

State of New York Executive Department
Office of General Services
Procurement Services Group
Corning Tower - 38th Floor
Empire State Plaza
Albany, NY 12242
<http://www.ogs.state.ny.us>

REQUEST FOR PROPOSALS

IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
 BIDS MAY BE SENT TO THE ABOVE ADDRESS
 (E-Mail or Fax Bid Submissions are NOT Acceptable)

BID OPENING DATE: August 29, 2002 TIME: 11:00 AM	TITLE: Group 77007 -Provide, Install, Maintain Network Communications Cable and Cable Associated Hardware (All State Agencies & Political Subdivisions) (Class Code 43)
REQUEST FOR PROPOSALS NUMBER: 02135	SPECIFICATION REFERENCE: As Incorporated Herein
CONTRACT PERIOD: 5 Years commencing on the date of approval by OSC	ADDRESS INQUIRIES TO: Peter Chudzinski Team13 Telephone No. (518) 473-3287 Fax No. (518) 486-6867 E-mail address: peter.chudzinski@ogs.state.ny.us

By signing you indicate your express authority to sign on behalf of yourself, or your company or other entity and full knowledge and acceptance of the REQUEST FOR PROPOSALS, Appendix A (Standard Clauses For All New York State Contracts), and Appendix B-1 (OGS General Specifications for Technology & Services). An authorized person must fully and properly execute the agreement.

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

FOR PROCUREMENT SERVICES GROUP USE ONLY

P.R. 02135	LIT <input type="checkbox"/>	MEMO <input type="checkbox"/>	MISSING PAGES
BID #	LET <input type="checkbox"/>	OTHER <input type="checkbox"/>	

NOTICE

This Request For Proposal is comprised of the Cover Sheet as the first page and pages numbered sequentially in the header ending with page number 169. If it is determined that a page(s) is missing or otherwise defective, the bidder must contact OGS immediately so that a corrected copy can be issued to the bidder. Incomplete proposals, which may be a result of a defective or incomplete RFP, will be subject to disqualification. It is the bidder's responsibility to ensure that all pages have been included in the RFP received.

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SECTION I

INTRODUCTION

I.1 SCOPE

The New York State Office of General Services (OGS), Procurement Services Group (PSG) is seeking qualified and experienced Vendors to provide proposals for any combination of Purchase, Installation and Maintenance of Copper Twisted Pair, Fiber Optic, Coaxial communications cable and various cable-associated hardware. The intent is to award multiple contracts to Statewide and regional Vendors to provide Authorized Users (see [Appendix C](#)) the ability to bundle any combination of the purchase, installation and maintenance services. This RFP outlines the terms and conditions, specifies the accepted communications cable, connection components and installation specifications the successful Vendors will be required to adhere to. Compliance with bid requirements will prevent possible disqualification; bidders are required to follow the format and instructions in the [“PROPOSAL FORMAT AND CONTENT”](#) section of this RFP.

The contracts developed from this RFP contain the underlying agreement between the Vendor and the State of New York as to the cabling system product and services each Vendor is qualified to provide and the best value pricing at which the Vendor is willing to offer said product and services to the Authorized User. During the quote development process, vendors offer their “best and final” price at or below the contract pricing and rates.

I.2 BACKGROUND

The Office of General Services awarded multiple contracts as a result of competitive bids for Group 77007 – Cable & Fiber Optics. The group includes awarded contracts: T940105, T9700382, 00741 and 11758. These contracts are administered by the Procurement Services Group and will expire on June 30, 2002 or July 23, 2004.

This RFP is intended to replace all the former contracts and add additional services and features that reflect current communication cable, various cable-associated hardware and installation methods and services.

I.3 ESTIMATED QUANTITIES

The projected total estimated annual purchases for copper twisted pair, fiber optic, coaxial communications cabling, various components, installation and maintenance services is \$4,500,000. This figure represents the known sales to State government agencies for all regions combined. No figures are available for other contract users authorized by law. The contract shall be for the quantities actually ordered during the contract period.

I.4 INQUIRIES/ISSUING OFFICE

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

Peter J. Chudzinski
NYS Office of General Services
Procurement Services Group
Corning Tower - 37th Floor
Empire State Plaza
Albany, New York 12242
Phone No.: (518) 473-3287
FAX No.: (518) 486-6867

All questions should be submitted in writing, citing the particular proposal section and paragraph number. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved before the submission of a proposal. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum, which will be annexed to and become part of the ensuing contract.

I.5 KEY EVENTS/DATES

<u>Event</u>	<u>Date</u>	<u>Time</u>
RFP Release	6/24/2002	
Deadline for Written Comments	7/8/2002	
Pre-Bid Conference	7/16/2002	1:00 PM
OGS Issues Response to Written Comments	7/31/2002	
Submission of Proposal/Bid	8/29/2002	11:00 AM
Time Estimates/Goals:		
Evaluation and Selection	9/26/2002	
Contract Award	11/31/2002	

I.6 PRE-BID CONFERENCE

Attendance at the Pre-Bid Conference is mandatory. Prospective Bidders not present at the pre-bid Conference will not be considered in the bidding process.

OGS will require all persons to sign an attendance roster. The pre-bid conference will be held on July 16, 2002, at the GNAR Empire State Plaza, Albany, NY 12242, Erastus Corning 2 Tower Building 29th Floor. The official start of the pre-bid meeting will be 1:00 P.M. Prospective Bidders, who arrive more than 15 minutes after the official start of the meeting, will not be allowed to sign in.

The pre-bid conference will be held at the Empire State Plaza, Albany, New York. Notify the Associate indicated in [Section I.4](#) within one week before the scheduled date that you plan to

attend. Each interested Bidder is requested to limit the number of representatives attending to three.

Specific questions concerning the RFP shall be submitted in writing, electronic Mail or facsimile will be accepted however a copy of the original communiqué must be sent via United States mail on the same date to the Associate identified in [Section I.4](#). Although questions will be permitted at the conference, answers may be deferred and included in the official minutes of the pre-bid conference, which will be sent to the Bidder's official representative as identified on the attendance roster.

I.7 EXAMINATION OF CONTRACT DOCUMENTS

This Request For Proposals is comprised of the Cover Sheet as the first page and 169 pages numbered sequentially in the header. It is the Bidder's responsibility to ensure that all pages have been included in the RFP received. If it is determined that a page(s) is missing or otherwise defective, the Bidder must contact the PSG Associate identified in [Section I.4](#), immediately so that a corrected copy can be issued to the Bidder. Incomplete proposals, which may be a result of a defective or incomplete RFP, will be subject to disqualification.

Each Bidder shall examine specifications and all other data or instruction pertaining to the RFP. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the RFP in the execution of the associated work will be accepted by the Procurement Services Group as an excuse for any failure or omission on the part of the Vendor to fulfill every detail of all the requirements of the documents governing the work. If awarded a contract, the Vendor will not be allowed any compensation for any circumstance for which the Vendor did not obtain full information prior to bidding.

Any Bidder in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit a written request for an interpretation to the Office of General Services, Procurement Services Group, 37th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242. The written word shall take precedence over electronic links to sections in this RFP. If a major change is involved on which all Bidders must be informed, such request for interpretation shall be delivered, in writing, by the date for the close of inquiries stated in [Section I.5](#). Any interpretation of the proposed documents will be made by the issuance of an addendum. A copy of the addendum will be mailed or delivered to each Bidder.

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

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

SECTION II

TECHNICAL REQUIREMENTS

II.1 QUALIFICATIONS OF PROSPECTIVE BIDDERS

The Prospective Bidder shall, submit with its bid satisfactory evidence of previous experience and possess an adequate plant, financial resources, and organization as herein specified to perform the type, magnitude, and quality of work specified.

- 1) The Prospective Bidder shall provide evidence that the Prospective Bidder has maintained an organization capable of performing the work hereinafter described in continuous operation for at least the past three (3) years.
- 2) Provide a list of three (3)-customer references for similar products or services to be bid sustained over a period of at least two years that are being or were successfully administered by the bidder. Each reference must contain, at a minimum, the following information: company name, address, phone numbers, hours of operation, contact name, e-mail address, term of contract, type of products supplied and type of services supplied; ([VII.2.2 References](#))

The Procurement Services Group may contact the reference contacts on the list. The PSG reserves the right to review and consider other known clients of the bidder in addition to those provided and to disqualify based on unsatisfactory reports and records of services provided.

- 3) Provide a copy of the Companies most recent Consolidated Statement of Income and a Consolidated Balance Sheet arrived at by generally accepted accounting principles. Bidder must have an organization which is financially and logistically able to handle a contract with the potential for simultaneous multiple orders.
- 4) Provide a Dunn & Bradstreet (D&B) Comprehensive Report™ on the Bidders organization. The report must be dated no more than 6 months prior to the bid opening date. A positive financial position is desired.
- 5) Provide a reference list of the names of the employees in the area responsible for this contract, their function in the company, title, and number of year's service with the Vendor's firm. This list shall be kept up to date for the duration of the contract. ([Section VII.2.1](#))
- 6) **For LOTS 2 - 6**, which are regionalized, the bidder shall meet the following additional qualifications:
 - a) A complete description of all support services facility locations within the State of New York from which servicing personnel will be dispatched. The facilities must be located within the region(s) being bid. The bidder will provide, the address, telephone number, fax number and additional reference information for the office that will serve each area bid. Refer to [Appendix K](#).

- b) Provide a detailed description and approaches of how the bidder plans to meet the support needs of this RFP, including concurrent multiple site installations, moves, modifications, disconnects/removals, warranty, maintenance and program management.

Prospective bidders are advised that the State's intent in having requirements 1 through 5 (and 6 for Lots 2-6) above met is to ensure that only qualified and reliable Vendors perform the work of the contract. The State recognizes that there may be equally qualified, reliable Vendors who do not meet all of the above requirements specifically as stated above, but may in fact meet the objectives, and criteria intended in some other manner. However, the prospective bidders shall have the burden of demonstrating to the State's satisfaction that it can in fact perform the work. This shall be in the form of written notarized statements as to the prospective bidder's experience, references, listing of contracts performed, financial statements, human resources, or ability to respond such that PSG can evaluate the prospective bidder's ability. All statements made must be able to be independently verifiable by PSG and must be present in the bid package.

Note: PSG retains the right to request any additional information pertaining to the prospective bidder's ability, qualifications, and procedures used to accomplish all work under this contract, as it deems necessary to ensure safe and satisfactory work.

II.2 GENERAL REQUIREMENTS

Prospective bidders should note that the Appendix A – Standard Clauses for New York State Contracts and Appendix B-1 General specifications (Technology Products and Services) shall apply to this RFP.

Bidders should pay particular attention to the following clauses in Appendix B-1 General Specification (Technology Products and Services):

- Clause 9 Bid Submission
- Clause 12 Late Bids
- Clause 14 Extraneous Terms
- Clause 15 Record Disclosure/Confidentiality of Proprietary Records
- Clause 16 Prevailing Wage Rates
- Clause 25 Site Inspection
- Clause 26 Procurement Card
- Clause 66 Toxic Substances
- Clause 71 Warranties & Guarantees

- 1) Procurement Services Group will make no allowance or concession to the Vendor for any alleged misunderstanding or deception because of quantity, quality, character, location, or other conditions.
- 2) The quality of service shall be subject to inspection by the State of New York at any time. Should it be found that quality of services being performed is not satisfactory, and that the requirements of the specifications are not being met, the Office of General Services acting on behalf of the Authorized User or on its own behalf, may terminate the contract, and employ another Vendor to fulfill the requirements of the contract. The existing Vendor shall be liable to the State of New York for costs incurred on account thereof.

- 3) The Office of General Services reserves the right to stop the work covered by this proposal and the contract at any time that it is deemed the successful Vendor is unable or incapable of performing the work to their satisfaction. In the event of such stoppage, the Office of General Services shall have the right to arrange for the completion of the work in such manner as it may deem advisable and, if the resulting cost exceeds the amount of the bid, the successful Vendor shall be liable to the State of New York for any increase in cost.
- 4) The products to be supplied will be newly manufactured and will be guaranteed to be standard new product, latest model of regular stock product and current production, with all parts regularly used with the type of product offered; also, that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. All product delivered for installation will:
 - a) Conform to UL or ETL VERIFIED test standards at the time of purchase under this contract;
 - b) Incorporate the most recent design changes from the manufacturer as of the scheduled delivery dates for that technology;
 - c) Any product to be replaced must be new and manufactured by a reputable manufacturer. The product must be the same as or equal to the original product. The Authorized User before installation must approve all substitutes for the original manufacturers' product.
- 5) The products must be currently installed and demonstrable in a user environment for a minimum of three months. Experimental or unannounced product will not be acceptable.
- 6) For the purposes of this contract full service shall mean that the Vendor's bid price includes, all travel costs, parking fees, fines and any other ancillary fees and costs including permits, licenses, insurance, etc. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed as understood by the Vendor and included herein.
- 7) Cable, as installed or subsequently modified by the Vendor (or others with its knowledge and consent) shall be suitable for connection to the Authorized Users network or other equipment (as identified by Authorized User) and shall be provided with the guarantee that such interconnection will not in any way impair the quality of transmission or cause any harmful effects to such network or equipment. Vendor will save the Authorized User harmless from any action brought against the Authorized User to the extent that it is based on a claim that the cable at any time caused any such harmful effects, except to the extent that such damage was caused by acts or omissions of the Authorized User. The warranty, and remedy, set forth in this paragraph shall only be operable to the extent Authorized User informs the Vendor.
- 8) Vendor will utilize or supply product that is free of any liens or encumbrances.
- 9) The Office of General Services' interpretation of specifications shall be final and binding upon the Vendor.

- 10) The Vendor shall be completely responsible for their work, including any damages or breakdowns caused by their failure to take appropriate action.
- 11) Trained technicians are required to do all servicing. All technicians shall have at least two (2) years' experience. Trained technicians must have successfully attended an appropriate training program and upon request of the Authorized User provide a copy of the obtained certificate, as proof thereof. Appropriate training programs include but are not limited to installation certification programs provided by BICSI or the ACP (Association of Cabling Professionals).
- 12) Technicians will sign in and out with the Authorized User's representative. Failure to sign in or out, whether intentional or not, shall be understood to mean that service was not performed. [LOTs 2-6]
- 13) The Authorized User's representative reserves the right to reject and bar from the facility any employee hired by the Vendor provided the Authorized User has just cause for doing so.
- 14) The Authorized User will not be liable for any expense incurred by the Vendor because of any traffic infraction or parking violations attributable to employees of the Vendor.
- 15) The Vendor will maintain current pricing information, names of the primary sales staff and technicians on an electronic Internet Home Page. Pricing must be up dated at a minimum of a quarterly basis. The Vendor will provide a URL to their homepage to be used in the States Web site to awarded Vendors pricing.
- 16) No drug use of any type, nor alcoholic beverages by the Vendor or its personnel shall be permitted on the premises.
- 17) The Vendor has the burden to provide proof of renewal by Certificate of Liability Insurance with the minimum limits defined in [section III.5](#). Failure to do so may constitute grounds for the State to cancel or suspend this contract or to take any other action deemed necessary by the State.
- 18) The bidding Vendor is required to obtain a Dunn and Bradstreet (D&B) D-U-N-S number and complete a company profile. The information will assist in the evaluation of the bidders past performance, financial and operational stability. The company profile consists of approximately 60 elements and is available at no cost to the bidder. The Dunn & Bradstreet website URL is: <http://www.dnb.com>.

II.3 TECHNICAL REQUIREMENTS

The technical requirements detailed in this section are intended to provide minimum specifications for the most widely used data, voice and video cable. Cables, Fiber and installation components in LOTS 1,2,3,7 must be **VERIFIED** for compliance to the industry specifications for performance and quality for each type buy a Nationally Recognized Testing Laboratory (NRTL), such as; Underwriters Laboratories (UL) or Intertek Testing Services ETL SEMKO (ETL).

Note: NRTL is an independent laboratory recognized by the Occupational Safety and Health Administration (OSHA) to test products to the specifications of applicable product safety standards. At the digression of OGS additional testing laboratory certifications will be accepted with validated recognition by OSHA as a NRTL for the products bid.

Product Marking

Performance Certification Programs require specific markings on Verified products and on a tag attached to the cable reels, coils or smallest unit container. Examples of UL and ETL markings:



or



II.3.1 CABLE CHARACTERISTICS [LOTS 1-3,7]

II.3.1.1 100Ω UNSHIELDED TWISTED PAIR (UTP) CATEGORY 3 SPECIFICATIONS

- Cable Gauge: 24 AWG
- Conductor: Solid Bare Copper
- Strand Insulation: Polyolefin
- Frequency Range: ≥ 16 MHz
- Attenuation: ≤ 13.1 dB
- NEXT: ≥ 23 dB
- Return Loss: ≥ 15 dB
- Delay Skew: ≤ 45 ns
- Jacket Material Non-Plenum version: PVC
- Jacket Material Plenum version: FEP and NEC Plenum certified
- UL or ETL Verified

II.3.1.2 100Ω UNSHIELDED TWISTED PAIR (UTP) CATEGORY 5E SPECIFICATIONS

- Cable Gauge: 24 AWG
- Conductor: Solid Bare Copper
- Strand Insulation: Polyolefin
- Frequency Range: ≥ 100 MHz
- Attenuation: ≤ 22 dB
- NEXT: ≥ 35.3 dB
- PSNEXT: ≥ 32.3 dB
- ELFEXT: ≥ 23.8 dB/100m
- PSELFEXT: ≥ 20.8 dB/100m
- Return Loss: ≥ 20.1 dB
- Delay Skew: ≤ 45 ns
- Jacket Material Non-Plenum version: PVC
- Jacket Material Plenum version: FEP and NEC Plenum certified
- UL or ETL Verified

II.3.1.3 100Ω UNSHIELDED TWISTED PAIR (UTP) CATEGORY 6* SPECIFICATIONS

- Cable Gauge: 24 AWG
- Conductor: Solid Bare Copper
- Strand Insulation: Polyolefin
- Frequency Range: ≥ 100 MHz
- Attenuation: ≤ 19.8 dB
- NEXT: ≥ 44.3 dB
- PSNEXT: ≥ 42.3 dB
- ELFEXT: ≥ 27.8 dB/100m
- PSELFEXT: ≥ 24.8 dB/100m
- Return Loss: ≥ 20.1 dB
- Delay Skew: ≤ 45 ns
- Jacket Material Non-Plenum version: PVC
- Jacket Material Plenum version: FEP and NEC Plenum certified
- UL or ETL Verified
- * At the time of the RFP release, the standards for Category 6 were still in the proposal stage. The specification values are based on TIA/EIA-568-B-2.1, Draft 10a. It is the intent of the State to pursue the most current **ratified** TIA/EIA standard for new cable procurement and installation methods.

