Information Technology & Telecommunications

Carole Post
Commissioner
75 Park Place
New York, NY 10007
212-788-6600

January 11, 2012

Trigyn Technologies, Inc.
100 Metroplex Drive
Edison NJ 08817

Attn: Tom Gordon

Re: Notice to Proceed: Citywide Standby IT and Telecommunication Consulting Services (ITCS 3) Negotiated Acquisition Extension Parent Contract No: 858 20126200396

Dear Mr. Gordon:

This is to inform you that the Office of the Comptroller has filed Contract No: 858 20126200396 for a not to exceed amount of $3,500,000.00. The term of the contract is for eighteen (18) months, starting 01/01/12 and ending on 06/30/13. The DoITT contract manager is Michael Williams, whose telephone number is (212) 788-6186 and the contract administrator is Hillary Shabazz, whose telephone number is (212) 788-6010. They will coordinate all activity on this contract.

The DoITT contract manager will be contacting you shortly with further instructions regarding the procedures for Task Orders and invoicing.

Thank you for your anticipated assistance, and should you require additional information, please contact Margaret Budzinska, IT Contract Specialist at (212) 788-6510.

Very truly yours,

Barbara Lederman
Agency Chief Contracting Officer

c: M. Williams, H. Shabazz, J. Winker; V. Ahern & File
VNC#858111811001907

DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

AGREEMENT WITH

TRIGYN TECHNOLOGIES, INC.

CITYWIDE STANDBY INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS CONSULTING SERVICES

NEGOTIATED ACQUISITION EXTENSION

Pursuant to Section 3-04(b)(2)(iii): Negotiated Acquisition of the Procurement Policy Board Rules the parties signed below are entering into an agreement under the same terms and conditions of the existing contract (858 20116200488). The contract term shall be from January 1, 2012 to June 30, 2013. The maximum value of the contract is $3,500,000. The Trigyn Technologies, Inc. rates for Citywide Standby Information Technology and Telecommunications Consulting Services are set forth in the attached Exhibit A.

The original contract is annexed hereto and incorporated herein as Exhibit B. Investigations Clause, Resolution of Disputes and Vendor Name Check requirements are incorporated herein as Exhibit C. Except as set forth herein, all terms and conditions of the original contract shall remain in full force and effect.

ACCEPTED BY:

DoITT		Trigyn Technologies, Inc.	
Signature:	Carole Post	Signature:	
Name:	Carole Post	Name:	Thomas A. Gordon
Title:	Commissioner	Title:	Senior Vice President
Date:	1-6-12	Date:	January 3, 2012
		EIN:	54-1948401

Exhibit A

ATTACHMENT PRICE PROPOSAL FORMAT

Citywide Standby Information Technology and Telecommunications Consulting Services - 85810O0040

COMPANY NAME: TRIGYN TECHNOLOGIES, INC.

CONTACT NAME: TOM GORDON

AUTHORIZED SIGNATURE:_____ DATE: 10/25/10

#	NYS OGS Back-Drop Contract Job Title	OGS RATE	Contractor Proposed Hourly Rate(*)	Estimated # of Man-Hours Year 1(**)	Estimated Year 1 Price
1	Programmer Analyst EL	$277.75	50	600	$30,000.00
2	Programmer Analyst I	$310.15	60	800	$48,000.00
3	Programmer Analyst II	$341.40	75	11250	$843,750.00
4	Programmer Analyst III	$371.49	90	12500	$1,125,000.00
5	Project Manager EL	$317.10	60	200	$12,000.00
6	Project Manager I	$355.29	70	400	$28,000.00
7	Project Manager II	$402.73	85	5500	$467,500.00
8	Project Manager III	$465.23	100	6500	$650,000.00
9	Specialist EL	$249.97	50	600	$30,000.00
10	Specialist I	$285.85	60	800	$48,000.00
11	Specialist II	$341.40	75	11250	$843,750.00
12	Specialist III	$402.73	90	12500	$1,125,000.00
	Year 1 Subtotal				$5,251,000.00

(*) The hourly rate specified is to be inclusive of all costs and expenses, and cannot exceed the NYS OGS Backdrop Contract rate that is in effect for that contract year for the job title(s) proposed. Contractor will not be reimbursed for any travel time, including commuting between various City sites during the course of an assignment.

(**) All numbers of man-hours in this proposal form are estimates, and are set forth for comparison purposes only.

ATTACHMENT PRICE PROPOSAL FORMAT

Citywide Standby Information Technology and Telecommunications Consulting Services - 85810O0040

COMPANY NAME: TRIGYN TECHNOLOGIES, INC.

CONTACT NAME: TOM GORDON

AUTHORIZED SIGNATURE:_____ DATE: 10/25/10

#	NYS OGS Back-Drop Contract Job Title	OGS RATE	Contractor Proposed Hourly Rate(*)	Estimated # of Man-Hours Year 2(**)	Estimated Year 2 Price
1	Programmer Analyst EL	$277.75	50	600	$30,000.00
2	Programmer Analyst I	$310.15	60	800	$48,000.00
3	Programmer Analyst II	$341.40	75	11250	$843,750.00
4	Programmer Analyst III	$371.49	90	12500	$1,125,000.00
5	Project Manager EL	$317.10	60	200	$12,000.00
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11	Specialist II	$341.40	75	11250	$843,750.00
12	Specialist III	$402.73	90	12500	$1,125,000.00
	Year 2 Subtotal				$5,251,000.00

(*) The hourly rate specified is to be inclusive of all costs and expenses, and cannot exceed the NYS OGS Backdrop Contract rate that is in effect for that contract year for the job title(s) proposed. Contractor will not be reimbursed for any travel time, including commuting between various City sites during the course of an assignment.

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Citywide Standby Information Technology and Telecommunications Consulting Services - 85810O0040

COMPANY NAME: TRIGYN TECHNOLOGIES, INC.

CONTACT NAME: TOM GORDON

AUTHORIZED SIGNATURE:_____ **DATE: 10/25/10**

#	NYS OGS Back-Drop Contract Job Title	OGS RATE	Contractor Proposed Hourly Rate(*)	Estimated # of Man-Hours Year 3(**)	Estimated Year 3 Price
1	Programmer Analyst EL	$277.75	50	600	$30,000.00
2	Programmer Analyst I	$310.15	60	800	$48,000.00
3	Programmer Analyst II	$341.40	75	11250	$843,750.00
4	Programmer Analyst III	$371.49	90	12500	$1,125,000.00
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11	Specialist II	$341.40	75	11250	$843,750.00
12	Specialist III	$402.73	90	12500	$1,125,000.00
	Year 3 Subtotal				$5,251,000.00

Year 1 Subtotal		$5,251,000.00
Year 2 Subtotal		$5,251,000.00
Year 3 Subtotal		$5,251,000.00
GRAND TOTAL		$15,753,000.00

(*) The hourly rate specified is to be inclusive of all costs and expenses, and cannot exceed the NYS OGS Backdrop Contract rate that is in effect for that contract year for the job title(s) proposed. Contractor will not be reimbursed for any travel time, including commuting between various City sites during the course of an assignment.

(**) All numbers of man-hours in this proposal form are estimates, and are set forth for comparison purposes only.

Exhibit B

AGREEMENT FOR
CITYWIDE STANDBY
INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS
CONSULTING SERVICES

AGREEMENT made and entered into on April 14, 2011 between THE CITY OF NEW YORK (the "City"), acting by and through its Department of Information Technology and Telecommunications (the "Department" or "DoITT"), having offices at 75 Park Place, 9th Floor, New York 10007, and Trigyn Technologies, Inc ((the "Contractor"), with offices at 100 Metroplex Drive, Edison, New Jersey 08817

W I T N E S S E T H:

WHEREAS, the New York State Office of General Services ("NYS OGS") has entered into a contract for Information Technology Services (Group: 73012, Award: S960275-E.1, hereinafter referred to as the "Back-Drop Contract") with the Contractor to be part of a pool of contractors to bid on projects let by Issuing Entities during the Back-Drop contract term; and

WHEREAS, the Back-Drop Contract authorizes local governments, including cities, to use the Back-Drop Contract to issue project definitions and enter into contracts in accordance with the terms and provisions of the Back-Drop Contract ; and

WHEREAS, on August 11, 2010, the City issued a Project Definition (PIN: 85810O0040) for Citywide Standby Information Technology and Telecommunications Consulting Services, requesting proposals to provide the services set forth therein; and

WHEREAS, on October 25, 2010, the Contractor responded with a proposal to provide the requested services; and

WHEREAS, the City has determined that the Contractor's offer to be responsive and cost-effective;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

As used in this Agreement the following terms are defined as follows:

"Consultant" shall mean an individual selected by a Requesting Agency to perform services pursuant to a Task Order. The Consultant shall be either an employee or independent contractor of the Contractor. In either case, there is no direct contractual relationship between the Consultant and the City.

"Notice to Proceed" shall mean a written notice from DoITT to the Contractor informing the Contractor that this Agreement has been duly registered by the Office of the City Comptroller. The date of such registration, which will also be the date listed on the Notice to Proceed, shall be the first day of the term of this Agreement.

"Project Definition" shall mean the written solicitation for Citywide Standby Information Technology and Telecommunications Consulting Services, Procurement Identification Number 85810O0040, and Addendum #s 1, 2,3,4 and 5.

"Requesting Agency" shall mean a City agency that requests candidate resumes for Information Technology and Telecommunications consulting services in accordance with the procedures set forth in the Project Definition and awards a Task Order to the Contractor, having arranged for such Task Order to be filed in the Office of the City Comptroller.

"Task Order" shall mean a document agreed upon by the Contractor, the Requesting Agency and DoITT describing the services the Contractor is required to provide to the Requesting Agency.

"Tier 2" is the process, described in the Project Definition, with which process the parties to this Agreement shall comply to nominate and select Consultants and award Task Orders. ("Tier 1" was the contractor-selection process that resulted in the award of this Agreement to the Contractor.)

ARTICLE II TERM, TERMINATION, AND MODIFICATION OF AGREEMENT

The term of this Agreement shall commence upon Notice to Proceed and expire after a term of three (3) years. If the Back-Drop Contract has an expiration of December 31, 2011,
the Agreement shall automatically expire when the term (or extended term) of the Back-Drop Contract expires; provided, however, that if the Contractor and the New York State Office of General Services (OGS) have entered into a successor agreement (the "Successor Back-Drop Contract") the provisions of which are the same as or similar to those of the Back-Drop Contract, then the term of the Agreement shall not automatically expire but shall instead extend through, and survive for, the full duration of the term stated in the Agreement, in which event, effective upon the day next following the date the Agreement would otherwise automatically have expired, the terms and conditions of the Successor Back-Drop Contract shall apply from that day forward. If the term of the Agreement automatically expires because the term (or extended term) of the Back-Drop Contract has expired but the Contractor and OGS have not entered into a successor agreement as indicated above, then pursuant to Section IV.5 (Mini-Bid Project Awards) of the Back-Drop Contract , notwithstanding the expiration of the Agreement and the Back-Drop Contract, the Contractor shall be required to complete work under any Task Order (issued prior to the expiration of this Agreement) in accordance with the provisions of the Agreement and the Task Order, and the terms and conditions of the Agreement and the Back-Drop Contract shall survive expiration of the Agreement and Back-Drop Contract and apply through completion of the work under such Task Order and acceptance by the City.

The City reserves the right to terminate this Agreement, or any Task Order awarded under this Agreement, prior to expiration at the City's sole discretion.

ARTICLE III SUBJECT MATTER OF AGREEMENT

Pursuant to Task Orders awarded by Requesting Agencies in accordance with the procedures applicable to Tier 2 that are set forth in the Project Definition and guidelines established by DoITT, the Contractor shall provide Consultants to perform services in one or more of the following Categories of Expertise. The functions of such Categories of Expertise are described in the Project Definition.

1. Systems Management Mainframe
2. Systems Management Mid-Range
3. Systems Management PC
4. Applications Development PC
5. Internet/Intranet Application Services
6. Help Desk Services
7. Local Area Network Services (LAN/WAN)

8. Telecommunications Services

ARTICLE IV DOCUMENTS PART OF THIS AGREEMENT; CONFLICTS

This Agreement and each Task Order awarded pursuant to this Agreement is deemed to incorporate all the terms and conditions of the Back-Drop Contract and the Project Definition, even if such terms and conditions are not expressly set forth in this Agreement or in a Task Order. In addition, each Task Order awarded pursuant to this Agreement is deemed to incorporate and be subject to the provisions of this Agreement.

Any conflict between this Agreement and its exhibits shall be resolved in the following order of precedence, this document titled Agreement and the following listed exhibits constituting the entire contract between the parties:

- This document titled Agreement, including the attached Schedule of Hourly Rates;
- Exhibit I: Back-Drop Contract between the Contractor and NYS OGS;
- Exhibit II: Project Definition (and all Addenda);
- Exhibit III: Contractor's Technical and Price Proposals.

ARTICLE V AGREEMENT MAXIMUM AMOUNT, PAYMENT AND INVOICING

1. Agreement Maximum Amount

The total payments to Contractor under this Agreement, unless this amount is increased by a change order, shall not exceed $9,000,000. The total not-to-exceed dollar amount represents the maximum spending "cap" associated with this contract action, and is not a guarantee that this or any sum has been committed by the City. The City reserves the right to spend less than this total not-to-exceed amount.

Each payment obligation of the City created by this Agreement to be satisfied in any fiscal year other than the current fiscal year ending June 30, 2011, is conditioned upon the availability of City funds which are appropriated or allocated for the payment of such obligation.

2. Invoices, Payments and Schedule of Hourly Rates

Invoices:

Invoices for services performed pursuant to Task Orders shall be submitted to the Requesting Agency on a monthly basis, for services rendered in the previous calendar month.

Payments:

Payments shall be made by the Requesting Agency in accordance with the City's Prompt Payment provision, Section 4-06 of the Rules of the New York City Procurement Policy Board.

Schedule of Hourly Rates:

The attached Schedule of Hourly Rates for each of the twelve (12) NYS OGS job classifications (set forth in the Back-Drop Contract) shall be the basis for determining the hourly rates of Consultants (whose qualifications and experience correspond to such Back-Drop Contract job classifications) under Task Orders awarded during the term of this Agreement. The hourly rates that the Contractor offers to provide under a Task Order may be lower than, but cannot exceed, the rates in the attached Schedule of Hourly Rates.

ARTICLE VI ADDITIONAL REQUIREMENTS APPLICABLE TO THIS AGREEMENT AND TASK ORDERS

Notwithstanding any inconsistent statement in this Agreement, the following provisions of the Project Definition are expressly changed by this Agreement:

- Paragraph H (Ownership, Title, License of Deliverables) on page 15 of the Project Definition is supplemented by the following additional sentences: "Notwithstanding the foregoing, this Agreement does not contemplate a Contractor providing the City with any Existing Product or Existing Licensed Product. This is a project calling only for personal services. Any and all intellectual property created by Consultants, whether they may be employees or independent contractors of the Contractor, shall be owned exclusively by the

City. However, the Contractor and its personnel are free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of the City."

- Acceptance of the services provided by the Contractor lies with the Requesting Agency's project manager; provided, however, that such acceptance shall not be unreasonably withheld.

ARTICLE VII CHANGE ORDER PROVISIONS

This Agreement and Task Orders may be modified in writing by the parties from time to time as may be permitted under the laws and rules applicable to this Agreement. Any such modification shall be effective only if signed by the parties pursuant to the procedures required by law or rule.

ARTICLE VIII NON-FUNDING CLAUSE

Each payment obligation of the City created by this Agreement, or any Exhibit attached hereto, is conditioned upon the availability of City funds, which are appropriated or allocated for the payment of such an obligation.

ARTICLE IX ELECTRONIC FUNDS TRANSFER

A. In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

B. The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements

hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

ARTICLE X TAXPAYER AFFIRMATION

The Contractor affirms that Contractor is not in arrears to the City of New York upon debt or contract, or taxes, and is not a defaulter as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts except:

_____

[NO MORE TEXT ON THIS PAGE]

APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS

AGENCY: **DEPARTMENT OF INFORMATION TECHNOLOGY and TELECOMMUNICATIONS**

CONTRACT: **CITYWIDE STANDBY INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS CONSULTING SERVICES**

I hereby approve as to form the annexed contract by standard type of class. This approval is valid for a period of six (6) months from the date hereof and for a maximum of ten (10) contracts. The above approval is made on the express understanding that the substantive language of the subject contracts will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts or other similar details may be completed.

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

Date: FEB 04 2011

#2011-003066

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates appearing by their respective signatures.

CONTRACTOR: Trigyn Technologies, Inc

SIGNATURE: _____

PRINTED NAME: Thomas A. Gordon

TITLE: Senior Vice President

54-1948401
FED. EMPLOYER ID NUMBER OF CONTRACTOR

DATE: February 14, 2011

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS:

SIGNATURE: Carole Post

PRINTED NAME: Carole Post

TITLE: Commissioner

DATE: 2-25-11

Approved as to Standard Form
Certified as to Legal Authority

By Acting Corporation Counsel
Date:

ACKNOWLEDGMENT BY THE CITY OF NEW YORK

STATE OF NEW YORK)
) SS.:
COUNTY OF New York)

ON THE 25 DAY OF February, 2011, BEFORE ME PERSONALLY CAME CAROLE POST TO ME KNOWN AND KNOWN TO ME TO BE THE COMMISSIONER OF THE DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS OF THE CITY OF NEW YORK, THE PERSON DESCRIBED AS SUCH IN AND WHO AS SUCH EXECUTED THE FOREGOING AGREEMENT AS COMMISSIONER FOR THE PURPOSES THEREIN MENTIONED.

Denise M. Gilliam

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

DENISE M. GILLIAM
Notary Public, State of New York
No. 01GI6062892
Qualified in Bronx County
Commission Expires Aug. 20, 2012

ACKNOWLEDGMENT BY CORPORATION

STATE OF New Jersey)
) SS.:
COUNTY OF Middlesex)

ON THE 14 DAY OF February, 2011, BEFORE ME PERSONALLY CAME Thomas A Gordon WHO BEING DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES IN THE CITY OF Westfield, STATE OF NJ, THAT (S)HE IS THE Senior Vice President OF Trigyn Technologies, Inc, THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE FOREGOING AGREEMENT; THAT (S)HE KNOWS THE SEAL OF SAID CORPORATION; THAT THE SEAL AFFIXED TO THE SAID INSTRUMENT IS SUCH CORPORATE SEAL; THAT IT WAS SO AFFIXED BY ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION; AND THAT (S)HE SIGNED HIS NAME THERETO BY LIKE ORDER.

SEW FONG JORDAN
Notary Public of New Jersey
Commission Expires 2/21/2013

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

Sworn to and subscribed
before me
14 day of Feb, 20 11

Exhibit I: Back-Drop Contract between the Contractor and NYS OGS

I.1 Overview

This Request for Proposals (RFP) issued by the State of New York, Office of General Services (OGS) Procurement Services Group (PSG), solicits vendors qualified to provide the following Information Technology Services to the State of New York and it's Authorized Users:

- Consulting
- Systems Integration (SI),
- Training services
- On-Going Services, including Maintenance & Support
- Equipment Maintenance

Additionally, Vendors who are contracted to provide SI services may provide other products, including but not limited to technology, commodities, etc.

Solicitation will be on a continuous recruitment basis from the release date of this RFP, through June 30, 2010, for multi-vendor, Back-Drop Contract awards. During the Back-Drop Contract term, Vendors with Back-Drop Contracts will be eligible to bid on individual projects/tasks identified by Authorized Users and solicited under a competitive mini-bid process. **Projects principally involving the acquisition of tangible assets (hardware and/or software products) with only incidental Consulting, Systems Integration, and/or Training Services do not fall within the scope of this RFP.**

I.2 Inquiries

All questions concerning this RFP should be submitted by e-mail or fax and directed to Team 9, IT Services:

ITServicescontractcontract@ogs.state.ny.us

Fax #: 518-402-5331

Phone queries will NOT be accepted.

I.3 Bidders' Conference

No Bidder's Conference scheduled in conjunction with the letting of this RFP.

IT Services

Contract Period: February 2, 1998 - December 31, 2011

A replacement RFP will be advertised after January 31, 2011.

Group: 73012 **Award:** S960275E.1

Contract Type: Multi-vendor

Use of Contracts: Statewide, all state agencies, political subdivisions, local governments and other authorized users.

Designated Contacts:

Pat Weidman
pat.weidman@ogs.state.ny.us
(518) 473-2045

Theresa Kuo
theresa.kuo@ogs.state.ny.us
(518) 474-0259

Jenny Fung
jenny.fung@ogs.state.ny.us
(518) 486-2775

Fax: (518) 402-5331

Description:

Contracts are uniform in their Backdrop Terms & Conditions and will remain active through December 31, 2011. Each contract may cover a gamut of IT Services (Consulting, Systems Integration, Training, On-Going Services, Maintenance and Support).

The Procurement Lobbying Law imposes certain restrictions on communications between OGS and an Offerer/Bidder during the procurement process ("restricted period"). For Continuous Recruitment Contracts, **the restricted period begins** upon receipt of proposal **by OGS PSG** and **ends** upon contract approval by **OSC**. Details of the Procurement Lobbying law are available within RFPS960275-E.1.

