by written order, changes altering, adding to or deducting from the Contract specifications, such changes to be within the general scope of the Contract. The Agency 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.

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

With respect to any specific quantity stated in the Contract, the Agency may purchase greater or lesser percentages of Contract quantities should the Agency and Contractor so agree. Such agreement may include an equitable price adjustment.

35. 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 of the Agency 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 for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

36. PURCHASE ORDERS Unless otherwise authorized in writing by the Agency, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Agency. Unless terminated or cancelled pursuant to the authority vested in the

Agency, 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 a Contract let by the Agency must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Agency 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 Contracts will be placed by the Agency directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Agency.

The Purchase Order shall indicate the address for delivery of the Product. The Agency shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. Contractor's order form shall, at a minimum, contain the NYS Product reference number, license type, price, and must separately itemize quantities for software, documentation, and services. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to verify any Purchase Orders placed under the Contract.

37. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Agency and the Contractor. The decision of the Agency as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Agency, 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 Agency. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Agency's discretion, the Contract.

38. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Contract or by the Agency, 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 Agency shall govern.

39. SHIPPING/RECEIPT OF PRODUCT

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

b. Shipping Charges Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Agency. 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 Agency'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 Agency. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

39. 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 Agency 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 Contract or Purchase Order. Mere acknowledgment by Agency 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 Contract may be rejected or accepted on an adjusted price basis, as determined by the Agency.

40. PRODUCT SUBSTITUTION In the event a specified 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 Agency to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Agency. Unless otherwise specified, any substitution of Product prior to the Agency's written approval may be cause for termination of Contract.

41. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Agency within ten calendar days of notification of rejection by the Agency. 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 Agency shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Agency for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

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

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

44. ON-SITE STORAGE With the written approval of the Agency, materials, equipment or supplies may be stored at the Agency's site(s) at the Contractor's sole risk.

45. EMPLOYEES, SUBCONTRACTORS AND 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 Contract, and must comply with all security and administrative requirements of the Agency. The Agency reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency'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 Agency reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

46. ASSIGNMENT In accordance with Section 138 of the State Finance Law, 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 Agency (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Agency and seek written agreement from the Agency which will be filed with the State Comptroller. The Agency shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

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

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

47. SUBCONTRACTORS AND SUPPLIERS The Agency 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 Agency determines that the company is not qualified; the Agency determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit New York State certified minority- and women-owned business enterprises as required by prior Contracts.

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

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

50. TERMINATION

a. For Cause For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Agency at the Contractor's expense. Such termination shall be upon written notice to the Contractor. In such event, the Agency may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by Agency for convenience upon sixty (60) calendar days or other longer period as specified by written notice, 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 Agency shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

c. For Violation of Sections 139-j and 139-k of the State Finance Law The Agency 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 Agency 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 Section 5-a of the New York State Tax Law

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

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

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

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

f. Upon Conviction of Certain Crimes The Agency reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

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

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

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

- a. he Agency may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
- b. he Contractor will provide the Agency with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Agency may accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Agency 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 Agency 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 Agency where the delay or failure will significantly impair the value of the Contract to the State or to the Agency, the Agency may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Agency reserves the right, in his or 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. In the event of a dispute between the Contractor and the Agency, such dispute shall be resolved in accordance with the Agency's Dispute Resolution Procedures set forth in herein; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

53. CONTRACT INVOICING

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

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

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

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

54. DEFAULT – BY AGENCY

a. Breach by Agency The Agency's breach shall not be deemed a breach of the Contract; rather, it shall be deemed a breach of the Agency's performance under the terms and conditions of the Contract.

b. Failure to Make Payment In the event the Agency fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to the Agency, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least ten business days prior to declaring a breach of Contract by the Agency, by certified or registered mail, notify the Agency of the specific facts, circumstances and grounds upon which a breach will be declared.

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

55. PROMPT PAYMENTS

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

Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

b. 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.

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

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

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

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Agency. Should Contractor and the Agency fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute to be resolved in accordance with the Agency's Dispute Resolution Procedures.

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

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

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

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Agency 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 Agency the amount of such claim or portion of the claim still outstanding, on demand. The Agency reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

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

58. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide the Agency 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 Agency representative.

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

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

61. 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 Agency, as necessary to ensure delivery or performance of Product.

62. CONTRACT TERM - RENEWAL The Agency may extend by mutual agreement of the Agency and the Contractor any stated renewal periods in the Contract.

63. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Agency under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

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

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one (1) year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Agency. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or the Agency shall in no event be liable or responsible therefor.

Where Contractor, the independent software vendor (ISV), or other third-party manufacturer markets any Product 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 Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with ISV or other third-party manufacturers for warranty repair or replacement of ISV or other third-party manufacturer's Product.

