



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

November 20, 2006

To Whom It May Concern:

The New York State Department of Health (DOH), Bureau of Emergency Medical Services is currently seeking meeting locations for the State Emergency Medical Services Council (SEMSCO) and the State Emergency Medical Advisory Committee (SEMAC). We are seeking bidders to provide a location and meeting services for these groups to meet five times during the 2007 calendar year. For all required forms, please go to the DOH Website titled Grants/Funding Opportunities at [www.health.state.ny.us/funding/](http://www.health.state.ny.us/funding/), IFB # 0609201240, Conference Services.

We would appreciate if you would take the time to review the IFB. Instructions for submitting a bid are enclosed. If you are unable to host this meeting, please respond using the enclosed No Bid Form. All bids must be received at the New York State Department of Health, Bureau of Emergency Medical Services, 433 River Street, Suite 303, Troy, NY by Monday December 11, 2006 by 12:00 pm. Bid opening will take place at 2:00 pm at the location listed above. Please address the envelope to the attention of Donna Gerard.

If you have any questions regarding this proposal, please feel free to contact me at (518) 402-0996 ext 3. Thank you for your consideration of this invitation and for taking the time to respond.

Sincerely,

Donna Gerard, Executive Secretary  
NYS Emergency Medical Services Council  
Bureau of Emergency Medical Services



**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

Wadsworth Center    The Governor Nelson A. Rockefeller Empire State Plaza    P.O. Box 509    Albany, New York 12201-0509

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**INVITATION FOR BID**

**One-Time Purchase**

Title	<b>Conference Services</b>
Commodity Group Number	<b>00000</b>
Bid Solicitation Date	<b>11/20/06</b>
IFB Number	<b>0609201240</b>
Bid Opening Date	<b>12/11/06 at 2:00 P.M.</b>

**Designated Contact for Technical Questions Related to this Procurement**

*Donna Gerard  
NYS Department of Health  
433 River Street - Suite 303  
Troy, NY 12237  
Telephone (518) 402-0996 Fax (518)402-0985  
E-Mail: [dag04@health.state.ny.us](mailto:dag04@health.state.ny.us)*

*Lynn M. Bouchey, Purchasing Agent  
NYS Department of Health  
Bureau of Accounts Management  
Corning Tower, Room 1705  
Albany, NY 12237  
Telephone (518) 473-6473, Fax (518) 486-9100  
E-Mail: [LMB02@health.state.ny.us](mailto:LMB02@health.state.ny.us)*

**Designated DOH Lobbying Contact for this Procurement**

*Bonnie DeGennaro, Sr. Administrative Analyst  
NYS Department of Health  
Bureau Of Accounts Management, Financial Administration Unit  
Corning Tower, Room 1325  
Albany, NY 12237  
Telephone (518) 402-5243, Fax (518) 486-1413  
E-Mail: [BJD05@health.state.ny.us](mailto:BJD05@health.state.ny.us)*

# **GENERAL INFORMATION**

## **IMPORTANT NOTICE TO POTENTIAL BIDDERS**

Receipt of this Invitation for Bid (IFB) document does not indicate that the New York State Department of Health has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the request for quote due date and will be based on our evaluation of your quote submission compared to the specific requirements and qualifications contained in this request for quote document. Responses to this request should be returned to: No e-mails or faxes will be accepted.

New York State Department of Health  
Bureau of Emergency Medical Services  
433 River Street - Suite 303  
Troy, NY 12180

## **ISSUING AGENCY**

This IFB is issued by the NYS Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

## **SUBMISSION OF PROPOSALS**

Interested vendors should submit three (3) original Bid Proposals no later than 12:00 p.m. on 12/11/06. Responses to the proposal should be clearly marked "**SEMCO/SEMCO Meetings**" and sent to:

**NYS DOH - Bureau of Emergency Medical Services**  
**SEMCO/SEMCO Meetings, 0609201240**  
**Attention: Donna Gerard**  
**433 River Street - Suite 303**  
**Troy, NY 12180**

**Originals** are needed to complete the contract process. The package must include:

- Vendor Information
- Appendix C – Bid Forms
- Published Price List

**NON-COLLUSIVE BIDDING CERTIFICATION (State Finance Law Section 139-d and Appendix A, Clause 7)**

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

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition

**THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO**

1. Reject any or all proposals received in response to this IFB.
2. Waive or modify minor irregularities in proposals received after prior notification to the bidder.
3. Adjust or correct cost or cost figures with the concurrence of bidder if errors exist and can be documented to the satisfaction of DOH and the State Comptroller.
4. Negotiate with the lowest responsive and responsible bidder responding to this IFB within the requirements to serve the best interests of the State.
5. Modify the detail specifications should no bids be received that meet all these requirements.