Contract Specifics

Download RFPS960275-E.1 *If interested in Pre-Qualifying for a Back-Drop Contract for IT Services.*

Contract Terms & Conditions

List of Pre-Qualified Contractors (Contractor Information, Services & Categories, Pricing, etc.)

The renewal of individual backdrop contracts is ongoing.
Contractors will be added to the List of Pre-Qualified Contractors as their contract renewal is approved.

Contractor Policy & Procedures Manual

Contractor Pricing & Mailing List

Contractor Amendment Packet (Word File)

Contractor Semi-Annual Report Form (Excel File)

Contractor Policy of Good Standing

Procurement Information

Road Map (Getting Around the IT Services Web Site)

Frequently Asked Questions (FAQ's)

Guidelines, Forms, Templates for all Procurement Options

NYS CIO/OFT (Plan To Procure)

Quick Contract Processing Criteria (OSC 3-5 day turnaround)

Contractor Performance Report Form (Word File)

Monthly Purchasing Memoranda

GTC Presentation

Install Free Adobe Acrobat Reader for PDF Documents

© State of New York, Office of General Services
Website Disclaimer | Privacy Policy

I.1 Overview

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Fax #: 518-402-5331

Phone queries will NOT be accepted.

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SECTION II - TECHNICAL REQUIREMENTS

II.1 General

Vendor must submit a Bid Proposal in compliance with this RFP in order to qualify for award of a Back-Drop Contract (Refer to Section VI). It is important to understand that this is NOT A COMPETITIVE BID!! Its purpose is to establish the Vendor's firm on a pre-qualified list from which authorized users of State contracts solicit bids. Bid Proposal must document Vendor's qualifications to the satisfaction of the State (Refer to Section II.2). Vendor must show itself to have prior, substantial experience with *Information Technology (IT) Services* within the Categories of Expertise defined herein (Refer to Section II.5). Vendors may qualify to provide any or all *Information Technology (IT) Services* within one or more Categories of Expertise. Vendors may also qualify to provide Equipment Maintenance for Mainframes, Mid-Ranges, PCs, and Printers.

Vendor must furnish not-to-exceed maximum pricing (except where noted) that will be updated annually. Thereafter at the contract level contract rates will apply to all projects bid by Contractor during the Back-Drop Contract term (Refer to Section III.3). Upon receipt of the New York State Comptroller's (OSC) approval, Vendor will be awarded a Back-Drop Contract under the Terms and Conditions set forth herein and placed on the list of qualified Back-Drop Contractors according to the Types of Services and Categories of Expertise awarded with Vendor's Back-Drop Contract. Best and final pricing within that ceiling will be furnished at the mini-bid level for a particular project in accordance with its Project Definition/Specifications.

To maintain its Back-Drop Contract status until December 31, 2010, each Contractor must deliver to OGS, once a year, written re-certification of all information contained in the original Bidder's Qualification Filing as a condition of continued qualification. The Contractor is required to:

(1) Update annually the financial, employee and ownership information for the firm. If there are no changes to the remaining information, it is incumbent upon Contractor to re-certify that fact in writing to OGS at the address listed in Section I.2 above in order to maintain its Back-Drop Contract status.

(2) Update annually the not-to-exceed rates in accordance with the guidelines set forth in Section III.3.6 of this RFP.

If Contractor fails to comply with these requirements, OGS may remove Contractor from active bidding status pending receipt and reinstatement, or may cancel Contractor's Back-Drop Contract.

II.2 Minimum Vendor Qualifications

II.2.1 Register with Department of State

Vendors (with the exception of single proprietorships) must comply with the Department of State (DOS) guidelines for doing business in their respective states (NYS for headquartered/resident NYS business; and the same for non-NYS businesses).

A firm must be established as a business (single proprietorships, LLC, LLP, or corporation) for a minimum of six (6) months before consideration can be given for a back-drop contract award. It is the combination of technical knowledge as well as the administrative and business functions that are key to a firm's viability and stability.

II.2.2 Minimum Number of Employee(s)

II.2.2.1 For Consulting, Systems Integration Services, On-Going Services, Maintenance and Support

Vendor must have at least one (1) full-time, professional level employee who is capable of performing the duties as described in Section II.4.1 and II.4.2. In the case of one-person firms, they can be one and the same.

II.2.2.2 For Training Services

Vendor must have at least one (1) full-time professional level employee who has had principle responsibility for the administering and/or developing, and/or instructing for the area and mode of training delivery sought (Live, CBT/Multi-Media, VBT, WBT, IWBT) as described in Section II.4.3. In the case of one-person firms, they can be one and the same.

II.2.3 Vendor's Business and Financial Stability

Vendor must provide evidence of its general corporate and financial stability to the satisfaction of the State or Issuing Entity. Disclosure of all relevant information shall be furnished, including at a minimum, all information required in Appendix C, Part II, Bidders' Qualification Filing. The State reserves the right to request additional information if needed.

Vendor must disclose in its Bid Proposal and subsequent responses to mini-bids, any information relating to its reputation or reliability, whether adverse or otherwise, arising within or outside New York State. The State or Issuing Entity may consider all relevant information made known by Vendor or discovered at any time thereafter in relation to the Vendor. Such information may include changes in key personnel, past performance on public or private contracts, and criminal or civil liabilities or proceedings involving Vendor whether arising within or outside the State of New York. The State may, in its sole discretion, withhold or withdraw contract award and/or placement on the Bidder's Qualification Filing list, and/or may terminate a previously awarded contract for Vendor's failure to meet the requirements of this paragraph.

In submitting its proposal, Vendor affirms that material facts, whether technical, financial or otherwise, relating to its qualifications to provide services in accordance with the terms herein have been disclosed.

II.2.4 Minimum Expertise Requirements

Vendor must be able to demonstrate to the satisfaction of the State that Vendor can meet this RFP's minimum qualifications for at least one Category of Expertise and one Type of Service by its submission of the mandatory supporting documentation outlined in Appendix C, Part I, Mandatory Vendor Submissions.

Vendor may amend or expand the Categories of Expertise or Types of Services for which it qualifies under the Back-Drop contract at any time during the contract term (up to six months prior to the expiration of the contract). Refer to Section VI.7.

II.3 Preferred Sources

Section 162 of the State Finance Law requires that agencies afford first priority to the products/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, NYS Industries for the Disabled, and the Office of Mental Health's "Buy OMH" program when such products/services meet the form, function and utility of the agency. Some products/services covered by the Back-Drop contracts may be available from one or more preferred sources.

The following note will be included in the Mini-Bid Guidelines governing the use of these contracts reminding agencies of the statutory requirements and resulting guidelines with respect to affording first priority to the preferred sources:

Agencies Note: Some products/services covered by the Back-Drop contracts may be available from one or more preferred sources. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products/services available from preferred sources that meet your form, function and utility.

II.4 Types of Services

II.4.1 Consulting Services

"Consulting Services" include the qualified, professional ability of the Vendor to offer analysis, recommendations, design or programming expertise to the State relating to information technology systems associated with the Categories of Expertise defined in Section II.5. Said expertise must include a current knowledge of the technology marketplace, related information technology issues and trends, and may include the ability to:

a) Analyze existing technological environment, including hardware, software, and live operations and transaction volumes;
b) Design and develop new systems, add-ons or modifications to existing architectures, including single platform computer systems and distributed systems;
c) Develop functional and/or design specifications, technical writing and documentation;
d) Provide operating system and/or applications programming, including recommendations for the acquisition of off-the-shelf products for their integration;
e) Install, test, audit and fully integrate programming or products in the Issuing Entity's environment.

II.4.2 Systems Integration

II.4.2.1 General

"Systems Integration Services" includes all of the responsibilities under Consulting Services in addition to the Vendor assuming principal responsibility and liability for designing, recommending, procuring, and installing and fully integrating systems into live operating environments. The SI Vendor is required to show prior, substantial experience as a Systems Integrator in order to pre-qualify under this RFP, including principal responsibility for project management and acquisition of project materials or components from third party sources. All SI Vendors will be required to comply with the requirements set forth below in Section II.4.2.2. Duties include but are not limited to the following:

a) Analyze existing technological environment, including hardware, software, and live operations and transaction volumes;

b) Design and develop new systems, add-ons or modifications to existing architecture, including single platform computer systems and distributed systems;
c) Develop functional and/or design specifications, technical writing and documentation;
d) Provide operating system and/or applications programming, including recommendations and acquisition of off-the-shelf products or integration of custom programming products;
e) Acquire hardware/software products and services utilizing existing state contracts in accordance with the terms of this RFP and resulting Project Definition/Specifications;
f) Coordinate and supervise multiple service or product providers;
g) Install, test, audit and fully integrate a new system within the Issuing Entity's environment; and
h) Provide cultural transitioning of Issuing Entity's workforce to the new environment, including training of Issuing Entity's employees and other end users at Issuing Entity's site as identified in the Project Definition/Specifications.

II.4.2.2 Systems Integration (SI) Responsibilities

II.4.2.2.1 Delivery of the Integrated System

The SI Contractor shall be responsible for delivering a working, integrated system in accordance with the Project Definition/Specifications, including delivery of products, scheduling and coordination of all suppliers/subcontractors, and interface with existing architecture as defined in the Project Definition/Specifications.

Failure to meet the performance or inter-connection requirements of the specifications remains Contractor's responsibility and shall be remedied at Contractor's expense.

II.4.2.2.2 Procurement Responsibilities: Contractor & Issuing Entity

The Issuing Entity shall set forth the Contractor's procurement role in the Project Definition/Specifications. The Issuing Entity may reserve procurement responsibilities to itself in the Project Definition/Specifications relative to all or part of the Project products as best serves the interest of the Issuing Entity.

II.4.2.2.3 Procurement from State Centralized Contract Vendors

Where Contractor assumes a procurement role for the Issuing Entity, Contractor's discretion in bidding and acquiring Project products, including technology, commodities and services, will be restricted to available OGS centralized contract vendors/suppliers "*wherever possible*" in order to take full advantage of the pre-qualification and standardization of products available from centralized contract vendors/suppliers and to expedite project award and completion. Such limitation will restrict Contractor's supplier pool for a majority of the Project products to vendors who already hold centralized products contracts.

A list of centralized contract vendors for the Project products and services, which list shall serve as a canvas list for Contractor, is available from the Office of General Services. A special form will be provided by each Issuing Entity as part of the Project Definition/Specifications for Systems Integration (SI) projects. This form, called the ***Product Acquisition and Use Confirmation*** form is included in

the templates and attachments available to the users of the OGS PSG back-drop contracts (and referred to as Attachment 12 in the PD Attachments packet). Contractor shall provide such centralized contract vendor with a letter, and the ***Product Acquisition and Use Confirmation*** form executed by Issuing Entity and Contractor, indicating to the centralized contract holder that the product(s) being acquired are for ultimate use by the Issuing Entity. This form will request that the hardware and/or software vendor "extend the same terms, conditions and pricing to the Contractor for the listed product, and to credit the volume if applicable to the Issuing Entity under vendor's New York State centralized contract with the Office of General Services."

Procurements from centralized contract vendors shall require Contractor to ascertain that applicable volume discount, pricing structure or other centralized contract rights, warranties and/or other requirements are applied to the Project product, and such quantities are credited on behalf of the State under the applicable State centralized contract number(s).

II.4.2.2.4 Procurement Standards and Documentation

The highest standard of care shall be imposed on Contractor to secure Project products at the lowest available price in accordance with centralized contracts to serve the best interests of the Issuing Entity. Contractor shall be required to provide written affirmation to the Issuing Entity that it has: a) solicited products from centralized contracts wherever possible for the Project products furnished by Contractor; and b) that Contractor's negotiated bid price for such products (whether on a centralized contract or not) is at or below the State contract price. Contractor's principal duty shall be to obtain the "*Best Value*" for the Issuing Entity who shall be entitled to all savings negotiated by the Contractor on its behalf. "Best Value applies to the offeror that optimizes quality, cost, and efficiency. Such basis shall reflect, whenever possible, objective and quantifiable analysis." (NYS Finance Law, Article XI, Section 163.)

II.4.2.2.5 Responsibility for Coordination of Delivery with Third Party Suppliers

Contractor is responsible for the timely coordination of delivery, installation and completion of the Project deliverables set forth in the statement of work. Where the statement of work requires delivery and/or installation of third party products or services to be furnished by or through Contractor, Contractor is responsible for coordinating delivery and installation with third party suppliers, and shall be liable for any cost(s) of reinstating standard manufacturer's warranty or acceptance periods which have lapsed due to untimely coordination by Contractor. Where the Issuing Entity is responsible for delivery and/or installation of third party products or services pursuant to Section II.4.2.2, Contractor is responsible for furnishing the delivery schedule to Issuing Entity and Issuing Entity is responsible for timely delivery pursuant to that schedule.

II.4.2.2.6 Responsibility for Payment/Risk of Loss with Delivery of Project Components

Costs and risk of loss shall not pass to the Issuing Entity for Project components, whether tangible or intangible, until turned over to the Issuing Entity upon successful completion of the acceptance testing in accordance with the Project Definition/Specifications. If said materials or supplies do not meet the acceptance

testing criteria for payment, Contractor shall be responsible for securing satisfactory performance at its own expense.

II.4.2.2.7 Responsibility for Defective Deliverables
Products specified by Contractor to meet the requirements of the Project Definition/ Specifications but acquired or furnished by Issuing Entity to Contractor pursuant to Section II.4.2.2, shall be deemed to be "components or deliverables specified and furnished by or through Contractor under the Project Definition" during the Project warranty period for purposes of the Section III.21, Warranty for Deliverables/ Workmanship.

II.4.2.2.8 Liability for Third Party Payments/Title/Risk of Loss
Contractor shall be responsible for supplier payment, delivery and risk of loss until the acceptance criteria in the Project Definition/Specifications have been met entitling Contractor to progress payments or to pass title and risk of loss in accordance with the terms of the contract notwithstanding that Contractor shall be required to make acquisitions from centralized contract suppliers. Contractor shall remain solely liable for payment to its third party suppliers during the Project term until entitled to reimbursement from the Issuing Entity for such payments in accordance with the schedule for project deliverables/acceptance set forth in the Project Definition/Specifications.

II.4.2.2.9 Substitution of Specified Products
In the event a specified manufacturer's commodity listed in the Project Definition/Specifications, Contractor mini-bid Proposal, and subsequent Notice of Project Award, becomes unavailable or cannot be supplied for any reason, a product deemed by the Issuing Entity to be the equal of the specified commodity must be substituted by the Contractor at no additional cost or expense to the State**,** subject to Contractor's approval, which shall not be unreasonably withheld.

II.4.3 Training Services
"Training Services" will include Contractor's ability to furnish pre-packaged training products, and/or develop or customize training programs (Refer to Note below) as requested, including Instructor Led/Live Training (ILT), Computer Based/Multi-Media training (CBT), Video Based Training (VBT), Web Based Training (WBT), and/or Interactive Web Based Training (IWBT). The non-ILT Training modes of delivery provide alternatives and/or supplements to instructor-led classroom training. Both allow the student to advance at his or her own speed and to review as needed.

Note: If customized training is required, Contractors who provide within the category of expertise for which training is being sought will be solicited for bids. Those Contractors may be asked to bid hourly rates for the customization. If Contractors do not have these rates on contract, they can amend their contracts to add these under Group 2: Optional Ancillary Job Classifications/Titles using a title such as *Customized Training Consultant* or some equivalent. (Refer to Section VI.7). Training Contractors whose contract also includes Consulting/SI Services may bid hourly rates using the *Specialist* Mandatory Job Classification/Title. (Refer to Section III.3.1.1)

II.4.3.1 Live Training

Live training consists of instructor-led course work in a classroom setting either at the Vendor facility or at the Issuing Entity facility. Training may be "hands on" where the student works with the hardware and software and/or "demonstration" where the Instructor works with the hardware and software. The Issuing Entity will define its needs at the Project Definition/Specifications level.

II.4.3.2 Computer Based Training/Multi-Media (CBT)

CBT consists of instruction delivered on a computer, with or without supplemental workbook materials. In addition to the actual instruction, exercises are usually included. This methodology provides an opportunity for a high level of interactive participation by the student. CBT courses for computer software often simulate the software and sometimes also provide an alternative Help source. CBT training may be made available for individual computers or through a network to many computers.

II.4.3.3 Video Based Training (VBT)

VBT consists of instruction presented on videotapes, sometimes supplemented with hands-on exercises to reinforce the instruction. For computer courses, the "hands on" exercises are often performed on a computer using a supplied disk. Supplemental workbook materials may also be used.

II.4.3.4 Web Based Training (WBT)

WBT consists of computer-based training that uses Web technologies (e.g. TCP/IP, HTTP, Web browsers, and HTML as the core language of the Web) and is delivered across networks. WBT can be broken down into real-time, non-real-time, and various combinations of the two. WBT has also been referred to as Internet Based Training (IBT), Web Based Learning (WBL), and Web Based Instruction (WBI). These are all very similar, if not synonymous with WBT and for this RFP may be thought of interchangeably.

II.4.3.5 Interactive Web Based Training (IWBT)

IWBT can be thought of as an extension of WBT. It consists of computer-based training that uses Web technologies (e.g. TCP/IP, HTTP, Web browsers, and HTML as the core language of the Web) delivered across networks with the additional component of interactivity between the group of students and the instructor. Discussion forums, e-mail and/or chat sessions provide ways for trainees to interact with an instructor or the rest of the group.

Note: NYeNet Intranet Accessibility - The NYeNet is an electronic communications network designed to reach all the major areas within New York State with fiber optic cables running from New York City to Albany, from Albany west to Buffalo and north to Plattsburgh near the Canadian border. Along this "digital backbone" of fiber optic cables, with network access points across the state, information can flow to and from virtually all areas of the state. Contractor may be asked to provide training across this network. Details would be provided at the project level.

II.4.4 On-Going Services, Maintenance & Support

"On-Going Services" is synonymous with such phrases as "continuous", "extended", "over a long period of time", etc. "Maintenance & Support" is synonymous with assistance, help, prevention, anywhere, anytime, etc. and addresses software applications and systems that are newly developed and those that have been in place and operational for a time, as well as, the hardware on which the software, programs, applications, and systems reside. It will include Vendor's ability to provide 24X7 support, maintenance, monitoring, and/or management of a newly developed system as well as applications or systems that were developed and implemented in the past, including hardware and software. Support, maintenance, monitoring, and/or management includes keeping a functional unit in a specified state by performing preventive activities such as tests, measurements, replacements, product upgrades during and following the manufacturer's warranty periods, adjustments, and timely repairs. These services and support will assure enhanced response time, uptime, and reliability of hardware and software to better meet the day-to-day needs of the business in a proactive manner through monitoring and managing of tools and processes. On-Going Services agreements may be established for up to five years (e.g. three years with two one-year renewal/extension options, two years with three one-year renewal/extension options, or any combination thereof that is a "best fit" for the particular support/maintenance services requested).

On Going Services may be provided:
a. In house from the Issuing Entity's site exclusively
b. From the contractor's site exclusively
c. Or a combination of both using in house staff exclusively, contractor staff exclusively or a combination of both.

The hardware and/or software may reside:
a. In-house at the Issuing Entity's site exclusively
b. The contractor's site exclusively
c. Or a combination of both.

The service provider's responsibilities would include but not be limited to:

a) The on-going operational performance of programs (software) and the hardware on which the programs run within the Mainframe, Mid-Range, PC, or Printer environments (Refer to Section II.5.2.7 Equipment Maintenance).
b) The optimization of space requirements where applicable
c) The address of all security issues where applicable
d) The establishment of disaster recovery provisions

Particulars of the services to be provided will be specified at the project level in the Project Definition/Specifications. Because qualifications of Contractor in the areas of On-Going Services, Maintenance & Support may be more difficult and crucial than providing Computer Consulting, Systems Integration, and Training, Issuing Entities should consider stringent requirements in the Project Definition/Specifications (e.g. capital investments, certifications, inventory, etc.). Payments will be based on a pricing scheme that is most practicable for the services solicited. If such pricing is not on the Back-Drop Contracts, the contracts can be amended to accommodate the

requested pricing schemes (e.g. per page, monthly fee, or yearly service fee). Refer to Section VI.7.

For any Category of Expertise, the minimum-of-three (3) rule will apply in order for PSG to accept a project for On-Going Services, Maintenance & Support bid under any Category of Expertise (Refer to Section VII.5). Below is a representative list of the categories and On-Going Services, Maintenance & Support. Clearly, On-Going Services, Maintenance & Support are more inherent for some categories than for others as illustrated in the Exhibit 1 below. However as technologies change and expand, the need for specific on going and support services, which are not now described in detail, may be added as they emerge. On-Going Services, Maintenance & Support will be available for all Categories of Expertise identified in this RFP and categories, which may be added in the future.

Exhibit 1

Category of Expertise	**On-Going Services, Maintenance & Support**
Systems Management (MF, MR, PC)	Application Service Providers (ASPs), Application Development & Maintenance Services
Electronic Output Management	Document/Records Management Services
Imaging Services	Image Conversion: Paper-to-Image & Microfilm/Fiche-to-Image
Help Desk Services	Help Desk/Call Center
Information Security and/or IT Management & Planning	Managed Security Services/Disaster Recovery/Penetration
Web Hosting Services	Web Hosting Services
Equipment Maintenance Mainframe, Mid-Range, PC, Printers, etc.	Break & Fix Maintenance or Fixed Rate Maintenance

II.5 Categories of Expertise

Vendor must qualify to provide Consulting, and/or Systems Integration and/or Training and/or On-Going Services, Maintenance & Support services for at least one (1) platform-specific Category of Expertise (Applications Development and Systems Management) **OR** for one (1) non-platform specific Category of Expertise (Business Process Re-Engineering, Imaging, Year 2000, etc.) Vendor's qualifications must be set forth on the form provided in Appendix C, Part I, Mandatory Vendor Submissions, entitled: "Vendor Declaration of Expertise Matrix", along with supporting documentation for each Category of Expertise and Type of Service. Vendor may amend its contract at any time to expand or reduce the Categories of Expertise and/or Types of Services for which it is qualified. Refer to Section VI.7.