Where Contractor, ISV or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Agency and pass through the standard commercial warranty to the Agency at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

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

Contractor shall not be responsible for any modification of the Products made by the Agency without Contractor's approval.

d. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Agency does not contain any known Viruses. Contractor is not responsible for Viruses introduced at Licensee's Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including,

but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

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

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

h. Prompt Notice of Breach The Agency shall promptly notify the Contractor in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the Agency.

j. No Limitation of Rights The rights and remedies of the State and the Agency provided in this clause are in addition to and do not limit any rights afforded to the State and the Agency by any other clause of the Contract.

64. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Agency that it meets or exceeds all requirements of the Solicitation 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 Agency to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Agency. 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.

65. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Agency from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents,

employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Agency.

The Agency shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify the Agency, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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

66. INDEMNIFICATION RELATING TO INFRINGEMENT

The Contractor will also defend, indemnify and hold the Agency harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: (a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Agency or by someone other than Contractor at the direction of the Agency without Contractor's approval, and (b) the Agency gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

The Agency shall give Contractor the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

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

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its

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

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

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

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Agency's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

b. The Agency 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 Agency unless Contractor at the time of the presentation of claim shall demonstrate to the Agency'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 Agency 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 Agency, the Contractor, or by others.

68. AGENCY'S DISPUTE RESOLUTION PROCEDURES The first step of the dispute resolution will be through conference between the Agency and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be resolved by the Commissioner or his/her designee, whose decision is final and binding. During this period all work required hereunder shall be performed. If the Contractor pursues any legal or equitable remedy

outside the Agency, the Contractor will continue to perform work in accordance with the direction of the Agency until such proceedings may be concluded and will continue to be paid in accordance with the Agreement, and less any amounts attributable to the dispute. Disputes that go to litigation must be pursued in a court of competent jurisdiction of the State of New York. New York law will govern the dispute and venue must be laid in Albany County, New York.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

69. 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 the Agency 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) hard copy instructions for access by downloading from the Internet; and (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 Agency, 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 Contract term. Maintenance terms and any renewals thereof are independent of the expiration of the Contract term and shall not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, fixes, upgrades and

New Licensed Software 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 Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the technical support/maintenance term.

The Agency 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 the Agency 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: (i) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and (ii) 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 (iii) 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 that require Licensee to restore backups 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. The phrase “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; or (iii) export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

70. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Agency and the Contractor, the Agency shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Agency until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Agency 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 Agency agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Agency and the Contractor, the Agency shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by the Agency. Where using its own data or tests, the Agency 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 Agency, and shall be made part of the Contractor’s standard documentation. The test data shall remain accessible to the Agency 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, the Agency 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. The Agency 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 Agency for damages, loss of profits, expenses, or other remuneration of any kind.

If the Agency 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 Agency 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, the Agency, 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 Agency 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 Agency's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Agency within ten calendar days of notification of non-acceptance by the Agency. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Agency shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Agency for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

71. 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 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 net pricing in effect under the Contract 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.

72. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

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

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

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

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

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to the Agency upon acceptance.

2. Software - Title and ownership to Existing Software Products 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 the Agency in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Agency a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the Agency as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Agency's satisfaction) and distribute Existing Licensed Product to the Agency up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or the Agency'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 Agency is a State Agency. 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 Agency shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to the Agency 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. The Agency 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 the Agency taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all the Agency 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 purchases under the Contract may be the obtaining of acceptable third party financing by the Agency. The Agency shall make the sole determination of the acceptability of any financing proposal. The Agency 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, the Agency 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 the Agency 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 the Agency'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 Agency's sale or other transfer of Custom Products which were acquired by the Agency 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 Agency which complies with the terms of this clause.

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

73. 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.

74. 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 the Agency and Contractor is willing to provide such version.

75. 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 Agency and each Licensee 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 the Agency's option, provided that the Agency is under contract for maintenance on the date of notice, either: provide the Agency with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable the Agency 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 the Agency 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 re-bundling change to the Agency 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.