II.3.1.4 100Ω SCREENED TWISTED PAIR (SCTP) SPECIFICATIONS
(in addition to related Category cable performance specifications)

- Cable Gauge: 24 AWG
- Conductor: Solid Bare Copper
- Strand Insulation: Polyolefin
- Shield: Foil with 26 AWG drain wire
- Jacket Material Non-Plenum version: PVC
- Jacket Material Plenum version: FEP and NEC Plenum certified
- UL or ETL Verified

II.3.1.5 MULTI-MODE FIBER 50/125 μm

- Fiber Type: All Glass Graded Index
- Core Diameter: 50 +/- 3 μm
- Cladding Diameter: 125 +/- 2 μm
- Coating: 900 μm
- Numerical Aperture: 0.200 +/- 0.015
- Core Cladding Concentricity: ≤ 3μm
- Cladding Non-Circularity: <2.0%
- Core Non-Circularity: ≤ 5%
- Cabled Fiber Attenuation: ≤ 3.5 dB/km @ 850nm, ≤ 1.5 dB/km @ 1300nm
- Attenuation uniformity: no point discontinuity greater than 0.2 dB
- Jacket Material non-Plenum general version: PVC and NEC certified (OFNG or OFCG)
- Jacket Material non-Plenum riser version: PVC and NEC certified (OFNR or OFCR)
- Jacket Material Plenum version: FEP and NEC Plenum certified (OFNP or OFCP)
- Rip cord: Aramid fiber
- UL or ETL Verified
- Outside Specifications (includes all above specifications with the addition or substitutions of the following)
 - Coating: 250μm
 - Rodent Protection: Steel or Aluminum Armor
 - Ariel: Self supporting
 - Jacket Material (Inner/Outer): Medium Density Polyethylene / UV stabilized Polyethylene
 - Buffer: Loose tube
 - Buffer tube filling: Non-hazardous gel

II.3.1.6 MULTI-MODE FIBER 62.5/125 μm

- Fiber Type: All Glass Graded Index
- Core Diameter: 62.5 +/- 3 μm
- Cladding Diameter: 125 +/- 2 μm
- Indoor Coating: 900 μm
- Numerical Aperture: 0.275 +/- 0.015
- Core Cladding Concentricity: $\leq 3\mu\text{m}$
- Cladding Non-Circularity: $<2.0\%$
- Core Non-Circularity: $\leq 5\%$
- Cabled Fiber Attenuation: $\leq 3.5 \text{ dB/km @ } 850\text{nm}$, $\leq 1.5 \text{ dB/km @ } 1300\text{nm}$
- Attenuation uniformity: no point discontinuity greater than 0.2 dB
- Jacket Material non-Plenum general version: PVC and NEC certified (OFNG or OFCG)
- Jacket Material non-Plenum riser version: PVC and NEC certified (OFNR or OFCR)
- Jacket Material Plenum version: FEP and NEC Plenum certified (OFNP or OFCP)
- Rip cord: Aramid fiber
- UL or ETL Verified
- Outside Specifications (includes all above specifications with the addition or substitutions of the following)
 - Coating: 250 μm
 - Rodent Protection: Steel or Aluminum Armor
 - Ariel: Self supporting
 - Jacket Material (Inner/Outer): Medium Density Polyethylene / UV stabilized Polyethylene
 - Buffer: Loose tube
 - Buffer tube filling: Non-hazardous gel

II.3.1.7 SINGLE-MODE FIBER

- Fiber Type: All Glass uniform refractive index
- Core Diameter: 8.3 +/- 0.1 μm , nominal
- Cladding Diameter: 125 +/- 1 μm
- Coating: 900 μm
- Numerical Aperture: 0.14
- Core Cladding Concentricity: $< 12\mu\text{m}$
- Cladding Non-Circularity: $<1.0\%$
- Core Non-Circularity: $\leq 5\%$
- Cabled Fiber Attenuation: $\leq 0.7 \text{ dB/km @ } 1310\text{nm}$, $\leq 0.7 \text{ dB/km @ } 1550\text{nm}$
- Attenuation uniformity: no point discontinuity greater than 0.2 dB
- Minimum Bend Radius: $>25\text{mm}$
- Strength member: high strength aramid yarn (Kevlar®)
- Buffer: Tight tube style

- Jacket Material non-Plenum general version: PVC and NEC certified (OFNG or OFCG)
- Jacket Material non-Plenum riser version: PVC and NEC certified (OFNR or OFCR)
- Jacket Material Plenum version: FEP and NEC Plenum certified (OFNP or OFCP)
- Rip cord: Aramid fiber
- UL or ETL Verified
- Outside Specifications (includes all above specifications with the addition or substitutions of the following)
- Coating: 250µm
- Cabled Fiber Attenuation: ≤ 0.5 dB/km @ 1310nm, ≤ 0.4 dB/km @ 1550nm
- Strength member: Fiberglass rod
- Rodent Protection: Steel or Aluminum Armor
- Ariel: Self supporting
- Buffer: Loose tube
- Buffer tube filling: Non-hazardous gel
- Jacket Material (Inner/Outer): Medium Density Polyethylene / UV stabilized Polyethylene

II.3.1.8

RG6/SERIES 6 COAXIAL SPECIFICATIONS

- Cable Gauge: 18 AWG
- Conductor: Bare Copper Covered Steel
- Maximum operating voltage: 300 vrms
- Impedance: 75 +/- 3Ω
- Attenuation: ≤ 1dB/100ft @ 10MHz
- Nominal Inductance: 0.093 Micro-h/ft
- Nominal Capacitance Conductor to shield: 16.5 pf/ft
- Nominal Velocity of Propagation: 82%
- Nominal Delay: 1.24 NS/Ft
- Shield Type:
 - 1st layer: Foil
 - 2nd layer: Braid
 - 3rd layer: Foil
 - 4th layer: Braid
- Bend Radius: ≥ 10 times diameter
- Non-Plenum Jacket Material: PVC
- Plenum Jacket Material: FEP
- Insulation (Dielectric): FEP
- Jacket Material Non-Plenum version: PVC
- Jacket Material Plenum version: FEP and NEC Plenum certified
- UL or ETL Listed
- Sweep tested from 5MHz - 1 GHz, 20 dB min.
- Outside Specifications (includes all above specifications with the addition or substitutions of the following)
 - Strength member: Fiberglass rod
 - Rodent Protection: Steel or Aluminum Armor

- Buffer: Loose tube
- Corrosion Protection: non-hazardous gel between the braid and the jacket
- Jacket Material (Inner/Outer): Medium Density UV stabilized Polyethylene

II.3.2 HORIZONTAL CABLING [LOTS 2-6]

Horizontal cabling is that portion of the cabling that extends from the WA (work area) outlet to the HC (horizontal cross-connect) in the TR (telecommunications room) also known as a telephone/data closet.

II.3.2.1 TOPOLOGY OF HORIZONTAL CABLING

Horizontal cabling will be installed in a star topology. Each cable will be a homerun without splices. Application-specific electrical components (such as impedance matching devices) will not be installed as part of the horizontal cabling. These components will be added externally to the TO (telecommunications outlet). This facilitates testing and use of the cabling for varied network requirements. Horizontal cabling will contain no more than one TP (transition point) or CP (consolidation point) between the HC and TO. Taps, splices or splitters are not allowed.

II.3.2.2 HORIZONTAL DISTANCES

The horizontal distance is the cable length from the mechanical termination at the HC to the TO. To conform to standards the maximum allowed distance is 90 m (295 ft) independent of media type (UTP, coax, fiber, etc.). This allows 10 m (32 ft) for patch cords and equipment cables. If MUTOA (multi-user telecommunications outlet assembly) is used, the maximum distance will be reduced in accordance to paragraph 6.4.1.4 of TIA/EIA-568-B.1.

II.3.2.3 RECOGNIZED HORIZONTAL CABLES

Three types of cables are acceptable (Copper, Optical Fiber and Coaxial); for new installations that can be used individually or in combination, as the design requires:

- (a) 4-pair 100 Ω Category 3/5e/6 UTP (or ScTP as required for specific electrically noisy environments)
- (b) 50/125 μm (or alternately 62.5/125 μm) Multi-Mode fiber
- (c) 8.3 μm Single Mode Fiber
- (d) 75 Ω coaxial cable (RG-6/Series 6)

Do **NOT** use other types of cables unless directed by the Authorized User for special applications and then only in addition to the listed cable types above. Although the TIA/EIA-568-B.1 standard allows category 3 cables for voice applications, it is recommended that all new or modified systems will have a minimum of 4-pair category 5e cables for both voice and data. Do **NOT** use traditional Multipair (greater than 4-pair) cables for data, even if they are rated as category 5e or above, as their performance especially in mixed systems cannot be predicted. If using ScTP cables the shield will be bonded through a conducting path to the TGB (telecommunications grounding busbar) in the TR. When using ScTP cables, the entire system must support that conducting path end-to-end. Acceptable voltage measurement between the WA TO shield and the ground wire at the electrical outlet supplying power to the workstation is less than 1.0 Vrms. Cables will be plenum-rated where cable traverses plenum pathways. All cables outer sheath will be factory marked in accordance with the labeling specifications as defined in [Section II.3.6.5](#)

Fiber optic cable installed in an indoor horizontal environment will meet UL or ETL vertical tray test and be Type OFN listed with UL or ETL. The outer sheath will be clearly marked. OFNR or OFNP are acceptable substitutes.

II.3.2.4 CABLE COLOR CODING

The following cable coding is a guideline for typical cable color-coding. The Authorized User reserves the option to alter the color-coding scheme.

II.3.2.4.1 PAIR COLORS

UTP/ScTP cable pairs typically identified with the following colors:

- Pair 1 - White-Blue and Blue
- Pair 2 - White-Orange and Orange
- Pair 3 - White-Green and Green
- Pair 4 - White-Brown and Brown

II.3.2.4.2 JACKET COLORS

Typical jacket colors to identify cable use:

- White - Telephone/Voice
- Blue - Data/LAN
- Black - RF/Video
- Orange – Multi-Mode Optical Fiber
- Yellow – Single-Mode Optical Fiber
- Red – Fire Alarm System
- Yellow – Personal Duress System

II.3.3 BACKBONE CABLING [LOTS 2-6]

The function of the backbone cabling is to provide interconnection between the HC and IC (intermediate cross-connects)/MC (main cross-connects) located in the ER (equipment room) or at the EF (entrance facility).

II.3.3.1 BACKBONE CABLING TOPOLOGY

The backbone cabling will use hierarchical star topology wherein each HC in a TR is either cabled directly to a MC or to an IC then a MC. Non-star configurations (such as ring, bus, or tree) will be accommodated through appropriate interconnections, electronics, or adapters in the TR, not within the backbone cabling. No splices are allowed in backbone cabling.

II.3.3.2 RECOGNIZED BACKBONE CABLES

Three types of cables are acceptable (Copper, Optical Fiber and Coaxial); for new installations that can be used individually or in combination, as the design requires:

- (a) 4-pair 100 Ω Category 3/5e/6 UTP (or ScTP as required for specific electrically noisy environments)
- (b) 2-fiber 50/125 μm (or alternately 62.5/125 μm) Multi-Mode fiber
- (c) 8-9 μm Single-Mode fiber
- (d) 75 Ω coaxial cable (RG-6/Series 6)

Do **NOT** use other types of cables unless directed by the Authorized User for special applications and then only in addition to the listed cable types above. To maintain system performance of the data UTP backbone, non-multipair category 5e or higher cable should be used for data. Copper cable will be plenum-rated CMP, optical fiber cable will be plenum-rated OFCP (see NEC) and coaxial cable should be plenum-rated FEP. All cables outer sheath will be factory marked in accordance with the labeling specifications as defined in [Section II.3.6.5](#)

Fiber optic riser cable will meet UL or ETL standard and will be Type OFNR listed with UL or ETL. The outer sheath will be clearly marked. Type OFNP is an acceptable substitute for riser applications.

Fiber cable requiring a Plenum rating will meet UL or ETL standard and will be listed as Type OFNP with the UL or ETL. The outer sheath will be clearly marked.

II.3.3.3 BACKBONE DISTANCES

In large installations the MC location should be as centrally located as possible to minimize cabling distances.

Those portions of the backbone used solely for voice transmissions may have a maximum distance of 800 m (2624 ft) with an IC to HC maximum distance of 300 m (984 ft) regardless of media used. Maximum distance for optical fiber backbones is dependent on: application, wavelength of light, fiber type (single-mode or multimode and core size), and link budget. Refer to TIA/EIA-568-B.1 Annex E for guidelines. In general, MMF is limited to 2000 m (6560 ft) and SMF is limited to 3000 m (9840 ft).

II.3.3.4 CATEGORY 3 MULTIPAIR COLOR CODING

Where Category 3 (Voice) multipair (more than 4-pairs) cabling is used, the following standard will be used to identify the pairs unless otherwise adjusted by the Authorized User. Note: 1200, 1800, etc... pair cables will be multiples of a 600 Pair format.

25 Pair Cables		
Pair #	Colors	
1	White	Blue
2	White	Orange
3	White	Green
4	White	Brown
5	White	Slate
6	Red	Blue
7	Red	Orange
8	Red	Green
9	Red	Brown
10	Red	Slate
11	Black	Blue
12	Black	Orange
13	Black	Green
14	Black	Brown
15	Black	Slate
16	Yellow	Blue
17	Yellow	Orange
18	Yellow	Green
19	Yellow	Brown
20	Yellow	Slate
21	Violet	Blue
22	Violet	Orange
23	Violet	Green
24	Violet	Brown
25	Violet	Slate

Up to 600 Pair Cables		
Group #	Pair Count	Binder ID
1	1-25	White-Blue
2	26-50	White-Orange
3	51-75	White-Green
4	76-100	White-Brown
5	101-125	White-Slate
6	126-150	Red-Blue
7	151-175	Red-Orange
8	176-200	Red-Green
9	201-225	Red-Brown
10	226-250	Red-Slate
11	251-275	Black-Blue
12	276-300	Black-Orange
13	301-325	Black-Green
14	326-350	Black-Brown
15	351-375	Black-Slate
16	376-400	Yellow-Blue
17	401-425	Yellow-Orange
18	426-450	Yellow-Green
19	451-475	Yellow-Brown
20	476-500	Yellow-Slate
21	501-525	Violet-Blue
22	526-550	Violet-Orange
23	551-575	Violet-Brown
24	576-600	Violet-Slate

II.3.4 WORK AREA [LOTS 2-6]

Work area components include the TO and equipment cables at the user's work station. They are not limited to numbers or types of devices (telephones, modems, faxes, computers, data terminals, etc.).

II.3.4.1 TELECOMMUNICATIONS OUTLET/CONNECTOR

II.3.4.1.1 100-Ω TWISTED-PAIR CONNECTORS

Each 4-pair cable will be terminated in an 8-position modular jack of either UTP or ScTP type to match the installed cable type (angled is preferred, flat or straight is acceptable). Pin/pair assignments will follow the T568A convention for new work as listed below:

T568A

Pin #	Wire Color	Pair #
1	White-Green	3T
2	Green	3R
3	White-Orange	2T
4	Blue	1R
5	White-Blue	1T
6	Orange	2R
7	White-Brown	4T
8	Brown	4R

T=Tip R=Ring

Although TIA/EIA-568-B.1 allows an optional pin/pair assignment (T568B), the State has decided to follow the U.S. Federal Government publication FTR 1090-1997 for new work. Where existing installations require additional outlets that are using the T568B convention, these additions will also use the T568B assignments. In either case, both ends of any cable (horizontal or patch cord) must match pin-for-pin, pair-for-pair. Pin/pair assignments will follow the T568B convention for existing work as listed below:

T568B		
Pin #	Wire Color	Pair #
1	White-Orange	2T
2	Orange	2R
3	White-Green	3T
4	Blue	1R
5	White-Blue	1T
6	Green	3R
7	White-Brown	4T
8	Brown	4R

Rather than stocking both T568A and T568B types, the preferred jack is a type labeled for both T568A/B. All 8P8C jacks will be wired in this manner.

II.3.4.1.2 OPTICAL FIBER CONNECTORS

Horizontal optical fibers to the work area will terminate into a SFF (small form factor) duplex outlet/connector of MT-RJ design (angled is preferred, flat or straight is acceptable) unless otherwise specified by the Authorized User. If previous applications have used duplex 568SC or simplex ST/SC connectors, they will be accommodated by factory-made MT-RJ jumper/adapters with the appropriate connector style on one end. The TR optical fibers will terminate in patch panels with ST/SC connectors.

II.3.4.1.3 COAX RG6/SERIES 6 CONNECTORS

75Ω baseband coaxial cable for video will terminate utilizing BNC connectors unless otherwise specified by the Authorized User. Connection between two sections will require the installation of a BNC connector on each cable, and then, connect the two sections using a “barrel connector”.

75Ω broadband coaxial cable for video will terminate utilizing F-Type connectors unless otherwise specified by the Authorized User. Connection between two sections will require the installation of a F-type connector on each cable, and then, connect the two sections using a “barrel connector”.

II.3.4.1.4 FACEPLATES

Use of faceplates is to accommodate the T568A/B, MT-RJ, Series 6 (RG-6) connectors terminating UTP/ScTP copper, optical fiber and coaxial cables. Manufacturers will be selected that offers a wide and flexible variety of materials, colors, multiple ganging, connector choices, and labeling. At a minimum the chosen manufacturer will include:

- Several colors of plastic faceplates (standard will be ivory)
- Stainless steel faceplates (preferred)
- Single- and double-ganged types (triple ganging may be required at server locations)
- UTP/ScTP category 3/5e/6 connectors
- MT-RJ connectors
- BNC connectors
- F-type connectors
- Blank plastic and stainless steel covers
- Blank connector covers
- Colored function icons
- Label holders
- Quad connectors (within a single gang faceplate)
- Modular Furniture Face Plates (manufacturer specific)

Other desirable features include: specialty combination connectors, USOC jacks, other SFF connectors, 568SC/ST/SC optical fiber connectors, RCA, and audio/video connectors. The individual components and work area system must be approved by the Authorized User.

II.3.4.1.5 EQUIPMENT CORDS

Equipment cords are used to connect the TO to the user equipment. Maximum length is 5 m (16 ft). Where communication devices are located farther away, it will be required to move the TO closer to the user equipment. Except for temporary emergency repairs only factory terminated and tested modular cords are allowed.

II.3.4.1.5.1 DATA CORDS

In addition to the specifications under [Section II.3.1](#), all data equipment cords will be 4-pair UTP/ScTP category 5e/6 cords terminated with T568A or B connectors. Typical data equipment cords will be color coded blue either with blue colored boots (optional) or the entire cord (preferred). The Authorized User reserves the option to alter the color-coding scheme.

II.3.4.1.5.2 TELEPHONE/VOICE CORDS

In addition to the specifications under [Section II.3.1](#), all telephone/voice equipment cords will be 4-pair UTP/ScTP category 3/5e/6 cords terminated with a T568A or B connector on the TO end and a 6P6C modular plug on the user end. Typical telephone/voice cords will be color coded white either with a white boot on the TO end (optional) or the entire cord (preferred). The Authorized User reserves the option to alter the color-coding scheme. As an acceptable option, a T568A plug to 6P6C jack adapter can be used with a standard 4/6 conductor modular cord.

II.3.4.1.5.3 VIDEO CORDS

In addition to the specifications under [Section II.3.1](#), all broadband/baseband video equipment cords will be RG-6/Series 6 terminated with F-type or BNC-type connectors unless otherwise specified by the Authorized User. Typical video equipment cords will be color coded black. The Authorized User reserves the option to alter the color-coding scheme.

II.3.4.2 OPEN OFFICE CABLING

II.3.4.2.1 MUTOA (MULTI-USER TELECOMMUNICATIONS OUTLET ASSEMBLY)

Open office spaces (modular furniture) require special considerations. The distribution point is called a MUTOA. It is fed from the HC with horizontal cables to central locations within a furniture cluster. Work area cables are then routed through furniture pathways up to a maximum of twelve (12) work areas.

The following table shows maximum lengths allowed in open space applications:

Length of Horizontal Cable H m (ft)	Maximum Length of Work Area Cable W m (ft)	Maximum Combined Length of Work Area Cables, Patch Cords, and Equipment Cable C m (ft)
90 (295)	5 (16)	10 (33)
85 (279)	9 (30)	14 (46)
80 (262)	13 (44)	18 (59)
75 (246)	17 (57)	22 (72)
70 (230)	22 (72)	27 (89)

II.3.4.2.2 OPTICAL FIBER LINKS

For optical fiber cables, extending the lengths of work area cables to reach a MUTOA does not require reduction of the total channel length allowance of 100 m (328 ft).

II.3.4.2.3 CONSOLIDATION POINTS

Consolidation points (CP) are interconnection points within the horizontal cabling that unlike MUTOAs require an additional connection for each horizontal cable. Cross-connects will not be used at a CP. No more than one (1) CP will be used within the same horizontal cable. If TP (transition points) are used to transition to under carpet cabling, CP are not allowed in those horizontal cables. For UTP/ScTP cables, the CP will be located at least 15 m (49 ft) from the TR to reduce the effect of multiple connections in close proximity on NEXT and return loss performance. CPs will be located in fully accessible, permanent locations such as building columns or permanent walls.

II.3.5 ADMINISTRATION AND TESTING [LOTS 2-6]

Administration is the method for labeling, identification, and documentation during initial installation and as needed to implement moves, additions, and changes of the telecommunication infrastructure. Administration will be a required phase to every cabling project. At the digression of the Authorized User, alternative identification schemes may be identified.

Based on examples within TIA/EIA-606 a complete set of records documenting initial installation and changes to it will be required. The records should include the test results, what is installed, where it is installed (description and floor plan location), and a basic block diagram. These records should include the personnel, dates, building name and/or street address, and ambient conditions.

II.3.5.1 COMPONENT IDENTIFICATION AND CABLE NUMBERING

Sample system of component labeling, unless otherwise specified by the Authorized User.

FF - Floor Number 00 to 99 (Note: All floors below street level 1st floor will be 00)

T – Telecommunication Room Designation A to Z

RR – Rack or Terminal Block Section Number 01 to 99

P – Patch Panel or Terminal Block Number A to Z

XXX – Cable Number 001 to 999

All TRs should be labeled with the FFT designation to indicate floor number and TR number. Racks or wall-mounted terminal block sections or shelves will be identified with the FFTRR designation. Patch panels and/or terminal blocks will be identified with the FFTRRP designation from top to bottom. Cables should be identified with the entire nine (9) -character designations FFTRRPXXX. Examples follow:

15B – 2nd Telecommunications Room, 15th floor

15B10 – 10th Rack in 2nd TR on 15th floor

15B10G – 7th Patch Panel in 10th Rack in 2nd TR on 15th floor

15B10G067 – 67th Cable from 7th Patch Panel in 10th Rack in 2nd TR on 15th floor

All designations and labels should be computer generated (no hand written labels). Cables will be labeled in at least three (3) places: on the cable behind the faceplate, on the faceplate outlet front, and on the cable entering the patch panel jack or terminal block.

Sample termination field color-code for easy identification as follows:

<u>Color</u>	<u>Field Type</u>
--------------	-------------------

Orange	Demarcation Points (LEC and other providers)
Green	Network Connections (Network equipment)
Purple	Common Equipment (PBX, LAN, multiplexer, switches)
White	1st Level Backbone (MC to IC or TR)
Gray	2nd Level Backbone (IC to TR)
Blue	Work Area Cable (Horizontal)
Brown	Inter-building Backbone (Campus cabling)
Yellow	Miscellaneous (Auxiliary, alarms, security)
Red	Key Telephone Systems

II.3.5.2 FIELD TESTING TWISTED-PAIR CABLING SYSTEM [LOTS 2-6]

A representative of Authorized User will be invited to witness field-testing. The Authorized Users representative will be notified of the start date of the testing phase five (5) business days before testing commences.

Cabling link installations will be tested in accordance with the Telecommunications Industry Association (TIA) standard ANSI/TIA/EIA-568-B.1 Section 11.2: 100Ω twisted-pair transmission performance and field test requirements. Installed twisted-pair horizontal links will be tested from the telecommunications room to the telecommunication wall outlet in the work area against the “Permanent Link” performance limits specification as defined in ANSI/TIA/EIA-568-B.1. Any failing link must be diagnosed and corrected. At the digression of the Authorized User concurrent installations with greater than 25 link installations will require a minimum random test of 20% of the total installed cables. If any of the randomly selected cable links fail, the entire quantity of cables being installed will be re-tested and problems rectified at no additional cost to the Authorized User. Installations less than 25 links will require all installations to be tested.