The State reserves the right at any time to revise or expand the Categories of Expertise set forth below in response to changes in technology needs. (Refer to Section III.27 Emerging Technologies of this RFP.)

II.5.1 Platform Specific Categories of Expertise

Vendors may qualify for as many of the Platform Specific and non-Platform Specific categories of expertise by providing substantiating documentation as required in Appendix C, Part I, Mandatory Vendor Submissions or as few as one (1) Category of Expertise.

II.5.1.1 Applications Development

Applications development is defined as development and modification of applications software programs within one or more of the various Platform Specific Mainframe (MF), Mid-Range (MR), or PC environments. Must include experience and knowledge within any one or all of the following various platforms to be considered as a Mainframe, Mid-Range, or PC qualified Contractor. These platforms include but are not limited to:

MF	MR	PC
IBM (MVS, VM)	AS400	WINDOWS/NT
UNISYS (2200, A Series)	UNIX	NETWARE
	DEC	OS/2
	SUN	
	HP	

II.5.1.2 Systems Management

Systems management includes consulting services pertaining to the planning, programming, management and operation of systems, procedures and guidelines (i.e. technical manuals, user manuals, etc.) that work to maintain the on-going operational performance of programs (software) and the hardware on which the programs run within the Mainframe, Mid-Range, or PC environments with platforms that include but are not limited to:

MF	MR	PC
IBM (MVS, VM)	AS400	WINDOWS/NT
UNISYS (2200, A Series)	UNIX	NETWARE
	DEC	OS/2
	SUN	
	HP	

An Issuing Entity may request from an external provider the on-going, maintenance, & support of systems either as a part of a newly developed system or application (analysis, design, implementation, support and maintenance) or as a standalone post-implementation request (e.g. Data Center support/operations). The industry has referred to such providers as Application Service Providers (ASPs) and Application Development & Maintenance Services. The specifics of such services

will be defined in the Project Specifications/Definition released by the Issuing Entity.

II.5.2Non-Platform Specific Categories of Expertise

Includes services pertaining to each of the following technical areas:

II.5.2.1 Business Process Analysis (BPA) and Business Process Re-Engineering (BPR)

Increasing competition and demands for better service are causing enterprises and agencies to evolve and re-engineer the way they do business and operate. Business Process Analysis (BPA) and Business Process Re-engineering (BPR) services focus on identifying target processes, maximizing efficiencies, managing change and leveraging technology investments to re-engineer the enterprise business functions. These services include a complete rethinking and redesigning of the enterprise from the business management and decision-making processes, through the supporting IT systems, to the underlying business transformation processes themselves.

II.5.2.2 Computer-Aided Design & Drafting (CADD)

CADD, Computer-aided Design and Drafting, is a customizable software tool, sometimes combined with specialized hardware, used to facilitate tasks involved with the design and drafting of products. Products can range from buildings to automobiles to silverware. CADD utilizes 2-D and 3-D graphics to speed the usually labor-intensive design tasks and thus allows designers more time to spend on design changes and improvements. CADD, through viewing and rendering, provides the ability to analyze and design a system prior to its actual development and also facilitates the sharing of design details among the various design platforms.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its CADD systems. The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.3 Data Conversion

Data Conversion includes the process of changing data from one form of representation to another within various mainframe, mid-range, and PC environments.

II.5.2.4 Desk Top Asset Management

Desktop Asset Management services encompass the creation of a managed life cycle for desktop computer products (including mobile computers), the ability to control cost of ownership and the ability to manage service levels. The functional services include consulting in regard to procurement, break and fix maintenance, inventory control, help desk services, management of moves and changes, network services (LAN/WAN), financial management of all desktop assets, disposal services, and problem and change management. Also included is software management, which involves the key elements of inventory, distribution, and license management. Applications development for desktop systems may also be included.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its Desktop Assets. The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.5 Electronic Commerce (EC) and Electronic Data Interchange (EDI)

Electronic Commerce (EC) refers to business transactions done electronically over networks and through computers instead of through the mail, in person, etc. EC also includes all inter-company and intra-company functions (such as marketing, finance, manufacturing, selling, and negotiation) that enable commerce and use electronic data interchange (EDI), Internet applications, on-line services, electronic forms (E-forms), electronic mail, file transfer, fax, video conferencing, workflow, or interaction with a remote computer. Electronic data interchange (EDI) is the exchange of standardized document forms between computer systems for business use.

An Issuing Entity may request from an external provider the on-going, maintenance, & support of its electronic, inter-organizational business networks. The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.6 Electronic Output Management

Electronic Output Management encompasses the management of electronic transferred output. It focuses on computer output to laser disc (COLD); hard copy output production, including distributed print and distributed output management; electronic forms; COM and/or COM-replacement and paper reduction strategies, including report distribution systems (RDSs), viewers and application development tools for production output. A common method of pricing such services is based on a "Fully Loaded Price Per Page". The Pricing Designation Page has been included in this RFP to accommodate this pricing scheme. Refer to the category of Imaging Services, II.5.2.10, as another category that may address Imaging needs depending on the scope of services required.

An Issuing Entity may request from an external provider the gamut of Document Management Services that include but may not be limited to:

a) Planning and Designing of a document systems solutions
b) Identifying resources, processes and applications to enable a document management system
c) Performing troubleshooting, third party equipment management, production support related to the operation and use of document management equipment in production of the document applications
d) Providing Records Management Services that include indexing, filing, refilling and retrieval from on and of-site locations

The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.7 Equipment Maintenance (EM)

II.5.2.7.1 General

Equipment Maintenance (EM) refers to preventive and repair services covering at a minimum the following types of equipment:

a) Mainframes & Servers (including monitors, internal components, storage disk, CD ROM libraries, tape, back up units, file server based technology, web server technology etc.)
b) Mid-Range
c) PC
d) Laptops
e) Printers, plotters, scanners (including all internal components and peripheral devices)

Dependable equipment is of paramount importance to the day-to-day operations of government entities. Monitoring software and preventive maintenance can minimize costly downtime while increasing uptime and equipment reliability. Timely repair services during and following a manufacturer's warranty period is equally critical. Establishing maintenance agreements with external providers can provide these services. The equipment includes but is not limited to the following:

High End Servers/ Mainframes	Mid-Range Servers	PC/Laptop/ Servers	Printers
IBM (zSeries 900, S/390) Unisys (ES7000)	IBM AS400, RS 6000) Sun (Enterprise 6500) H-P (e3000) Compaq (AlphaServer)	All manufactured brands; Various operating systems,	All Brands, Laser, Dot Matrix, Impact

At time of a mini-bid, the Issuing Entity may require supporting documentation verifying a Contractor's Authorization or Certification where applicable to perform services or maintenance for particular brands of equipment specified in the Project Definition/Specifications. This documentation could be in the form of certificates from Equipment Manufacturers, verifying their certifications.

When awarding Equipment Maintenance services to a Contractor, the Issuing Entity may have additional requirements to which will be set forth in the Project Definition/Specifications and may include at a minimum:

- Permanent identification markers suitable for inventory/tracking purposes for all equipment.
- Maintenance Service Sheets to track the information about the requested service.

II.5.2.7.2 Classification of Services

II.5.2.7.2.1 Time and Materials (primarily applicable to microcomputers and servers)

The Issuing Entity may have additional requirements that will be set forth in the Project Definition/Specifications and may include at a minimum:

- **Repair Services** that may include but are not limited to activities such as initial diagnosis of problem, repair or replacement of faulty components and testing to ensure equipment and software are functioning properly after repairs have been completed.
- **Maintenance Services** which may include but are not limited to activities such as cleaning equipment; installing additional components such as second floppy drive, additional memory, modems, CD-ROM drives, etc.; or upgrading existing components such as hard disk drives or general upgrades of personal computers.
- **Support Services** which may include but are not limited to activities such as software installation, upgrading and/or configuration; physically and logically connecting personal computers to printers, telephone lines, etc.; and installing new components such as personal computers, printers, modems, scanners, and other peripheral devices.

II.5.2.7.2.2 Fixed Rate Maintenance (FRM)

II.5.2.7.2.2.1 On-Site Remedial Maintenance

The Issuing Entity may require unscheduled on-site remedial maintenance service to ensure that its equipment is performing according to published specifications. Remedial maintenance shall include the repair or replacement

of any defective components that have been determined to be the cause of the equipment to be malfunctioning or to be inoperable or unserviceable. This repair will be inclusive of all labor, parts or travel associated with the service call. The Issuing Entity shall initiate remedial maintenance by notifying the Contractor's service center via phone call (or other agreed upon method of communication such as e-mail) that equipment is inoperable or unsuitable for operation. Contractor will be expected to perform any preventive maintenance deemed necessary at the time of the service call, at no additional charge. Only new parts or parts equivalent to new parts shall be used in providing maintenance. Delivery, cost, and response times of remedial maintenance will be defined in the Project Definition/Specifications.

II.5.2.7.2.2.2 On-Site Scheduled/Preventive Maintenance

Scheduled/Preventive maintenance will be one classification of services Contactor will perform at the request of the Issuing Entity and provided at no additional charge on any covered equipment for which a service call is received. Contractor may propose to provide additional preventive maintenance to ensure that equipment performs according to published specifications. The Contractor shall perform routine preventive maintenance (PM) according to the manufacturer's recommended schedule and it shall be performed during the working hours specified in the Project Definition/Specifications. Among the services included are any routine cleaning, servicing, or inspection requested by the Issuing Entity, or as recommended by the manufacturer of the equipment to insure the equipment is in proper operating condition. Scheduled/Preventive maintenance may also be made at the request of the Issuing Entity as a result of problems occurring on an intermittent basis with non-critical equipment.

II.5.2.7.3 Service Levels

Service Levels apply to both Remedial and Scheduled/Preventive Equipment Maintenance and will be defined by the Issuing Entity in the Project Specification/Definition as part of or in conjunction with service level agreements (SLA's – Section IV.14). There are generally two (2) types of service levels, but are not limited to the following:

II.5.2.7.3.1 On-Site Service - Critical Need

The Issuing Entity will provide the Contractor a complete inventory identifying the location and types of equipment that are classified as critical to the agency's ability to perform their function. The Issuing Entity will define in detail the specific equipment, location and response times required by the contractor to restore or replace the equipment to full operation to the Issuing Entity's satisfaction. Response times may be unique to each Issuing Entity dependent on its organization and function. An Issuing Entity may consider varying degrees of coverage, such as:

a) Dedicated On-Site Service Engineer (if deemed necessary by Issuing Entity - Refer to Section II.5.2.7.5 below)
b) Timeframe for on-site service (24 x7 including holidays and weekends or other mutually agreed upon schedule.
c) Dedicated toll-free number for Service Calls
d) Mutually agreeable timeframe for response time to initial call for service.

e) Mutually agreeable timeframe by which Contractor restores or replaces equipment to be fully operational.
f) Contractor maintenance of an inventory of components necessary to repair or replace equipment determined to be of critical need that has been mutually agreed upon.

II.5.2.7.3.2 On-Site Service -Non-Critical Need

The Issuing Entity will provide a complete inventory identifying the location and types of equipment that are classified as non-critical to the Issuing Entity's ability to perform its function. The Issuing Entity will define in detail the specific equipment, location and response time required by the contractor to restore or replace the specific equipment to full operation to the Issuing Entity's satisfaction. In defining response time for non-critical equipment the agency will provide the contractor with a list detailing their requirements for service in the same detail as described for On-Site Critical Need. For example:

a) Dedicated toll-free number for Service Calls
b) Response to initial call within a period of time to be mutually agreed upon by all parties.
c) Equipment will be repaired or replaced with period of time to be mutually agreed upon by all parties.

II.5.2.7.4 Obsolete Equipment

The recommended life of equipment is five (5) years (re: Gartner Group) after which time it should be replaced rather than maintained. If equipment currently covered under a maintenance contract becomes obsolete, is inoperable, and cannot be repaired due to the unavailability of spare parts, the contractor is obliged to advise the Issuing Entity. The Issuing Entity will have the option of finding the required parts or will be obligated to remove the equipment from its list of covered maintenance items.

II.5.2.7.5 On-Site Technical Assistance

The Issuing Entity may request an on-site technician at any of the Issuing Entity's facility locations. If there is an additional cost for an on-site technician, the Contractor may:

- use the Specialist Mandatory Job Classification/Title if the Contractor has provided not-to-exceed rates under the Consulting/SI Services requirements or
- amend its contract to add an Ancillary Job Classification/Title if the Contractor does not have hourly pricing on its contract to provide this level of expertise.

II.5.2.8 Geographic Information Systems (GIS)

Geographic Information Systems (GIS) are computer systems used for capturing, storing, checking, integrating, manipulating, analyzing and displaying data related to positions on the Earth's surface. Typically, a GIS is used for the storage and manipulation of electronic maps and related data. These might be represented as several different layers where each layer holds data about a particular kind of feature (e.g. roads). Each feature is linked to a position on the graphical image of a map.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its Geographic Information Systems. The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.9 Help Desk Services

A professionally staffed Help Desk provides a single point of contact for Issuing Entities, responds to their requests for assistance, and change management, and works with them toward resolving their problems. The Help Desk also facilitates tracking and reporting requests for assistance. Managers are increasingly relying on automated help desk tools and help desk out-sources. The role of the Help Desk is to provide support for the use of technology and/or services.

Authorized Users in need of Level I Help Desk Services Support should consider the *Enterprise Help Desk Services* contract CM00664 with Unisys administered by the Office for Technology (contact OFT Customer Relations at 518-473-2658 for further information) to determine its applicability to the User's individual project needs. The Authorized User should investigate both the Enterprise *Help Desk Services* contract and the backdrop contracts based on its particular needs and scope of services required.

Where applicable, an Issuing Entity may request from an external provider the on-going maintenance, & support of its Help Desk on-site and off-site. The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.10 Imaging Services

Imaging services involve the recording, organization and retrieval of graphic images, either from a video camera or from digitally generated data. Recording of images may be on microfilm, videotape, magnetic disk or laser disk. Imaging services includes the scanning and indexing, the capture, storage and management of imaged data within the information technology environment, document management and document output, as well as, providing recommendations to the user community on the best methods for accessing and utilizing the imaging services. A common method of pricing such services is based on a "Fully Loaded Price Per Page". The Pricing Designation Page has been included in the RFP to accommodate this pricing scheme. Refer to the category of Electronic Output Management, II.5.2.6, as another category that may address Imaging needs depending on the scope of services required.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its Imaging Systems. The specifics of such services will be defined in the Project Specifications/Definition. (Note: Refer to Section II.3 **Preferred Sources for appropriate use of Preferred Sources for Imaging Services.**)

II.5.2.11 Information Security

Information security services may include developing a risk assessment; providing a framework, technical guidance and services to develop security guidelines and policies; and providing an end-to-end information security solution for environments

from desktop to mainframe, from point to network, and from physical site to interface between information systems. Other services include design, plan, implement, test, and certify security systems, as well as provide supporting tools for construction of such systems. A vendor may perform security incident follow-ups, including identifying the vulnerabilities and providing legal framework and resources to go after those gaining unauthorized access.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its Information Security System (e.g. Managed Security Systems). This includes but may not be limited to:

a) Hardware Security Support
b) Software/application Security Support
c) Disaster Recovery including at a minimum:
   i. Business impact analysis
   ii. Continuity of operations
   iii. Contingency planning
   iv. Risk assessment
   v. Simulation and testing
   vi. Intrusion detection
   vii. Penetration testing
   viii. Disaster recovery

The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.12 Interactive Voice Response (IVR) Application Development Services

Includes Touchtone® and Natural Language Speech Recognition Applications. Development of IVR applications for Authorized Users includes permitting constituents to initiate transactions, including payments to the Authorized Users. Attributes of IVR Applications (e.g. dialog, call rates, and lengths, validations, local database lookups, payment processing, security, and disaster recovery) will be specified at the project level in the Project Definition/Specifications. Payments will be based on an hourly rate.

II.5.2.13 Interactive Voice Response (IVR) Hosting Services

IVR hosting services include Touchtone® and Natural Language Speech Recognition Applications. Development, maintenance, and hosting of IVR applications for Authorized Users includes permitting constituents to initiate transactions and including payments to the Authorized Users. Attributes of IVR Processing Applications (e.g. dialog, call rates, and lengths, validations, local database lookups, payment processing, security, and disaster recovery) will be specified at the project level in the Project Definition/Specifications. Payments will be based on a per transaction fee.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its IVR System.

II.5.2.14 Internet/Intranet Application Services

This Category of Expertise includes consulting with clients to exploit the full potential of Internet technologies -- both on the global Internet and on internal Intranets. Areas include: web site development, network service providers,

Intranets, Internet infrastructure and its impact on software and hardware platforms and communications technologies, security and management issues surrounding electronic network usage, Web technologies, navigation tools, infrastructure management and application deployment.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its Web site (On-Going Services). Web Hosting Services category will be addressed in RFP Sec. II.5.2.20.

II.5.2.15 IT Management & Planning

Information Technology Management Consulting and Planning encompass services that provide support to the management of the IT function. These IT areas include personal computing, networking, LAN Server based systems, midrange systems and large-scale systems. Services focus on satisfying the needs of IT managers and executives and on providing solutions allowing them to maximize the contribution their organizations can make to the enterprise.

Services may involve assistance in policy formulation, re-investment decisions, external/internal resource decisions, integration of sources of IT within the enterprise and developing architectures), economics (value analysis, contribution and productivity analysis, financial tools and alternative funding and charging mechanisms, plus research into budgets and spending patterns), organization (the development of business models and management processes), planning (structuring the IT organization of an enterprise to increase alignment and to better identify business opportunities, also management implications of emerging IT technological issues, addressing of disaster recovery strategies), learning (processes for adoption of appropriate best practices, contracting and relationship management and the various means to add skills to an IT organization), and effective use of the IT function (business unit managers' responsibilities for IT, the management of external service providers and the marketing of IT services within the enterprise).

II.5.2.16 Local Area Network Services (LAN/WAN)

Local Area Networks (LANs) are predominantly data communications networks that are geographically limited (typically to a 1 km radius) allowing easy interconnection of PCs, minicomputers, mainframes, printers, file servers, and a host of other devices. Ethernet 10Base-T/100Base-T and token ring are examples of standard types of LANs. LAN services encompass planning, management, support, and operation of the LAN environment.

An Issuing Entity who requires on-going maintenance, & support of its networks, etc. from an external provider will procure those services from the OGS PSG Networking Hardware and Software Contracts. This will not be a service offered as part of this RFP#S960275-E.1.

II.5.2.17 Point-of-Sales (POS)

Point-of-Sale (POS) systems are a special type of computer system that is used to collect, store, and manage retail sales data. POS Systems include inventory control systems involving electronic data input with automatic, real-time updating of a

database and include processing of cash sales, integrated order entry, stock identification, stock issue, and invoicing.

An Issuing Entity may request from an external provider the on-going maintenance & support of its Point-of-Sales (POS) systems to assure optimal operation of the computing environment.

II.5.2.18 Technology Procurement (Marketwatching)

Marketwatching services provide knowledge and know-how relative to recommendations for the purchasing of hardware and software in light of current technology market trends and conditions. The service supports new organization-wide procurement strategies and systems to effectively cope with IT asset procurement. Enterprises must have timely information and analysis concerning the best-in-class deals and prices, knowledge of financial, secondary market and outsourcing alternatives, distribution channels and hardware and software asset management strategies (including both acquisition & retirement). Part of making procurement decisions also includes recommendations for action, advice on negotiating tactics, knowledge of contract terms & conditions as well as primary and secondary market pricing trends and financing alternatives.

II.5.2.19 Telecommunications Services

Telecommunications describes the transmission and reception of digital data as well as voice and video signals (analog data). Information stored in digital form can be delivered over various media including electrical wires, fiber-optic cables, microwave transmission and standard telephone lines. Telecommunications includes all aspects of providing these services to the enterprise including research, planning, installation, maintenance and trouble-shooting.

Telecommunications consultant services include services that enable multi-media delivery to the desktop, within a building, across the campus and over the wide area. Examples of relevant technologies used include: ATM (Asynchronous Transfer Mode), Frame Relay, SONET (Synchronous Optical Network) and AIN (Advanced Intelligent Networking) for wide area networking applications; FDDI (Fiber Distributed Data Interface), Ethernet, Token Ring and ATM for local area networking; ISDN (Integrated Services Digital Network), ADSL (Asynchronous Digital Subscriber Loop) and various wireless technologies for local access and CTI (Computer Telephone Integration) for the desktop. Premise-based equipment, such as switches, routers, hubs, multiplexers, PBXs (Private Branch Exchange), ACDs, (Automatic Call Distributor), and VRUs (Voice Response Units) are other examples of products that require telecommunications services.