Appendix C – Required Forms

The following forms are required to be submitted with your bid:

- Non-Collusive Bidder Certification
- Offeror's Affirmation of Understanding and Agreement
- MacBride Fair Employment Principles
- Sexual Harassment Prevention Certification
- Gender-Based Violence and the Workplace Certification
- Executive Order No. 14 and 16 Certification
- Executive Order No. 177 Certification
- Proof of Insurance – Workers' Compensation and Disability, or CE-200 Exemption

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 or 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

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

Offeror's Affirmation of Understanding of an Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b) Page 1

New York State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerors as to the Offeror's understanding of an agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

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

By:

Date:

Name:

Title:

Contractor Name:

Contractor Address:

Offeror's Affirmation of Understanding of an Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b) Page 2

Offerer Disclosure of Prior Non-Responsibility Determinations**Background:**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

Continued **Offeror's Affirmation of Understanding of an Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b) Page 3****Offerer Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract							
Address							
Name of Person Submitting This Form		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? If yes, please answer the next questions:		Yes <input style="width: 40px; height: 25px;" type="checkbox"/>	No <input style="width: 40px; height: 25px;" type="checkbox"/>				
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?		Yes <input style="width: 40px; height: 25px;" type="checkbox"/>	No <input style="width: 40px; height: 25px;" type="checkbox"/>				
3. Was the basis for the finding of non-responsibility due the intentional provision of false or incomplete information to a Governmental Entity?		Yes <input style="width: 40px; height: 25px;" type="checkbox"/>	No <input style="width: 40px; height: 25px;" type="checkbox"/>				
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below. <table style="width: 100%; margin-top: 20px;"> <tr> <td style="width: 50%;">Government Entity</td> <td style="width: 50%;">Date of Finding of Non-Responsibility</td> </tr> <tr> <td colspan="2" style="height: 80px; vertical-align: top;">Basis of Finding Non-Responsibility (attach additional pages if necessary)</td> </tr> </table>				Government Entity	Date of Finding of Non-Responsibility	Basis of Finding Non-Responsibility (attach additional pages if necessary)	
Government Entity	Date of Finding of Non-Responsibility						
Basis of Finding Non-Responsibility (attach additional pages if necessary)							

Continued

**Offeror's Affirmation of Understanding of an Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b) Page 4**

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?

Yes**No**☐☐

6. If yes, please provide details below

Government Entity**Date of Termination or Withholding of Contract****Basis of Termination or Withholding (attach additional pages if necessary)**

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

Signature_____
Date

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

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the Division of Military and Naval Affairs with respect to State Finance Law §139-k is complete, true and accurate.

Offerer Certification:

I certify that all information provided to the Division of Military and Naval Affairs with respect to State Finance Law §139-k is complete, true and accurate.

By:**Date:**

Name:

Title:

Contractor Name:

Contractor Address:

Procurement Lobbying Termination

The Division of Military and Naval Affairs 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 Division of Military and Naval Affairs may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

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 operation in Northern Ireland;

YES _____ or NO _____

If YES:

- 2) Shall take lawful steps in good faith to conduct any business operations that is 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 _____

Legal Business Name of Company Bidding:

Bidder's Signature:

Printed or Typed Name:

Title:

Date:

SEXUAL HARASSMENT PREVENTION CERTIFICATION
REQUIRED BY SECTION 139-L OF THE STATE FINANCE LAW

State Finance Law §139-L requires Bidders on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training (that meets the Department of Labor's model policy and training standards) to all its employees.

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

If the Bidder cannot make the foregoing certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification

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 attachment and that all information provided is complete, true and accurate.

Legal Business Name of Company Bidding:

Bidder's Signature:

Printed or Typed Name:

Title:

Date:

GENDER-BASED VIOLENCE AND THE WORKPLACE CERTIFICATION

New York State Finance Law §139-M requires Bidders on competitive state procurements to certify that they have a written policy addressing gender-based violence and the workplace and that such policy meets the following minimum requirements:

- **Share Information:** Employers must provide information regarding gender-based violence where employees can see and access it, including displaying the NYS Domestic and Sexual Violence Hotline information and a gender-based violence and the workplace poster.
- **Refer Employee-Survivors to Services:** The policy must require that the employer refer employees who disclose current or past victim status to the NYS Domestic and Sexual Violence Hotline and/or a local service provider. For Bidders outside of New York State, referrals should be made to a local provider or statewide hotline. While referrals are required to be provided by the employer, it is not required for the employee to access services.
- **Prohibit Retaliation:** The policy must clearly state that discrimination or retaliation against employees who identify as victims or survivors of gender-based violence is prohibited.
- **Comply with Laws:** Ensure your policy follows State law. For employers based in New York State, this means that the policy must follow the SAFE Leave Act, New York State Human Rights Law, and any other relevant laws and regulations.
- **Offer Implementation Support:** OPDV is able to assist employers in developing and implementing this policy. Employers must provide information to supervisors and human resources, where available, about this technical assistance from OPDV. OPDV can be contacted at workplace@opdv.ny.gov.

By submission of this certification, each person signing on behalf of any organization certifies, and in the case of a joint submission each party thereto certifies its own organization, under penalty of perjury, that they have and have implemented a written policy addressing gender-based violence and the workplace.