The tester interface adapters must be of high quality and the cable will not show any twisting or kinking resulting from coiling and storing of the tester interface adapters. In order to deliver optimum accuracy preference is given to a permanent link interface adapter for the tester that can be calibrated to extend the reference plane of the Return Loss measurement to the permanent link interface. At the request of the Authorized User the Vendor will provide proof that, the interface has been calibrated within the period recommended by the tester manufacturer. To ensure that normal handling on the job does not cause measurable Return Loss change, the adapter cord cable will not be of twisted-pair construction.

II.3.5.2.1 CATEGORY 5E PERFORMANCE TESTS

Transmission performance depends on cable characteristics, connecting hardware, patch cords and cross-connect wiring, the total number of connections, and installation practices. All category 5e systems will be tested and the results submitted for system acceptance for each 4-pair UTP/ScTP link.

- 1) Test results will also include the site information, cable number under test, and environmental conditions. Only permanent link testing will be required.
- 2) The test equipment (tester) will comply with or exceed the accuracy requirements for enhanced level II (Level II-E) field testers as defined in TIA-568-B; Annex I: Section I.4. The tester including the appropriate interface adapter must meet the specified accuracy

requirements. The accuracy requirements for the permanent link test configuration (baseline accuracy plus adapter contribution) are specified in Table I.4 of Annex I of TIA/EIA-568-B.2. (Table I.5 in the TIA document specifies the accuracy requirements for the Channel configuration.)

- 3) Test instruments will be field calibrated before testing begins and whenever a break from testing of over an hour occurs. The test instrument must be adjusted to the Nominal Velocity of Propagation NVP of the particular manufacturer's installed cable type. Factory calibration and certification is required at least once every year. Acceptance testing will not be approved using test instruments with expired calibration certifications.
- 4) All system testing will be performed without signals on the cabling plant.
- 5) A BICSI or equivalent technician will perform testing.
- 6) An acceptable test instrument would be a Level IIe certification tester than can print a hardcopy or send the test results to a computer/disc. All tests except wire map, length, and propagation delay will be sweep tested from 1 MHz to 100 MHz.

The following test parameters at ambient temperature are required of each category 5e permanent link. The 100 MHz expected results are shown below.

<u>Test Parameter</u>	<u>Results</u>
Wire map	All 8 conductors terminated on the proper T568A pins
Length	Maximum of 90 m (295 ft) – NVP adjusted for cable type
Insertion loss	Maximum of 21.0 dB at 100 MHz
NEXT loss	Maximum of 32.3 dB at 100 MHz (worst case, pair-to-pair)
PSNEXT loss	Maximum of 29.3 dB at 100 MHz
ELFEXT	Maximum of 18.6 dB at 100 MHz (worst case, pair-to-pair)
PSELFEXT	Maximum of 15.6 dB at 100 MHz
Return loss	Maximum of 12.0 dB at 100 MHz
Propagation delay	Maximum of 498 ns at 10 MHz
Delay skew	Maximum of 44 ns (worst case, pair-to-pair)

WIRE MAP

Wire Map will report Pass if the wiring of each wire-pair from end to end is determined to be correct. The Wire Map results will also include the continuity of the shield connection if present. [As defined in TIA/EIA-568-B.1; Section 11.2.4.2]

LENGTH

The field tester will measure the length of all pairs of a permanent link or channel based on the propagation delay measurement and the average value for NVP. The physical length of the link will be calculated using the pair with the shortest electrical delay. This length figure will be reported and will be used for making the Pass/Fail decision. The Pass/Fail criteria are based on the maximum length allowed for the permanent link configuration (90 meters – 295 ft) or the channel (100 meters – 328 ft). [As defined in TIA/EIA-568-B.1; Section 11.2.4.3]

INSERTION LOSS (ATTENUATION)

Insertion Loss will be tested from 1 MHz through 100 MHz in maximum step size of 1 MHz. It is required to measure attenuation at the same frequency intervals as NEXT

Loss in order to provide a more accurate calculation of the Attenuation-to-Cross talk Ratio (ACR) parameter. [As defined in TIA/EIA-568-B.1; Section 11.2.4.4] Minimum test results documentation (summary results): Identify the worst wire pair (1 of 4 possible). The test results for the worst wire pair must show the highest attenuation value measured (worst case), the frequency at which this worst-case value occurs, and the test limit value at this frequency.

NEXT LOSS, PAIR-TO-PAIR

Pair-to-pair near-end cross talk loss will be tested for each wire pair combination from each end of the link. This parameter is to be measured from 1 through 100 MHz. The maximum step size for NEXT Loss measurements will not exceed the maximum step size defined in the standards. [as defined in TIA/EIA-568-B.1; Section 11.2.4.5] Minimum test results documentation (summary results): Identify the wire pair combination that exhibits the worst case NEXT margin and the wire pair combination that exhibits the worst value of NEXT (worst case). NEXT is to be measured from each end of the link-under-test. These wire pair combinations must be identified for the tests performed from each end. Each reported case will include the frequency at which it occurs as well as the test limit value at this frequency.

PSNEXT LOSS

Power Sum NEXT Loss will be evaluated and reported for each wire pair from both ends of the link-under-test (a total of 8 results). The test parameter must be evaluated from 1 through 100 MHz and the step size may not exceed the maximum step size defined in the standards. [as defined in TIA/EIA-568-B.1; Section 11.2.4.6] Minimum test results documentation (summary results): Identify the wire pair that exhibits the worst-case margin and the wire pair that exhibits the worst value for PSNEXT. These wire pairs must be identified for the tests performed from each end. Each reported case will include the frequency at which it occurs as well as the test limit value at this frequency.

ELFEXT LOSS, PAIR-TO-PAIR

Pair-to-pair FEXT Loss will be measured for each wire-pair combination from both ends of the link-under-test. ELFEXT is to be measured from 1 through 100 MHz and the maximum step size for FEXT Loss measurements will not exceed the maximum step size defined in the standards. [as defined in TIA/EIA-568-B.1; Section 11.2.4.7] Minimum test results documentation (summary results): Identify the wire pair combination that exhibits the worst-case margin and the wire pair combination that exhibits the worst value for ELFEXT. These wire pairs must be identified for the tests performed from each end. Each reported case will include the frequency at which it occurs as well as the test limit value at this frequency.

PSELFEXT Loss

Power Sum ELFEXT is a calculated parameter that combines the effect of the FEXT disturbance from three wire pairs on the fourth one. This test yields 8 wire-pair combinations. Each wire-pair is evaluated from 1 through 100 MHz in frequency increments that do not exceed the maximum step size defined in the standards. [as defined in TIA/EIA-568-B.1; Section 11.2.4.8]

Minimum test results documentation (summary results): Identify the wire pair that exhibits the worst-case margin and the wire pair that exhibits the worst value for

PSELFEXT. These wire pairs must be identified for the tests performed from each end. Each reported case will include the frequency at which it occurs as well as the test limit value at this frequency.

RETURN LOSS

Return Loss is to be measured from both ends of the link-under-test for each wire pair. The parameter is to be measured from 1 through 100 MHz in frequency increments that do not exceed the maximum step size defined in the standards. [as defined in TIA/EIA-568-B.1; Section 11.2.4.9]

Minimum test results documentation (summary results): Identify the wire pair that exhibits the worst-case margin and the wire pair that exhibits the worst value for Return Loss. These wire pairs must be identified for the tests performed from each end. Each reported case will include the frequency at which it occurs as well as the test limit value at this frequency.

PROPAGATION DELAY

Propagation Delay measurement is to be performed for each of the four wire pairs. Minimum test results documentation (summary results): Identify the wire pair with the worst-case propagation delay. The report will include the propagation delay value measured as well as the test limit value. [as defined in TIA/EIA-568-B.1; Section 11.2.4.10]

DELAY SKEW

Delay skew measurement is to be performed between the four wire pairs. The pair with the shortest propagation delay is the reference pair with a delay skew value of zero.

Minimum test results documentation (summary results): Identify the wire pair with the worst-case propagation delay (the longest propagation delay). The report will include the delay skew value measured as well as the test limit value. [as defined in TIA/EIA-568-B.1; Section 11.2.4.11]

II.3.5.3 GENERAL TEST RESULT DOCUMENTATION

- 1) The test results information for each installed or repaired link will be recorded in the memory of a field tester upon completion of the test.
- 2) The test results records saved by the tester will be transferred into a Windows™-based database utility that allows for the maintenance, inspection and archiving of these test records.
- 3) Measurement results should be transferred to the PC unaltered, i.e., “as saved in the tester” at the end of each test.
- 4) The database for the completed job will be stored and delivered on computer/disc including any proprietary non-MicroSoft based software tools required to view, inspect, and print any selection of test reports.
- 5) A paper copy of the test results will be provided that lists all the links that have been tested with the following summary information.

- 6) The identification of the link in accordance with the naming convention defined in the overall system documentation.
- 7) The overall Pass/Fail evaluation of the link-under-test.
- 8) The date and time the test results were saved in the memory of the tester.
- 9) General Information to be provided in the electronic data base with the test results information for each link:
 - a) The identification of the customer site as specified by the Authorized User
 - b) The identification of the link in accordance with the naming convention defined in the overall system documentation
 - c) The overall Pass/Fail evaluation of the link
 - d) The name of the standard selected to execute the stored test results
 - e) The cable type and the value of NVP used for length calculations
 - f) The date and time the test results were saved in the memory of the tester
 - g) The brand name, model and serial number of the tester
 - h) The identification of the tester interface
 - i) The revision of the tester software and the revision of the test standards database in the tester

II.3.5.4 FIBER OPTIC CABLING PERFORMANCE TESTS

Every fiber optic cabling link in the installation will be tested in accordance with the field test specifications defined by the Telecommunications Industry Association (TIA) standard ANSI/TIA/EIA-568-B. ANSI/TIA/EIA-568-B, defines the passive cabling network, to include cable, connectors, and splices (if present), between two optical fiber patch panels (connecting hardware). Any failing link must be diagnosed and corrected. The corrective action will be followed with a new test to prove that the corrected link meets the performance requirements. The final and passing result of the tests for all links will be provided in the test results documentation. Testing will be performed by a BICSI certified Technician Level or equivalent installer.

Field test instruments for multimode fiber cabling will meet the requirements of ANSI/TIA/EIA-526-14A. The light source will meet the launch requirements of ANSI/EIA/TIA-455-50B, Method A One reference jumper. This launch condition can be achieved either within the field test equipment or by use of an external mandrel wrap (as described in clause 11 of ANSI/TIA/EIA-568-B.1) with a Category 1 light source. Field test instruments for single mode fiber cabling will meet the requirements of ANSI/EIA/TIA-526-7. The tester will be within the calibration period recommended by the manufacturer in order to achieve the Vendor-specified measurement accuracy. The fiber optic launch cables and adapters must be of high quality and the cables will not show excessive wear resulting from repetitive coiling and storing of the tester interface adapters.

A representative of Authorized User will be invited to witness field-testing. The Authorized Users representative will be notified of the start date of the testing phase five (5) business days before testing commences.

A representative of the Authorized User may select a random sample of 5% or greater of the installed links to validate the installation prior to accepting the system. The representative (or an authorized delegate) may test these randomly selected links and the results stored in accordance with [section II.3.5.4.2](#). The results obtained may be compared to the data provided by the installation Vendor. If any of the sample results differ in terms of the pass/fail determination, the installation Vendor under supervision of the Authorized User or representative must diagnose and correct the problem(s) and will repeat 100% testing and the cost will be borne by the installation Vendor.

II.3.5.4.1 FIBER OPTIC PERFORMANCE TEST PARAMETERS

ANSI/TIA/EIA standard 568-B prescribes that the single performance parameter for field-testing of fiber optic links is link attenuation when installing components compliant with this standard. (EIA-445 Fiber Optic Test Procedures (FOTPs)) The Pass or Fail condition for the link-under-test is determined by the results of the required individual tests. A Pass or Fail result for each parameter is determined by comparing the measured values with the specified test limits for that parameter.

The link attenuation will be calculated by the following formulas specified in ANSI/TIA/EIA standard 568-B.

- Link Attenuation = Cable Attenuation + Connector Attenuation + Splice Attenuation
- Cable Attenuation (dB) = Attenuation Coefficient (dB/km) * Length (Km)

The values for the Attenuation Coefficient are listed in the table below:

Type of Optical Fiber	Wavelength (nm)	Attenuation Coefficient (dB/km)	Bandwidth (MHz-km)
Multimode 62.5/125 μm	850	3.5	500
	1300	1.5	500
Multimode 50/125 μm	850	3.5	160
	1300	1.5	500
Single-mode (Inside)	1310	1.0	N/a
	1550	1.0	N/a
Single Mode (Outside)	1310	0.5	N/a
	1550	0.5	N/a

- Connector Attenuation (dB) = number of connector pairs * connector loss (dB)
- Maximum allowable connector loss = 0.75 dB
- Splice Attenuation (dB) = number of splices (S) * splice loss (dB)
- Maximum allowable splice loss = 0.3 dB

Link attenuation does not include any active devices or passive devices other than cable, connectors, and splices, i.e. link attenuation does not include such devices as optical bypass switches, couplers, repeaters, or optical amplifiers.

Horizontal link (multimode): acceptable link attenuation for a multimode horizontal optical fiber cabling system is based on the maximum 90 m (295 ft) distance. The horizontal optical fiber cabling link segments need to be tested at only one (1) wavelength. Because of the short length of cabling [90 m (295 ft) or less], attenuation deltas due to wavelength are insignificant. The horizontal link may be tested using a fixed upper limit for attenuation of 2.0 dB. This value is based on the loss of two (2) connector pairs, one (1) pair at the telecommunications

outlet/connector and one (1) pair at the horizontal cross-connect, plus 90 m (295 ft) of optical fiber cable.

Backbone link (multimode): will be tested at 850 nm and 1300 nm in accordance with ANSI/EIA/TIA-526-14A. Because backbone length and the potential number of splices vary depending upon site conditions, the link attenuation equation will be used to determine limit acceptance values.

Backbone link (single mode): will be tested at 1310 nm and 1550 nm in accordance with ANSI/TIA/EIA-526-7, Method A.1 one reference jumper. All single mode links will be certified with test tools using laser light sources at 1310 nm and 1550 nm.

Optical Fiber Gigabit Ethernet: will be tested compliant to certification IEEE std 802.3z, test equipment that uses a VCSEL (Vertical cavity surface emitting laser) at 850 nm (compliant with 1000BASE-SX) and an FP laser at 1310 nm (compliant with 1000BASE-LX) will be used.

Cable Plant Testing Equipment All single-mode outside cable plant and long distance (1,000+ ft) inside networks shall be tested with a Optical Time Domain Reflectometer (OTDR). The test results shall identify any splices and the performance results are within previously defined parameters. Cable plant loss shall be tested using a source and power meter.

II.3.5.4.2 FIBER OPTIC TEST RESULT DOCUMENTATION

The test result information for each link will be recorded in the memory of the field tester upon completion of the test. The test result records saved by the tester will be transferred into a Windows™-based utility that allows for the maintenance, inspection and archiving of these test records. Measurement results should be transferred to the PC unaltered, i.e., “as saved in the tester” at the end of each test.

The database for the completed job at the option and request of the Authorized User will be stored and delivered on computer disc; this disc will include the software tools required to view, inspect, and print any selection of test reports. A paper copy of the test results will be provided that lists all the links that have been tested with the following summary information.

- 1) The identification of the link in accordance with the naming convention defined in the overall system documentation.
- 2) The overall Pass/Fail evaluation of the link-under-test including the Attenuation worst-case margin.
- 3) The date and time the test results were saved in the memory of the tester.
- 4) General Information to be provided in the electronic data base containing the test result information for each link:
 - a) The identification of the customer site as specified by the Authorized User.
 - b) The insertion loss (attenuation) measured at each wavelength, the test limit calculated for the corresponding wavelength and the margin (difference between the measured attenuation and the test limit value).
 - c) The link length will be reported for each optical fiber for which the test limit was calculated.
 - d) The cable type and the value of the ‘index of refraction’ used for length calculations
 - e) The brand name, model and serial number of the tester
 - f) The revision of the tester software and the revision of the test standards database in the tester

SAMPLE TEST RESULT DOCUMENTATION OUTLINE

OPTICAL TRANSMISSION LOSS MEASUREMENTS						
SINGLEMODE						
FIBER PATH IDENTIFICATION:						
LOCATION A:			OPERATOR:			
LOCATION B:			WITNESS:			
WAVELENGTH: 1310-1550 nm			DATE:			
Index of refraction			Tester name, model software rev.			
FIBER LENGTH:						
FIBER PATH	L(AB) 1310(D B)	L(AB) 1550 (DB)	L(BA) 1310 (DB)	L(BA) 1550 (DB)	L(Avg) 1310 (DB)	L(Avg) 1550 (DB)
RIBBON #						
FIBER 1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

OPTICAL TRANSMISSION LOSS MEASUREMENTS						
MULTIMODE						
FIBER PATH IDENTIFICATION:						
LOCATION A:		OPERATOR:				
LOCATION B:		WITNESS:				
WAVELENGTH: 850-1300 nm		DATE:				
Index of refraction		Tester name, model software rev.				
FIBER LENGTH:						
FIBER PATH	L(AB) 850 (DB)	L(AB) 1300 (DB)	L(BA) 850 (DB)	L(BA) 1300 (DB)	L(Avg) 850 (DB)	L(Avg) 1300 (DB)
RIBBON #						
FIBER 1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

II.3.6 GENERAL GUIDELINES

II.3.6.1 PLACEMENT OF CABLES [LOTS 2-6]

Cables will be installed in a good workmanship manner. Cables and components will be visually inspected for proper installation. Cable stress such as tension in suspended cables or tightly cinched bundles shall not be acceptable. Velcro™ straps or nylon cable ties will be used to bundle cables, never use metallic straps or scrap wires. If using cable ties, they shall be applied loosely (hand tight) to allow the cable tie to slide around the cable bundle. Cable sheath must not be deformed either by ties or placement.

Cable Mining:

When renovation work is performed, unused or abandoned cable unless marked for future use will be removed from the TR/EF/ER/WA and all pathways (conduits, cable trays, etc.) in compliance with NEC 2002 Article 770.3(A) for optical fiber and Article 800.52(B) for communalizations cabling.

Outside Cable Plant:

Direct buried cable will be armored to prevent rodent damage and gel filled to prevent damage due to moisture contamination. The cable and fiber is to be buried at least six (6) inches below the frost line or three (3) feet, whichever is greater. The Vendor is required to bury 800% stretchable, brightly colored plastic tape thirteen (13) inches above the cable or fiber. Aerial cable will include a strength member or messenger capable to support the weight of the cable between the support components of an aerial cable run. Cable construction will be appropriate for the climate area installed. At the option of the Authorized User, these parameters may be adjusted to system and environmental situations.

Grounding and Bonding:

The grounding and bonding will comply with specification of the NFPA NEC Article 250 and Chapter 8 and TIA/EIA-607.

Pathways and Spaces:

The commercial building standard for Telecommunications pathways and spaces will conform to the ANSI/TIA/EIA-569-A specifications.

II.3.6.2 GENERAL UTP/SCTP CABLE PLANT [LOTS 2-6]

Bend Radius:

The minimum bend radius, under no-load conditions, for 4-pair UTP cable will be four (4) times the cable diameter, eight (8) times for 4-pair ScTP cable, and ten (10) times for multi-pair cable. Maximum pulling tension for 4-pair UTP cable is 25 lb/f, use manufacturer's guidelines for other cable types.

Sheath Removal:

To maintain cable geometry, remove only as much cable sheath as necessary to terminate the cable pairs as per manufacturer instructions and Category specifications. Category 5e

cable pair twists will be maintained to within 0.5 in from the point of termination. No more than 1 inch of jacketing should be skinned off.

Patch Cord:

Factory constructed patch cords compliant to the cable system will be utilized. Unjacketed field constructed jumpers will not be acceptable. Cross-connector jumper wires will be cross-connect wire of 1- to 4-pair construction.

Service Loops:

Whenever service loops for extra cable slack is desired, cable will be loosely coiled into figure eight's to prevent degradation of return loss and NEXT performance.

ScTP Grounding:

When terminating ScTP cable, the drain wire will be bonded at both ends at the "Telecommunications Grounding Busbar" with the connecting hardware per manufacturer's instructions. The connecting hardware will be bonded to an ANSI/TIA/EIA-607 grounding and bonding system. The difference between the two grounds will be no more than 1.0 V RMS.

EMI :

Pathways should cross perpendicular to fluorescent lighting and electrical power cables. Avoid proximity with potential sources of EMI (e.g., motors, lighting ballasts, transformers) wherever possible, especially with UTP cables. All pathways should provide clearances of at least:

- 4 feet from large motors or transformers
- 1 foot from cables used for electrical power distribution
- 5 inches from fluorescent lighting
- 2.5 inches from power cables if either UTP or power is in conduit.

II.3.6.3 GENERAL OPTICAL FIBER CABLING PLANT [LOTS 2-6]

Bend Radius

The bend radius for intra-building 2- and 4-fiber horizontal optical fiber cable will not be less than 1 inch under no-load conditions. When under a maximum tensile load of 50 lb/f, the bend radius will not be less than 2 inches. The bend radius for intra-building optical fiber backbone cable will not be less than that recommended by the manufacturer. If not known, then the bend radius will not be less than ten (10) times the cables outside diameter under no load and not less than 15 times under tensile load.

Service Loops

Whenever service loops for extra cable slack are required, Optical Fiber cable will be loosely coiled into figure eight's.