An Issuing Entity who requires on going, maintenance & support of its key telephone systems, digital Centrex equipment or PBX equipment will procure those services from the appropriate OGS PSG contracts for key telephone systems, digital Centrex equipment and PBX back-drop contracts. Maintenance for these types of equipment will not be a service offered as part of this RFP#S960275-E.1.

II.5.2.20 Webcasting Services

Webcasting is described as the transmission (streaming) of audio and video content over the internet. Webcasting services can be comprised of various components which may include but are not limited to: production, encoding, streaming, captioning, storage and archiving. Services can be provided at either the contractor's site or a site designated by the authorized user. Webcasting services under this RFP are intended to assist authorized users in meeting the requirements of Executive Order No. 3.

An Issuing Entity may request from an external provider the on-going maintenance, & support of webcasting services. The specifics of such services will be defined in the Project Specifications/Definition.

II.5.2.21 Web Hosting Services

Includes provision of space on the Contractor's servers for the Authorized User's informational and transaction processing web pages or provision of space within the Contractor's facility for storage of Authorized User's servers including access to the Internet. Attributes of Web Hosting Services (e.g. - space requirements, security, data transfers, disaster recovery, e-commerce solutions, proximity to the Internet, customer support, and account features including e-mail management) will be specified at the project level in the Project Definition/Specifications. For web site development, see Internet/Intranet Services category. Where there are payments (e.g. debit/credit card transactions), payments will be based on a monthly service fee or other applicable fee schedule.

Web Hosting Services may require development, maintenance, and hosting of Internet applications for Authorized Users permitting constituents to initiate transactions, including payments to the Authorized Users. Attributes of Internet Processing Applications (e.g. number of web pages, number of entered fields, number of calculated fields, edits and validation performed, local database lookups, number of transactions, and security) will be specified at the project level in the Project Definition/Specifications. Payments will be based on a per transaction fee or other applicable fee schedule.

An Issuing Entity may request from an external provider the on-going maintenance, & support of its external, public web site. Such *Web Hosting Services* include but may not be limited to:

a. Handling of the day-to-day operations and maintenance of the web site
b. Performing all upgrades with knowledge and approval of entity

Web Hosting can be shared, dedicated, or collocated.
Shared - when multiple entities/accounts or Web sites are stored on one server and controlled/owned by the host (often referred to as "virtual hosting".).
The server and everything related to the server is "shared", such as the hard disk drive, the central processor units, and the network bandwidth. This is one of the fastest-growing markets targeted to low-cost, entry-level consumers.
Dedicated Hosting - when a Web site is stored on a server owned by the Web host, rented by the entity and "dedicated" to that entity. In addition the hardware,

software, and network connectivity and all other parts required to run the site are also dedicated. With this solution the entity is responsible for the software only while the host handles the staff to customize, upgrade, or maintain the server.
Collocation - when the entity owns the server but it is housed at the host's site. The entity maintains and updates its servers and has more control over the Web server administration. The host delivers all the related network services, including bandwidth. The entity must have the resources to maintain its own equipment thereby making this option the most costly.

An Issuing Entity who requires Web Hosting Services or an Internet Service Provider may procure those services under this category of expertise or from the OGS PSG *Contract for Internet Access Services*. The Authorized user should investigate these two options based on its particular needs and scope of services it requires.

II.5.2.22 Workflow Management Services

Workflow Management applies many of the same concepts and benefits of factory automation and industrial engineering to the process of work management in an office environment. Some of these benefits are: the elimination of unnecessary tasks, the saving of worker and management time. Workflow management keeps track of the processes a document goes through and alerts users where operations are overdue. Workflow management services include analyzing current workflow processes, planning changes and improvements to these processes, implementing new, more efficient workflow processes and software systems and management and operating workflow management systems.

II.5.2.23 Year 2000 Services

Year 2000 services may include developing an awareness program; an application system inventory; a business priority, time horizon and cost impact assessment; a Year 2000 compliance implementation plan; as well as performing application system code modification, testing and implementation. Service vendors may provide a Year 2000 methodology and a project management methodology, and may assist in defining the structure and establishing a Year 2000 program management office to coordinate the various disciplines involved. Other services may include providing an operating environment (hardware, software, operation resources) for code conversion, correction, testing, and disaster recovery; providing proprietary Year 2000 tools and/or support of third-party tools; and performing operating system and environment system upgrade and testing.

SECTION III - SPECIAL TERMS AND CONDITIONS

III.1 Bid Deposit

Vendor is not required to furnish a Bid Deposit with its Proposal in response to this RFP for the Back-Drop Contract

III.2 Contract Term/Back-Drop Contract

The first year of the Back-Drop Contract or "Back-Drop Contract Base Year" as used herein shall be defined as a period beginning upon the date of issue of this RFP and running through December 31, 1997. Subsequent years of the Back-Drop Contract term shall begin on January 1 and end on December 31.

Vendor's Back-Drop Contract Base Year shall be defined as a period beginning upon the date of New York State Comptroller's approval of Vendor's Back-Drop Contract effective upon mailing by OGS (Refer to Appendix B, clause 29), until the next January 1 of the Back Drop Contract term. All Contracts will expire on December 31, 2010.

III.3 Method Of Pricing: General

Vendor must submit Back-Drop Contract pricing on the required Pricing Designation Page(s) contained in Appendix C, Part I - Mandatory Vendor Submissions, of this RFP.

Pricing quoted by Vendor constitutes the maximum all-inclusive rate that Vendor can charge for services under this contract. Pricing offered at the time of a Project bid (e.g. mini-bid) shall constitute a firm offer to provide services at a rate not-to-exceed the maximum prices contained in the Vendor's Back-Drop Contract. These rates will constitute the maximum, allowable payment rate for any Project awarded to Contractor during that period.

At the mini-bid level, Contractor may offer lower, competitive pricing but may not quote pricing which exceeds the established maximum of the Back-Drop Contract pricing. A Project bid with rates that exceed Back-Drop contract pricing may be deemed a non-responsive bid.

III.3.1 Consulting & System Integration Services

Hourly pricing is based on classification of employee by Job Classification/Title without reference to Category of Expertise. Contractors must quote all Mandatory Group 1 Job Classifications/Titles defined under paragraph below, whether or not Contractor employs an individual in that job title at the time of bid submission. A failure to provide maximum pricing for each Mandatory Group 1 Job Classification/Title shall be deemed a non-responsive bid.

Hourly rates quoted in Vendor's Bid Proposal for a Back-Drop Contract must include all auxiliary costs, such as printing, copying secretarial, typing, program entry, etc. Hourly rates quoted must also include expenses for travel, meals, and lodging. These contract rates should be considered "worst case scenario" rates as in the situation where an Albany, NY based firm bids on a project that requires consultant services in New York City, NY.

III.3.1.1 Mandatory: Group 1 Job Classifications/Titles

These Mandatory Job Classifications/Titles apply to Consulting and Systems Integration Services, regardless of Category of Expertise.

Mandatory Group 1 Job Classifications/Titles descriptions provide the minimum criteria associated with each level of employee. Job Classifications/Titles are divided into:

- Project Managers (Entry Level, Levels I, II, III),
- Programmer/Analysts (Entry Level, Levels I, II, III), and
- Specialists (Entry Level, Levels I, II, III).

The higher the level, the more experience and responsibility the position requires. Most, if not all, Project Definitions that establish minimum expertise requirements will fall within one or more of these titles/levels.

III.3.1.1.1 Project Managers:

Project Manager (Entry Level) - **Less than 2 years** experience in overseeing small scaled, non-complex projects, comprised of a small number of deliverables and/or a small number of phases; typically coordinates and delegates the assignments for the consultant project staff numbering up to 5; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements, scope changes, and issues and concerns raised by consultant staff or Issuing Entity.

Project Manager I - **Minimum of 2 years** experience in overseeing small scaled, non-complex projects, comprised of a small number of deliverables and/or a small number of phases; typically coordinates and delegates the assignments for the consultant project staff numbering up to 10; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements, scope changes, and issues and concerns raised by consultant staff or Issuing Entity.

Project Manager II - **Minimum 4 years** experience in overseeing medium scaled projects comprised of sub-projects and distinct deliverables; typically coordinates and delegates the assignments for the consultant project staff numbering over 10; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements; scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or Issuing Entity.

Project Manager III - **Minimum 8 years** experience in overseeing medium to large scaled projects comprised of sub-projects and distinct deliverables; typically coordinates and delegates the assignments for the consultant project staff numbering over 20; focal point of contact for Issuing Entity regarding project status, meetings, reporting requirements, scope changes, and financial, administrative, and technical issues and concerns raised by consultant staff or Issuing Entity.

III.3.1.1.2 Programmer/Analysts

Programmer/Analyst (Entry Level) - Less than 2 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, design, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptops.

Programmer/Analyst I - Minimum of 2 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, design, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptops.

Programmer/Analyst II - Minimum of 4 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

Programmer/Analyst III - Minimum of 8 years experience with writing application software, data analysis, data access, data structures, data manipulation, databases, programming, testing and implementation, technical and user documentation, software conversions; environments include but are not limited to mainframe, mid range, personal computers, laptop; available to assist and/or lead in the design of program specifications and the implementation of software solutions.

III.3.1.1.3 Specialists

Specialist (Entry Level) - Less than 2 years experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer/Analyst (Entry level) Job Classification/Title as defined in a Project Definition/Specifications.

Specialist I - Minimum of 2 years experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer/Analyst I Job Classification/Title as defined in a Project Definition/Specifications.

Specialist II - Minimum of 4 years experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer/Analyst II Job Classification/Title as defined in a Project Definition/Specifications.

Specialist III - Minimum of 8 years experience in a particular technical and/or business application that is beyond the requirements addressed in the Programmer/Analyst III Job Classification/Title as defined in a Project Definition/Specifications. Examples of Specialists include but are not limited to:

a) Certified Instructor (e.g. Sybase, PowerBuilder, Novell)
b) Certified Network Engineer (CNE)
c) Certified Systems Administrator
d) Data Administrator

e) Lotus Notes Certified Application Developer
f) Microsoft Certified Systems Engineer (MCSE)
g) Microsoft Solutions Developer (MSD)
h) Network Administrator
i) PC Computer Designer
j) Systems Administrator
k) Web Master

III.3.1.2 Payment For SI Services

In addition to the hourly fees for consulting services provided on a Systems Integration Project outlined above, Systems Integration Contractors shall be paid for Systems Integration services, including "*profit and risk*" assumed by Contractor associated with SI projects. This fee shall be expressed as a specific sum in Contractor's mini-bid response and will be presented as a separate expense on the Cost Statement included with the Project Bid.

III.3.2 Training

There are no Job Classifications/Titles associated with Instructors who offer the Training Services. Instead, at the Project level, the Issuing Entity will identify in the Project Definition/Specifications its Instructor/Training requirements, such as the number of years of experience in teaching a particular piece of software. The Issuing Entity as a mandatory requirement in order to respond to the training request may identify certifications or Licenses. Pricing will be based most often on the per student cost for a course in terms of its length (e.g. 1 day course, 2 day course, … 5 day course)

Training Vendors must quote maximum rates for course offerings based upon the instructional medium: live, computer-based training, video based training, web based or interactive web based. Training Vendors must submit the applicable Pricing Designation Page(s) for Training.

III.3.2.1 Live Training

For Live Training, contract pricing is presented as a per student cost for each of the 1, 2, 3, 4, 5 day courses whether or not those course lengths are normally a part of the Vendors curriculum at the time of bid submission. The failure to furnish the mandatory pricing may be deemed a non-responsive bid.

At the project level, the Issuing Entity may identify a need for an on-site "roving" instructor to be billed on an hourly basis (or some other pricing method), Training Contractors can amend their contracts at the time of their project bid by adding an Ancillary Job Classification/Title to accommodate the project's particular needs. Refer to Section VI.7. However, if the Contractor also has Consulting/SI Services as part of its contract, the Specialist Job Classifications/Titles can be used since the not-to-exceed hourly pricing has already been established.

The Issuing Entity may at its own discretion require bidders to have certain certifications and/or licenses as certifications. These will be specified in the Definition/Specifications under the Instructor/Training requirements.

Compensation for canceled classes by either the Training Contractor or by the Issuing Entity is not permitted. All parties involved will make every effort to prevent class cancellations and will work together to reschedule the training. Also, where the Issuing Entity is unable to meet the minimum number of students required for a dedicated class, either (1) students may attend a publicly held class offered by that Contractor based on seat availability or (2) the dedicated class can be rescheduled for a date and time mutually agreeable to all parties involved.

III.3.2.2 Computer-Based Training, Video Based Training, Web Based or Interactive Web Based Training

For the Computer-Based Training, Video Based Training, Web Based or Interactive Web Based Training, contract pricing is presented as a minimum discount from list price.

Refer to Exhibit 3 that follows:

Exhibit 3
Pricing Schemes

Type of Training	Method of Pricing
CBT/VBT - no customization	➢ Minimum % Discount from List
CBT/VBT - with customization	➢ Hourly rate ➢ Minimum % Discount from List
WBT - Just in time Trainers (Dial Up) no customization	➢ Minimum % Discount from List
WBT - Just in time Trainers (Dial Up) with customization	➢ Hourly rate ➢ Minimum % Discount from List
IWBT - Interactive Presentation & Training no customization	➢ Minimum % Discount from List
IWBT - Interactive Presentation & Training with customization	➢ Hourly rate ➢ Minimum % Discount from List

III.3.3 Optional: Group 2 Ancillary Job Classifications/Titles

There may be IT Services projects that identify unique project needs or pricing. To address these specialties, the Optional Group 2 Ancillary Job Classifications/Titles will be the mechanism through which these specialized classifications/titles can be satisfied.

Completion of the Pricing Designation Page for Optional Group 2 Ancillary Job Classifications/Titles is optional. Ancillary Job Classifications/Titles are intended for other than hourly pricing such as per call pricing. For each Ancillary Job Classification/Title that a Vendor specifies, the Duties & Experience page must be completed and will include:

a) Description of the duties performed under this title.
b) Description of the level of experience required for this title.

The following are examples of good candidates for the not-to-exceed Ancillary Job Classifications/Titles:

a) Help Desk Telephone Support - per call pricing (e.g. Help Desk Support 1-50 calls 7 a.m. - 5 p.m. M-F
b) Imaging Services - per page pricing
c) Transaction fee

III.3.4 On-Going Services, Maintenance & Support

On-Going Services, Maintenance & Support will be available for most if not all of the Categories of Expertise outlined in Section II.5, except as noted. Pricing may be unique (monthly, yearly, transaction fee, per visit, etc.) depending on the nature of the On-Going Support Services. Vendors who offer On-Going Support Services under this RFP will be required to complete the Pricing Designation Page for On-Going Support Services based on a **MINIMUM TEN PER CENT (10%) DISCOUNT FROM LIST.** This generic Pricing for On-Going Services, Maintenance & Support will be based on the not-to-exceed rates for the 12 Mandatory Job Titles for Consulting/SI Services. This method will allow any pricing scheme regardless of the uniqueness of a situation. At the time of a project bid, the entity will identify the specific job title(s) and level(s) for which the bidder will provide Competitive and/or Best & Final Pricing. Bid will include the actual price list for the proposed services and the competitive deeper discount but at least 10% off the list price.

** If already on contract for Consulting/SI Services, the not-to-exceed hourly rates for the Mandatory Job Classifications/Titles can be used when a project requires hourly based pricing. There would be no need to duplicate those rates on the Pricing Designation Page for On-Going Support Services.

III.3.5 Equipment Maintenance

The maintenance of equipment that includes but may not be limited to PCs, Printers, Servers (Mainframes, and Mid-Ranges), may have a variety of pricing schemes to address the different requirements of the Issuing Entities. Vendors who offer Equipment Maintenance under this RFP#S960275-E.1 will be required to complete the Pricing Designation Page for Equipment Maintenance **MINIMUM TEN PER CENT (10%) DISCOUNT FROM LIST.** This generic pricing method will allow any pricing scheme regardless of the uniqueness of a situation. At the time of project bid, the bid

will include the actual price list for the proposed services and the competitive deeper discount but at least 10% off the list price.

III.3.5.1 Pricing for Time & Material Service (T&M)

Time and Materials basis for payment includes two components:

Time

- Hourly ** for technical labor to correct the problem(s) or provide the necessary services.
- After the first hour, this fee will be billable in 15-minute segments unless otherwise specified in the Project Definition/Specifications. This rate will be inclusive of all travel related expenses and other auxiliary charges.

Additional response times pricing (e.g. two (2) and four (4) hour responses within the same or next day) must all be offered for those users who may have the need for quicker, more mission critical applications.

** If already on contract for Consulting/SI Services, the not-to-exceed hourly rates for the Mandatory Job Classifications/Titles can be used when a project requires hourly based pricing. There would be no need to duplicate those rates on the Pricing Designation Page for On-Going Support Services.

Cost of Materials needed to complete the repairs. The actual cost of the materials can be based on the minimum discount from list that is the method for contract pricing at the back-drop level for EM.

III.3.5.2 Fixed Rate Maintenance (FRM)

Pricing for this option shall be provided as monthly rates per type of product and service response time. (Yearly rates should be provided if the total yearly cost is less than a monthly rate times 12.)

If equipment under warranty is included in an agency mini-bid, warranty maintenance must be performed at no additional cost to the user.

There must be a single unit charge based on the computer configurations that include all internal boards, components and peripherals, the keyboard, the mouse, and the monitor. External peripherals such as tape drives, modems, CD ROM drives, may be separately priced, but any of these components added internally to the configuration will be considered under that configuration's single unit rate. Printers and their components as well as LAN, mainframe and mid-range hardware should also be handled as single units with single unit rates. All internal components and peripheral attachments of the devices listed must be covered, and such coverage will be assumed to be included in the Contractor's unit bid rates.

III.3.6 Price Increases

The not-to-exceed maximum rates approved in the Vendor's Back-Drop Contract will be held from the date of approval of Vendor's Back-Drop Contract to the next January 1 of the Back-Drop Contract (hereinafter "Contractor's Back-Drop Contract Base Year" and/or "Contractor's Base Year Pricing"). Any new contracts awarded after November 15th during a given year of the back-drop contract, will retain that pricing through the next year of the contract which begins on the following January

1. Price increases that are approved by OSC shall be effective for projects where **bid are due** in accordance with the following timetable:

January 1, 2005	2005 Rates apply
January 1, 2006	2006 Rates apply
January 1, 2007	2007 Rates apply
January 1, 2008	2008 Rates apply
January 1, 2009	2009 Rates apply
January 1, 2010	2010 Rates apply

Contractor shall be entitled to hold or modify Contractor's Base Year Pricing during subsequent years of the contract term. The Base Year Pricing is subject to either no change or a maximum increase of the lesser of five percent (5%) or the percent increase in the copy of the National Consumer Price Index for All Urban Consumers (CPI-U) as published sixty (60) days prior to price increase request in the United States Bureau of Labor Statistics, Washington, D.C., 20212. OGS will notify the Contractors in writing of the proposed new rates based on the maximum allowable under the above formula. Contractor will not be required to take further action upon such notification UNLESS Contractor wants to either hold its previous year's pricing or increase its previous year's pricing by less than the proposed change announced by OGS. **The request for a price increase must be approved by OSC**. Upon OSC approval, contractors will be notified of their new contract year not-to-exceed rates.

Important Note: Modifications pursuant to this paragraph shall apply to the back-drop contract pricing only. Rates bid by a contractor for a project award will be fixed at the time of bid opening and shall not be subject to an increase under this paragraph unless such increase has been separately and expressly stated in the project definition, and has been agreed upon by the Issuing Entity prior to project award.

III.4 Acquisitions Involving Third Party Financing

In the event that third party financing is used to finance a Project award, it is understood and agreed by the parties hereto that a condition precedent to the payment of any unpaid balance of the deliverables and/or materials developed in the course of performance of the consultant services for the various projects as set forth in the Project Definition is the obtaining by the State of acceptable financing therefore. The State shall make the sole determination of the acceptability of any financing proposal. The State will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of this contract. Notwithstanding the foregoing, Contractor reserves all rights at law and equity to receive compensation for services performed or products delivered under the Project Award.

III.5 Liability for Acquisition of Project Components

Project Definition/Specifications will set forth the delivery schedule, acceptance testing and progress payment criteria for completion of work and acquisition of project components. Contractor at all times shall be liable for the cost of acquisition and delivery of those components until it is entitled to receive progress payments for work delivered in accordance with the Project Definition/Specifications. This responsibility includes the acquisition of materials, equipment and supplies as needed to satisfy the Project requirements, and the

carrying cost(s) relating thereto, prior to the acceptance date for progress payment under the project.

III.6 Ownership/Title/License of Deliverables

a. Definitions

i. "Products" - A deliverable furnished 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 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 that exist prior to the commencement of the Project or are not developed at Issuing Entity's expense. Contractor retains the burden of proving that a particular product exists.

iii. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees or agents for Issuing Entity under the Contract.

b. Title to Project Deliverables

Contractor acknowledges that it is commissioned by the Issuing Entity to perform services detailed in the work order. Unless otherwise modified in the Project Definition, the Issuing Entity has the following ownership and/or license rights in Project Deliverables:

i. Existing Products

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

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

ii. Custom Products

Effective upon creation, Contractor hereby conveys, assigns and transfers to Issuing Entity the sole and exclusive rights, title and interests in the copyrights in Custom Product(s), whether preliminary, final or otherwise. Contractor hereby agrees to take all necessary and appropriate steps to ensure such transfer and 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 in the course of Contractor's business.