Organization's signature below certifies its compliance with State Finance Law §139-M.

Legal Business Name of Company Bidding:

Bidder's Signature:

Printed or Typed Name:

Title:

Date:

This form must be signed by an authorized executive or legal representative.

If the organization cannot make the above certification, they must provide a statement with their bid detailing the reasons therefor:

EXECUTIVE ORDER 14 AND EXECUTIVE ORDER 16 CERTIFICATION

This certification is required from all Sponsors prior to contract / agreement execution.

New York State Executive Order No. 14 directs State Entities, to the extent practicable, to divest their money and assets and terminate contracts with institutions or companies headquartered in Russia or with their principal place of business in Russia, "protecting New York from financing discrimination against the Ukrainian people". New York State Executive Order (herein, "Executive Order" No. 16 directs State Entities to refrain from entering into any new contract or renewing any existing contract with an Entity conducting business operations in Russia until such time as sanctions imposed by the federal government are no longer in effect.

For purposes of this certification, and as set forth in Executive Order No. 16, an "Entity conducting business operations in Russia" means "an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership."

Notwithstanding the foregoing, an Affected State Entity may contract with an Entity conducting business operations in Russia provided that the head of the Affected State Entity makes a determination in writing that the investment or contract is necessary for the Affected State Entity to perform its functions and that no suitable investment or contractual alternatives exist.

In accordance with Executive Order No. 14 and Executive Order No. 16 (collectively, "the Executive Orders"), specific to the bid or proposal submitted for the above referenced contract or solicitation, and as evidenced by signature affixed hereto, Offeror/Bidder/Contractor (or any assignee) certifies they: (1) are not an Entity conducting business operations in Russia, (2) are not conducting, will not conduct, and will not engage any such company that conducts, commercial activity with (a) the Russian Government, and (b) commercial entities headquartered in Russia or with their principal place of business in Russia, in the form of contracting, sales, purchasing, investment, or any business partnership.

NYS DMNA reserves the right to reject any bid, proposal, grants, or request for assignment of any Offeror / Bidder / Contractor / Sponsor, and to pursue a responsibility review with respect to any entity that is awarded a contract, if found to be in violation of this Certification or the Executive Orders.

Legal Business Name of Company Bidding:

Bidder's Signature:

Printed or Typed Name:

Title:

Date:

This certification must be signed by an authorized executive or legal representative.

EXECUTIVE ORDER 177 CERTIFICATION

This certification is required from all Sponsors prior to contract / agreement execution.

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the applicant hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Legal Business Name of Company Bidding:

Bidder's Signature:

Printed or Typed Name:

Title:

Date:

This certification must be signed by an authorized executive or legal representative.

Appendix D - Bid Protest Procedures

It is the policy of the Division of Military and Naval Affairs (DMNA) to provide Bidders with an opportunity to administratively resolve disputes or inquiries related to DMNA contract awards. Bidders are encouraged to seek resolution of disputes through consultation with the Designated Contact(s). After being notified of the results of this contract opportunity, any entity or individual that participated in the procurement may submit a protest of the resulting contract award.

DMNA reserves the right to suspend, modify, or cancel this procurement at any time during the procurement process. DMNA also reserves the right to waive or extend the deadlines in this procedure.

Submission of Formal Written Protests

Protests must be received by the Designated Contact no later than five (5) business days after a debriefing or ten (10) business days after the written notice of selection or non-selection for contract award, whichever is later.

Protests must be submitted in writing, clearly marked as a protest on the envelope or in the email subject line, and include the following information:

1. Solicitation or contract number
2. Name, address, email address and telephone number of the filer
3. Detailed statement of the legal and factual grounds for the protest
4. Statement of the relief requested
5. Copies of relevant documents

Agency Response

Within 30 business days of receipt of a protest, DMNA's protest officer (the Director of Budget and Finance or their designee) will respond with a protest determination stating the agency's decision on the protest and the reasoning on which it is based. In making a determination, the protest officer will consider the legal and factual grounds stated in the protest, consult with the Designated Contact and appropriate program staff, and review all relevant documents.

Finality; Appeal

For contract opportunities subject to the approval of the Office of the State Comptroller, the protesting party may appeal DMNA's protest determination to the Office of the State Comptroller in accordance with the regulations contained in Part 24 of Title 2 of the New York Codes, Rules and Regulations.

For contract opportunities that are not subject to the approval of the Office of the State Comptroller, DMNA's protest determination is the conclusive and final determination of the protest.

Nothing in these bid protest procedures is intended to limit or impair the rights of any Bidder to seek and pursue remedies of law through the judicial process.