Patch Cord

Optical fiber patch cords will consist of 2-fiber cables of the same type as in the optical fiber channel with factory-installed connectors on each end.

Right of Ways

The Vendor is responsible for negotiation of all right-of-ways on behalf of the Authorized User with final approval by the Authorized User. The Authorized User must give the Vendor the appropriate authority to negotiate on their behalf. Vendors are due compensation for legitimate costs incurred. This includes additional claims for hitting rock while trenching and the like. Additional costs will be documented in written form and presented for the Authorized Users approval before beginning work. Nonstandard trenching and manholes will be handled on a project-by-project basis. The Procurement Services Group will adjudicate any unresolved issues as required.

II.3.6.3.1 GENERAL FIBER OPTIC CABLE CONSTRUCTION [LOTS 1-3,7]

Fiber optic cables consisting of less than eight (8) fibers will have a dielectric strand member to provide tensile strength for the cable. Aramid yarn will surround the fibers to provide additional tensile strength. A ripcord will be included between the Aramid yarn and the outer jacket to facilitate jacket removal.

Fiber optic cables of eight (8) to 24 fibers will have fibers stranded around a central strength member. A ripcord will be included between the aramid yarn and the outer jacket to facilitate jacket removal.

Riser cables of more than 24 fibers will have the buffered fibers grouped in sub units of six to twelve fibers. Individual fibers will be stranded around a dielectric central member and surrounded by an aramid yarn. A ripcord will be included in the sub unit to facilitate access to the individual fibers and each sub unit will have a jacket to provide additional physical and environmental protection. The sub units will be stranded around a central strength member to provide anti-buckling protection to assure consistent attenuation performance across the operating temperature range of the cable. The stranded sub units will be surrounded by an aramid yarn and covered by an extruded jacket to provide additional physical and environmental protection. A ripcord will be included to facilitate the removal of the outer jacket.

The cable jacket will be continuous, seamless and free of pinholes, splits, blisters and other imperfections that may allow the ingress of moisture. Jacket material will comply with the mechanical and flammability requirements as specified by the NEC, UL or ETL, and any other standard codes in effect at the time of purchase.

Outside cables will be gel filled to prevent moisture contamination. The gel will be non-nutritive to fungus, and electrically non-conductive. A polyethylene UV stabilized jacket will protect all outside fiber optic cable. The jacket will be applied directly over the strength members and gel. Bidders offering alternatives to cable must supply complete technical testing data and criteria. Acceptance or rejection will be made at the sole discretion of the Authorized User.

Outside plant cable will be certified as having passed the following performance tests:

- FOTP-82 Fluid Penetration Test for Filled Fiber Optic Cable
- FOTP-81 Compound Flow (Drip) Test for Filled Fiber Optic Cable
- FOTP-41 Compressive Loading Resistance of Fiber Optic Cables
- FOTP-104 Fiber Optic Cable Cyclic Flexing Test
- FOTP-25 Repeated Impact Testing of Fiber Optic Cables and Cable Assemblies

- FOTP-33 Fiber Optic Cable Tensile Loading and Bending Test

Fiber optic riser cable is required to meet UL or ETL flame test and be Type OFNR listed with UL or ETL. The outer sheath will be clearly marked "Type OFNR". Type OFNP is an acceptable substitute for riser applications.

Plenum fiber optic cable is required to meet NFPA 262-1985 standards and is listed as Type OFNP with the UL or ETL. The outer sheath will be clearly marked "Type OFNP". Substitutions for plenum installations are not permitted.

II.3.6.4 GENERAL COAXIAL CABLING PLANT [LOTS 2-6]

Bend Radius

The bend radius for intra-building Series 6 (RG-6) coaxial cable will not be less than 15 times the cable diameter of the OD of the cable.

Service Loops

Whenever service loops for extra cable slack are required, Coaxial cable will be loosely coiled into figure eight's.

II.3.6.4.1 GENERAL COAXIAL CONSTRUCTION [LOTS 1-3,7]

A solid bare Copper Covered Steel conductor is covered with solid polyethylene insulation. A foil with Aluminum bonded to both sides of a polypropylene or polyester tape and a Foam Polyethylene insulation, Bonded Aluminum Foil, Aluminum Braid shield, Aluminum Foil, Aluminum Braid shield then a PVC or FEP jacket.

II.3.6.5 GENERAL LABELING [LOTS 2-6]

All cable either twisted pair, coaxial or optical fiber will be marked by the manufacturer of the cable as to the maximum performance EIA/TIA, NEC and UL or ETL specifications that the cable meets. These markings are to be permanently marked in a non-fading manner and spaced between one and three feet apart. Markings must include manufacturer's name, part number, type, and the pair count or fiber count as appropriate.

The following information must be printed on the surface of the Cabling Products. For example, on UL Verified copper communications cable, the following must be printed: the manufacturer's name, trademark or UL file number (E-XXXX), the cable type (CM, CMR, CMP, etc.), the size and number of conductors in the cable, cable temperature rating, the letters "UL" (either in parentheses or in a circle), and a reference to the specific UL Verification Service. Examples of this reference are "Verified (UL) Category (2, 3, 4, 5, 5E or 6)," "Verified (UL) Category (3, 4, 5, 5E or 6) Patch Cable." On optical fiber cable, the following should be printed: the manufacturers' name, trademark or UL file number (E-XXXX), the cable type (OFN, OFNR, OFNP, etc.), the letters UL (either in parentheses or in a circle), and a reference to the specific UL Verification Service. An example of this reference is "Also Verified (UL) in accordance with Bellcore GR409-CORE."

II.3.6.6 PACKING AND SHIPPING [LOTS 1-3,7]

Cable will be packaged in cartons or cable wound on spools to prevent damage during shipment and delivery. Each spool or package will contain one continuous length of cable. Measures will be taken to insure that the cable is secure during shipment and delivery to prevent the cable from becoming loose during shipment. Cable will be covered with a thermal wrap and protected from moisture contamination. Test tails will be available on each reel of cable. Each reel will be clearly labeled to identify the cable type, Quality Control (QC) data, and an identification number so the manufacturer can trace the manufacturing history.

II.3.7 MAINTENANCE [LOTS 2,4,6]

Prospective Bidders may bid on one or more regional areas.

Authorized Users will be allowed the option of signing a Vendor's standard maintenance agreements as long as these agreements do not exceed T&M rates quoted in the bid proposals, do not result in monthly recurring maintenance fees or conflict with any other terms of the contract resulting from this RFP. The decision for maintenance coverage will be left to the Authorized Users purchasing agencies.

Maintenance of installed and existing cable or fiber and testing services will be provided on a time and materials (T&M) basis. There can be different rates for different types of services when performed by different technical staff in diverse situations. Accommodation for multiple T&M rates has been provided for in [Section VI PROPOSAL FORM](#). All Vendors must enter a comprehensive description of the circumstances under which a particular rate applies in the space provided in the PROPOSAL FORM. The T&M categories entered in the unit pricing are only suggestions to be used as a guide.

The Vendor shall advise the Authorized User of the maintenance options, which may be ordered with the Product and the costs, associated with each option. Maintenance may be ordered separately at any time during the contract period. The Purchase Order, or equivalent, shall identify which option shall be exercised.

Unless the agreement between the Authorized User and the Vendor specify otherwise, Vendor guarantees that within forty-eight (48) continuous hours of its response for any maintenance as provided above that repairs will be successfully completed and that system service will be fully restored so long as the malfunction is attributable to Vendor's Product.

Where Authorized User elects support and maintenance services, Vendor shall maintain the Product to provide Authorized User with the ability to utilize the Product without interruption, delay or significant functional downtime to the Authorized User's ongoing business operations during the maintenance term in accordance with the terms and conditions of the applicable service descriptions.

Warranty will become effective subsequent to Acceptance of the Product.

Following Acceptance, the warranty period and for maintenance situations not covered by manufacturer's warranty, the Authorized User may select a remedial maintenance contract with

renewal options as offered by the Vendor. Maintenance shall be provided for all equipment acquired from the Vendor, including moves, additions, and changes (MACs) which take place after installation. All MAC charges must be included in the pricing provided in the bid.

However, if at any time during the warranty period or any subsequent maintenance period, service is performed on the Product by anyone other than the Vendor, without the Vendor's consent, or if the Product is removed from the premises without the Vendor's supervision and consent, then at the option of the Vendor, the warranty agreement or maintenance contract may become null and void for those items of Product affected by the prohibitions. The Vendor shall notify the OGS Procurement Services Group of any such cancellation. OGS reserves the right to review the validity of such cancellation with the Vendor and Authorized User and take appropriate action.

The Vendor shall not be obligated to repair damage caused by fire or other casualty (except that caused by the Vendor), willful or grossly negligent operation or handling of the Product by the Authorized User's employees. Trained personnel from the Authorized User may, without the Vendor's prior written consent, make modifications in the Authorized User's records. The Authorized User shall be responsible for updating of all records associated with modifications.

Nothing in this Contract shall be construed to prevent the Authorized User from acquiring peripheral equipment from a Third Party. In the event the Authorized User acquires such equipment, Vendor shall be obligated to cooperate with the Third Party, as necessary, in the performance of each party's maintenance obligations.

II.3.7.1 MAINTENANCE RESPONSIBILITY [LOTS 2,4,6]

Malfunctions which cannot be immediately diagnosed and pinpointed to a certain piece of equipment or service will require the participation of the Vendor until the responsibility for the problem has been unequivocally established.

In no instance shall the failure to resolve the issue of responsibility relieve any Vendor of their obligation to restore product operation. The Authorized User shall have the right to adjust such matters after the fact and validate charges and/or maintenance credits applicable to the provisions of the maintenance agreement. As a part of maintenance responsibilities, the Vendor shall represent the Authorized User with other involved equipment and service providers in order to identify and correct the malfunction. The specific maintenance responsibilities are described in the maintenance agreement and must include the delineation of responsibility for any charges received from other involved equipment and service providers because of the use of Vendor supplied products.

II.3.7.2 MAINTENANCE / SERVICE SHEETS [LOTS 2-6]

The Vendor shall furnish the Authorized User with a maintenance service sheet for all maintenance requests. The maintenance service sheet shall include, as a minimum, the following data for each request for service:

- 1) Date and time notified
- 2) Date and time of arrival

- 3) Description of malfunction reported
- 4) Diagnosis of failure and work performed
- 5) Date and time failure was corrected
- 6) Charges for the service, if applicable
- 7) Name of person performing the service

The maintenance service report must be supplied upon completion of maintenance whenever it is performed on the system.

II.3.8 SERVICE AREAS [LOTS 2-6]

The following regional breakout is based on NYS OGS Division of Construction divisions. The regions are divided to minimize response times during major service outages. The Vendor must be capable of providing fully prepared resources to a job site within five (5) business days after receiving a non-maintenance valid work order.

Region 1 – Long Island

- Nassau
- Suffolk

Region 2 – New York

- Bronx
- Kings
- New York
- Queens
- Richmond

Region 3 - Westchester

- Dutchess
- Putnam
- Westchester

Region 4 - Ulster

- Orange
- Rockland
- Sullivan
- Ulster

Region 5 – Albany

- Albany
- Columbia
- Delaware
- Fulton
- Greene
- Montgomery
- Otsego
- Rensselaer
- Schenectady
- Schoharie

Region 6 – Adirondack

- Clinton
- Essex
- Franklin
- Hamilton
- Saratoga
- Warren
- Washington

Region 7 – Syracuse

- Cayuga
- Herkimer
- Jefferson
- Lewis
- Madison
- Oneida
- Onondaga
- Oswego
- St. Lawrence

Region 8 – Finger Lakes

- Broome
- Chemung
- Chenango
- Cortland
- Livingston
- Monroe
- Ontario
- Schuyler
- Seneca
- Stueben
- Tioga
- Tompkins
- Wayne
- Yates

Region 9 – Buffalo

- Allegany
- Cattaraugus
- Chautauqua
- Erie
- Genesee
- Niagara
- Orleans
- Wyoming

II.3.9 EMERGENCY SERVICE [LOTS 2,4,6]

The Vendor shall provide emergency service on an "as required basis."

Emergency service will be provided, as needed on a 24 hour, 7 days a week basis. To ensure the State that the Vendor will respond promptly, the Vendor agrees to provide an emergency telephone service on a 24 hour, 7 days a week basis (at the appropriate T&M rate established from this contract). From the time of the call by the Authorized User, the Vendor has a maximum of 4 hours to respond to the call before Service Level penalties are assessed.

Requests for service resulting in overtime rates being assessed must be authorized by the requesting Authorized User and these rates will be at the rates established in [Section VI, PROPOSAL FORM](#), Unit Prices at the given percentage of standard T&M or of an installation rate, if applicable.

II.3.10 MAINTENANCE RESPONSE TIME [LOTS 2,4,6]

The Authorized Users desire that the repair period not exceed four hours from the time a High Priority trouble as defined in [Section II.3.14](#) is reported to the Vendors repair facility.

Penalties, in the form of a credit against the monthly cost for maintenance, will be defined in the service contract resulting from this RFP. The credit amount will be a percentage of the monthly cost of the affected circuit for each hour of downtime, adjusted upward to the nearest hour. Downtime for each incident shall commence from the time the repair request is called in to the Vendors maintenance facility and shall terminate when the trouble ticket is cleared and the service is returned to full operation as defined by the Authorized User. Travel time shall be included in the down time calculation.

This is the State’s preferred credit allowance schedule for outages.

Service	Allowance for Time-to-Restore	Credit per Outage
Cable Maintenance (High Priority)	Under 4 hours	0%
	4-8 hours	25%
	8-16 hours	50%
	+16-24 hours	75%
	+24 hours	100%

The selected Vendor, as the Prime Contractor, is responsible for identifying and correcting all cable failures. It is the Vendors responsibility to report cable failures to any subcontractors(s) involved in the provision of cabling service and to work with the subcontractor to resolve the outage within the downtime limitations defined above.

The Authorized Users reserves the right to adjudicate matters after the fact and validate charges and/or maintenance credits applicable to the provisions of the contract. As a part of maintenance responsibilities, the Prime Contractor shall represent the Authorized User to identify and correct problems with service.

II.3.11 INSTALLATION INTERVALS [LOTS 2-5]

The selected Vendor(s) shall provide complete installation and cutover in accordance with the following installation intervals:

- Single Work Station Less than 5 business days
- Greater than 3 but less than 20 Work Stations Less than 10 business days
- Single Backbone Run Less than 10 business days
- Multiple backbone and multiple station runs Less than 15 business days
- Entire Facility (less than 500 Work Stations) Less than 45 Business days

The installation interval shall begin upon receipt of the order from the Authorized User.

II.3.12 REMEDIAL MAINTENANCE [LOTS 2,4,6]

The remedial maintenance procedures shall include:

- 1) Centralized trouble reporting
- 2) Determining the cause of and correcting troubles
- 3) Working cooperatively with other Vendors and Authorized Users designated representatives to resolve problems
- 4) Maintaining audit trails of trouble resolution activities
- 5) Responding to inquiries on trouble resolution status
- 6) Providing monthly and quarterly trend analysis and sorting of trouble reports and administrative reporting
- 7) Providing trouble escalation for normal and emergency events
- 8) Monitoring trouble report management and escalation procedures

II.3.13 TROUBLE REPORTING [LOTS 2,4,6]

Vendor shall provide a single point of contact for trouble handling. The Vendor shall be able to receive trouble reports on-line (e.g., via a computer network), telephone, electronic mail, or facsimile. All trouble reporting calls shall be toll free. The State prefers web access to the Vendors trouble reporting system.

II.3.14 ESCALATION PROCEDURES [LOTS 2,4,6]

The Vendor shall provide an escalation procedure, including contact names and titles, with appropriate time intervals and point(s) of contact for unresolved service problems.

Trouble reports are prioritized and tickets shall be updated according to the following parameters:

- 1) High Priority Problem: A facilities core backbone cable network is down resulting in critical impact on an Authorized Users operations, or a problem as identified the Authorized User as a Priority 1.

The trouble ticket records and the Authorized Users representative, shall be updated minimally every ½ hour.

- 2) Medium Priority Problem: A physical connection is down, causing significant impact on an authorized users business operations.

The trouble ticket records and the Authorized Users or representative, shall be updated minimally every hour.

- 3) Low Priority Problem: A non-service effecting problem that has no noticeable impact on an Authorized Users business operations.

The trouble ticket records shall be updated, as new information is made available, until the problem is resolved.

The Vendors point of contact shall be responsible for coordinating trouble isolation and repair efforts within the Vendor's organization, between other service providers who may be involved in resolving the problem, and Authorized Users representative. The point of contact shall be responsible for escalating all troubles not resolved in the required periods. The point of contact shall stay actively involved with the trouble resolution process from start to completion, including the use of cooperative, end-to-end testing when troubles remain unresolved or become chronic.

II.3.15 REPORTING REQUIREMENTS [ALL LOTS]

The Vendor shall supply quarterly, and annual reports and service forecasts using the processes and formats supplied to other customers to the maximum extent possible. The Vendor shall describe the content and formats of all required reports.

The Vendor shall provide the following reports as requested by the Authorized User:

- 1) Service Order Status
- 2) Service Trouble Status Reports
- 3) Service Outage Credits
- 4) Invoices

II.3.16 PRIME CONTRACTOR RESPONSIBILITIES [LOTS 2-6]

Bids are required to be made on a per region basis. A Vendor may bid on one or more regions. The Bidder must demonstrate that they can provide all the services mandated within this RFP within each regional bid. This can be accomplished either by being the provider of those services region-wide directly, or by resale, or some combination thereof, or by partnering or subcontracting with individual companies to form a consortium that will provide such service Statewide. In all instances, the Bidder shall be the Prime Contractor, acting on the State's behalf for all order, maintenance, and billing issues during the term of the Agreement. The Issuing Office considers the Prime Contractor to be the sole contact with regard to all provisions of the proposal, to include payment of all charges resulting from the procurement and installation. In the event the Bidder's proposal includes cable by another manufacturer or supplier, it is mandatory for the supplier (Prime Contractor) to assume full responsibility for delivery, installation, maintenance, and support services for such items offered in the proposal. **A statement agreeing to the Prime Contractor's responsibility is required in the bid response proposal. [Section VI.12](#)**

II.3.17 CABLE ASSOCIATED HARDWARE [LOT 7]

The State of New York proposes to establish Statewide, multiple award contracts for hardware associated with the installation and testing of cable and other telecommunications equipment. PSG is looking for vendors that are able to provide a comprehensive catalog of networking products including but not limited to the following categories:

- 1) Cable Test Equipment
- 2) Cable Management (Inside and Outside Plant)
- 3) Installation Hardware (Inside and Outside Plant)
- 4) Racks/Cabinets
- 5) Power Protection
- 6) Tools
- 7) Installation Supplies
- 8) Patch Panels
- 9) Blocks/Jacks
- 10) Patch Cords
- 11) Cable Assemblies
- 12) Adapters
- 13) Connectors

The bidder must offer a uniform percentage discount on all products from their nationally published and regularly distributed catalog(s) in effect at the time of bid opening. The State reserves the right to accept or reject any or all bids or to accept or reject any or all products included in the bidders catalog and to add products, with the agreement of the bidder, if it is in the best interest of the State to do so.

The percent discount offered must be stated within two decimal places. Once awarded a contract, the percentage discount offered to contract users may, at the Vendor's option, be increased based on individual orders. Discounts may be greater, but in no instance may they be lower than the awarded discount.

The contract prices may be subject to increase or decrease during the contract period in accordance with changes which may be made by the distributor in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount originally accepted for award shall not be decreased during the contract period.

New products will be considered for inclusion provided they are pertinent to the award category description and offered to the State under the same terms, conditions and discount structure (or pricing deemed to be in the best interest of the State) as in the original bid.

Price revisions, new lists or supplements to an original list shall be submitted to the Office of General Services, Procurement Services Group, Attention: Team 13 Purchasing Officer, in duplicate, for approval before ordering. Authorized Users will be bound to any such revisions. Price increases or decreases shall be binding under any contract five (5) days following written notification to the Vendor from the Office of General Services, Procurement Services Group that the price revision as submitted for approval has been accepted.

Price shall include all shipping and handling charges to any destination point in New York State as designated by the Authorized User.

SECTION III SPECIAL TERMS AND CONDITIONS

III.1 TERM OF CONTRACT [ALL LOTS]

- 1) The service contract will commence upon the date of approval by OSC, effective upon mailing by OGS (See appendix B-1 Section 38) and will be in effect for five years.
- 2) Authorized User Project Definitions, which are developed during the term of the Base Agreement, will state their own term up to five years and may have their term extended over a period of time not to exceed five (5) years beyond the end date of the Base Agreement. This will allow anyone who utilizes this contract the ability to maximize the service offered by the Base Agreement.
- 3) The contract price shall be adjusted yearly on the anniversary date of the effective date of each Authorized User Project Definition agreement. Such adjustments will be made as soon as practicable after having received the United States Department of Labor, Bureau of Labor Statistics, Wholesale Commodity Prices for Network Products for the month which falls within the anniversary of the commencement of the service as applicable to each region. The index is also available through the Internet at the Bureau of Labor statistics web site at <http://stats.bls.gov/>, Click "data", then click "economy at a glance" and then scroll down to "Consumer Price Index". Each adjustment shall be made as follows:
- 4) The Vendor shall have the responsibility to initiate any price adjustments on the anniversary date of the Authorized User Project Definition agreement. Price adjustments shall be submitted directly to the user agency. Failure by the Vendor to submit a price adjustment within 90 days of the Authorized User Project Definition agreement anniversary date shall result in the Vendor waiving its rights to a price adjustment.
- 5) The State reserves the right to re-bid these contracts at any time.