Where the Project does not involve COPS or other third party financing, the Issuing Entity may, upon written notice in the Project Definition, elect, in the alternative, to take a non-exclusive, perpetual license to Custom Products in lieu of taking exclusive ownership and title. In such case, Licensee, in its own name and on behalf of all Authorized Users under the Contract, shall be granted a non-exclusive, perpetual license as provided 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 Project Definition may be the obtaining of acceptable third party financing by the Issuing Entity. The Issuing Entity shall make the sole determination of the acceptability of any financing proposal. The Issuing Entity 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, Issuing Entity 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 Issuing Entity 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 Issuing Entity's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (e.g. Certificates of Participation (COPS)

The Issuing Entity's sale or other transfer of Custom Products that were acquired by the Issuing Entity 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 Issuing Entity 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 III.6 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 Issuing Entity at Contractor's sole cost and expense.

f. 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.

g. Mercury-Added Consumer Products
Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information: http://www.dec.state.ny.us/website/dshm/redrecy/c145home.html.

III.7 Title to Proprietary Information Furnished for Mini-Bid Evaluation
Any and all proprietary written documentation, information, object or source code and software provided to the State or Issuing Entity for use in conjunction with a Project mini-bid evaluation shall remain the property of Contractor. In such event, Contractor hereby grants the State and its Authorized Users a personal, non-transferable and non-exclusive license to use all such documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated "property"), which are furnished to the State for testing purposes only.

III.8 Patent/Copyright Claims
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 other third party proprietary

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.

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 Issuing Entity'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.

The foregoing provisions shall not apply to any infringement occasioned by modification by the State or Issuing Entity of any tangible or intangible products without Contractor's approval or the use of any Equipment with any adjunct device added by the State without the consent of Contractor.

In the event that an action at law or equity is commenced against the State or Issuing Entity arising out of a claim that the State's use of a product under this Agreement infringes any patent, copyright or proprietary right and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in this Agreement, Contractor shall immediately notify the Issuing Entity and the Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of this Agreement. Contractor shall in such event protect the interests of the State and secure a continuance to permit the State to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses the State may have.

III.9 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 a Project Award.

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 Issuing Entity 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 fault or negligence of Contractor, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

For all other claims against the Contractor under any individual Project Award or subsequent scope change(s) ("Project Award") 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 shall be fully liable for the actions of its agents, employees, partners or subcontractors and such liability for direct damages under any Project Award shall not exceed the greater of **one hundred thousand dollars** ($100,000), the dollar amount of the Project Award or two (2) times

the charges rendered by the Contractor. Unless otherwise specifically enumerated herein or in the Project Definition, Contractor shall not be liable for consequential, indirect, special or economic consequential damages, even if Contractor has been advised of the possibility of such damages. **Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data as a Project Deliverable.**

The State and Issuing Entity 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 under the Project Definition/Specifications, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

III.10 Record Disclosure/Confidentiality of Proprietary Records

The terms of this agreement will be made public, both to the general public and to Authorized Users of this NYS centralized contract. In accordance with the NYS Public Officers Law, the Commissioner has determined that the back-drop contract terms and conditions, including the terms of this Amendment, and the contract ceiling pricing and discounts quoted by Contractor do not constitute proprietary or trade secret information and will be published using a variety of commercial means in order to implement this purpose. The Commissioner reserves the right to reject any proposal that claims an exemption for pricing information.

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 Issuing Entity 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 Issuing Entity.

III.11 Compliance with Security and Confidentiality Requirements

Contractor agrees to abide by all policies and procedures of the Issuing Entity provided in advance in writing and to comply with all **reasonably non-invasive** security requirements of the Issuing Entity particularly in its use of computer facilities and shall not provide access or divulge to third parties any information or materials acquired during performance of services under this contract unless such information is a) previously known by Contractor; b) generally available to the public; c) subsequently disclosed to Contractor by a third party who is not under an obligation of confidentiality with the Issuing Entity; or d) independently developed by Contractor. Contractor shall inform its employees of the requirements of this paragraph and shall enforce compliance with these requirements by its employees. The Contractor firm or sub-contractors engaged in a project as a result of this contract may be required to sign a statement of confidentiality prior to each project. The period of confidentiality under this contract shall be up to four (4) years from the conclusion of the contract term except as otherwise agreed to in a Negotiated Statement of Work..

The Issuing Entity may impose security requirements depending on the nature of the individual projects initiated under these back-drop contracts. The specific security requirements will be detailed in the Project Definition/Specifications.

III.12 Defective Performance/Temporary Incapacity of Contractor

During the contract period, should it become evident that the Contractor cannot meet the Terms and Conditions of the contract, or should the Contractor be substantially behind in meeting the work plan schedule for the project, or should Contractor suffer any temporary incapacity which

renders it unable to resume work, and where the Contractor has been offered an opportunity to cure its default within a reasonable time as specified by the Issuing Entity, but not to exceed thirty (30) days, and the Contractor has failed to remedy such default, the Issuing Entity reserves the right to terminate or cancel the project in whole or in part immediately upon written notice to the Contractor. Such action shall not give rise to any action on behalf of Contractor for loss of future profits or future remuneration of any kind.

III.13 Cancellation/Suspension of Back-Drop Contract

a. For Cause: The Contract may be cancelled 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 Back-Drop Contract may be cancelled at any time by the State for convenience upon sixty (60) days written notice without penalty or other early termination charges due. Such termination and/or cancellation shall not give rise to any cause of action against the State for damages, loss or profits, expenses or future remuneration of any kind. Such cancellation of the Back-Drop Contract shall not affect the validity of any Project award or Purchase Order issued prior to cancellation, or of work performed under such awards.

c. Suspension: The Office of General Services, in its sole discretion, reserves the right to suspend any or all such activities under this Back-Drop Contract, at any time, in the best interest of the State. In the event of such suspension, the Contractor will be given 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 suspension of work, the contractor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Office of General Services issues a formal written notice authorizing a resumption of work; **provided, however, that if such suspension lasts more than ten (10) business days, Contractor's obligation to resume the project is subject to the Contractor's reasonable ability to re-establish the project team or an equivalent project team acceptable to the Issuing Entity.**

d. OGS Summary Of Policy And Prohibitions On Procurement Lobbying:

It is the policy of OGS to comply with the provisions of the procurement lobbying law, established by Chapter 1 of the Laws of 2005. In pertinent part, Chapter 1 adds two new sections to the State Finance Law effective January 1, 2006: State Finance Law §139-j, Restrictions on Contacts during the Procurement Process, and State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. OGS is also required to develop and maintain a listing on its web site setting forth those offerers who have been determined to be non-responsible or debarred due to violations of State Finance Law §139-j. Both sections of law use defined terms to support the new restrictions on procurement lobbying and it is OGS policy that employees who are involved with procurement contracts shall be familiar with such definitions.

State Finance Law §139-j, Restrictions on Contacts during the Procurement Process:

State Finance Law §139-J prohibits lobbying on the governmental procurements of governmental entities (i.e., state agencies, the Legislature, the Unified Court System, and

public authorities, including local industrial development agencies and local public benefit corporations). This section provides that OGS in undertaking a governmental procurement shall: (a) designate with regard to each governmental procurement a person or persons to be responsible for communications relative to the procurement who may be contacted by bidders or potential bidders; and (b) undertake the procurement in a manner that is consistent with procurement principles set out in the State Finance Law and free from any conduct in violation of Public Officers Law ethics provisions. Further, offerers who contact OGS about a procurement shall be required to contact only designated personnel subject to some statutory exceptions.

Under this section, OGS staff may consult the model guidelines issued by the Advisory Council on Procurement Lobbying and OGS is responsible for incorporating a summary of the policy and prohibitions against unauthorized contacts on governmental procurements into solicitations, bid documents or specifications for all procurement contracts. This section provides that OGS established a process for reviewing all violations of this section, and that upon notification of alleged violations, the matter is referred to the OGS ethics officer or the State Inspector General who shall investigate and give the offerer notice of the investigation and an opportunity to be heard.

This section provides that OGS make a determination of responsibility of the proposed awardee of the procurement contract. In the event that OGS finds that a contractor knowingly and willfully violated the new section, OGS shall determine that the contractor is a non-responsible bidder and OGS shall not award the contract to that contractor. Further, any contractor that has violated this section within four years of violating it an initial time would be debarred from governmental procurements for a period of four years. OGS will maintain a listing on its website of non-responsible offerers and debarred offerers pursuant to this statute.

State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers:
State Finance Law §139-K provides for disclosure of contacts between contractors and OGS. Specifically, this section requires contractors to disclose prior findings of non-responsibility and penalizes contractors that fail to disclose prior findings of non-responsibility or that provide false and incomplete information by disqualifying them from being awarded the procurement contract. Further, this section requires OGS employees to record in the procurement record certain information about the persons who appear before them on governmental procurements.

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

f. Procurement Lobbying Requirements:
Pursuant to §139-j and §139-k of the State Finance Law, this solicitation includes and imposes certain procurement lobbying limitations. Bidders/Offerers are restricted from making contacts from issuance of the solicitation through approval of the contract by the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions (referred to as permissible contacts). Staff identified on the first page of this solicitation are the "designated contacts."

OGS employees are also required to obtain certain information when there are communications during the restricted period that constitute a "contact" as defined in the statute and make a determination of the responsibility of the Bidder/Offerer pursuant to these two statutes. Findings of non-responsibility result in rejection for contract award and in the event of two findings within a four year period, results in a finding of Bidder/Offerer being ineligible to submit a proposal on or be awarded any procurement contract for four years from the date of the second finding of non-responsibility. Further information about these requirements can be found on the OGS website:

http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html

III.14 Administrative and Reporting Requirements

Contractor shall furnish semi-annual activity reports on forms provided by OGS and submit these reports electronically to the Office of General Services, Procurement Services Group, no later than C.O.B. on the 15th of January and July for each year of the contract starting in January 2003. Work awarded under the Back-Drop Contract to political subdivisions and others authorized by law shall also be reported on the same report form. Failure to submit the required reports in the manner and time period described above may result in cancellation of the current Back-Drop Contract and/or disqualification of Contractor for future contract award.

III.15 Dispute Resolution Policy:

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

III.16 Emergency Purchasing Clause

In the event that an emergency is declared by any political subdivision or the Governor of the State of New York in accordance with the laws of the State of New York which requires the prompt and immediate delivery of commodities or services, the Commissioner reserves the right to obtain such commodities or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for commodities or services procured from other sources pursuant to this paragraph.

III.17 Sub-Contractors/Partnerships

III.17.1 Work Performance Liability

In the performance of work under a Project Award, Contractor remains primarily liable for the successful completion of all work in accordance with the Project Definition/Specifications, and jointly and severally liable for the timely performance of all work or goods/materials furnished pursuant to this master agreement and its associated mini-bid project award(s) by third parties acting for or through Contractor. The Contractor shall be so liable even where subcontracting, independent contractors, consortiums or partnering for a portion of the work is expressly authorized under the mini-bid Project Definition/Specifications, and where the use of such partners or sub-contractors is subject to the prior approval of the State.

III.17.2 Disclosure of Sub-Contractors

Where mini-bid Project Definition/Specifications allow the use of sub-contractors or partnerships in performance of the project work, Contractor shall be required to disclose its intention to enter into such agreements as part of the project mini-bid submitted by Contractor, and the State reserves the right, in its sole discretion, to prior review and approval of each party and its technical staff. Failure to disclose intended use of a sub-contractor in the project mini-bid may result in a disqualification of sub-contractor, or termination of the project.

III.17.3 Sub-Contractor Warranty

The State shall also require said sub-contractor to execute, in a form approved by the State, a warranty statement in favor of the State for all work to be performed, warranted or maintained by sub-contractor, and may require the executed form as a pre-condition of Project Award to Contractor.

Notwithstanding any sub-contracting pursuant to this paragraph, contractor shall at all times be primarily liable for all obligations and sub-contractor performance under the back-drop agreement and project award.

III.18 Assignment

This RFP is intended to secure the personal services of the Vendor because of the ability and reputation of said Vendor and its staff. This Back-Drop Contract and any Project Award made in conjunction thereto shall not be assigned, conveyed, transferred, disposed of or subcontracted by such Contractor without the prior, written consent of the State or Issuing Entity which shall not unreasonably be withheld. Back-Drop Contractor may, however, utilize a third party Contractor, subcontractor or partner for performance of certain components of the Project Award consistent with the Terms and Conditions of the Back-Drop Contract and Project Definition/Specifications. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties hereto to the same extent as if each such successor were named a party hereto.

While approval by the Commissioner is not required for an assignment of monies due under a Project Award, a "Notice of Assignment of Monies" must be filed directly with the State Comptroller, with a copy simultaneously filed with the Commissioner of OGS and the Issuing Entity, prior to the assignment of monies becoming effective.

III.19 Force Majeure

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

III.20 <u>Date/Time Warranty</u>

Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in

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

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

Subject to SIII.9, Limitation of Liability, Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.

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

III.21 Warranty for Deliverables/Workmanship

Contractor warrants and represents full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of Issuing Entity perpetual license rights set forth herein to use the Product for the purposes stated in the Project Definition. Contractor shall indemnify Issuing Entity for any loss, damages or actions arising from a breach of this warranty without limitation. Issuing Entity may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. Issuing Entity's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

Contractor warrants and represents that any required deliverables specified and furnished by or through Contractor, whether tangible or intangible, regardless of form, shall be standard new equipment or equipment warranted by a manufacturer as new, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered, with no attachment or part substituted or applied contrary to the manufacturer's recommendations and standard commercial practice in the industry.

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

Contractor further warrants and represents that Products or deliverables specified and furnished by or through Contractor under the Project Definition shall individually, and where specified by Contractor to perform as a system, be substantially uninterrupted and

error-free in operation and guaranteed against faulty material and workmanship for the warranty period stated in the Project Specifications, or for a minimum of ninety (90) days from the date of acceptance, whichever period is longer ("Project Warranty Period"). During the Project Warranty Period, defects in the Products or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Issuing Entity.

Contractor shall extend the Project Warranty Period for individual Product(s), or for the System as a whole, if applicable, by the cumulative period(s) of time, after notification, during which an individual Product 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.

In addition to Contractor's Project Warranty, the Issuing Entity shall have the benefit of all manufacturers' standard commercial warranties for individual Project Deliverables. It shall be the Contractor's responsibility to insure that such warranties begin conterminously with the commencement of Contractor's Project Warranty Period. Any additional cost(s) for having the periods begin conterminously shall be borne by Contractor. During the Project Warranty Period, Contractor shall be responsible for placing and coordinating all manufacturers' warranty claims on behalf of Issuing Entity. Such manufacturer's warranty coverage shall be supplemental to, and not relieve the Contractor from, Contractor's warranty obligations during the Project Warranty Period.

Where the manufacturer's warranty term is longer than the Project Warranty Period, Contractor shall notify the Issuing Entity and pass through the manufacturer's warranty to Issuing Entity at no additional charge. Contractor shall not be responsible for coordinating services under the manufacturer's warranty after expiration of the Project Warranty Period.

The warranties set forth herein shall survive any termination of the Back-Drop Contract for individual Projects in accordance with the stated warranty term(s).

THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTIBILITY AND FITNESS FOR A PARTICULAR PURPOSE. The above warranties do not apply to the extent the problem is caused by misuse, unauthorized modification, unsuitable physical environment, operation in other than the Specified Operating Environment, failure to follow required maintenance by the Issuing Entity or failure caused by a product for which Contractor is not responsible.

III.22 Appendix A

Appendix A, "Standard Clauses for New York State Contracts" is incorporated herein by reference as part of this agreement. Exceptions taken by Vendor to the terms of Appendix A shall be deemed material and will be grounds for disqualification of the Vendor from being awarded a Back-Drop Contract.

III.23 Standard Appendices & Inconsistencies

During the contract term, conflicts between the various documents (including the Back-Drop Contract, Mini-Bid Project Definitions, Contractor's Proposal, and any negotiated statement of work between Contractor and Issuing Entity) shall be resolved in the following order of precedence:

a. **Appendix A -** Standard Clauses for NYS Contracts
b. **Negotiated Statement of Work (If Any) -** setting forth the final agreement terms or clarifications between Contractor and Issuing Entity, which reconciles the Issuing Entity's Project Definition & Contractor's Project Proposal
c. **Project Mini-Bid Project Definition**
d. **RFP # S960275-E.1**
   - Contract Document
   - Appendix B
e. **Contractor's Project Mini-Bid Proposal**
f. **Contractor's Back-Drop Contract Proposa**l- (response to RFP # S960275-E.1)

III.24 Entire Agreement
The documents referenced herein constitute the entire Agreement 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 these contracts shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

III.25 Independent Contractor
It is understood and agreed that Vendor is acting as an independent Contractor and not as an agent of the State of New York or its Authorized Users in the performance of this Agreement.

III.26 Notices
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 set forth above, and (ii) if to Issuing Entity, to the address set forth in the Project Definition/Specifications; and (iii) if to Contractor, addressed to Contractor at its address set forth above. The parties may from time to time, specify any address in the United States as its address for 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 purposes of this Agreement.

III.27 Emerging Technologies
The State reserves the right to modify the terms of the RFP at any time to allow for technologies not identified elsewhere under this document. If there are repeated requests for an "emerging technology," and OGS feels it is warranted to add such technology to the list of Categories of Expertise, OGS reserves the right to include such technology hereunder or to issue a formal modification or amendment to the RFP. The technology will have to have been in the commercial marketplace for a reasonable amount of time and have met with some degree of success among a substantial base of Issuing Entities to be considered by OGS as a new category for contract services.

III.28 Diesel Emission Reduction Act of 2006
On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The

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

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

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

SECTION IV - USE OF CONTRACT BY STATE AGENCIES, POLITICAL SUBDIVISIONS, AND OTHERS AUTHORIZED BY LAW

IV.1 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 there under 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 there under 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.

IV.2 The Mini-Bid Process/General Information

During the Back-Drop Contract term, in accordance with the mini-bid process, Contractors will be competing against other pre-qualified Contractors for individual projects within one or more Categories of Expertise and Type of Service. Best and final pricing will be submitted at the mini-bid level. Only pre-qualified, Back-Drop Contractors will be eligible to participate in the mini-bid process during the Back-Drop Contract term. Selection and Project Award will be made in accordance with Project Definition/Specifications prepared by the Issuing Entity.

Mini-bid Project Definition/Specifications may cross multiple Categories of Expertise within one or more of the Types of Services. In such event, any Contractor pre-qualified in those Categories of Expertise and Types of Services identified in the Project Definition/Specifications will be solicited to bid. Where Project Definition/Specifications set forth additional qualifying criteria, (e.g. multiple Categories of Expertise are mandatory, or one or more of the Categories of Expertise are weighted more heavily than the others), Contractor must demonstrate to the sole satisfaction of the Issuing Entity that it can meet all the minimum requirements set forth in order to be considered for Project Award. (Refer to Section IV.3 Process Modifications.)

During the Back-Drop Contract term, individual Project Definition/Specifications will be drafted which incorporate the Terms and Conditions of this RFP. Therefore, where the word "State" is used herein, the reference shall be deemed to relate to the Issuing Entity for purposes of application of rights and obligations. Any bid submitted by Contractor shall be deemed to incorporate the terms of this Back-Drop Contract as if fully set forth therein at length. Contractor may not use its Project Bid to alter the Terms and Conditions stated in this Back-Drop Contract. A mini-bid that attempts to do so may be rejected in whole or in part at the sole discretion of the State. The Issuing Entity shall address contractor questions concerning the technical parameters within the Project Definition/Specifications. All inquiries must be in writing to the Issuing Entity who will be required to respond in writing. All questions and answers will be shared with all Contractors who receive the Project Definition/Specifications. If a Contractor believes that the information included in the Project Definition/Specifications is insufficient to enable the Contractor to prepare a fully responsive mini-bid Proposal, the Contractor must submit a written inquiry to the Issuing Entity or be deemed to have waived that objection.

All Project Awards are based upon "turnkey" Project Bids, by which Contractor certifies that <u>all</u> work and costs necessary to accomplish successful completion of the project and to meet the requirements of the Project Definition/Specifications, whether or not such work is expressly enumerated in Contractor's mini-bid Proposal, has been included in the bid submitted. **A CONTRACTOR WHO ASSISTS AN ISSUING ENTITY WITH THE PREPARATION OF THE PROJECT DEFINITION/SPECIFICATIONS WILL NOT BE ELIGIBLE TO BID ON THAT PROJECT.** Refer to Section VII.3.

Contractors submitting bids under this process are bound to the obligations and the not-to-exceed rates as quoted in the Back-Drop Contract. Exceptions which alter the terms of the Back-Drop Contract or pricing in the project bid that exceeds the cap may be disallowed or be grounds for rejection of Contractor's Project Bid.

The State, on behalf of the Issuing Entity, reserves the right to consider the business and financial stability of the Contractor in comparison to the size and scope of a specific project when making individual Project Awards. The State also reserves the right, in its sole discretion, to disqualify Contractors for a Project who lack previous experience with project of comparable size to the project being bid. In exercising this right, the State may consider, without limitation, such factors as company size, number and quality of employees assigned to the Project, hours employees have been assigned to the Project, turnover in management or personnel, qualification of Sub-Contractors, partners or other third parties performing by or through Contractor, percentage of the work to be completed in-house vs. subcontract, past performance, including completion on time, within budget, bonding capacity and experience of the technical staff. Authorized Users have the option to require that additional information or forms such as VENDEX forms, Confidentiality forms, etc. be submitted with

a Contractor's mini-bid in response to a Project Definition/Specifications or at the time of Contractor selection by the Issuing Entity.