III.2 ENTIRE AGREEMENT [ALL LOTS]

These documents, the RFP, Bidder's proposal and documentation resulting from the evaluation process, shall constitute the entire Agreement/Contract between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Agreement/Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of both parties hereto. Such parties include Bidder, the Commissioner of OGS, the Attorney General, and the Comptroller on behalf of the State of New York. Authorized Users shall not have the authority to modify the terms of the Agreement/Contract.

III.3 REPORTING REQUIREMENTS [ALL LOTS]

Vendor shall furnish quarterly reports on forms provided as an attachment to this document ([ATTACHMENT 1](#)) and submit them to the Office of General Services, Procurement Services Group, Corning Tower, 37th Floor, Empire State Plaza, Albany, NY 12242, no later than the

15th of the month following the close of each quarter. In the event that a Vendor utilizes alternate channel participants to fulfill orders under this contract, it is the responsibility of the contract holder to report all contract purchases from these participants. Purchases by local governments and others authorized by law shall be reported separately. Failure to submit the required reports may be cause for disqualification of a bidder for future contracts.

III.4 STANDARD CLAUSES FOR ALL NYS CONTRACTS [ALL LOTS]

During the performance of the contract, the Vendor agrees to the terms outlined in Appendix A attached hereto and hereby incorporated by reference and made part hereto as fully as if it were set forth at length herein. The Vendor is required to adhere to the clauses in Appendix, A which include the recent additions of regulations regarding the use of tropical hardwoods, the Omnibus Procurement Act and the MACBRIDE Fair Employment Principles.

III.5 VENDORS INSURANCE REQUIREMENTS [LOTS 2-6]

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

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Vendor; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to OGS; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to (Office of General Services, Tower Building, G.N.A.R. Empire State Plaza, Albany, NY 12242) and shall name The People of the State of New York, its officers, agents, and employees as additional insured there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 10 11 85**). This additional insured provision does not apply to Workers Compensation, Disability or Professional coverage.

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

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

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

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

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

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

- 1) Commercial General Liability Insurance with a limit of not less than \$5,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent Vendors, 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.
 - i) If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.
- 2) An Owners and Contractors Protective Liability Policy issued to, and in the name of, The People of the State of New York, with limits of not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate.
- 3) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.
- 4) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$5,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
- 5) Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of OGS held in their care, custody and/or control.
- 6) During the performance of any Construction Work, Restoration or Alteration, builder's risk completed value form covering the perils insured under the ISO special causes of loss form, including collapse, water damage, and transit and theft of building materials, with deductible reasonably approved by the State, in non reporting form, covering the total value of work

performed and equipment, supplies and materials at the location of the job as well as at any off-site storage location used with respect to the Project. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation. Such policy shall name as insureds, The People of the State of New York, as well as the Contractor and Subcontractors.

- 7) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against OGS arising from Contractors work.
 - a) If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under this Contract is completed.
 - b) If the Contract includes disposal of materials from the job site, the Contractor must furnish to OGS, evidence of pollution legal liability insurance in the amount of \$5,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.
- 8) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that the Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$5,000,000 per loss.
 - a) Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and may not exclude bodily injury, personal injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
 - b) If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under this Contract is completed.
 - i) If autos are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement

that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

Reference Sample Insurance Form in [Appendix J](#).

III.6 INCONSISTENCIES [ALL LOTS]

The various documents that comprise this RFP shall prevail in accordance with the precedence established below in the case of any inconsistencies contained in them:

- 1) Appendix A - Standard Clauses for NYS Contracts
- 2) RFP
- 3) Appendix B-1 - General Specifications
- 4) All Other Appendices

Further, should the Successful Bidder's proposal be incorporated by reference herein following contract award, such proposal shall have the least precedence amongst the documents in resolving any inconsistencies contained in them.

III.7 ESTABLISH AND MAINTAIN PRICING [ALL LOTS]

During the term of the contract, the Vendor must maintain the pricing with discount(s) from list as quoted in the original bid for the categories outlined in the BID Award process clause except under the specific circumstances outlined below. It shall be the responsibility of the Bidder and subsequent Vendor to submit to the Procurement Services Group all product line changes (additions, deletions, price changes) as soon as the manufacturer announces them in order that the contract can be amended accordingly (See [Section V.9 CHANGES/UPDATE SCHEDULE](#)). Price reductions shall take effect immediately and be applied to all unshipped orders. The State reserves the right to delete, at its discretion, any product that increases in price during the contract period or any extension period.

It is the intent of the State that the Vendor's profit margin remains the same throughout the term of the contract including any extension period. Acknowledging that the manufacturer may periodically revise the discounting structure to its resellers, it is Procurement Services Group's further intent to provide for such occasions within the contract.

If the manufacturer revises the discounting structure in such a way that the Vendor cannot maintain the margin upon which the bid was based and comply with the contractual requirements to pass along price reductions and add all new product and services to the contract at the discounts bid; or the manufacturer creates a new group or category of products or service that did not exist at the time of the bid opening, the Vendor shall, when updating the contract under these circumstances, provide such documentation as the State deems appropriate to insure that the Vendor's profit margin remains the same as when the contract was first awarded.

All net prices must **INCLUDE** all applicable shipping; handling, insurance and associated delivery charges and such charges must be included in the discount.

Bidders **MUST** attach to the bid the Price List dated [enter most recent version date]. To develop the NYS Net Price List, use the provided spreadsheet [Appendix C Bidders Price List with Discount Form](#), enter the cost of each item from the manufacturer's price list in the "List Price" column, and complete the spreadsheet with the information as indicated.

The State reserves the right to allow other Vendors to include the [manufacturer] product line in their contracts if the Vendors are authorized to sell the [manufacturer] product line, and on the condition that the Vendors sell the product line at pricing no higher than that awarded against this RFP.

III.7.1 INTERNET ACCESS TO CONTRACT & PRICING INFORMATION [ALL LOTS]

It is the intention of the parties to facilitate access by Authorized Users to contract offering and pricing information primarily electronically via the Internet. To that end, OGS's web site shall host and update the Contract terms and conditions throughout the Contract term.

For Lots 2-6 the Vendor will provide completed pricing sheets to be posted on the OGS site.

For Lots 1 and 7 the Vendor is required to host the complete Contract, discount and Product offerings at the Vendor's Internet site, at the Vendor's sole expense, including all subsequent changes in the Contract offerings (adds, deletes, price revisions) throughout the Contract term.

Vendor may not password protect or otherwise restrict access to the site. This Contract, and Vendor's NYS Contract page, or pages required by this agreement, constitute public documents under the laws of the State of New York and Vendor cannot restrict access (e.g., through use of restrictive technology or passwords) to the contract terms and conditions, or data, or records, and or information required to be maintained by the Vendor for the State.

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

Vendor warrants and represents that contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Vendor's web site. Vendor may only post Product or Service offerings, including Product SKU's and part numbers, at the OGS centralized contract web page which have been approved for sale under the Contract. Vendor shall indemnify the Authorized Users for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post contract information in accordance with this paragraph.

The parties anticipate that certain price data may fluctuate during the Contract term, and that new pricing will be posted in a timely manner. When no longer current, historical pricing information must be archived and retained for a twelve month period by the Vendor, at Vendor's place of business at its sole cost and expense. Archived data must be retained in a manner which renders it electronically accessible on-line by the Comptroller, OGS and/or Authorized Users for the purpose of auditing payments under the Contract. While the Vendor is not required to maintain this information as live data at Vendor's web site, it may choose to do so or may permit access by remote log-on to a dedicated PC, or any other similar means.

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

- 1) Vendor forwarding three proposed firms acceptable to Vendor to the Comptroller and/or OGS, and
- 2) State making the final selection of the auditor used from that pool.

Vendor must provide OGS with written notice of any change in URL or other information needed to access the site and/or maintain the link. Vendor hereby consents to a link to the Vendor's site from the OGS site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. OGS has the right to terminate or remove a link at any time, in its sole discretion and without advance notice, or to deny a future request for linkage. OGS will provide Vendor with subsequent notice of link termination or removal.

Vendor is solely responsible for administration, content, intellectual property rights and all materials at Vendor's web site including Vendor's NYS Contract page, or pages. Vendor is solely responsible for its actions and those of its agents, employees, or assigns, and agrees that neither it, its agents, employees, nor assigns has any authority to act or speak on behalf of the State or OGS.

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

Where Products and services are offered from multiple sources (Vendor and/or one or more Resellers), Vendor's NYS Contract page or pages should first list category of service, and second all multiple sources approved to provide that service under the contract. The State reserves the right, at any time during the Contract term, in the alternative to require the Vendor to host all pricing information at its site (including Reseller(s) pricing), or to require, as a

condition of continued Reseller participation, Reseller to have an operational on-line Configurator if applicable at Resellers' site in accordance with the requirements of paragraph F, below.

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

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

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

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

Vendor may offer electronic ordering capability to Authorized Users in order to facilitate the transaction electronically.

Notwithstanding the foregoing, where an Authorized User does not have the capability to access contract information electronically, it shall be the Vendor's responsibility to configure the transaction in accordance with the above, and to configure and print out the configured transaction screen and furnish by means of FAX or hardcopy the configured transaction summary to the Authorized User upon request.

The State of New York has adopted the W3C Web Content Accessibility Guidelines. Vendor agrees to comply with Office for Technology Policy 99-3 <http://www.oft/policy/99-3.htm> , Universal Accessibility for NYS Web Sites (Supplement to 96-13 <http://www.oft/policy/96-13.htm>), dated, September 30, 1999.

III.7.2 RATES FOR TRAVEL COSTS [LOTS 2-6]

All rates include travel time and costs incurred for travel to the site. The contract is for the individual regions awarded, therefore, the rates and charges for the Product, installation and maintenance of the Product must include all travel and costs associated with accessing the installation site.

III.8 PRICE STABILITY [ALL LOTS]

If for any reason, during the term of the contract, the Vendor reduces the pricing for similar services to a similarly situated entity, the State shall receive an equivalent reduction in pricing for the services or products delivered to the State.

III.9 EXTRANEIOUS TERMS [ALL LOTS]

Bidders must refer to Appendix B-1, item 14.

III.10 CORPORATE MERGER / ACQUISITION / TAKEOVER [ALL LOTS]

Any assignment or other transfer of contracts issued as a result of this RFP by Vendors arising from merger, acquisition, takeover or any change in corporate form shall be subject to a condition that the pricing, terms and conditions inuring to the benefit of the State under this contract shall be assumed in their entirety by the assignee or transferee. Notwithstanding the terms of this provision, assignments of contractual obligations arising from corporate merger, acquisition, takeover or change in corporate form require the advance approval of the Office of the State Comptroller.

III.11 NOTICES [ALL LOTS]

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this RFP or contract executed pursuant thereto shall not be valid unless in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address given set forth on the title page of this RFP, and (ii) if to Authorized Users, to address set forth in the Purchase Order, and (iii) if to Vendors, addressed to Vendors at their addresses. The parties may from time to time, specify any address in the United States as its address for the purpose of notices under this agreement by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for the purpose of this contract.

III.12 PERFORMANCE AND BID BONDS

III.12.1 BID BOND [ALL LOTS]

An approved bid bond in the amount of \$10,000 will be required with all Vendor responses at the time of Submission of Bid. A Certified Check or Letter of Credit will be accepted. Vendors that are notified that they did not receive the award may cancel the bonds. The awarded Vendor must retain the bond until the contract has been signed.

One original Bid Bond is required with your bid. All three proposals shall have the original Bid Bond or a copy of same. The proposal, which contains the original bond, must be labeled on the outside of the binder "Original Bid Bond Enclosed".

III.12.2 PERFORMANCE AND PAYMENT BOND [LOTS 2-6]

As specified in Section 137 of the State Finance Law, the Vendor will be required to furnish a bond for the faithful performance of all obligations imposed by the contract and for the payment of all lawful claims of subcontractors, material suppliers, and workers arising out of the performance of the contract. Provided, however, that all performance bonds and payment bonds may, at the discretion of the Authorized User, be dispensed with. Such bond will be in the form found herewith entitled "Performance and Payment Bond", and will be in a penal sum at the discretion of the Authorized User equal to fifty percent (50%) to one-hundred percent (100%) of the Agency Purchase Order and such bond will be signed by one or more sureties * satisfactory to the State.

When the State notifies the Vendor to furnish a bond, the Vendor will deliver such bond to the Purchaser within 15 days after receipt of the request by the Vendor, provided that if the State has therefore given notice to the Vendor that the proposed sureties or any of them are not satisfactory, the bond will be executed by other sureties satisfactory to the State.

In the event of a default by the Vendor in its obligation to furnish a satisfactory bond within 15 days after receipt of a request by the Purchaser, such default will entitle the State in its discretion to terminate this contract at any time within 25 days after the acceptance of the request by the Purchaser, without any liability on the part of the State. Inasmuch as the damages to the State, resulting from a termination by it upon the failure of the Vendor to furnish a satisfactory bond, will include items whose accurate amount will be difficult or impossible to compute. Such damages will be liquidated in the sum of the following amounts:

- 1) The expense of such new advertisement of the contract, if any, as may be deemed necessary by the State; and
- 2) The sum of \$1,500.00 for each day after the receipt by the Vendor of the request from the Purchaser that the performance of the contract is not commenced by reason of the failure of the Vendor to furnish the required bond.

See [Appendix G](#) for the Bid Bond Form.

If at any time the State will be or become dissatisfied with any surety or sureties furnished for any bond submitted in accordance with the requirements of the State, or if for any other reason such bond will cease to be adequate security to the State the Vendor will, within fifteen days after notice from the State to do so, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the State to constitute adequate security.

* Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the State of New York; whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Purchaser as acceptable as sureties to the **Treasury Department**. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties will equal or exceed the penal sum of the Performance and Payment Bond.

The Performance and Payment Bond expires at the time the State "accepts" the system or installation. From that point on, the State will rely on the Manufacturers Warranty and/or the maintenance contract to protect the State from inadequate or non-performance by the Vendor.

See [Appendix G](#) for Performance and Payment Bond Form.

III.13 ASBESTOS PROVISIONS [LOTS 2-6]

All suspected or confirmed Asbestos-Containing Building Materials (ACBM) will be identified and located by the facility owner for the Vendor before all cable installation work. For all cable installations that require ACBM disturbance, the Vendor shall supply the facility owner proof that the firm performing the work has a valid New York State Department of Labor (NYSDOL) asbestos-handling license and that employees possess current NYSDOL Operations & Maintenance (O&M) handling certificates. Vendor insurance coverage shall include an asbestos specific occurrence type policy with no deductible or sunset clause. Any disturbance or abatement

of suspect or confirmed ACBM shall be conducted in accordance with 12 NYCRR 56 and 29 CFR 1926.1101. Disposal of ACBM shall be in accordance with 40 CFR Part 61 and all other applicable laws, rules and regulations of Federal, State or Local agencies.

**III.14 NYS DEPT. OF LABOR PREVAILING WAGE RATE SCHEDULES [LOTS
2-6]**

ALL PUBLIC WORKS AND BUILDING SERVICE CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS AS ESTABLISHED BY LAW BY THE DEPARTMENT OF LABOR. Information indicating that prevailing wages are not being paid on a public works project will be forwarded to the New York State Department of Labor for investigation. Willful violations of the prevailing wage provisions of the Labor Law may result in monetary fines or debarment from bidding and awarding of contracts.

NOTE: CONTRACTORS AND SUBCONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING WAGE RATES IN A PROMINENT AND ACCESSIBLE PLACE AT THE QWORK SITE. Vendor is solely responsible for confirming subsequent changes to the posted rates and for paying the prevailing rates at all times during the contract term.

This is a Public Work project. The Bidder must use the labor rates and must adhere to Department of Labor rules and regulations in the payment to employees **Notice: Prevailing Labor Rates from the department of labor are available on the web site.**

http://www.labor.state.ny.us/business_ny/employer_responsibilities/prevwage/countylistgeneral.htm

A list of companies with which the Department of Labor prohibits State Agencies from doing business is located at the end of the labor rates list. The issuing Office will disqualify any bid from a company that is listed and a bid that uses one of the listed companies as a subcontractor.

The awarded Vendor(s) will be required to complete the following actions and maintain Department of Labor records as indicated:

- 1) The Prevailing Wage Schedules must be posted at the work site so that the workers are aware of the wages and supplements to which they are entitled by law.
- 2) The awarded Vendor(s) must provide all workers with written notice informing them of the prevailing wage requirements for the job and each worker must sign a statement or declaration that attests that all workers have been given this information.
- 3) The Vendor(s) are required to certify payrolls and keep the certified records on site and available.

SECTION IV USE OF CONTRACT BY STATE AGENCIES, LOCAL GOVERNMENTS AND OTHER AUTHORIZED BY LAW

IV.1 USE OF CONTRACT BY OTHERS [ALL LOTS]

Local governments and others authorized by law may participate in contracts resulting from this bid opening. Upon request, all eligible non-State agencies must furnish Vendors with the proper tax exemption certificates.

Section 163(4)(e) of the Procurement Act of 1995 effective as of July 20, 1995 authorizes the use of centralized contracts for services (including technology) by political subdivisions as defined in section one hundred of the general municipal law or a district therein, and by any public authority or public benefit corporation including the Port Authority of New York and New Jersey. Vendors are encouraged to voluntarily extend service contracts to those additional entities authorized to utilize commodity contracts under Section 163(3)(iv) of the Procurement Act of 1995, which would comprise all entities authorized under prior laws. A technical amendment to the law is being considered to remedy this situation. Upon legislative approval of the technical amendment, Vendors will be obligated to extend service contracts to these other entities.

See [Appendix C](#) to review a list of Authorized Users and to indicate agreement and acceptance to extension of contracts awarded hereunder to such entities.

IV.1.1 USE OF CONTRACT OUTSIDE OF NEW YORK STATE [ALL LOTS]

Any contract entered into pursuant to an award of this RFP is subject to extension pursuant to Section 163 (10) (f) of the State Finance Law which authorizes the Commissioner of General Services to let centralized contracts for joint purchasing by New York state and any department, agency or instrumentality of the United States government and/or any state including the political subdivisions thereof. Any entity incurring a liability under such contract shall be responsible for discharging said liability. Authorization for extension of any contract is in the discretion of the Commissioner of General Services. However, any response to this RFP shall be based solely on the purpose of this RFP and shall not factor in the possibility that this contract may, in the future, be applicable to other entities.

Vendors are required to include the volume usage of all users of this contract, including other state(s) that are approved to use this contract, with the volume usage of New York State agencies and others authorized by law, in contracts that aggregate contract usage for volume discounts.

IV.2 PROCUREMENT INSTRUCTIONS [ALL LOTS]

Lots 2-6. Agencies Authorized Users will review the list of locations to determine what region is applicable for the required service. Authorized Users will review the list of rates and services from the Contract Award Notification available in the applicable region. OGS strongly recommends that the Authorized Users obtain multiple quotes. The Authorized User will contact all the Vendors to perform a mandatory site visit and provide a cost quote using a document

provided by the Office of General Services. [[Appendix L Cost Quote Form](#)] The quoting process will ensure that the lowest cost, compliant product and service be obtained from the competing Vendors. Site visits ensure the work environment is taken into account during the bid creation, especially in reference to [Section III.13](#) Asbestos Provisions. The cost quote will itemize the cost of installation based on the contract unit pricing and the Vendor will enter a “best and final” quote on the form, which is equal to or less than the unit pricing total. The “best and final” quote will be based on the particulars of the work required at the specific site under the specific conditions. The Authorized Users are encouraged to utilize the services of the lowest bidder first whenever possible, consistent with the needs of the agency.

Lots 1 and 7 Authorized Users will review the list of discount rates from the vendors for products from the Contract Award Notification. The Authorized Users are encouraged to utilize product of the lowest bidder first whenever possible, consistent with the needs of the agency.

ALL Lots Authorized Users will issue purchase orders or other written orders, which are effective and binding on the Vendor when placed in the mail, addressed to the Vendor at the address shown on the signature page. Note: for services, purchase orders may be issued for an estimated quantity for the entire year.

Should the Authorized User be unsuccessful in negotiating a contract with the selected bidder within 45 days, the Authorized User may begin contract negotiations with another bidding Vendor in order to serve the best interest of the State of New York.

IV.3 DETAILED INVOICES [ALL LOTS]

The bidder must promptly and properly provide a detailed invoice the Authorized User at no additional cost. Invoices will include Purchase Order Number and Federal Employers Identification Number (FEIN) or Vendors Social Security Account Number clearly visible on the invoice. Invoices must be sent to the proper invoicing address. It is the responsibility of the Vendor to contact the purchasing office of the Authorized User assigning work against the bid.

IV.4 METHOD OF PAYMENT [ALL LOTS]

Invoices for payment shall be submitted to the Authorized User on a New York State Standard Voucher or company invoice for services satisfactorily completed.

This voucher or invoice will contain the Contract ID number (i.e.: PS000XX); the name of the authorized user, and the location where service was performed.

Payment of purchases made by authorized entities other than State Agencies under this agreement shall be the sole responsibility of such entities and the Vendor shall bill such entities directly on vouchers authorized by the said entities.

In the event a participating non-State Agency fails to make payment to the Vendor for services rendered and accepted, within 60 days of such delivery and acceptance, the Vendor may, upon 10 days advance written notice to both the Office of General Services and the non-State Agency representative, suspend additional delivery of service to the particular non-State Agency whose payment is late, until such time as reasonable arrangements have been made and assurances given by the said non-State Agency for current and future contract payments.

Billing discrepancies shall be resolved within 90 days of written notification by the user agency.

SECTION V ADMINISTRATIVE

V.1 PROPOSALS

All proposals will be received with the understanding that the acceptance in writing by OGS with the approval of the Attorney General and the Office of the State Comptroller will constitute a contract between the Bidder and the State. All proposals and accompanying documentation will become the property of the State of New York and will not be returned. The successful bidder's proposal and a copy of the specification will be made part of the contract. Therefore, an official authorized to commit the company to a contract must sign the proposal.

Facsimile and electronic proposals or bid responses **will not** be accepted for this bid opening.

The specific guidelines for the format are contained in [Section VI PROPOSAL CONTENT AND FORMAT](#).

V.2 SUBMISSION OF SEALED PROPOSALS

Complete bids must be packaged, sealed and submitted to OGS Procurement Services Group, Floor 38, Mayor Erastus Corning 2nd Tower, GNAR Empire State Plaza, Albany, New York, 12242. The date and time are shown on the cover of this RFP. Bids will not be accepted on the 37th floor location. A tabulation of bids received is available for viewing from the Procurement Services Group between the hours of 9:00 am - 3:00 pm. Please see the Procurement Services Group receptionist, Floor 38, Corning Tower, Empire State Plaza, Albany, NY. For Freedom of Information Law inquiries, please refer to Appendix B-1, Item 36.

IMPORTANT NOTE: Security procedures for the Corning Tower require all visitors to sign-in at a registration desk located on the Concourse level. In addition, security procedures extend to underground parking. Consequently, if you intend to hand deliver a bid to the Procurement Services Group, you must allow extra time to comply with the new security procedures. These new security procedures also extend to the underground Parking Services. Bids not received within the Procurement Services Group, or the OGS Mailroom, by the time and date shown on the front page of the proposal document will be considered late.

V.3 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

- 1) Adjust any bidder's expected costs based on a determination of the evaluation committee that the selection of the said bidder will incur additional costs by the State.
- 2) Utilize all ideas submitted in the proposals received.
- 3) Adopt all or any part of a bidder's proposal in selecting the optimum configuration.

- 4) Negotiate with bidders responding to this RFP within the RFP requirements to serve the best interests of the State.
- 5) Select and award the contract to other than the lowest Bidder in the event of other specified circumstances as detailed in the RFP requirements.

V.4 LIABILITY FOR PROPOSAL PREPARATION EXPENSE

The State is not liable for any costs incurred by a bidder in the preparation and production of a proposal or for any work performed before the issuance of a contract or delivery order.

V.5 NOTIFICATION OF AWARD

The successful bidder will be notified by PSG by letter after approval by OSC. The contract will be submitted for mandatory review and required approval by:

- 1) The Attorney General of the State of New York
- 2) The Comptroller of the State of New York

Public announcements or news releases pertaining to this contract will not be made without prior permission of PSG.

V.5.1 BIDDER DEBRIEFING

Letters will notify unsuccessful bidders after awards.

V.6 PROPOSAL SECURITY

The content of each bidder's proposal will be held in strict confidence during the bid evaluation process, and no details of any proposal will be discussed outside the evaluation process.

V.7 PRICE SHEETS / BID FORM

The bidder shall enter on the price sheets in [Appendix C](#) the List price and the applicable discount for the item or services bid. All price spaces shall be filled in accordingly. Bidders failing to furnish complete cost data will be considered non-responsive. "Not applicable" does not apply to the mandatory items required by this RFP.

V.8 PURCHASE PROCEDURE [ALL LOTS]

The Bidder's purchase agreement form will not be used since a contract resulting from this bid and the approved purchase order will constitute the complete agreement. Bids containing terms and conditions different than those contained in this invitation to bid will be rejected.

V.9 CONTRACT CHANGES / UPDATE SCHEDULE [ALL LOTS]

Adding New Products or Services Within Existing Price Structure. Where future offerings of Products or service become commercially available during the Contract term and are

commercially offered within the established pricing categories and discount structures set forth in [Appendix C](#), the Contract may be amended to include such offerings in accordance with the “Auto Add” procedures set forth in [Appendix I](#).

Adding New Products or Services Using Different Price/Discount Structure. Where future Products or service offerings become commercially available during the Contract term and are not commercially offered within the established pricing categories and discount structures set forth in [Appendix C](#), the Contract may be amended to include such offerings in accordance with the “Regular Add” procedures set forth in [Appendix I](#), which require the approval of OGS and the Office of the State Comptroller in advance of such Product being incorporated into the contract offerings.

Existing Products - Price Changes For approved Product or Service offerings under the Contract, Vendor may change the pricing set forth under this Contract as follows:

- 1) Price Decreases shall take effect automatically during the contract term where:
 - a) List Price/Reseller Cost/GSA Pricing, as Applicable, is Reduced. Vendor lowers its pricing for Product and/or services to its customers, resellers, or GSA as applicable during the contract term. In such case the Vendor shall lower Contract pricing in accordance with the established pricing structure as outlined in [Appendix C](#), as applicable; Or
 - ii) Special Offers/Promotions. See Appendix B-1, Clause 43. Vendor offers any customer generally during the term of the Contract other more advantageous special promotions or special discount pricing, in which case the maximum discount associated with such offer or promotion, if greater than the discount otherwise available under this Contract (“Contract discount”), shall, for transactions on the same terms or for the life of such special offer or promotion, be used in lieu of the Contract discount in the calculation of the NYS Price.
 - iii) Special Offers/Promotions to Authorized Users Under/Outside of Contract. Vendor may offer Authorized Users, under either the Contract or any other contracting vehicle, competitive pricing which is lower than the rates set forth herein at any time during the Contract term and such lower rates shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (ii).
- 2) Price increases shall be effective as to orders placed after:
 - a) The date on which such increase becomes effective under the appropriate benchmark the GSA Schedule or under other appropriate benchmark, generally US Commercial Price List, Or
 - b) Thirty-days after the date on which OGS and the NYS Comptroller have received and approved the amended pricing; whichever is later. In no event can a price increase be posted to the Vendor’s Internet site until after the effective date.

Additionally, where the pricing submitted for services are not benchmarked to an approved GSA Supply Schedule, Vendor may request an increase in the pricing contained in Appendices C or D provided that Vendor certifies in writing that the price change for services applies to all U.S. customers using the same benchmark. Such adjustment shall not exceed the lesser of five (5%) percent or the percent increase in the latest copy of the “National Consumer Price Index for All Urban Consumers (CPI-U)”, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Vendor has the sole responsibility to submit to OGS a service rate adjustment request thirty (30) days prior to the effective date of the price increase, providing a copy of the index and other supporting documentation necessary to support the request. In the event that this index ceases to be published, the referent index shall be as issued by the U.S. Department of Labor in its place. In no case shall the percentage increase result in a NYS Price, which exceeds Vendor’s commercial price list.

SECTION VI PROPOSAL FORMAT AND CONTENT

FORMAT AND CONTENT OF BID SUBMITTAL:

Bidder **MUST** supply **THREE ORIGINAL PROPOSALS** of the bid and include as part of their bid, all items listed below and use the following format as their **TABLE OF CONTENTS** for their bid submission. Bids are to be submitted in binders with each item listed below as a separate section marked with index tabs as section dividers. E-Mail or Fax Bids will **NOT** be accepted.

VENDORS NOT USING THE TABLE OF CONTENTS AS PROVIDED BELOW MAY SUBJECT THEIR BIDS TO DISQUALIFICATION

(Bidder's) Table of Contents

VI.1 BID DOCUMENT [ALL LOTS]

The submission for this section should contain documents from [Appendix C](#) of the RFP:

- 1) The completed and signed [Proposal Form Page](#) [All Lots]
- 2) The completed and signed [Signature Page](#) [All Lots]
- 3) The completed and notarized [Corporate Acknowledgment Page](#) [All Lots]
- 4) The completed and signed [MacBride/Non-Collusive Bidding](#) and [Questionnaire](#) [All Lots]
- 5) The completed and signed [Authorized Users Tables](#) [All Lots]
- 6) The completed and signed [Certificate of Liability Insurance](#) [Lots 2-6]
- 7) The completed and signed [Bid Bond](#) [All Lots]
- 8) The completed and signed Applicable [Annual Percentage Escalation](#) sheet. [All Lots]
- 9) Based on vendors' selection of lots being bid, bidders must submit their acceptance or declination to comply with RFP Sections outlined in [Appendix N Terms and Conditions, Use of Contract](#) by marking the appropriate box(s).

VI.2 EXTRANEIOUS TERMS [ALL LOTS]

This section should contain any exceptions to the terms and conditions listed herein (see Appendix B-1 section 14 "EXTRANEIOUS TERMS" clause).

VI.3 BIDDERS QUALIFICATIONS [ALL LOTS]

([Reference Section II.1](#))

Bidder must submit with each bid:

- 1) [Evidence of maintaining an organization](#)
- 2) [Customer references](#)
- 3) [Reference list of the names of the employees](#)
- 4) **Lots 2-6 Only**
 - a) [Description of all support services facility locations](#)

- b) [Detailed description and Program management approaches](#)

VI.4 EVIDENCE OF FINANCIAL SECURITY [ALL LOTS]

Bidder must submit with each bid:

- 1) A copy of the most recent [Consolidated Statement of Income](#)
- 2) A [Consolidated Balance Sheet](#) arrived at by generally accepted accounting principles
- 3) A Company [Dunn & Bradstreet \(D&B\) Comprehensive Report™](#)

VI.5 MANUFACTURE'S GAURANTEE [LOTS 1-3]

Bidder must submit with the bid:

- 1) Completed and Signed authorization and documentation from the manufacturer with Seal. Reference [Appendix F Manufacturer's Guarantee.](#)

VI.6 MANUFACTURER PRICING INFORMATION [LOTS 1-3,7]

Bidder must submit with each bid:

- 1) A paper copy of the referenced [manufacturer] Retail price list dated [with most recent version] and a list of any Product or price revisions announced before the bid opening date. This must be on the manufacturer's letterhead or printed with the manufacturer's logo. Reference [Appendix D Sample Manufacturer List Price Data.](#)

VI.7 STATE NET PRICE / PRODUCT LISTING [LOTS 1-3]

Bidder must submit with each bid:

- 1) A State net listing of all items in the referenced [manufacturer] price list in the required presentation format. Reference [Appendix C Bidders Price List with Discount](#)

VI.8 STATE NET PRICE / SERVICE LISTING [LOTS 2-6]

Bidder must submit with each bid:

- 1) A State net listing of all items in the referenced [service] price list in the required presentation format. Reference [Appendix C Bidders Price List with Discount](#)

VI.9 SPECIAL DISCOUNTS [ALL LOTS]

Bidder must submit with each bid:

- 1) If applicable, appropriate qualifications for participation in any special pricing or quantity purchase pricing to include;
 - a) any special pricing or programs offered for educational customers, hospitals, etc. or any quantity discounts offered, ([VOLUME DISCOUNTS](#)).

VI.10 PRICING INFORMATION PROVIDED ON MAGNETIC MEDIA [ALL LOTS]

It is highly recommended that each Bidder submit with the bid, the entire offering, as provided on paper media also on magnetic media. Magnetic media shall be on 3-1/2" HD disk or CD-ROM in MS-Windows format. Disk must be labeled with 1) name of Bidder, 2) the Request for Proposal Number, 3) file format, the name and version of the software program.

VI.11 PRODUCT, INSTALLATION AND MAINTENANCE SPECIFICATIONS [ALL LOTS]

- 1) Provide all necessary data to support compliance to specifications identified in [Section II.3 Technical Requirements](#) based on the requirements of the Lot being Bid. Electronic format can be supplied to supplement recent updates between publishing. The State reserves the right to request any additional information deemed necessary for the proper evaluation of bids.
- 2) Based on vendors' selection of lots being bid, bidders must submit their acceptance or declination to comply with RFP Sections outlined in [Appendix O Acceptance Form for Product, Installation and Maintenance Specifications](#) by marking the appropriate box(s).

VI.12 SERVICE AREA [LOTS 2-6]

- 1) Provide a detailed description on the Vendors' plans to service the nine (9) or subset of regional service areas in [section II.3.8](#).
- 2) Explain the ability and approach to comply with the Installation [LOTs 2-5] [Section II.3.11](#)
- 3) Explain the ability and approach to comply with the Maintenance [LOTs 2,4,6] Service timeframes identified in [section II.3.9](#), [Section II.3.10](#)
- 4) Provide a statement agreeing to the Prime Contractor's responsibility. As identified in [Section II.3.16](#)

VI.13 OFFICE LOCATIONS [LOTS 2-6]

- 1) Provide the name of the address, telephone number; fax number and primary contact person for the office that will serve each area bid. Reference: [Appendix K - Maintenance Center Information](#).

VI.14 CABLE ASSOCIATED HARDWARE PRICING AND CATALOG [LOT 7]

Reference [Section II.3.17](#)

Bidder must submit with each bid:

- 1) Percentage discount stated within two decimal places for all catalog products;
- 2) A detailed description on the Vendors plans to support the "catalog" service to all Authorized Users.
- 3) A copy of the most recent nationally distributed catalog

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

SECTION VII PROPOSAL EVALUATION CRITERIA

VII.1 METHOD OF AWARD OF CONTRACT

Awards of contracts will be made for each of seven (7) Lots.

VII.1.1 LOT 1 PURCHASE

Statewide awards will be made to the three (3) lowest responsible Vendors. Qualifications and Cost categories will be considered in the evaluation of the proposals. The selection will be determined by the following formula: List price X discount = price to the State X a weighting factor (based on estimated percentage of sales) = the evaluation total for each category. The maximum point value to be awarded to each category will be:

Price considerations - 100

- [State Net Product Price](#)
- [Special Discounts](#)

[upon meeting all technical and financial qualifications]

- [Bidder Meets Mandatory Requirements](#)
- [Extraneous Terms](#)
- [Qualifications of Vendor to Provide services described in the RFP](#)
- [Bidders Financial Capacity](#)

VII.1.2 LOT 2 PURCHASE, INSTALLATION AND MAINTENANCE

Awards will be made to the three (3) best value bidders in each of the nine (9) regions listed in [Section II.3.8](#) Service Area. Qualifications and Cost categories will be considered in the evaluation of the proposals. The selection will be determined by the following formula: List price X discount = price to the State X a weighting factor (based on estimated percentage of sales) = the evaluation total for each category. The maximum point value to be awarded to each category will be:

Qualifications / Technical Ability - 50

- [Bidder Meets Mandatory Requirements](#)
- [Extraneous Terms](#)
- [Qualifications of Vendor to Provide services described in the RFP](#)
- [Bidders Financial Capacity](#)
- [Product, Installation and Maintenance Specifications](#)
- [Office Locations](#)

[References](#) - 10

Price considerations - 40

- [State Net Product Price](#)
- [State Net Service Price](#)
- [Special Discounts](#)

VII.1.3 LOT 3 PURCHASE AND INSTALLATION

Awards will be made to the three (3) best value bidders in each of the nine (9) regions listed in [Section II.3.8](#) Service Area. Qualifications and Cost categories will be considered in the evaluation of the proposals. The selection will be determined by the following formula: List price X discount = price to the State X a weighting factor (based on estimated percentage of sales) = the evaluation total for each category. The maximum point value to be awarded to each category will be:

- | | | |
|--|---|----|
| Qualifications / Technical Ability | - | 50 |
| <ul style="list-style-type: none"> • Bidder Meets Mandatory Requirements • Extraneous Terms • Qualifications of Vendor to Provide services described in the RFP • Bidders Financial Capacity • Product, Installation and Maintenance Specifications • Office Locations | | |
| References | - | 10 |
| Price considerations | - | 40 |
| <ul style="list-style-type: none"> • State Net Product Price • State Net Service Price • Special Discounts | | |

VII.1.4 LOT 4 INSTALLATION AND MAINTENANCE

Awards will be made to the three (3) best value bidders in each of the nine (9) regions listed in [Section II.3.8](#) Service Area. Qualifications and Cost categories will be considered in the evaluation of the proposals. The selection will be determined by the following formula: List price X discount = price to the State X a weighting factor (based on estimated percentage of sales) = the evaluation total for each category. The maximum point value to be awarded to each category will be:

- | | | |
|--|---|----|
| Qualifications / Technical Ability | - | 50 |
| <ul style="list-style-type: none"> • Bidder Meets Mandatory Requirements • Extraneous Terms • Qualifications of Vendor to Provide services described in the RFP • Bidders Financial Capacity • Product, Installation and Maintenance Specifications • Office Locations | | |
| References | - | 10 |
| Price considerations | - | 40 |
| <ul style="list-style-type: none"> • State Net Service Price • Special Discounts | | |

VII.1.5 LOT 5 INSTALLATION

Awards will be made to the three (3) best value bidders in each of the nine (9) regions listed in [Section II.3.8](#) Service Area. Qualifications and Cost categories will be considered in the evaluation of the proposals. The selection will be determined by the following formula: List price X discount = price to the State X a weighting factor (based on estimated percentage of sales) = the evaluation total for each category. The maximum point value to be awarded to each category will be:

- Qualifications / Technical Ability - 50
- [Bidder Meets Mandatory Requirements](#)
 - [Extraneous Terms](#)
 - [Qualifications of Vendor to Provide services described in the RFP](#)
 - [Bidders Financial Capacity](#)
 - [Product, Installation and Maintenance Specifications](#)
 - [Office Locations](#)
- [References](#) - 10
- Price considerations - 40
- [State Net Service Price](#)
 - [Special Discounts](#)

VII.1.6 LOT 6 MAINTENANCE

Awards will be made to the three (3) best value bidders in each of the nine (9) regions listed in [Section II.3.8](#) Service Area. Qualifications and Cost categories will be considered in the evaluation of the proposals. The selection will be determined by the following formula: List price X discount = price to the State X a weighting factor (based on estimated percentage of sales) = the evaluation total for each category. The maximum point value to be awarded to each category will be:

- Qualifications / Technical Ability - 50
- [Bidder Meets Mandatory Requirements](#)
 - [Extraneous Terms](#)
 - [Qualifications of Vendor to Provide services described in the RFP](#)
 - [Bidders Financial Capacity](#)
 - [Product, Installation and Maintenance Specifications](#)
 - [Office Locations](#)
- [References](#) - 10
- Price considerations - 40
- [State Net Service Price](#)
 - [Special Discounts](#)

VII.1.7 LOT 7 CABLE ASSOCIATED HARDWARE

Statewide awards will be made to up to five (5) lowest responsible bidders. Qualifications and Cost categories will be considered in the evaluation of the proposals. The selection will be determined by the following formula: List price X discount = price to the State X a weighting factor (based on estimated percentage of sales) = the evaluation total for each category. The maximum point value to be awarded to each category will be:

Price considerations - 100

- [State Net Product Price](#)

[upon meeting all technical and financial qualifications]

- [Bidder Meets Mandatory Requirements](#)
- [Extraneous Terms](#)
- [Qualifications of Vendor to Provide services described in the RFP](#)
- [Bidders Financial Capacity](#)

VII.1.8 PRIORITY OF AWARD

Since this is a multiple award contract, it may be necessary for the State to prioritize sequencing of the contracts to be awarded. In that event, the following additional criteria shall be considered:

- 1) The breadth, depth and scope of services offered. The greater the breadth, depth and scope, the higher the priority.
- 2) Exceptions to terms and conditions: Proposals with no exceptions to terms and conditions will be given higher priority.
- 3) The needs of the user community. The RFP Selection Committee shall recommend to OGS any specific services that they deem to be of significant importance and these shall be given higher priority.

Using the above criteria the State retains the right to award contracts in the order which best serves the general State interests.

VII.2 QUALIFICATIONS OF PROSPECTIVE BIDDERS

VII.2.1 ORGANIZATION

Bidder has maintained an organization capable of performing the work for _____ years

Employees responsible for contract

Name _____ Function _____ Title _____ Yrs of service _____

Name _____ Function _____ Title _____ Yrs of service _____

Name _____ Function _____ Title _____ Yrs of service _____

Name _____ Function _____ Title _____ Yrs of service _____

Name _____ Function _____ Title _____ Yrs of service _____

Name _____ Function _____ Title _____ Yrs of service _____

Main Contact Person Name _____ Title _____
Address _____ Telephone _____
E-mail _____ Fax _____

VII.2.2 REFERENCES

(1) Reference Company Name: _____

Company Location:

Address: _____

City: _____ State: _____

Zip Code: _____

Phone Number: (_____) _____

Fax Number: (_____) _____

Hours of Operation (EST): _____

Main Contact Person: _____

E-Mail Address: _____

Contract Term: _____

Type of Product Supplied: _____

Type of Services Supplied: _____

(2) Reference Company Name: _____

Company Location:

Address: _____

City: _____ State: _____

Zip Code: _____

Phone Number: (_____) _____

Fax Number: (_____) _____

Hours of Operation (EST): _____

Main Contact Person: _____

E-Mail Address: _____

Contract Term: _____

Type of Product Supplied: _____

Type of Services Supplied: _____

(3) Reference Company Name: _____

Company Location:

Address: _____

City: _____ State: _____

Zip Code: _____

Phone Number: (_____) _____

Fax Number: (_____) _____

Hours of Operation (EST): _____

Main Contact Person: _____

E-Mail Address: _____

Contract Term: _____

Type of Product Supplied: _____

Type of Services Supplied: _____

**ATTACHMENT 1
Quarterly Report**

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NEW YORK STATE OFFICE OF GENERAL SERVICES

QUARTERLY REPORT

FOR THE PERIOD

(MONTH/YEAR):

PROCUREMENT SERVICES GROUP

AUTHORIZED USERS CONTRACT USAGE _____

Vendor Name and Address		Contract Title	Date Submitted	
Federal I.D. No.		Contract No.	Proposal No.	
LIST USER AGENCIES		LOCATION(s) OF SERVICE	GENERAL DESCRIPTION OF WORK OR PRODUCT	DOLLAR VALUE / YEAR
STATE	NON-STATE			
Vendor Signature _____ Date _____				

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE
CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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1. Executory Clause
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6. Wage and Hours Provisions
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STANDARD CLAUSES FOR NYS CONTRACTS

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

the State, whether a contractor, 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.