Although the mini-bid Project Definition was the original and only option available under the back-drop contracts, as OGS has strived to streamline the procurement for IT Services, alternative procurement options are made available to address different IT needs. The options currently available include the Discretionary Buying Thresholds and Fast Track Procurements (Refer to Section VIII.6 Procurement Options for a brief overview). The *Mini-Bid Guidelines for Procurement of IT Services* and the *Policy & Procedures Guidelines for Contractors* available on the OGS PSG IT Services web site are the best sources for up-to-date information about the various procurement options and associated processes.

IV.3 Process Modifications

As a result of, for example, statutory changes, technological changes to the process (e.g. e-procurement) or to the Back-Drop Contract, or to Contractor repeated non-compliance with the back-drop contract or with Project Definition/Specifications, OGS reserves the right to issue guidelines for the use of the Back-Drop Contracts that could result in not ALL previously pre-qualified Contractors within a specific Category of Expertise or Type of Service receiving ALL mini-bids for such Category of Expertise or Type of Service. Such guidelines that may result in the establishment of limitations would not be issued without prior written consultation with OSC and Contractors.

IV.4 Project Announcements

Mini-bid Project Definition announcements on the OGS website will replace individual hard copy notices to contract holders. This "push" technology will automatically send Project Announcements to the list of Back-Drop Contractors. These notices will outline the project generally with enough information so that Contractors with Back-Drop Contracts for computer Consulting, Systems Integration, Training, On-Going Services, Maintenance & Support (hereafter referred to as ***IT Services***) will be able to determine whether or not to contact the Issuing Entity for further project information. As soon as OGS PSG is prepared to implement the Project Announcements, each Contractor will be notified in advance by letter.

It shall be the Contractor's responsibility to notify OGS immediately in the event that:

- Contractor does not have access to the Internet at present and does not plan to in the future, or
- There are any changes to Contractor's email address that could result in a failed e-mail transmission

IV.5 Mini-Bid Project Awards

Notwithstanding the expiration of the Back-Drop Contract, individual Project Definitions/Specifications may require Contractor to work beyond that date to completion of a specific project, in which event the terms and conditions of this agreement shall survive expiration of the Back-Drop Contract term and apply through completion of project and acceptance by Issuing Entity.

IV.6 Dispute Resolution

Any dispute, complaint or inquiry regarding the mini-bid process or a proposed Project award shall be filed with the Issuing Entity. The Issuing Entity shall resolve the dispute, complaint or

inquiry in compliance with the Issuing Entity's procedures for dispute resolution. If the Issuing Entity does not have procedures for dispute resolution, Contractors should follow the OGS PSG Dispute Resolution Procedures for Vendors referenced above, in which case references to OGS and/or OGS personnel shall be deemed to reference the Issuing Entity, address, and contact person named on the mini-bid Project Definition.

IV.7 Contractor's Duty to Inspect Project Site

Where the Project Definition/Specifications identifies such requirements, Contractor must assume full responsibility for complying with the installation environmental definitions set forth in the Project Specifications, including physically inspecting the installation site and determining the technical parameters of the existing system prior to submission of its Project Bid. Prior to submission of its Bid, Contractor should become familiar with the Issuing Entity's physical facilities, and in particular locations where the equipment or deliverables are to be installed, as well as becoming familiar with the Issuing Entity's regional offices (if applicable) and their software/hardware/networking environments.

As part of the Project Definition/Specifications, the Issuing Entity will be responsible for providing all relevant documentation regarding the installation environment, software/hardware/networking requirements and existing architectures and configurations. Contractor shall rely only upon written representations made by the Issuing Entity regarding existing configuration or site requirements, which the Issuing Entity shall set forth to the best of its ability. Oral statements made by the Issuing Entity personnel shall not be binding against Contractor.

Contractor may submit questions concerning site conditions to the Issuing Entity in writing. If the Contractor knows of the inaccuracy or incompleteness of those representations, written notice must be given to the Issuing Entity in advance of submission of the mini-bid Proposal or Contractor will be deemed to have waived the objection.

Contractor assumes full responsibility for understanding Issuing Entity's existing system parameters, interface criteria, or architectural and design criteria as defined in the Project Definition/Specifications.

IV.7.1 Security & Site Visits (Pre-Bid Visits)

Contractors, including its employees, officers, agents and subcontractors, may be required to comply with all present and future security policies of the Issuing Entities. The specifics will be defined in the Project Definition/Specifications.

IV.8 Mini-Bid Project Bid Deposits

The Issuing Entity may require Contractor to furnish a bid deposit in the form of a certified check along with its Project Bid, in an amount specified in the Project Definition/Specifications. The check is to be submitted in a sealed envelope. Such sum shall be deemed liquidated damages covering anticipated losses due to Contractor's failure to enter into a final contract with the Issuing Entity. Bid Deposits would be applicable "generally" to Systems Integration Projects rather than to projects limited to Consulting or Training.

When applicable, Bid Deposits for the first and second low Contractors will be retained until a Project Award with the selected Contractor is executed. At such time, both checks will be returned. All other Bid Deposit Checks will be returned to unsuccessful Contractors along with a Notice of Project Award.

The Bid Deposit will be subject to forfeiture by the low cost Contractor in the event that: 1) he defaults in performance of any of the obligations hereunder; 2) he fails to enter into a binding contract in accordance with the terms of this contract or the Project Definition/Specifications; or 3) he becomes prospectively unable to fulfill the obligations set forth herein and such inability becomes known prior to execution of approved contract with Contractor.

IV.9 Performance & Payment Bond

Contractor may be required to furnish a bond for the faithful performance of all obligations imposed by the Project mini-bid, also for the payment of all lawful claims of sub-contractors, material suppliers, and workers arising out of the performance of the contract. Cost for the bond should be included as a separate cost item in the Contractor's mini-bid as required in the Project Definition/Specifications.

IV.10 Project Documentation

All documentation for projects will be provided to the Issuing Entity with the number of copies specified in the Project Definition/Specifications.

All system design and programming specifications must be accepted by the Issuing Entity, and finalized at Project Award. All information, specifications, and other material must be transmitted with a dated cover letter.

Contractor will provide the Issuing Entity's representative/contact with detailed time distribution information in the form provided by the Issuing Entity, which will be used to provide billing information to the Issuing Entity. In addition, progress reports will be submitted to the Issuing Entity representative/contact on a periodic basis, as defined in the Project Definition/Specifications but not less frequently than monthly, covering problems, meetings, progress and status against the work plan.

IV.11 Compliance with Project Standards and Conventions

There are diverse standards and naming conventions set by the Issuing Entities that must be adhered to by the Contractor in the performance of services hereunder. Upon provision of such conventions, the Contractor agrees to conform its work/products to such conventions.

IV.12 Acceptance

Contractor must meet the acceptance testing criteria set forth in the Project Definition/Specifications.

All deliverables required by the Project Definition/Specifications may require completion and may be turned over to the Issuing Entity before the acceptance period will begin unless otherwise mutually agreed upon by Contractor and Issuing Entity. Such deliverables shall include, but not be limited to the following:

a) Source code listing
b) Test results
c) Job control streams
d) Test data
e) Specified Number of Copies of all Users Manuals.

Full or partial payment due to the Contractor may be withheld until such testing has been completed and accepted by the Issuing Entity and provided in writing to the Contractor upon completion of the testing. If a deliverable malfunctions during the acceptance period, the

acceptance period may be extended for the length of time such deliverable was malfunctioning in order to ensure that such deliverable is functioning properly.

IV.13 Instruction, Maintenance and Diagnostic Manuals

For each Project deliverable, Contractor must furnish to the Issuing Entity a complete set of instructions, maintenance and diagnostic manuals for the equipment, programming or other materials and work supplied. The manuals shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the equipment and/or the system, together with system layout, interconnection diagrams, schematic and wiring diagrams, comprehensive preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information.

IV.14 Service Level Agreements (SLAs)/Penalties/Rewards

When an Issuing Entity enters into a long term relationship with a Contractor (often referred to as a "Provider" such as an Application Service Provider) to provide On-Going Services, Maintenance & Support, it is a "Best Practices" recommendation that issuing entities enter into formal, written Service Level Agreements (SLA) with their selected Service Providers. The SLA will be included within the Project Definition/Specifications for On-Going Services, Maintenance & Support, including Equipment Maintenance. The SLA serves, at a minimum, the following important functions:

a) Defines the services that the Contractor will provide, assigns priorities to these services, and establishes baseline standards, responsibilities, and commitments.
b) Becomes the basis for performance measurement reporting and provides the opportunity to identify potential service level improvements.

The SLA may be viewed as a "living" document and should be periodically reviewed and changed based upon mutual agreement to better-fit then current business requirements. Examples of events that may lead to changes include at a minimum:

a. The technical or business environment changes (e.g. O/S, hardware, network, DBMS, report writers, business procedures, etc.).
b. Entity's expectations and/or needs have changed (e.g. meetings, procedures, requests, etc.).
c. Workloads have changed (e.g. number of requests, average size, type, etc.).

At a minimum SLAs may include the following sections which will be defined in the PD:

1. Scope Of Services
2. Out-Of-Scope Applications And Services
3. Time Commitments & Prioritization of Services
4. Change Controls
5. Preventive and Corrective Maintenance Activities
6. Financial Objectives
7. Service Level Agreement Penalties/Rewards
8. Physical Commitments
9. Reporting Requirements
10. Deliverables Acceptance Procedures (Customer Satisfaction Objectives)
11. Back-up/Recovery Procedures

IV.15 Liquidated Damages

At the Issuing Entity's discretion and unless provided for in the alternative in the Project Definition/Specifications, Contractor's failure to deliver or install individual project deliverables within the time frames agreed to by the parties, shall subject Contractor to

liquidated damages in the amount of one (1.0%) percent of the contract value of the late deliverable per day for each day that receipt is delayed over the stated time frame, up to the value of the contracted price for the deliverable. Contractor shall be given written notice of the intent to assess such damages and thirty (30) days opportunity to cure before the liquidated amount may be assessed against Contractor**.** These damages may be deducted from monies due Contractor, or from the Performance and Payment Bond, if any. This sum shall be deducted, not as a penalty, but as liquidated damages and the sole remedy for delay causing loss of use by the Issuing Entity. This provision shall not apply to the extent or for any periods where the Issuing Entity or a force majeure is the cause of such delay.

IV.16 Cancellation of Mini-Bid Project Award

The Issuing Entity reserves the right to cancel the mini-bid project award in whole or in part upon thirty (30) days written notice to Contractor.

Where the Issuing Entity determines in its sole judgment that termination or cancellation of the mini-bid project award is necessary or desirable due to Contractor's failure to fulfill its obligations or a default by the Contractor, the Issuing Entity may withhold payment of all or part of the monies otherwise payable to Contractor and apply such monies toward any damages, or expenses without limitation or excess costs incurred in completing the project by the use or employment of other vendors or other means. Such termination and/or cancellation shall not give rise to any cause of action against the Issuing Entity for future remuneration of any kind to which it would have been entitled from the date of cancellation forward. Contractor will be liable, in the event of such cancellation, for damages including but not limited to cost to the State or Issuing Entity of finding substituted performance.

In the event of termination and/or cancellation, the Contractor shall deliver to Issuing Entity all software, products, programs, source code, reports and other materials, preliminary, final or otherwise, in its custody or prepared hereunder or in anticipation of providing further services.

IV.17 Approval of Contractor Personnel

The Issuing Entity must approve all personnel assigned to a project. All employees, subcontractors or agents performing work under the Contract must be trained technicians who meet or exceed the technical and training qualifications, if any, set forth in the Project mini-bid specifications or in Contractor’s mini-bid proposal, whichever standard is higher. All employees, subcontractors or agents must comply with all security and administrative requirements of the Issuing Entity, and the Issuing Entity reserves the right to conduct a security background check or otherwise approve at its sole discretion any employee, subcontractor or agent furnished by Contractor. Such approvals shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

Contractor acknowledges that the skill and experience of Contractor personnel proposed to be assigned to the Project is a material element in winning a Project Mini-Bid award. Therefore, in order to insure timely and cohesive completion of the Project, both parties intend that personnel initially assigned to the Project continue through Project completion. Once an individual has been approved and assigned to the Project, such individual will not thereafter be taken off the project by Contractor, or reassigned by Contractor to other duties involving comparable employment by Contractor while the Project is in progress and for so long as there has been no voluntary suspension under Section III.13 lasting for a period of longer than ten business days. Circumstances may arise, however, which necessitate personnel to be substituted during the progress of work due to delays in awarding the

contract, suspensions under Section III.13 or due to promotions, termination, sickness, vacation or other similar material change in the employment circumstance of the employee, at which time a replacement of comparable background and experience may be substituted, subject to approval of the Issuing Entity.

The Issuing Entity may refuse access to or require replacement of any employee, subcontractor, agent of Contractor if such individual renders, in the sole judgment of the Issuing Entity, inadequate or unacceptable performance of services, or for any other reason the Issuing Entity finds such individual does not meet its security or responsibility requirements. Contractor shall replace such individual within fifteen (15) business days of receipt of written notice. The replacement will be comparable in skills required and will be billed at a rate that is equal to or less than the rate of the individual being replaced.

IV.18 Liability Insurance

Contractor shall, at its own cost and expense, obtain and maintain in full force and effect, with sound and reputable insurers, at all times during the Project term and prior to the commencement of work, required insurance coverage as set forth by the Issuing Entity in the Project Definition/Specifications. Certificates evidencing such coverage will be supplied to the Issuing Entity prior to the commencement of any work if such evidence is requested.

IV.19 Application of Quoted Pricing

Contractor's Back-Drop Contract Base Year Pricing shall constitute Contractor's maximum rate for any project with a bid deadline occurring prior to the effective date of Contractor's proposed price increase, regardless of the Project Award or Project completion date. For Projects with a bid deadline occurring during subsequent years, Contractor's maximum rates for any mini-bid shall be determined by the annual rates in effect for said time period pursuant to the above paragraphs.

For projects which continue into the next year of the of this Back-Drop Contract, Contractor shall not be entitled to price increase during the project term unless Contractor shall have included said proposed increase in its mini-bid proposal when included as an option by the Issuing Entity in its Project Definition/Specifications, the price increase would otherwise be allowable under the Back-Drop Contract, and it has been accepted by the Issuing Entity prior to Project Award.

IV.20 Travel, Meals and Lodging Expenses

All rates quoted pursuant to this RFP shall be maximum rates **INCLUSIVE** of any expense for travel, meals and lodging. Costs for such expenses should be included at the Project mini-bid level, and will be evaluated by the Issuing Entity in making a determination of Best Value bidder for Project Award. Such expenses in the Project mini-bid must be incorporated by Contractor into the lump sum of hourly rates and the individual component totals (e.g. deliverables).

IV.21 Responsibility for Payment

Responsibility for payment shall be the sole and express responsibility of the Project mini-bid Issuing Entity. The Office of General Services shall have no liability in that regard unless it shall itself be the Issuing Entity for Project mini-bid. Payments shall be subject to legislative appropriation by the appropriate authority for the Issuing Entity.

IV.22 Foreign Nationals

The Federal Immigration Reform and Control Act, as amended, (8 USC section 1324a et al) obligates employers, such as the Contractors, to verify that all its employees are legally entitled to work in the United States. In order to verify that an individual is not an unauthorized alien, OGS and the Authorized Users of the back-drop contract reserve the right to request legally mandated Contractor-held documentation attesting to the legal entitlement to work in the United States for each consultant assigned work under any contract/project awarded. In accordance with such law, OGS and its Authorized Users do not discriminate against individuals on the basis of national origin or citizenship.

IV.23 Internet Security and Privacy

To All State Contractors and Prospective Contractors: The New York State "Information Security Breach and Notification Act" also known as the "Internet Security and Privacy Act" took effect December 9, 2005. The Legislature and Governor have enacted the Law in response to past and continuing identity theft and security breaches affecting thousands of people. The Law requires any person or business that conducts business in New York State and that owns or licenses computerized data that includes private information (including but not necessarily limited to social security numbers, credit and debit card numbers, drivers license numbers, etc.) must disclose any breach of that private information to all individuals affected or potentially affected in an expeditious manner. You may view a copy of the Law at http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS by searching for "INTERNET SECURITY AND PRIVACY." The Law is Article 2 of the State Technology Law. You may also find the Law in Chapter 442, Laws of 2005. All contractors must be compliant with the Law.

IV.24 Consultant Contractor law

Employee Information Required To Be Reported By Certain Consultant Contractors And Service Contractors

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as "contracts entered into by a state agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services"* ("covered consultant contract" or "covered consultant services"). The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006.

To meet these requirements, the Contractor agrees to complete:

Form A - Contractor's Planned Employment Form, if required. The State agency using the consultant services is required to submit Form A to the Office of the State Comptroller. Note: The agency may choose, in its discretion, to require the vendor's assistance in completing Form A. Agency solicitation documents should advise vendors accordingly.

Form B - Contractor's Annual Employment Report. Form B must be submitted each year the agreement is in effect, to capture the contractor's historical information detailing actual employment information for the most recently concluded state fiscal year (April 1 through March 31) and ever year thereafter. Throughout the term of the Contract by May 15th of

each year the contractor agrees to report the following information to the State agency awarding the Contract, or if the Contractor has provided contract employees pursuant to an OGS centralized contract, such report must be made to the State agency purchasing from such Contract. For each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such contract was in effect during such prior State fiscal year contractor reports the:

1. Total number of employees employed to provide the consultant services, for each employment category.
2. Total number of hours worked by such employees for each employment category.
3. Total compensation paid to all employees that performed consultant services under such Contract for each employment category.*

*NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to the Department of Civil Service and the Office of the State Comptroller as designated below:

Department of Civil Service	**Office of the State Comptroller** - Bureau of Contracts
Alfred E. Smith Office Building	110 State St., 11th Floor
Albany, NY 12239	Albany, New York 12236
Attn: Counsel's Office	Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the State agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller's Bulletin G-226 http://www.osc.state.ny.us/agencies/gbull/g-226.htm regarding the Contractor Consultant Law requirements and report Forms A and B.

IV.25 Information Security Breach And Notification Act

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable

delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: http://www.cscic.state.ny.us/security/securitybreach/

SECTION V - ADMINISTRATIVE

V.1 Delivery of Proposals

Vendors may submit a written proposal complying with the Terms and Conditions of this RFP at any time up to June 30, 2010, six months prior to the expiration of the contract term.

To be officially recorded, proposals must comply with the following:

- **Three (3)** complete copies of the Proposal must be mailed or hand delivered to:
  Ms. Pat Weidman - Team Leader IT Services
  Office of General Services - Procurement Services Group
  Empire State Plaza - Corning Tower, C/O Receptionist - 37th Floor
  Albany, New York 12242

- Whether hand delivered or mailed, the Bid Proposal envelope with the words "**BID PROPOSAL: RFP# S960275-E.1 - PSG Consulting, SI, Training and On-Going Services**" in large print on the front of the package containing the bid. It is recommended that large lettering be used for this purpose. If the Bid Proposal is hand delivered, the courier must present **three (3) copies** to the Reception Desk for the OGS Procurement Services Group at the above address.
- Bidders must allow extra time to comply with the security procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. **Bidders assume all risks for timely, properly submitted deliveries.**
- **IMPORTANT SECURITY PROCEDURES** in effect commencing January 30, 2006, at the Corning Tower. While Empire State Plaza procedures govern both parking and admittance to buildings, the new Corning Tower procedures require turnstile security access. Photo identification is required. **Vendors attending bid openings or scheduled meetings are encouraged to pre-register for building access by contacting the Procurement Services Groups (PSG) receptionist at 518-474-6262 at least 24 hours prior to the bid opening.** Visitors not pre-registered will be directed to a designated phone to call the PSG Receptionist**.** Vendors who intend to deliver bids or conduct business with PSG should allow extra time to comply with the security procedures. These security procedures may change or be modified at any time.

V.2 Disclosure of Contract Awards

Public announcements or news releases pertaining to contracts shall not be made prior to contract award. Requests concerning the evaluation of a bid submitted will be considered under the Freedom of Information Law (FOIL) only after contract negotiations are complete and the contract is released by the State Attorney General's Office and the Office of the State Comptroller.

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should you feel your firm's bid/proposal contains any such trade secrets or other confidential or proprietary information, you must submit a request to except such information from disclosure. Such

request must be in writing, must state the reasons why the information should be accepted from disclosure and must be provided at the time of submission of the subject information.

Requests for exemption of the entire contents of a bid/proposal from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm. Written requests are to be directed to:

Freedom of Information Officer
NYS Office of General Services
Corning Tower, 41st Floor, Empire State Plaza
Albany, NY 12242

SECTION VI - PROPOSAL FORMAT AND CONTENT

VI.1 Proposal Submission

VI.1.1 New Vendors

If your firm is interested in providing any or all of the following information technology services: Consulting, Systems Integration, Training, and/or On-Going Services, Maintenance & Support to the State of New York, you must complete and submit a responding proposal to this RFP, including the following mandatory components from Appendix C, in the following order:

- RFP Part I - Mandatory Vendor Submissions
- RFP Part II- - Bidder's Qualification Filing

These documents will constitute the Contractor's proposal, subject to exceptions that are:
a) Stated by the Vendor in its Bid Proposal and;
b) Accepted by the State prior to contract award.