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

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

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

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

per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

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agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

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

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result

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of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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APPENDIX B-1

GENERAL SPECIFICATIONS

(Technology Products and Services)

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GENERAL

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

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

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

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

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

a. **Appendix A** (*Standard Clauses for NYS Contracts*)

b. **Contract/Clarification Documents**
Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractor's Bid or Mini-bid.

c. **Mini-Bid Project Definition** (If any)

d. **Bid Documents** (Other than Appendix A)
i. Bid Specifications prepared by the Issuing Entity
ii. Appendix B-1 (General Specifications)

e. **Contractor's Bid or Mini-Bid Proposal**

6. **DEFINITIONS** Terms used in this Appendix B-1 shall have the following meanings:

AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards,

commissions, offices or institutions of the State of New York.

ATTORNEY GENERAL Attorney General of the State of New York.

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

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

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

BID DOCUMENTS Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. Appendix A (Standard Clauses for NYS Contracts), Appendix B-1, (General Specifications). Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

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

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

CERTIFICATES OF PARTICIPATION (COPS)

Certificates issued pursuant to Article 5-A of the State Finance Law which represent the right to receive a proportionate share in lease, installment or other periodic payments to be made by any state department, agency or the City University of New York.

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LATE BID For purposes of bid openings held and conducted by OGS, a bid not received in such place as may be designated in the Bid Specifications or in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the bid opening. For purposes of bid openings held and conducted by Issuing Entities other than OGS, the term late bid is defined as a bid not received in the location established in the Bid Specifications at or before the date and time specified for the bid opening.

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

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed

Software” includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

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

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

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

LOGICAL PARTITION A subset of the processing power within a machine which has been divided through hardware and/or software means (i.e., *Processor Resources/System Manager* [PR/SM]) so as to limit the total processing power which is accessible by an operating system image by individual Authorized Users or individual software products.

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

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

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

OBJECT CODE The machine executable code that can be directly executed by a computer’s central processing unit(s).

OGS The New York State Office of General Services

PHYSICAL PARTITION A subset of the processing power within a central electronic complex which has been derived through hardware means so as to limit the total processing power accessible by an operating system image by individual users or individual Products.

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE State of New York

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

VIRUS Any computer code, whether or not written or conceived by Contractor, which 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

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

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

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

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

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

"BID ENCLOSED (bold print, all capitals)

- Group Number
- IFB or RFP Number

■ Bid Submission date and time"

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

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

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

11. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, including an executed signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

12. LATE BIDS Any bid received at the specified location after the time specified will be considered a late bid. A late bid shall not be considered for award unless i) no timely bids meeting the requirements of the Bid Documents are received or, ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; and acceptance of the late bid is in the best interests of the Issuing Entity. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Issuing Entity, shall not excuse late bid submissions.

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

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

14. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection. Only those extraneous terms which meet all the following requirements will be considered as having been submitted as part of the Bid:

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

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents), whether or not deemed "material", which are attached or referenced with submissions and which do not meet the above requirements will not be considered part of the bid or resulting Contract, but rather will be deemed to have been included for informational or promotional purposes only. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s) or a waiver of the State's rights set forth above.

15. RECORD DISCLOSURE/CONFIDENTIALITY OF PROPRIETARY RECORDS Contractor may preserve proprietary rights as to other confidential or business process information in accordance with procedures established under NYS Public Officers Law, § 89, provided that: (i) Contractor shall inform the Authorized User upon submission of its bid, in writing, that such records are going to be furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor shall state the reasons why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by the Authorized User. Acceptance of the claimed materials does not constitute a determination on

the exemption request, which determination will be made in accordance with statutory procedures.

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

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

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

ii. Building Services *Labor Law Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.*

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

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

d. **Public Posting & Certified Payroll Records** In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:

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

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

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

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

e. **Day's Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law)** No laborer, worker or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or

completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

17. **TAXES**

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

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

c. Purchases by Authorized Users other than the State of New York may be subject to such taxes, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

18. **EXPENSES PRIOR TO CONTRACT EXECUTION**

The Issuing Entity is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to Contract execution.

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

20. **PRODUCT REFERENCES**

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

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

21. RECYCLED OR RECOVERED MATERIALS

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

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

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

22. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

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

23. PRICING

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

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

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

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

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

24. DRAWINGS

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

b. Drawings Submitted During the Contract Term

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

c. Accuracy of Drawings Submitted

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

25. SITE INSPECTION

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

26. PROCUREMENT CARD

NYS and American Express (AMEX) have entered into an agreement for AMEX to provide the State with purchasing card services. The AMEX Corporate Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing the Purchase Orders or Purchase Authorizations currently required. Purchasing Cards are issued to selected employees authorized to purchase for the agency and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the AMEX Corporate Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased products have been shipped or services performed. Unless

the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for products returned as defective or faulty.

27. SAMPLES

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

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

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

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

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

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder Samples consumed or rendered useless by testing will not be returned to the Bidder.

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

BID EVALUATION

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

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

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

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

32. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent bids

as to pricing or other factors, the decision of the Commissioner to award a contract to one or more of such Bidders shall be final.

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

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

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

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

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner

written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the *State Finance Law*, upon receipt of all required approvals a Contract shall be deemed executed and created upon the Commissioner's mailing or electronic communication to the address on the bid of: i) a Letter of Acceptance; ii) a fully executed Contract; or iii) a Purchase Order authorized by the Commissioner.

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

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

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

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

d. Responsibility for Performance Participation in New York State centralized contracts by Authorized Users is permitted upon the following conditions: a) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; b) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; c) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and d) each non-state agency Authorized User and Contractor guarantee to save the State, its officers, agents and employees harmless from any

liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract.

40. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor. For individual orders, however, the Contractor may offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, Contractor shall furnish a copy of such better offer to the Commissioner upon request.

Other than where terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the *Contract Award Notification*. Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to Product upon delivery (e.g., attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying or affixed to Product) or by incorporating such terms onto Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Acceptance of Product or processing of such documentation on forms furnished by the Contractor for approval or payment does not constitute acceptance of the proposed modification to terms and conditions.

41. SCOPE CHANGES The Commissioner 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 Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

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

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

43. BEST PRICING OFFER During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract vehicle upon the same or similar terms and conditions as that of this Contract at a lower price, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

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

All Purchase Orders issued pursuant to contracts let by the Commissioner must bear the appropriate contract number and, if necessary, required State approvals. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and shall be deemed to incorporate the terms and conditions set forth in this Contract by reference. Any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

The Purchase Order shall indicate the address for delivery of the Product. Authorized User 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 Order placed under the Contract.

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

45. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless

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

46. WEEKEND AND HOLIDAY DELIVERIES

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

47. SHIPPING / RECEIPT OF PRODUCT

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

b. **Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB destination to the delivery address specified on the Purchase Order. Even where the specifications permit Product to be purchased at a price FOB shipping point plus transportation charges, it is understood not to relieve the Contractor from responsibility for safe and proper delivery. Contractor shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments.

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

48. RISK OF LOSS Notwithstanding the form of shipment, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within the acceptance period specified in this Appendix B-1, or such other period of time mutually agreed to by Authorized User and Contractor. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g. signed bill of lading) shall not be deemed or construed as acceptance of the Products. Any delivery of Product which is substandard or does not

comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

49. (RESERVED)

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

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

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

53. REPAIRED OR REPLACED PARTS / COMPONENTS Where the Contractor is required to repair, replace or substitute parts components 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. Replaced or repaired components, or parts shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new product standards may be permitted by the Commissioner or Authorized User. All proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User before installation. The part or component shall be equal to or of better quality than the original part or component being replaced.

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

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

56. ASSIGNMENT / SUBCONTRACTORS Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract, other than the assignment of the right to receive money due, without the prior written consent of the Issuing Entity. Prior to an assignment of the right to receive money becoming effective, Contractor shall file a written notice of such assignment simultaneously with the NYS Comptroller, the Commissioner, and participating Authorized User(s).

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

57. PERFORMANCE / BID BOND The Issuing Entity reserves the right to require the Bidder/Contractor to furnish without additional cost, a performance, payment or

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

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

59. TERMINATION

a. For Cause: The Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing the work, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. In such event, the Commissioner or Authorized User may complete the work in any manner as 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 the State for convenience upon sixty (60) days written notice without penalty or other early termination charges due. Such termination shall not affect the validity of Purchase Orders placed prior to termination. Such termination of the Contract shall not affect any project or Purchase Order which has been issued under the Contract prior to the date of such termination.

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

notification is given the Commissioner, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Commissioner that the delay will significantly impair the value of the Contract to the State or to Authorized Users, whereupon the Commissioner may:

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to State Agencies with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantity; or
- c. Terminate the Contract or the portion thereof which is subject to delivery delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (1) the volatility is due to causes outside the control of Contractor; (2) the volatility affects the marketplace or industry, not just the particular contract source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

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

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

62. DEFAULT - AUTHORIZED USER An Authorized User's breach shall not be deemed a breach of the centralized Contract. In the event a participating Authorized User fails to make payment to the Contractor

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

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

63. INTEREST ON LATE PAYMENTS

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

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

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

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

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

- i. Purchase from other sources; or
- ii. If, after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Commissioner is unsuccessful, the Commissioner may acquire acceptable replacement product or service of lesser or greater quality.

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

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

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

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

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

e. Fee Refund In the event that a Purchase Order is cancelled for breach, Authorized User shall be entitled to a refund of any fees paid by Authorized User for usage or services prospectively from the date of breach.

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

66. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance as defined by Section 875 of the *Labor Law*, shall provide such Authorized User with not less than two copies of a material safety data sheet,

which sheet shall include for each such substance the information outlined in Section 876 of the *Labor Law*.

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

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

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

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

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

70. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES & GUARANTEES Where Contractor or Product manufacturer/developer generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

a. Product Performance Products delivered pursuant to this Contract conform to the specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Warranty Full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of Authorized User perpetual license rights to use the Product for the purposes of this Bid or individual Purchase Order. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the State and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation. Authorized User may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. Authorized User's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

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

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

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

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

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

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

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

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

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

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

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

THE WARRANTIES SET FORTH IN THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Misuse, accident, unsuitable physical or operating environment, modification or operation inconsistent with standard industry practice, or failure caused by a product for which Contractor is not responsible may void the warranties.

72. YEAR 2000 WARRANTY The following Year 2000 warranty applies to procurements of: **A) Product**, including: i) equipment incorporating embedded software or other technology (e.g. copiers, elevators, security systems), ii) software, or iii) other technology; or **B) Services** including: 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).

This Year 2000 Warranty shall survive beyond termination or expiration of the Contract through: a) one year, b) December 31, 2000, or c) the Contractor or Third Party Manufacturer's stated Year 2000 warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

a. Definitions For purposes of this warranty, the following definitions shall apply:

i. "Product" shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are furnished (e.g., maintenance, consulting, systems integration, code or data conversion, data entry) the term "Product" shall include resulting deliverables.

ii. "Contractor's Product" shall include all Product delivered under this Contract by Contractor other than Third Party Products.

iii. "Third Party Product" shall include product manufactured or developed by a corporate entity independent from Contractor and provided by Contractor

on a non-exclusive licensing or other distribution agreement with the third party manufacturer. "Third Party Product" does not include product where Contractor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

b. Warranty Disclosure At the time of bid for individual or agency specific contracts, or at the time of ordering Product or Product quote for OGS centralized contracts, Contractor must disclose in writing to Authorized User:

i. For Contractor Product and Products (including, but not limited to, Contractor and/or Third Party Products and/or Authorized User's Installed Products) which have been specified to perform as a system: Compliance or non-compliance of the Products individually and as a system with the Warranty set forth below; and

ii. For Third Party Product not specified to perform as part of a system: Compliance on the grounds that the Contractor has passed-through the third party manufacturer Year 2000 Warranty or non-compliance based upon the fact that a) Contractor indicates that they can not pass through the third party manufacturer's Year 2000 Warranty or b) there is no third party manufacturer's Year 2000 Warranty to pass through.

NOTE: AN ABSENCE OR FAILURE TO FURNISH THE REQUIRED WRITTEN WARRANTY DISCLOSURE SHALL BE DEEMED A STATEMENT OF COMPLIANCE BY THE CONTRACTOR OF THE PRODUCT(S) OR SYSTEM(S) IN QUESTION WITH THE YEAR 2000 WARRANTY STATEMENT SET FORTH BELOW.

c. Year 2000 Warranty Year 2000 Warranty "compliance" shall be defined in accordance with the following warranty statement:

"Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Contractor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Contractor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion."

d. Year 2000 Warranty on Services 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), in addition to the foregoing Year 2000 warranty on service deliverables, 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) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, 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.

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

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

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

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: a) one (1) hard copy and one (1) master electronic copy of the Documentation in diskette or CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

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

Software media must be in a format specified by the Authorized User, without requiring any type of conversion (e.g., if unit has a 3½" disk drive, software must be provided on 3½" diskettes).

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

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

Maintenance shall include, at a minimum, (1) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (2) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

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

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

individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties

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

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

g. Archival Back-Up and Disaster Recovery

Licensee may use and copy the Product and related Documentation in connection with: 1) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; 2) reproducing a reasonable number of copies of the Product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 3) 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 under this section #73. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential,

and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

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

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

74. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have sixty (60) days from the date of delivery to accept Product unless the Contractor is responsible for installation, in which case the sixty day period shall run from completion of installation. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for testing and acceptance.

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

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for another sixty (60) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the State or Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to fees paid to Contractor, if any, or any liability for costs incurred at the direction or recommendation of Contractor.

75. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no

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

76. OWNERSHIP / TITLE TO PROJECT DELIVERABLES

a. Definitions

- i. "Products" - A deliverable furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), 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. "Existing Products" - Tangible Products and intangible licensed Products which exist prior to the commencement of work under the Contract. Contractor retains the burden of proving that a particular product was existing before commencement of the Project.
- iii. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees or agents for Authorized User under the Contract.

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

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

i. Existing Products:

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

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

ii. Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project definition/work order in the course of Contractor's business.

Where a scope of work does not involve COPS or other third party financing, the Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom

Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

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

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

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section 76.0 are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

77. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: a) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or b) 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.

78. MIGRATION TO CENTRALIZED CONTRACT Authorized User may obtain additional Product authorized under this Contract, (e.g., licensed capacity upgrades, new

releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this Contract. The Authorized User's election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

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

80. 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: (1) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (2) 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 (3) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: a) provide the Authorized User with either a Product replacement or migration path with at least equivalent functionality at no additional charge, or b) provide Authorized User with the source code for Licensed Product at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (1) provide the notice required under (1), above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (2) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdrawn support.

The provisions of this paragraph (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: (1) notify the State and each Authorized User in writing of the intended change; (2)

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 (3) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. *The provisions of this section do not apply if the Contractor is not the Product manufacturer.

81. NO HARDSTOP / PASSIVE LICENSE MONITORING

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

82. SOURCE CODE ESCROW FOR LICENSED PRODUCT

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

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained

services, who may use such copy of the Source Code to maintain the Product.

83. INDEMINIFICATION & LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the State and Authorized User 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 Contractor, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State and its Authorized Users harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or Authorized User may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product; ii) Authorized User's use of the Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof 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 as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or

part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Project Award.

For all other claims against the Contractor under any individual Purchase Order where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability under a Purchase Order **for direct damages shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither

party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

APPENDIX C

PROPOSAL FORM

CONTRACT NO. _____
(To be completed by Agency)

NYS/OGS Procurement Services Group
Corning Tower – 37th Floor
The Governor Nelson A. Rockefeller
Empire State Plaza
Albany, New York 12242

PROPOSAL FORM

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

Gentlemen:

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

It is acknowledged that the Contract is comprised of this Request For Proposals 02135, the proposal submitted by this company and all documentation resulting from the evaluation process.

Proposals are being submitted for the following:

Lot 1 Statewide Purchase _____

Lot 7 Statewide Catalog _____

For Lots 2-6

Check all Regions that apply:

Region 1 – Long Island _____

- Nassau
- Suffolk

Region 2 – New York _____

- Bronx
- Kings
- New York
- Queens

- Richmond

Region 3 – Westchester _____

- Dutchess
- Putnam
- Westchester

Region 4 – Ulster _____

- Orange
- Rockland
- Sullivan

- Ulster

Region 5 – Albany _____

- Albany
- Columbia
- Delaware
- Fulton
- Greene
- Montgomery
- Otsego
- Rensselaer
- Schenectady
- Schoharie

Region 6 – Adirondack _____

- Clinton
- Essex
- Franklin
- Hamilton
- Saratoga
- Warren
- Washington

Region 7 – Syracuse _____

- Cayuga
- Herkimer
- Jefferson
- Lewis
- Madison
- Oneida
- Onondaga
- Oswego
- St. Lawrence

Region 8 – Finger Lakes _____

- Broome
- Chemung
- Chenango
- Cortland
- Livingston
- Monroe
- Ontario
- Schuyler
- Seneca
- Stueben
- Tioga
- Tompkins
- Wayne
- Yates

Region 9 – Buffalo _____

- Allegany
- Cattaraugus
- Chautauqua
- Erie
- Genesee
- Niagara
- Orleans
- Wyoming

signature

title

date

CONTRACT NO. _____

(To be completed by Agency)

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

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

State of _____

Bidder's Principal Place of Business

AGENCY SIGNATURE

VENDOR'S SIGNATURE

DATED _____

PRINT NAME

Reviewed by
PROCUREMENT SERVICES GROUP _____

TITLE

COMPANY

ADDRESS

CITY STATE/ZIP

TELEPHONE NUMBER

FEDERAL I.D. NUMBER

DATE

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

**NEW YORK STATE
COMPTROLLER'S SIGNATURE**

DATED _____

DATED _____

CORPORATE ACKNOWLEDGMENT

CORPORATE, PARTNERSHIP OR INDIVIDUAL ACKNOWLEDGMENT

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

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

[Check One]

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

 Notary Public

BIDDER IS REQUIRED TO SIGN BOTH SECTIONS ON THIS PAGE

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) have business operations in Northern Ireland,

Yes ___ or No ___

if yes:

(2) shall take lawful steps in good faith to conduct any business operations they have 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 ___

X

(Vendor's Signature)

(Name of Business)

NON-COLLUSIVE BIDDING CERTIFICATION

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

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

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

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

X

(Vendor's Signature)

(Name of Business)

AUTHORIZED USERS

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

Table One

These groups are eligible to purchase through BOTH
OGS Services and Technology and OGS Standards and Purchase
Centralized Contracts

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

Table Two

These groups are eligible to purchase ONLY through
OGS Standards and Purchase Centralized Contracts.

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

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

Acknowledged, Agreed and Accepted

By _____
Name:

Bidder is asked to execute this Authorized Users Agreement. In signing, bidder indicates that it has read the listing of authorized users set forth herein and voluntarily agrees and accepts that entities listed in Tables 1 and 2 may participate in and make purchases as provided for in the RFP and the resulting contract awards.

Questionnaire

**ALL BIDDERS MUST COMPLETE THE QUESTIONS BELOW BY FILLING IN THE
BLANKS
TO THE RIGHT OF THE QUESTIONS.**

1. Place of Manufacture of product (s) (please indicate Yes or No for either A, B or C):
- A. All NYS Manufacture? _____ YES _____ NO
OR
B. All Manufactured Outside NYS? _____ YES _____ NO
OR
C. Manufactured In NYS and Outside NYS?
Primary location of manufacture (city, state) _____
2. Are you a New York State resident business? _____ YES _____ NO
3. Total number of people employed by your firm: _____
4. Total number of people employed by your firm in New York State: _____
5. Is your company independently owned and operated? _____ YES _____ NO
6. Is your firm a Certified Woman or Minority Owned Business certified by the NYS Department of Economic Development? _____ YES _____ NO
- Your company is eligible to be certified if it is at least 51% owned and controlled by women, or 51% owned and controlled by minority group members (i.e. Black, Hispanic, Asian, Pacific Islander American Indian, Alaskan Native).
7. Do any of the products bid herein incorporate Recycled materials? _____ YES _____ NO
8. Do any of the products bid herein contain remanufactured components? _____ YES _____ NO
9. Are any of the products bid herein Energy Star Compliant? _____ YES _____ NO
If yes, what equipment? (i.e. monitors, printers, PC's etc.)

VENDOR RESPONSIBILITY:

10. Within the past five years has your firm, any affiliate, any predecessor company or entity, owner, director, officer, partner or proprietor been the subject of: (Check any that apply. If "yes", describe using additional pages.)
- a. an indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business-related conduct constituting a crime under local, state or federal law? _____ YES _____ NO
- b. a federal, state, or local government suspension or debarment, _____ YES _____ NO

rejection of any bid or disapproval of any proposed subcontract, including pending actions, for lack of responsibility, denial or revocation of pre-qualification or a voluntary exclusion agreement?

c. any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful"? _____ YES _____ NO

d. a consent order with NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a construction-related violation of federal or state environmental laws? _____ YES _____ NO

Bidders Price List with Discount

Link to Spreadsheet:

[Bidders Price List with Discount](#)

VOLUME DISCOUNT LEVELS FOR AGGREGATE CONTRACT USAGE

Dollar volumes (thresholds) are based on **all** services and equipment ordered as a result of this contract.

Dollar Volume	(% off of unit list price)
\$2,000,000-\$4,999,999	_____ %
\$5,000,000-\$9,999,999	_____ %
\$10,000,000-\$24,999,999	_____ %
\$25,000,000 +	_____ %

Vendor must provide discount information in the above table. These discounts will apply towards your Base Unit Price when the appropriate dollar levels are accrued.

All discounts will be uniformly applied.

ANNUAL PERCENTAGE ESCALATION

All percentages given are deemed maximum amounts. In the actual implementation of the contract, escalation cannot exceed the National Consumer Price Index for the previous year.

Lots 1 and 7

1. Applied to **Purchase rates:**

For term of contract, in annual percentage

Year 2 ____ Year 3 ____ Year 4 ____ Year 5 ____

For each extension approved thereafter

Year 2 ____ Year 3 ____ Year 4 ____ Year 5 ____

Lots 2,3,4,5

2. Applied to **Installation Labor rates:**

For term of contract, in annual percentage

Year 2 ____ Year 3 ____ Year 4 ____ Year 5 ____

For each extension approved thereafter

Year 2 ____ Year 3 ____ Year 4 ____ Year 5 ____

Lots 2, 4,6

3. Applied to monthly **Maintenance rates:**

For term of contract, in annual percentage

Year 2 ____ Year 3 ____ Year 4 ____ Year 5 ____

For each extension approved thereafter

Year 2 ____ Year 3 ____ Year 4 ____ Year 5 ____

APPENDIX D

SAMPLE MANUFACTURER LIST PRICE DATA

Must be on manufacturer letterhead or logo with pricing

WIDGETS , INC

<u>QTY</u>	<u>Unit</u>	<u>Part#</u>	<u>Description</u>	<u>Unit</u> <u>Cost</u>	<u>Extended</u> <u>Cost</u>
1		123SKI	Genuine Faux Widget	\$ 9.99	\$ 9.99
1	ft	8765309	2 Strand 50μ Single Mode Fiber	\$ 0.05	\$ 0.05

APPENDIX E

CONTRACTOR'S EXECUTIVE LAW, ARTICLE 15-A
(M/WBE) REQUIREMENTS

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

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

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

In order to be awarded an OGS contract, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

POLICY AND PROVISIONS

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBEs) in State contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE subcontractors or suppliers in the performance of this contract.

For the purpose of determining a Contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the contracting agency shall consider:

- (a) Whether the Contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,
 - (i) whether or not certified minority or women-owned businesses which have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - (ii) whether certified businesses which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and
- (b) Whether there has been written notification to appropriate certified businesses that appear in the Directory of Certified M/WBE prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and
- (c) Whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

- A. **GOALS** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.
- B. **UTILIZATION** - The Contractor may count as M/WBE participation: subcontracting part of the contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the contract from certified firms.

Upon a showing by the Contractor of every good faith effort to achieve the goal for M/WBE participation in the work, the State will waive a Contractor's failure to achieve the goal M/WBE participation.

- C. **MINORITY AND WOMEN-OWNED BUSINESS OFFICER** - The Contractor shall designate a Affirmative Action officer and assign the officer the responsibility and authority to monitor the M/WBE program for this contract. The OGS' Office of Minority and Women-owned Business Enterprises' staff is available to help in identifying certified M/WBEs.
- D. **REQUIRED REPORTS** - The Contractor is required to submit a Utilization Plan (BDC-328) to the NYS Office of General Services within five (5) days after the opening of bids for construction contracts exceeding \$100,000 and 14 days after notification of award for commodity and service contracts exceeding \$25,000. The Contractor must also submit the MBE/WBE Letter of Intent to Participate (BDC-49). The Letter MBE/WBE of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBEs, over the term of the contract, must be reported on a revised Utilization Plan.
- E. **NONDISCRIMINATION** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this contract.

POST AWARD

The Contractor must submit to the Office of Minority and Women-owned Business Enterprises after notification of award, the following forms, by the 10th day of each month:

1. (BDC-58) Cumulative Monthly Payment Statements
2. (BDC-25) Monthly Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to:

New York State Office of General Services
Office of Minority and Women-owned Business Enterprises
35th Floor, Room 3580
Corning Tower Building
Empire State Plaza
Albany, NY 12242

The telephone numbers and addresses for New York State Department of Economic Development are as follows:

New York State Department of Economic Development
Division for Small Business
30 South Pearl St. -- 7th Floor
Albany, NY 12245

Telephone: (518) 292-5220

New York State Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St. -- 2nd Floor
Albany, NY 12245

Telephone: (518) 292-5220

Revised 10/04/00

APPENDIX F
MANUFACTURERS GUARANTEE

MANUFACTURER'S GUARANTEE

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

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

Part B - For a ten year period from the date the State has accepted the installation pursuant to the terms of the contract the manufacturer's guarantee will also include the following:

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

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

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

MANUFACTURER'S GUARANTEE STATEMENT

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

(Manufacturer)

(Representative)

(Date)

(Title)

* Insert the name of the manufacturer and the title of the authorized officer and AFFIX THE CORPORATE SEAL.

APPENDIX G
PERFORMANCE AND PAYMENT BOND / FORM

CONTRACT _____

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned (*) as principal; and (†) as sureties, are hereby held and bound unto The in the penal sum of ____dollars (\$ _____), for the payment of which, well and truly to be made jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this.....day of....., 20.....

The condition of the above obligation is that:

WHEREAS, the above named principal has entered into a Contract in writing with The _____ a copy of which is hereby made a part of this bond as through herein set forth in full and which is designated Contract _____

WHEREAS, The _____ has required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract;

NOW, if the said principal shall well and faithfully do and perform the items agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit of The _____ and all subcontractors, materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such subcontractors, materialmen and workmen (as well as The _____ shall have a direct right of action upon this bond; but the rights and equities of such subcontractors, materialmen and workmen shall be subject and subordinate to those of the _____.

(*) Insert Contractor's name. If a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of.....".

If a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of.....".

If an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of.....".

(†) Insert name of surety or sureties. If space is insufficient, add rider.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction or by any payment thereunder before the time required therein or by any waiver of any provision or condition thereof (whether precedent or of any part thereof or of any construction to be performed or any monies due or to become due thereunder: and said sureties do hereby waive notice of any and all of such extensions, modification, omissions, additions, changes, payments, waivers, assignments, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal).

The sureties shall give the _____ Counsel of The _____ the following notices:

- (a) Written notice of an intent to pay any claim of a subcontractor, materialman or workman hereunder;
- (b) Written notice within five days of the institution of an action by a subcontractor, materialman or workman hereunder.

The sureties shall not pay the claim of any subcontractor, materialman or workman hereunder until the expiration of thirty days after receipt of said _____ Counsel of notice under wither subparagraph (a) or (b) above, describing the claim to be paid.

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal

(Seal) _____
By (*) _____

Surety

By (†) _____
By (†) _____

APPROVED AS TO ACCEPTABILITY OF
SURETIES:

(Credit Manager)

_____, 20 .

(*) If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

(†) Add signatures of additional sureties, if any.

APPENDIX H

NYS PREVAILING WAGE RATES

All T&M rates must adhere to Department of Labor rules and regulations in the payment to employees **Notice: Prevailing Labor Rates from the department of labor are available on the web site**

http://www.labor.state.ny.us/business_ny/employer_responsibilities/prevwage/countylistgeneral.htm

APPENDIX I
OGS PROCEDURES FOR UPDATING THE CONTRACT

OGS Procedures for Updating the Contract

As set forth in the Contract, Contractor is responsible for hosting the Contract at the Contractor's Internet site. Contractor shall automatically update the website to reflect all Auto-Add changes as defined below. Regular and Special Adds shall be filed with OGS as outlined, and Contractor shall update the website to reflect Regular and Special Adds after Office of General Services (OGS) and the Office of the State Controller (OSC) prior approval has been received.

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

A. TYPES OF CONTRACT UPDATES In order to expedite processing of a change request, where proposed changes involve more than one category below, they should be submitted to OGS as separate requests.

- 1) AUTO ADDS / DELETIONS - "Auto Adds/Deletions" are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a "discount from list" or pricing based on an approved GSA-based price schedule. Auto Adds do not include any price increases. Auto Adds/Deletions include: i) adding new Products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. For categories (i) and (ii) Auto Adds: Contractor shall electronically submit a list of ADDS 5 (five) days prior to the effective date. OGS will review the ADDS and notify the Contractor within that 5 (five) day period whether any of the ADDS are beyond the scope of the Contract. If OGS does not notify the Contractor of any issues before the close of business on the fifth day, the Contractor may then automatically update the Contract price list without prior approval of either OGS or the Comptroller and may proceed with selling Products. Contractor should note, however, that all Auto Adds approved by OGS are subject to a post audit by the Office of the State Comptroller. For category (iii) Auto Deletions, at the end of and subject to the period specified in Appendix B-1, Clause 80 ("Changes in Product or Service Offerings"), Contractor may automatically update the Contract price list by deleting the Product(s) without prior approval of either OGS or the Comptroller.

After meeting the above criteria, Auto Adds must be immediately posted electronically by the Contractor at the Contract web site.

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

conform to the established price structure may not be electronically posted by Contractor until after receipt of OGS approval of the "Regular Add".

When the Contract pricing is based on GSA prices, the revised prices or prices of new Products must reflect current GSA prices adjusted as necessary for any additional discounts, including an additional 1% discount representing the Industrial Funding Fee.

- 3) SPECIAL ADD - Contract changes and updates that do not fall within either of the above categories, will be processed as "Special Adds". Special Adds are changes that are not specifically covered by the terms of the Contract but inclusion is found to be in the best interest of the State. Contractor must provide a justification of reasonableness of the prices offered and a statement explaining why it is in the best interest of the State to approve the new Products. Special Adds are subject to pre-audit by the Office of the State Comptroller. If approved, OGS staff will notify Contractor in writing. New offerings may not be electronically posted by Contractor until after receipt of OGS approval of the Special Add.
- 4) CHANGES IN RESELLER LIST - If the Contractor allows resellers to participate in the Contract in accordance with the Use of Alternate Channel Participation (Resellers/Distributors) clause of this Contract, requests to add or delete resellers or to modify reseller information must be submitted for prior approval of OGS and the State Comptroller. Contractor may request changes to the designated Reseller List by submission of a completed, revised Appendix F.

B. CONTRACTOR'S SUBMISSION OF CONTRACT UPDATES In connection with any Contract update, OGS reserves the right to:

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

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

- Price increases
- Products being added

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

- D. SUPPORTING DOCUMENTATION Each update request must include the current U.S. commercial price list relevant to the Products included in the update. If the NYS Net Prices are based on a GSA Schedule, the current GSA Schedule must also be included with the update request. Requested price increases not based on an approved GSA schedule must also include a copy of the current National Consumer Price Index as described in the “Payments/Pricing” section of the Contract.
- E. COVER LETTERS A Contract update must be accompanied by three (3) copies of the contract update format set forth in Appendix H. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, and/or for new Products or services which fall into a new group or category that did not exist at the time of approval of the Contract by the State Comptroller, etc.). Each of the three copies of the cover letters must contain original signatures by an individual authorized to sign on behalf of Contractor, and an original corporate acknowledgment (see below).

The Cover Letter must be signed by an individual given the authority to perform this action by the corporation’s board of directors and the signature must be notarized using the language that follows.

APPENDIX J

**SAMPLE
CERTIFICATE OF LIABILITY INSURANCE**

APPENDIX K
MAINTENANCE CENTER INFORMATION

Maintenance Center Information

REGION _____

Provide one form for each region for which your company is submitting a bid.

Prime Contractor Name: _____

Sub-Contractor Name (if applicable): _____

Maintenance Office Location:

Address: _____

City: _____

Zip Code: _____

Phone Number: (_____) _____

Fax Number: (_____) _____

Day of Operation: _____

Hours of Operation: _____

Main Contact Person: _____

E-Mail Address: _____

Number of Qualified Technicians @ Location: _____

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APPENDIX L
COST QUOTE FORM

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STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP

COMMUNICATIONS WIRE OR FIBER SYSTEM
COST QUOTE AND REQUISITION

PAGE 1 of ____

SECTION 1: To be completed by requesting agency. Refer to OGS Contract Notification Award Document.

TYPE and QUANTITY OF CABLE :

REGION _____

QTY	WIRE	QTY	FIBER
___	Cat ___ Cable Runs	___	Single Mode Runs
___	Cat ___ Cable Runs	___	# Of Strands
___	Coax Cable Runs	___	Multi Mode Runs
___	Inter-Floor Cables	___	# Of Strands
___	Required? Y/N	___	Inter-Floor Cables
___	Number of Closets	___	Required? Y/N
___	Number of Floors	___	Number of Closets
___	Inter Building Cable	___	Number of Floors
___	Required? Y/N	___	Inter Building Cable Required?
		___	Y/N

Agency name _____

Agency billing address _____

Telecommunications/Finance Representative Signature _____

please print representative name _____

Other (describe) _____

Tel # _____ Fax # _____

Address _____

Date required _____

Delivery location _____

On site contact _____

Tel # _____ Fax # _____

SECTION 2: To be completed by Contractor and returned to Agency Representative listed in SECTION 1.

CONTRACTOR _____ CONTRACT # _____
Total from attached Itemization based on Agency Request with contract unit pricing: \$ _____
Total "Best and Final" bid based on Agency Request: \$ _____
Quote prepared by: _____
Print Signature
Tel # _____ Fax # _____ Date _____

SECTION 3: FOR ALL PURCHASING AGENCIES - SECTION 3 must be completed before the Contractor is authorized to install the service requested on the attached Cost Quote(s).

Amount authorized by Purchasing Agency because of this review: \$ _____
Contractor recommended: _____
date

Print name

Agency Authorized Signature

Date

Vendor performed site visit? Yes No Floor plans Not applicable (circle one)
Justification attached requesting that other than lowest Contractor quote be authorized Yes No (circle one).

APPENDIX M

CONTRACT UPDATE FORM

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

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

INSTRUCTIONS:

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

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

<p>1. This request is an: <input type="checkbox"/> Auto Add <input type="checkbox"/> Regular Add <input type="checkbox"/> Special Add See contract for an explanation of these terms.</p>	<p>2. The intent of this submittal is to: <input type="checkbox"/> Add new products <input type="checkbox"/> Delete products <input type="checkbox"/> Increase pricing <input type="checkbox"/> Reduce pricing <input type="checkbox"/> Amend VAR list</p>
<p>3. All terms and conditions of the contract shall apply to this request. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree</p>	<p>4. All discounts as agreed to in the contract shall apply. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree</p>

<p>5. All discounts are: ___ GSA ___ Most Favored Nation*</p> <p>*Prices offered are the lowest offered to any similarly situated entity.</p>	<p>6. Attached documentation includes: ___ Current approved GSA (labeled "For information only") ___ Current commercial price list (labeled "For Information only") ___ Revised NYS Net Price List</p>
<p>7. For a regular add, please explain how pricing has been restructured to customers, and/or identify and describe new Products or services, which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller. If not applicable, state NA:</p> <p>_____</p>	

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

Signature of Authorized Vendor Representative:

<u>CORPORATE, PARTNERSHIP OR INDIVIDUAL ACKNOWLEDGMENT</u>		
STATE OF _____	}	
	:	SS.:
COUNTY OF _____	}	
<p>On the ___ day of _____ in the year 19 __ , 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:</p>		
<p>[Check One]</p> <p><input type="checkbox"/> If an individual: _he executed the foregoing instrument in his/her name and on his/her own behalf.</p> <p><input type="checkbox"/> 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.</p> <p><input type="checkbox"/> 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 the purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.</p>		
<p>_____ Notary Public</p>		

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

APPENDIX N

ACCEPTANCE FORM

APPENDIX O

ACCEPTANCE FORM

Requirements							
II.3.16 Prime Contractor Responsibilities		<input type="checkbox"/> Accept <input type="checkbox"/> Decline	<input type="checkbox"/> Accept <input type="checkbox"/> Decline	<input type="checkbox"/> Accept <input type="checkbox"/> Decline	<input type="checkbox"/> Accept <input type="checkbox"/> Decline	<input type="checkbox"/> Accept <input type="checkbox"/> Decline	
II.3.17 Cable Associated Hardware							<input type="checkbox"/> Accept <input type="checkbox"/> Decline

EXHIBIT 1

GLOSSARY OF TERMS, ACRONYMS AND ABBREVIATIONS

A	Ampere
AC	Alternating Current
ACR	Attenuation to Cross talk Ratio
ANSI	American National Standards Institute
AP	Access Provider
Aramid yarn	Generic name for a tough synthetic yarn
Attenuation	The decrease in magnitude of transmission strength between points, expressed in dB as the ratio of output to input signal level
AWG	American Wire Gauge
Backbone	Riser or Feeder Cables (between TR, EF, ER or floor distribution terminals)
Baseband	Signaling technique in which one signal at a time is transmitted
BICSI	Building Industry Consulting Service International
Bix	Northern Telecom trade name for an in-building termination and cross connect system for Unshielded pair cables
BNC	Bayonet-locking connector (Bayonet-Neill-Concelman)
Bonding	Permanent joining of metallic parts to form an electrically conductive path
CMP	Communications Plenum Cable
Coax	Coaxial cable used mainly for video and RF (and older data systems)
CP	Consolidation Point (location for interconnection between horizontal cables into furniture pathways)
Broadband	Frequency division multiplexing dividing a single physical channel into a number of smaller independent frequencies
dB	Decibel(s)
Delay skew	Difference in propagation delay between any two pairs within the same cable
Demarc	Demarcation point, where operational control or ownership changes
DFB Laser	Distributed Feedback Laser (Singlemode)
EF	Entrance Facility
EIA	Electronic Industries Alliance
ELFEXT	Equal Level Far-End Crosstalk
EMI	Electromagnetic Interference
ER	Equipment Room
FEP	Fluorinated Ethylene Propylene
FEXT	Far-End Crosstalk
FP Laser	Fabry-Perot Laser (Multimode)
F-Type	Male single-conductor coax connector that screws into a female jack
ft	Feet
GHz	Gigahertz
Ground	Conducting connection between an electrical circuit or equipment and earth
HC	Horizontal Cross-Connect (being revised to international standard of floor cross-connect)
Horizontal	Connection between the TO and HC
HVAC	Heating, Ventilation, and Air Conditioning

Hybrid	Cable assembly of two or more cable types or categories within one overall sheath (i.e. copper and optical fiber, or UTP and Coax)
IC	Intermediate Cross-Connect (being revised to international standard of building cross-connect)
IEEE	Institute of Electrical and Electronics Engineers
in	Inch
kg	Kilogram
kPa	Kilopascals
kVA	kilovolt-amperes
lb	Pound
lb/f	Pound force
lx	Lux
m	Meter(s)
Mbps	Megabits per second
MC	Main Cross-connect (being revised to international standard of campus cross-connect)
Media	Wire, cable, or conductors (could be copper, glass, or in the case of wireless air)
MHz	Megahertz
mm	Millimeter
MMF	Multi-Mode optical fiber (usually with 50 or 62.5 μm core) that carries many paths of light
MT-RJ	Duplex small form factor connector for optical fiber
Multipair	Cables with more than four pairs
MUTOA	Multi-user telecommunications outlet assembly
N	Newton
NA	Numerical Aperture (the fiber's ability to accept, in its bound modes, non-normal incident rays)
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NEXT	Near-End Crosstalk
NFPA	National Fire Protection Association
nm	Nanometer
NRTL	Nationally Recognized Testing Laboratory
ns	Nanosecond(s)
NVP	Nominal Velocity of Propagation
OFCP	Optical Fiber Conductive Plenum, NFPA designation
OFNP	Optical Fiber Nonconductive Plenum, NFPA designation
OFNR	Optical Fiber Nonconductive Riser, NFPA designation
Open office	Floor space division provided by furniture or moveable partitions instead of building walls
Patch cord	Flexible length of cable with a plug on one or both ends
Patch panel	Connecting hardware system that facilitates cable termination and cabling administration using patch cords
Pathway	A facility for the placement of telecommunications cable(s)
Plenum	A chamber by which environmental air is distributed
PO	Polyolefin (UTP cable insulation)
PSACR	Power Sum Attenuation to Crosstalk Ratio
PSELFEXT	Power Sum Equal Level Far-End Crosstalk

PSFEXT	Power Sum Far-End Crosstalk
PSNEXT	Power Sum Near-End Crosstalk
PVC	Polyvinyl Chloride
RG	Radio Guide
SC	Older style simplex optical fiber connector
ScTP	Screened Twisted Pair
SMF	Single Mode optical fiber (usually with 8-9 μm core) that carries only one path of light
SFF	Small Form Factor, optical fiber duplex connector approximately the same size as an 8P modular connector (RJ45)
ST	Older style simplex optical fiber connector
Star	Topology in which cables are distributed from a central point
STP	Shielded Twisted Pair
TGB	Telecommunications Grounding Busbar
TIA	Telecommunications Industry Association
TO	Telecommunications Outlet
TP	Transition Point
TR	Telecommunications Room (formerly TC or Telecommunications Closet)
UL	Underwriters Laboratories, Inc.
μm	Micron or micrometer
UPS	Uninterruptible Power Supply
USOC	Universal Service Order Code
UTP	Unshielded Twisted Pair
VAC	Volts AC
WA	Work Area
X	Cross-connect
10GE	10 Gigabit Ethernet
568SC	Older style duplex SC connector for optical fiber terminations
6P4C	6-position 4-conductor modular connector (incorrectly a.k.a. RJ14) typically used for telephone instrument connections
8P8C	8-position 8-conductor modular connector (incorrectly a.k.a. RJ45) typically used for LAN/data connections

This is the last page.