VI.2 Proposal Content/Format

Submission must include **three (3) copies** of the proposal, organized as outlined in Section VI.1 - Proposal Submission and include one original signature page, signed and notarized in each of the copies of the proposal for a total of **three (3) original** signature pages. (To save on postage and handling, it is not necessary to submit the Proposals in binders. Rubber bands or large binder clips are preferred.).

All respondents complete all mandatory submissions. These documents will constitute the Vendor's contract upon approval, subject to exceptions that are a) stated by the Vendor in its Bid Proposal; and b) accepted by the State prior to contract award. Refer to Section VI.3 that follows regarding exceptions.

VI.3 Exceptions to Contract Terms

Due to the requirement for uniformity of contract with all Back-Drop contractors, exceptions that materially alter the terms and conditions set forth in this RFP will be grounds for rejection of bid or disqualification of Vendor. Exceptions to this RFP may only be made to the extent they are minor and do not materially alter the Terms and Conditions stated herein, and will be subject to acceptance by OGS or to Vendor withdrawal prior to

contract award. The State reserves the right, in its sole discretion, to determine the materiality of the Vendor's stated exceptions.

VI.4 Mistakes, Misrepresentations, Omissions
Any mistake or misrepresentation, whether intended or accidental, of the documentation may, at the State's sole discretion, cause immediate disqualification and/or termination of vendor's contract or any project award(s) made pursuant to this RFP.

VI.5 Liability for Proposal Costs
The Vendor assumes full responsibility for delivery of the proposal to OGS PSG and shall be solely liable for work performed in preparation, production and delivery of a proposal or any work performed prior to the formal execution of a contract.

VI.6 Vendor Interview/Presentation
If there are questions or clarifications needed as a result of a review of any Back-Drop Contract Proposal, the State may request selected Vendor(s) submitting acceptable proposal(s) to provide oral presentation(s) covering major points in the proposal(s). Oral presentations must be concise. All interviews/presentations would be held in Albany, New York at the address outlined in Section I.2.

VI.7 Amending an Existing Contract
Once a Vendor has been awarded a back-drop contract, they have the opportunity to amend their contract to add any of the following:
1. Types Of Services (limited to those on the Declaration of Expertise Matrix)
2. Categories Of Expertise (limited to those on the Declaration of Expertise Matrix)
3. Ancillary Job Classifications/Titles
4. On-Going Services & Support Pricing
5. Equipment Maintenance Pricing

The Amendment Packet can be downloaded from the OGS PSGIT Services web site.
- Enter URL: http://www.ogs.state.ny.us/purchase/snt/awardnotes/73012S960275can.htm
- Click on ***Contractor Amendment Packet***

SECTION VII - PROPOSAL EVALUATION CRITERIA

VII.1 Evaluation Process/Criteria for Back-Drop Contacts
In evaluating Vendor proposals, the State shall have the following rights:
a) Reject any and all proposals received. Any Vendor whose proposal has been rejected will be so notified in writing.
b) Waive or modify upon notice to Vendor minor irregularities in proposals received.
c) Utilize any and all ideas submitted in the proposals received unless those ideas are formally protected by patents or as other proprietary information and notice of that fact is provided in the proposal.
d) Amend the RFP specifications after their release upon written notice to all bidders.
e) Disqualify a bidder from receiving an award if such bidder has previously failed to perform satisfactorily in connection with public bidding or contract(s) or is deemed otherwise not responsible.
f) A Vendor's submission of a proposal shall be deemed a commitment to enter into a contract in accordance with the Terms and Conditions stated in this RFP, including Appendix A and Appendix B appended hereto. The State reserves the right, in its sole discretion, to consider

a Vendor's stated exceptions to the Terms and Conditions of the RFP as a measure of the conformance of its proposal to the RFP or to refuse any such changes proposed by the Vendor.

g) Consider the following:
- Qualification and previous experience of the Vendor in providing the described services;
- Financial responsibility, past history, and reliability of the Vendor;
- Ability of the Vendor to assume the liabilities and responsibilities of the Contract;
- Reasonableness of pricing.

VII.2 Method of Contract Award

A contract shall be deemed awarded, executed and binding upon approval by the New York State Comptroller, and mailing by OGS. Posting on the OGS Web Site within thirty (30) days of contract execution shall serve as official notice to Authorized Users that Contractor is eligible and entitled to be solicited for qualified project definitions issued after such posting.

The State and Issuing Entity have no affirmative duty to solicit Contractor for project definitions issued prior to the date of posting. Contractor may, however, be eligible to bid on project definitions issued after the date of OSC approval and prior to the date of posting, provided that Contractor: a) assumes responsibility for contacting the Issuing Entity and requesting a copy of the Project Definition; and b) agrees that such participation is permitted solely for the convenience of Contractor and shall not change any requirements of the project definition, including date and time for bid submission, nor entitle Contractor to any extension of time or other special consideration due to Contractor's late receipt or shortened time for preparing its mini-bid response.

VII.2.1 Contract Components

The contract that is awarded is comprised of a number of components rather than a "formal legal document." Those components include:
- The RFP
- Proposal in response to the RFP
- Award Letter from OGS PSG
- Signature & Acknowledgement Page stamped and approved by the Office of the State Comptroller (OSC)
- Amendments requested and approved during the term of the contract

VII.3 Eligibility for Project Solicitation/Award

Any Vendor which meets the criteria set forth herein shall be eligible for award of a Back-Drop Contract without limitation on the number of Vendors eligible to qualify for a Back-Drop Contract. All Contractors will be eligible to bid on projects initiated by Issuing Entities with the exception of those Contractors who participated in the preparation of the Project Definition/Specifications.

NOTE: In accordance with Section 163-a of the State Finance Law

If a vendor prepares and furnishes specifications for a state agency (or other authorized user) technology procurement proposal, to be used in a competitive acquisition, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. Such restrictions shall not apply where:

1. The vendor is the sole source or a single source of the product or services;

2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. A vendor has furnished at government request specifications or information regarding a product or services they provide, but such vendor has not been directly requested to write specifications for such product or services or an agency technology procurement proposal; or
4. The state agency together with the office for technology determines that the restriction is not in the best interest of the state. Such office shall notify each member of the advisory council established in article ten-a of the executive law of any such waiver of these restrictions.
(added L. 1997, c.430, sections 31, eff. Aug.20, 1997)

The Category(ies) of Expertise and Type(s) of Service(s) identified in a Project Definition/Specifications will dictate which Contractors receive the Project Definition/Specifications. The State's need for specialized services crosses a wide variety of technical environments, platforms, distributed systems and software configurations. Therefore, eligibility for project award at the mini-bid level may be based on additional, mandatory, platform-specific experience requirements as set forth in the Project Definition/Specifications. Where more than one Category of Expertise and/or Type of Service is identified, all Contractors with at least one of the Categories of Expertise and Type of Service identified will be sent the Project Definition/Specifications.

VII.4 Scope of Contract

For all Types of Services and Categories of Expertise the award of a back-drop contract will be made without regard to geographic location EXCEPT for the category of Equipment Maintenance (EM) which will be awarded based on geographic location (Refer to Exhibit 4). For EM, vendors will be asked to indicate on the Pricing Designation Page for EM (included in Appendix C) in which of the following counties they propose to provide maintenance. Vendors will be eligible to respond to Project Definitions/Specifications for EM only within those counties proposed and awarded. Contractors will be given the option to include all counties.

Exhibit 4

1. Albany	2. Allegany	3. Bronx	4. Broome	5. Cattaraugus	6. Cayuga
7. Chautauqua	8. Chemung	9. Chenango	10.Clinton	11. Columbia	12. Cortland
13. Delaware	14. Dutchess	15. Erie	16. Essex	17. Franklin	18. Fulton
19. Genesee	20. Greene	21. Hamilton	22. Herkimer	23. Jefferson	24. Kings
25. Lewis	26. Livingston	27. Madison	28. Monroe	29. Montgomery	30. Nassau
31. New York	32. Niagara	33. Oneida	34. Onondaga	35. Ontario	36. Orange
37. Orleans	38. Oswego	39. Otsego	40. Putnam	41. Queens	42. Rensselaer
43. Richmond	44. Rockland	45. St. Lawrence	46. Saratoga	47. Schenectady	48. Schoharie
49. Schuyler	50. Seneca	51. Steuben	52. Suffolk	53. Sullivan	54. Tioga
55. Tompkins	56. Ulster	57. Warren	58. Washington	59. Wayne	60. Westchester
61. Wyoming	62. Yates				
All Counties					

VII.5 Minimum-of-Three (3) Rule

For any specific service and Category of Expertise identified in Sections II.4 and II.5 respectively, the "minimum of three (3) rule" will apply. There must be a minimum of three (3) Back-Drop Contracts in order for PSG to accept a project for bid under any specific service and Category of Expertise. Where there are less than three (3) Back-Drop Contracts, PSG will advise the Authorized User to bid that project on its own by advertising in the Contract Reporter and going through a formal RFP process. The State reserves the right, in its sole discretion, to withhold award of any Back-Drop Contract for a particular Category of Expertise within a specific service until there are a minimum of three qualified respondents in that service and Category.

SECTION VIII- DEFINITIONS

VIII Definitions – General

VIII.1 Authorized Users of the Contracts

"Authorized Users of the Contracts" include State agencies, authorities, local governments (cities, towns, villages, counties and subdivisions thereof), school districts, libraries and others authorized by law to utilize OGS centralized service contracts. Vendors should note that while a contract may be established pursuant to this RFP between the Vendor and the State, Contracted Vendor will be providing services for Issuing Entities located across the State in accordance with specific project requirements and may be requested to bid on the services described herein geographically throughout the State. (Refer to Section IV.1)

VIII.2 Back-Drop Contract

The "Back-Drop Contract" contains the underlying agreement between the Vendor and the State of New York as to the services each Vendor is qualified to provide and the not-to-exceed pricing at which Vendor is willing to offer said services to the State. During the contract term, Vendors qualify by Category of Expertise and Type of Service as part of a pool of Contractors to bid on projects let by Issuing Entities during the contract term. Upon qualification and approval under the Back-Drop Contract, Contractor is eligible to bid for specific project awards during the contract term. During the "mini-bid" process (defined below), vendors offer their "best and final" price at or below the Back-Drop Contract maximum rates.

VIII.3 Continuous Recruitment

"Continuous Recruitment" is a contracting process offered through the NYS Office of General Services that is designed to assist Vendors to do business with the State of New York more easily and in a timelier manner. Key objectives are: i) the ability to award Back-Drop Contracts to new vendors on an on-going basis; ii) the ability of the State to respond to fluid changes in the technology marketplace as technology issues change; iii) to ease the duplicative requirements otherwise imposed on Vendors when filing bids, and iv) to allow newly emerging technologies or Vendor specialties to be quickly recognized and included by amendment to existing vendor contracts.

(a) Continuous Recruitment: Unique Aspects. Continuous Recruitment is unique in that there is no public bid opening or fixed date for submission of bids. Proposals can be received at any time up to six months prior to the expiration of the contract term or until June 30, 2010. This allows new Vendors to be added to the contract at any time without having to wait for a new contract cycle to begin.

(b) Contract Term. The starting date for each Vendor's contract will vary according to the date of Vendor's bid submission and approval. All contracts awarded based upon this RFP will terminate simultaneously on December 31, 2010. However, individual projects that have been awarded under the Back-Drop Contract survive the expiration of the underlying contract term to project completion, and are governed by the terms of the Back-Drop Contract notwithstanding its expiration.

(c) Amendments to Existing Contracts. Contractors may amend their existing contract at any time up to six months prior to expiration of the contract term in order to qualify for additional categories or services as Contractor develops new specialties or expertise. Continuous Recruitment shortcuts the paperwork for Contractors once their initial "Bidder's Qualification Filing" is approved. Thereafter, Contractors submit short form RFP responses, without the need to duplicate submissions on corporate background for each amendment to the contract.

VIII.4 Contractor

The term "Contractor" as used herein refers to a Vendor who has met the minimum qualifications established in this RFP and has been awarded an OGS PSG Back-Drop Contract.

VIII.5 Issuing Entity

The term "Issuing Entity" as used herein shall refer to an entity, either the State of New York or its Authorized Users, who specifically identify a project and issues a "Project Definition/Specifications" for work under this Back-Drop Contract using the mini-bid process or an alternative procurement option as outlined below.

VIII.6 Procurement Opportunities

Specific projects requiring the services described in this RFP will be identified throughout the Back-Drop Contract term by Issuing Entities by means of various procurement options depending on the nature of the procurement. Work awarded through the options discussed below may survive the expiration of the Back-Drop Contract as discussed in Section IV.5. Included among these options are the following:

VIII.6.1 Formal Mini-Bid

This process refers to the method by which a project for services is identified by an Issuing Entity. With assistance from OGS, the requirements are set forth in a document referred to as a Project Definition/Project Specifications. The Contractor receiving the Project Definition/Specifications submits a bid that includes "best & final" pricing for the Category(ies) of Expertise and Types of Services defined in the Project Definition/Specifications. The Issuing Entity will evaluate the bids based on the requirements established in the Project Definition/Specifications and select the contractor(s) whose Proposal represents the "best value" among the responsive and responsible bidders.

VIII.6.2 Fast Track Procurements

This process refers to acquisition of Consulting Services for the various Categories of Expertise as defined in Section II.5 when there is a need to augment the State workforce for specified periods of time (six months, one year, eighteen months, etc.) based on Hourly rates.

VIII.6.3 Discretionary Buying Thresholds

This process is used when the projected cost for Consulting, Systems Integration (SI), Training (Live, CBT, VBT, WBT or IWBT), or On-Going Services, Maintenance & Support is expected to be less than $100,000.00. The Issuing Entity may bypass a formal competitive process and choose one of two options:

1. For procurements that are less than $50,000:
   - "Buy Direct" from **<u>any</u>** back-drop Contractor under the applicable Service (Consulting, SI, Training, On-Going Services, Maintenance & Support and

Category/ies of Expertise (Application Development, GIS, Help Desk, Imaging, Internet/Intranet, etc.)

- Upon the entity's acceptance of the proposal from the Contractor, work can begin immediately since prior approval from the State Comptroller (OSC) is not required when dollar amount is less than $50,000.

2. For procurements that are between $50,000 and $100,000:
   - Solicit bids from a minimum of three Contractors under the applicable Service (Consulting, SI, Training, On-Going Services, Maintenance & Support and Category/ies of Expertise (Application Development, GIS, Help Desk, Imaging, Internet/Intranet, etc.)

OR

   - "Buy Direct" if soliciting from:
     - NYS SBE (small business enterprise);or
     - NYS Certified MBE (minority-owned business enterprise); or
     - NYS Certified WBE (woman-owned business enterprise)
   - Upon the entity's acceptance of a proposal from the Contractor(s), prior approval from the State Comptroller (OSC) is required when dollar amount exceeds $50,000.

VIII.6.4 Multiple Award Standby Agreements (MASA)

This process refers to the acquisition of Consulting or Live Training Services for anticipated needs on a "standby" basis for up to 36 months. A minimum of three (3) firms are awarded Standby Agreements. The Issuing Entity must do a formal mini-bid soliciting all back-drop Contractors who have been approved for the relevant service(s) and/or category(ies) of expertise on which the procurement focuses. Over the term of the MASA, the awarded Contractors are offered opportunities to provide services for "assignments/task orders" as they arise. Competitive Hourly rates for Consulting and per student rates for Live Training will have been guaranteed in the proposals submitted in response to the MASA Project Definition. As the assignment/task orders are issued, the MASA awardees are able to submit even better pricing (i.e. Best & Final pricing). **EFFECTIVE 9/29/06, this Procurement Option is available to NON-STATE AGENCIES ONLY.**

VIII.7 Reserved

VIII.8 Products

The term “Products” used herein refers to technology, commodities or services specified for acquisition pursuant to Systems Integration Projects initiated under the mini-bid procurement option. Refer to Section VIII.6.

VIII.9 Project Definition/Specifications

The term “Project Definition” (used interchangeably with “Project Specifications”) means the written description of the Issuing Entity’s scope of work for Consulting, Systems Integration, Training, or On-Going Services, Maintenance & Support and any amendments, modifications or clarifications issued thereto. The terms of this RFP and Vendor’s resulting Back-Drop Contract shall be incorporated by reference into the Project Definition/Specifications. All generic references to the “State” in this RFP shall be deemed to reference the Authorized User issuing the Project Definition/Specifications.

VIII.10 Vendor

The term “Vendor” as used herein refers to a respondent to this RFP.

APPENDIX A STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, 11th floor, Albany, New York 12236.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
http://www.empire.state.ny.us

A directory of certified minority and women-owned business enterprises is available from:
NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245

Telephone: 518-292-5250
Fax: 518-292-5803
http://www.empire.state.ny.us

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

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

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

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

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

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

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

(June 2006)

APPENDIX B GENERAL SPECIFICATIONS FOR PROCUREMENT CONTRACTS

Please retain this document for futre reference and do not return with submittal

DEFINITIONS

AGENCY OR AGENCIES: Any department, agency, board, commission, office or institution of the State of New York and, if specifically authorized by the Commissioner of General Services in writing to utilize this Contract, the term "Agency" or "Agencies" shall also include public authorities, political subdivisions and not-for-profit organizations of the State of New York.

ATTORNEY GENERAL: Attorney of the State of New York.

BID OR PROPOSAL: A firm offer to furnish a described commodity or service or combination thereof at a stated price in accordance with the bid documents. Wherever the term "bid" is used herein, it shall also be deemed to include "proposal".

BIDDER: Any person, partnership, firm, corporation or other authorized entity submitting a bid or proposal to the State. The term Bidder shall also include "OFFERER" AND "PROPOSER".

BID DOCUMENTS: All bid invitations, requests for proposals, specifications and amendments thereto.

BID INVITATION: The form(s) which, when issued by OGS, or by Agencies in accordance with guidelines issued by OGS, constitutes an invitation for bid or request for proposal on the commodity, service or combination thereof described therein and which, when completed by the bidder or proposer, constitutes a firm and binding offer to the State to furnish such commodity, service or combination thereof.

COMMISSIONER: Commissioner of OGS, or in the case of direct agency purchases, the head of such Agency, or the authorized representative of either.

COMMODITY OR COMMODITIES: Materials, equipment or supplies.

COMPTROLLER: Comptroller of the State of New York

CONTRACT AWARD: The notification by OGS or Agency to all concerned that a contract has been made between the State and the successful bidder.

CONTRACT DOCUMENTS: All bid and award documents and amendments or proposal thereto.

CONTRACTOR: Any bidder to whom a contract award has been made by the Commissioner.

INVITATION FOR BID OR IFB: A type of bid invitation that is used for procurements that can be translated into exact specifications and when the intent is to award the contract to the lowest responsible bidder.

LATE BID: For purposes of bid openings held and conducted by OGS, a bid not received in such place as may be designated on the bid documents or in the OGS Mailroom located in the Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, Albany, New York 12242, at or before the date and time established for the bid opening in the bid documents. With respect to agency bid openings, the term late bid is defined as a bid received in the offices of the purchasing agency after the date and time established in the bid documents.

OGS: The New York State Office of General Services.

PURCHASE ORDER: The official form that may be used by an Agency when making a purchase or acquisition with a contractor.

REQUEST FOR PROPOSAL OR RFP: A type of bid invitation that is used for procurements where factors beyond cost are of equal or greater importance in awarding the contract, and an evaluation of the proposals is necessary.

SERVICE OR SERVICES: The performance of a task or tasks.

SPECIFICATION: Description of a commodity, service or combination thereof and the conditions for its procurement.

STATE: State of New York.

BIDDING

1. Bids may as applicable be opened publicly. The Commissioner may at any time postpone or cancel a scheduled bid opening.

2. All bids are to be submitted on forms provided by the Commissioner or as otherwise specified in the bid documents.

3. All bids or proposals must be sealed. All required information should be recorded on the envelope or shipping material containing the bid. In the event a bidder fails to provide such information on the return bid envelope or shipping material, OGS reserves the right to open the envelope to determine the proper commodity group, and the time and date of bid opening. The opening of such bid shall not affect the validity of same.

4. All information required by the bid documents must be supplied by the bidder. The State also reserves the right to request any clarification and any information deemed necessary for proper evaluation of bids. Failure to so provide required information may result in rejection of the bid.

5. No alteration, erasure or addition is to be made to the bid documents. Any such changes may be ignored by the Commissioner or may be grounds for rejection of the bid. In addition, changes, corrections and/or use of white-out in the bidder's entries must be initialed by an authorized representative of the bidder.

6. The laws of the State of New York shall in all respects solely govern and apply for the determination of any and all disputes, litigation or interpretations arising from or connected with any bid proposal to or contract with the State except where expressly superseded in specific contract letting or where the Federal supremacy clause requires otherwise.

7. On all bid documents the words "or equal" are understood to apply where a copyright, brand name, trade name, catalog reference, or patented commodity or process is referenced. References to such specific commodities or services are intended as descriptive, not restrictive, unless otherwise stated. Comparable products or services will be considered if proof of comparability is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the product or service as equal will be final.

8. Used, re-manufactured, refurbished, damaged or obsolete items are not acceptable unless otherwise provided for herein or in the individual bid documents or approved by the Commissioner. Such items, if offered or delivered, shall be rejected and the contract may be canceled at the contractor's expense. Notwithstanding the prohibition against used, re-manufactured, refurbished, damaged or obsolete items as set forth in this paragraph, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications.

9. If required by the bid documents, 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, unless obviously erroneous, shall govern.

10. In the event of a discrepancy between the model number referenced in the bid documents and the written description of the commodity therein which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

11. Unless the bid document so provides, 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 services included in the bid documents. It is understood that nothing herein shall be deemed to change or alter the Method of Award contained in the bid documents.

12. The State is not liable for any costs incurred by a bidder in the preparation and production of a bid or proposal or for any work performed prior to the issuance of a contract, purchase request, purchase order, purchase requisition or delivery order.

13. Prices must be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the contractor to the destination(s) indicated in the bid document, subject only to the cash discount. If the award is to be made on another basis, transportation and other charges must be prepaid by the contractor and added to the invoice as a separate item.

14. A late bid shall not be considered for award of a State contract unless no timely bids meeting the requirements of the bid documents are received or the award was intended to be made on a multiple basis, and acceptance of the late bid is in the best interests of the State. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the State, other than employees of the OGS Procurement Services Group or the OGS mailroom located at the Empire State Plaza, shall not excuse late bid submissions.

15. All items to be supplied for educational purposes shall be subject to an additional discount allowed by the manufacturer and/or bidder/proposer.

16. A bidder or proposer in submitting a bid agrees not to use the results there from as a part of any commercial advertising without the prior written approval of the Commissioner. In addition to any other sanctions or remedies available to it at law or equity, the State may suspend from bidding on its requirements any bidder or proposer who violates the terms of this paragraph.

17. All information required to be submitted with the bid will not ordinarily be entitled to the trade secrets exemption under the Freedom of Information Law, unless otherwise specifically indicated by the Commissioner in the bid documents. Bidders who intend to file a request for exemption must so notify the Commissioner in writing; this notification must be received prior to the bid opening date or consideration may not be given to the request.

18. Requests concerning the evaluation of the bids submitted will be considered under the Freedom of Information Law only after contract evaluation is complete and the contract is released by the State Attorney General and the Office of the State Comptroller.

Written requests should be directed to:
NYS Office of General Services
Freedom of Information Officer
Corning Tower, 41st Floor - Empire State Plaza
Albany, NY 12242

AWARDS

19. The Commissioner reserves the right to investigate at any time whether or not the items, services, qualifications or facilities offered by the bidder meet the requirements set forth in the bid documents and are ample and sufficient to ensure proper performance of the contract. A bidder 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 commodity or service bid. If in the opinion of the Commissioner it is determined that the conditions and terms of the bid documents are not complied with or that items or services proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, the Commissioner may reject such bid. 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 contractor from fulfilling all requirements and conditions of the contract.

20. Whenever in the sole discretion of the Commissioner it is deemed appropriate, the Commissioner may cause to be inspected the equipment, plant or other facilities of a bidder prior to the contract award or of a contractor during the contract term, as necessary for the Commissioner's determination that such equipment, plant or facilities conform with the requirements of the bid documents and are adequate and suitable for the proper and effective performance of the contract.

21. A bidder may be disqualified from receiving awards if such bidder, or an employee of the bidder, has previously failed to perform satisfactorily in connection with public bidding or contracts.

22. All bidders and bidder employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the bid, each bidder guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law.

23. The Commissioner reserves the right to evaluate and/or reject any and all bids, in whole or in part, and to waive technicalities, irregularities, and omissions if in the Commissioner's considered judgment the best interests of the State will be served. In the event compliant bids are not received, the Commissioner reserves the right to consider late or non-conforming bids as offers.

24. The Commissioner reserves the right to allow adjustments of bids in cases where errors are obvious and the correct bid price, model or term may be ascertained independently with reasonable certainty. Nothing in the foregoing shall mean or imply that it is obligatory upon the Commissioner to allow adjustments of bids as provided for herein.

25. The Commissioner reserves the right to make awards within sixty (60) days or such longer period as shall be specified in the bid documents after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time. If, however, an award is not finalized within the sixty (60) day period or otherwise specified, a bid shall remain firm until such later time as either a contract is awarded by the State or the bidder delivers to the Commissioner written notice of the withdrawal of the bid.

26. If two or more bidders submit conforming tie bids, the decision of the Commissioner to award a contract to one or more of such bids shall be final.

CONTRACTS

27. 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 for any late payment thereof.

28. If substantially the same or a smaller quantity of a commodity or service is sold by the contractor under the same or similar terms and conditions as that of any State contract for such commodity or service then held by the contractor, at a price lower than the State contract price, the price to the State shall be immediately reduced to the lower price.

29. All bids shall be received with the understanding that the acceptance thereof in writing by the Commissioner with the approval of the State Comptroller shall constitute a contract between the bidder and the State effective upon the mailing or electronic transmission of a contract letter, a notice of award identified by number or a purchase order to the address on the bid.

30. 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 documents to conform with Agency 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 does so adjust its bid.

31. With respect to specific quantity contracts, the State 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 State may purchase greater or lesser percentages of contract quantities should the Commissioner and contractor so agree.

32. Estimated quantity contracts are expressly agreed and understood to be made for only the quantities actually ordered during the contract term.

33. The State will only contract with the successful bidder(s). 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 of all services

34. Bidders are encouraged (when subcontracting is necessary) to subcontract with companies certified as minority or women-owned enterprises. A list of New York State registered minority and women owned business enterprises is available from OGS. Before any part of the contract shall be sublet, the Contractor shall submit to the Procurement Services Group, 37th Floor, Corning Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12242, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor by PSG without causing delay in the work of this contract. The Contractor shall promptly furnish such information as PSG may require concerning the proposed subcontractor's ability and qualifications.

35. The contract issued pursuant to the bid documents cannot be assigned without the prior written consent of the State. Such consent shall not be unreasonably withheld. However, the State will not consent to the assignment of a contract in a situation where the Prime Contractor can subcontract the service.

36. If at anytime during the term of the contract, the awarded Prime Contractor elects to discontinue providing contractual services to the State, the Contractor may subcontract the balance of its contract performance subject to the following conditions: the Prime Contractor must submit a written request along with justification.

The State reserves the right to reject the proposed subcontractor. The reasons for rejection include, but are not limited to: that the proposed subcontractor is on the Department of Labor's list of companies with which the State cannot do business; the State determines that the company is not qualified; the references given indicate unsatisfactory contract performance or service has been provided; or attempts were not made to solicit M/WBE vendors for the subcontract.

37. A purchase order issued against a specific quantity contract by any State Agency not listed in the bid documents or the award schedule shall be honored by the contractor at its discretion and only if such order bears the approval of the Commissioner.

38. 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 shown on the award. Unless otherwise specified, all purchase orders against contracts will be placed by Agencies directly with the contractor.

39. If, with respect to a specific quantity contract, a purchase order is not received within two weeks after notice of contract award is given, it is the responsibility of the contractor to request in writing the appropriate Agency to 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 Commissioner and without cost to the State, result in the canceling of such requirement by the Commissioner with, at the Commissioner's discretion, a corresponding reduction in the contract quantity and price.

40. All purchase orders issued pursuant to contracts let by the Commissioner must be in writing and must bear the appropriate contract number and, if necessary, the approval of the Commissioner.

41. No commodities are to be shipped or delivered or services supplied until receipt of an official purchase order from the agency requiring the commodity or service unless otherwise authorized in writing by the Commissioner.

42. Approval by the Commissioner is not required for the assignment of monies due for contract deliveries by the contractor. Such assignments should be filed directly with the Comptroller with a copy simultaneously provided to OGS. If the assignee invoices the ordering agency, a copy of the assignment of monies should accompany the invoice, to permit prompt payment. In the event of the Contractor assigning the right to receive payment, neither the State nor any agency shall be bound without prior written notification thereof.

43. The Commissioner reserves the right, unilaterally, to require, by written order on contract, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The State may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance. No written or oral instructions, including any from the using agency, subdivision or entity, shall be construed as directing a change in the terms of the contract unless in the form of an order signed by the Commissioner. No alteration or variation of the terms of the contract, including substitution of commodities or services, shall be valid or binding upon the State unless so authorized by order of the Commissioner.

44. In the event a specified manufacturer's commodity or service listed in the successful bidder's bid documents becomes unavailable or cannot be supplied to the State by the contractor for any reason (except as provided for in the Savings Clause herein,) a product or service deemed by the Commissioner to be the equal of the specified commodity or service must be substituted by the contractor at no additional cost or expense to the State.

45. In addition to any extension clause in the bid documents, 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 concurrence of the contractor.

46. Each contractor furnishing a toxic substance as defined by Section 875 of the State Labor Law to an ordering agency, shall provide such agency with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the State Labor Law.

DELIVERY

47. Delivery must be made as ordered and in accordance with the terms of the contract. Unless otherwise specified in the bid documents, delivery shall be made within thirty calendar days after receipt of a purchase order by the contractor. It shall be understood that with respect to contract deliveries, time is of the essence. 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 OGS and the using agency, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries.

48. Any extension of the time for delivery must be requested in writing by the contractor and approved in writing by the Commissioner.

49. Commodities 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 Agency unless otherwise specified in the contract documents.

50. Point of destination: all deliveries shall be tailgate delivery at the dock of the ordering Agency unless otherwise stated in the bid documents.

51. Items purchased at a price F.O.B. shipping point plus transportation charges are understood to be purchased F.O.B. point of destination basis in terms of title transfer and the contractor agrees to assume full responsibility for delivery of goods to the destination point. The State's assumption and payment of transportation charges shall not relieve the contractor from responsibility for safe and proper delivery.

The Contractor may elect to utilize the New York State Inbound Transportation Program Contract, currently with FDSI Management Group, to route all contract shipments according to instructions given to FDSI by the contractor. All terms and conditions of the contractor's contract, including F.O.B. destination terms of sale, remain the same.

52. The contractor shall be solely responsible for assuring that deliveries under the contract are only made to persons authorized to accept delivery on behalf of the ordering Agency. Any losses resulting from the contractor's failure to deliver contract commodities to authorized Agency personnel shall be borne exclusively by the contractor.

53. Title and risk of loss shall not pass from the contractor to the State until the commodities have been received by the ordering Agency and accepted by the State. Mere acknowledgment by Agency personnel of the delivery or receipt of goods (as in a signed bill of lading) shall not be deemed or construed as acceptance of the commodities received.

54. Deliveries are subject to re-weighing at the point of destination by the State and if shrinkage occurs which exceeds that normally allowable in the trade, payment will be reduced accordingly.

55. When commodities are rejected, they must be removed by the contractor from the premises of the ordering Agency within ten days of notification of rejection. Rejected items not removed by the contractor within ten days shall be regarded as abandoned by the contractor, and the State shall have the right to dispose of the items as its own property. The contractor shall promptly reimburse the State for any and all costs and expenses incurred in effecting removal or disposition.

PAYMENTS

56. Contractors shall provide complete and accurate billing invoices to each ordering State Agency containing all information required by the State Comptroller. The State Comptroller shall render payment for State Agency purchases, and such payment shall be made in accordance with ordinary State procedures and practices.

57. All invoices submitted for payment for the sale of services, materials, equipment or supplies to a New York State agency must include the payee's identification number, i.e., the seller'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 such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on the invoice, must give the reason or reasons why the payee does not have such number or numbers.

The authority to request the above personal information from a seller of goods or services and the authority to maintain such information is found in Section 5 of the State Tax Law. Disclosure of this information by the seller 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. The personal information is requested by OGS, as the contracting agency, or the purchasing unit of the agency acquiring the goods covered by this contract. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, 110 State Street, 11th floor, Albany, New York 12236.

58. Payment of contract purchases made by authorized entities other than State Agencies shall be the sole responsibility of such entities, which shall be billed directly by contractors on invoices/vouchers, together with complete and accurate supporting documentation as authorized by the said entities.

59. In any case where a question of non-performance of a contract 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 by the State as if no delay in payment had occurred.

60. In the event a participating non-State Agency fails to make payment to the contractor for contract items delivered and accepted within 60 days of such delivery and acceptance, the contractor may, upon 10 days advance written notice to both the Commissioner and the non-State Agency purchasing official, suspend additional shipments of product or provision of services 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.

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

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 agency purchasers. Neither is the Office of General Services or the Office of the State Comptroller responsible for payments on any purchases made by a participating non-State agency.

62. Submission of an invoice and payment thereof by the State shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the commodity or service delivered is found to deviate from the terms and conditions of the bid and award documents. Any delivery made which does not meet such terms and conditions may be rejected, or accepted on an adjusted price basis as may be determined by the Commissioner.

63. Tax Provisions:

(a) The bidder understands that its bid price shall include all taxes to which the sale transaction shall be subject. Purchases made by the State of New York and its authorized non-State agencies are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. However, purchases by other authorized entities may be subject to such taxes, and in those instances the tax should be computed based on the bid price and added to the invoice submitted to the entity for payment. To satisfy the requirements of the New York State Sales tax, either the purchase order issued by a State agency or institution for services, materials, equipment or supplies, or the invoice forwarded to authorize payment for such items 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 Agencies 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 the Federal Social Security taxes.

GUARANTEES BY CONTRACTOR

64. Contractor hereby guarantees:

(a) To save the State, its political subdivisions and other entities authorized by law to purchase through OGS and the respective officers, agents and employees harmless from any liability imposed upon any or all of the foregoing arising from the negligence, either active or passive, of the contractor, its officers, agents or employees, or for the use of any copyrighted or uncopyrighted composition, secret process, trade secret, proprietary information, patented or unpatented invention, process, article or appliance furnished (including samples), supplied or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee. Where a dispute or claim arises relative to a real or anticipated infringement of any such property right (patented items, trade secrets, copyrighted materials, etc.), the State may require bidders claiming or disputing such infringement, at their sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.

(b) To pay all permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any local governmental activity in which provision of services, installation or delivery is to be made, and of the State of New York and the government of the United States.

(c) That (except as provided under language governing use of recycled materials) the equipment offered is standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; also that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Every unit, including any substituted or replacement unit delivered, must be guaranteed against faulty material and workmanship for a period of one year from and after the date the unit is accepted unless otherwise specified. Notwithstanding the foregoing, when the manufacturer's standard guarantee for the unit or any component thereof exceeds one year, the longer guarantee period shall apply to such unit or component thereof delivered under State contract. Furthermore, the contractor agrees to extend its warranty period with regard to any unit delivered by the cumulative periods of time, after notification, during which the unit requires servicing or replacement (down time) or is in the possession of the contractor, its agents, officers or employees. If during the regular or extended warranty periods faults develop, the contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective goods during the warranty periods shall be borne solely by the contractor, and the Agencies shall in no event be liable or responsible therefore.

65. (a) The Contractor has the burden to provide proof of renewal by Certificate of Issuance, licensing, etc. 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.

(b) A contract may be canceled at the contractor's expense upon non-performance of the contract.

66. Upon the failure of the contractor to perform services or deliver commodities within the time specified, failure to provide acceptable service, to make immediate replacement of rejected commodities when so requested, or upon the revocation of the contract by the Commissioner for cause, or upon repudiation of the contract by the contractor, the Commissioner may, with or without formally bidding same, purchase from other sources to replace the commodity or service rejected, revoked, not timely delivered or repudiated. If after making reasonable attempts, under the circumstances then existing, to timely provide acceptable service or acquire replacement product of equal or comparable quality the Commissioner is unsuccessful, the Commissioner may acquire acceptable service or replacement product of lesser or greater quality. The contractor agrees to reimburse the State promptly for any and all additional costs and expenses incurred for all purchases of acceptable services, replacement product, or such costs may be deducted by the agency from payments due, or to become due, the contractor on the same or another transaction. Should the cost be less than the contract price, the contractor shall have no claim to the difference. Such purchases may, in the discretion of the Commissioner, be deducted from the contract quantity. The contractor covenants and agrees that in the event suit is instituted by the State for any default on the part of the contractor, all costs and expenses expended or incurred by the State in connection therewith, including reasonable attorney's fees, shall be paid to the State by the contractor.

67. The contractor agrees that a breach of the contract by any particular Agency shall neither constitute nor be deemed a breach of the contract by the State as a whole and shall not affect the validity of the contract nor the obligations of the contractor there under respecting non-breaching Agencies, whether State or otherwise. The contractor shall, however, have the right, as against any breaching Agency only, to pursue any remedy otherwise available to it under law.

68. Notwithstanding the foregoing, the contractor, at least 10 days prior to declaring a breach of contract by any Agency, shall, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Agency 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 Agency shall constitute a breach of its contract and the State or Agency may thereafter utilize any remedy available hereunder or at law.

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

70. It is understood and agreed that all rights, remedies and requirements afforded the State herein for its benefit shall be in addition to all remedies and actions otherwise authorized or permitted by law.

ASSIGNMENT OF CLAIM

71. Contractor hereby assigns to the State any and all its claims for overcharges associated with this contract which 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.

DRAWINGS AND PLANS

72. When the bid documents 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 be considered a part of the bid and of any resulting contract.

73. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

74. Approval by the Commissioner of drawings and/or plans of details for any commodity or installation will not relieve the contractor from its responsibility for furnishing the commodity or installation of proper dimensions, size, quantity and quality to efficiently perform the work and carry out the requirements and intent of the layout of descriptive drawings forming a part of the bid documents. Such approval shall not relieve the contractor from responsibility for design or other errors of any sort in the drawings or plans. If the contractor's drawings or plans deviate, or are intended to deviate from the layout or descriptive drawings in the bid documents, the contractor shall so advise the Commissioner, in writing, at the time of bid, stating the difference in value between the contract requirements and that denoted by said drawings and/or plans.

75. Drawings and plans will be examined by the Commissioner and may be returned if necessary to the contractor for correction. After the corrections have been made, the contractor shall promptly resubmit to the Commissioner as many copies thereof as required for final approval.

76. Drawings, plans and copies thereof submitted to the Commissioner and all rights thereto shall become the property of the State. Such drawings and plans shall not be deemed approved for any other State work unless specific approval is granted by the Commissioner.

MISCELLANEOUS

77. Bidders shall acquaint themselves with conditions at the site and shall assume all responsibility for providing services and placing and installing equipment in the required locations.

78. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the equipment or render it structurally unsound or unsuitable for use.

79. The contractor shall protect the site from damage and shall repair damages or injury of any kind caused by the contractor, its employees, officers or agents.

80. Work shall be performed so as to cause the least inconvenience to the State and its Agencies and participating non-State agencies and with proper consideration for the rights of other contractors or workers. The contractor shall promptly perform its work and shall coordinate its activities and work in harmony with those of other contractors.

81. Installation shall include the furnishing of any equipment, rigging, and materials required installing or placing the contract item in the proper location. 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.

82. Materials, equipment, or supplies shall be stored at the site only with the approval of the using Agency and at the contractor's sole risk. In general, such on-site storage should be avoided to prevent possible damage to or loss of the material.

83. The contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work the premises shall be left in a neat unobstructed condition, the buildings broom clean, and everything in satisfactory repair and order.

SAVINGS CLAUSE #84 HAS BEEN INTENTIONALLY DELETED

AGENCY CONTRACTS

85. The terms, conditions and requirements set forth in these General Conditions shall be binding upon bidders and contractors submitting bids or furnishing services, materials, equipment or supplies in connection with bid invitations received or contracts awarded by Agencies pursuant to rules, regulations and guidelines promulgated by the Commissioner of General Services.

SUSPENSION OF CONTRACT SERVICES

86. The Office of General Services, in its sole discretion, reserves the right to suspend any or all activities under this contract, at any time, in the best interests of the State. 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 suspension of work, the vendor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Office of General Services issues a formal written notice authorizing a resumption of work.

YEAR 2000 DATE CHANGE WARRANTY

87. Contractor shall insure that any Product(s) furnished pursuant to this agreement ("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 performs any date and/or time data recognition function, calculation or sequencing, will support a four digit year format and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the User. This warranty shall survive termination or expiration of the Agreement.

In the event of any decrease in Product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the Product from operating correctly beyond December 31, 1999, Contractor agrees to restore the Product to the same level of functionality as warranted herein, or to repair or replace the Product with a conforming Product so as to minimize interruption to user's ongoing business processes, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions which may be required (including, without limitation, data conversion tools) shall be borne exclusively by Contractor.

Where Consulting services rendered pursuant to this Agreement for Year 2000 fixes or retrofit such Consulting deliverables may support a four digit year format or may provide an alternate patch or "workaround".

RECORD DISCLOSURE/CONFIDENTIALITY OF PROPRIETARY RECORDS

88. Vendor hereby agrees that all documents furnished by Vendor shall be subject to public disclosure by the State in the normal course of business in accordance with the requirements of the Public Officers Law, Article 6, except for proprietary information the disclosure of which would cause substantial injury to the competitive position of Vendor's enterprise. Information relating to Vendor Price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary by the Vendor. Vendor may otherwise preserve proprietary rights as to confidential or business process information in accordance with procedures established under Section 89, Public Officers Law, provided that: (i) Vendor shall inform OGS prior to submission of its bid, in writing, that such records are going to be furnished, are proprietary and are not to be disclosed; (ii) said records shall be sufficiently identified; and (iii) Vendor 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 OGS.