**APPENDIX A**

Appendix A, Standard Clauses for New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this Request for Quote document as fully as if set forth at length herein. *Please retain this document for future reference.*

**APPENDIX D1:**

Appendix D1, New York State Department of Health General Specifications, attached hereto, is hereby expressly made part of this Bid Document as fully set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. *Please retain this document for future reference.*

**CONFLICT OF TERMS AND CONDITIONS:**

Conflicts between documents shall be resolved in the following order of precedence:

- a. Appendix A – Standard Clauses for New York State Contracts
- b. Appendix D-1 – New York State Department of Health General Specifications
- c. Appendix B - This Invitation for Bid
- d. Appendix C – Bid Forms

## **NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE**

Bidder agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as Appendix 1 (hereinafter the "Questionnaire"). The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, DOH may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### **TAX LAW § 5-A**

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

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

Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with contractors bid response certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

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

### **FREEDOM OF INFORMATION LAW**

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or

information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should You Feel Your Firm's Bid/Proposal Contains Any Such Trade Secrets Or Other Confidential Or Proprietary Information, You Must Submit A Request To Except Such Information From Disclosure. Such Request Must Be In Writing, Must State The Reasons Why The Information Should Be Excepted From Disclosure And Must Be Provided At The Time Of Submission Of The Subject Information. Requests For Exemption Of The Entire Contents Of A Bid/Proposal From Disclosure Have Generally Not Been Found To Be Meritorious And Are Discouraged. Kindly Limit Any Requests For Exemption Of Information From Disclosure To Bona Fide Trade Secrets Or Specific Information, The Disclosure Of Which Would Cause A Substantial Injury To The Competitive Position Of Your Firm.

## **Statutory Summary**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, establishes significant changes to the development of procurement contracts with governmental entities.

In 2003, Governor Pataki issued Executive Order Number 127 *Providing for Additional State Procurement Disclosure* (“EO 127”), to increase disclosure requirements for persons and organizations contacting State government about procurement contracts and real estate transactions. It requires state agencies and certain public authorities to collect and record information from contractors seeking a procurement contract, and those who advocate on behalf of the contractors to influence procurement contracts. The goal of EO 127 is to enhance public confidence in the State’s procurement process by making available to the public information pertaining to the lobbying efforts of those seeking state contracts from state agencies and certain public authorities.

Chapter 1 of the Laws of 2005 expands upon EO 127 and the former lobbying statute. Among other things, the new law:

- makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- authorizes the Temporary State Commission on Lobbying to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- modifies the governance of the Temporary State Commission on Lobbying;

- provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York Temporary State Commission on Lobbying (Lobbying Commission) regarding procurement lobbying, the Lobbying Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the Lobbying Commission.

## SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. **An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a).** Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid or Request for Proposal*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

## PROCUREMENT LOBBYING TERMINATION

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

# **DETAILED SPECIFICATIONS - ATTACHMENT 1**

## **SCOPE OF BID**

The State EMS Council and the State Emergency Medical Advisory Committee are statutorily created bodies empowered to assist the Commissioner of Health in the management and oversight of the EMS system. Article 30 of the Public Health Law states in 3002.5 that the "council shall meet as frequently as its business may require". 3002.6 indicates that the commissioner shall assign employees to assist the council in the performance of its duties.

### **State EMS Council and Advisory Committee Meetings**

These meetings are held five times a year. Meetings are typically held in the months of January and/or February, March, May, September and December. We are looking for dates on a Tuesday/Wednesday schedule in the Capital District area, specifically, Albany and Saratoga Counties. Attendance is approximately 80 people.

#### **1st Day - Meeting Space**

Two Breakout Rooms to accommodate 40 people (square footage no less than 1,000 square feet per break-out room). The breakout rooms set up would be u-shape configuration with 20 chairs around table and remainder of chairs outside perimeter.

One room to accommodate 80 people (square footage no less than 3,000 square feet). Square configuration to seat 40 people and 60 chairs around perimeter. A steno table with electric would need to be inside the square for stenographer equipment. Other AV needs would be 6 microphones around the table and a stand alone podium with a microphone.

#### **Food**

AM Break for 80 people of Coffee, Decaf, Tea and danish, bagels, muffins, etc.

Lunch for 80 people - Deli Buffett (deli platter, side salads, soup, dessert and coffee/soda)

Food and beverage breaks must be at the prevailing state per diem rate. Meals would need to be provided in separate area other than inside the meeting space.

#### **2nd Day - Meeting Space (Half Day)**

One room to accommodate 80 people (square footage no less than 3,000 square feet). Square configuration to seat 40 people and 60 chairs around perimeter. A steno table with electric would need to be inside the square to accommodate stenographer equipment. Other AV needs would be 6 microphones around the table and a stand alone podium with a microphone. This meeting is only half day and usually ends between 12:00 and 1:00 pm.

#### **2nd Day - Food**

AM Break for 80 people Coffee, Tea, Decaf and danish, bagels, muffins, etc. Food/beverage break must be provided in separate area and must be at prevailing state per diem rates.

## **Room Block**

A block of 25 overnight rooms at or below government rate for Monday and Tuesday evening (2 nights). Participants would pay on their own.

## **Other Requirements**

- Full Conference Facility (designed and intended to be used exclusively as a conference facility).
- All conference rooms and dining areas must be fully handicapped accessible.
- Attendees will make their own hotel reservations and are responsible for payment of rooms and all charges to their rooms. Conference attendees will provide a New York State Tax Exemption Form.
- Bid must include an itemization of services per person, per day to be provided and a grand total. Service/gratuity charges must be included in the quotation. Bids not provided on the "Bid Quotation Form" will not be considered.

## **PROPOSAL REQUIREMENTS**

Bidder must provide per unit pricing of each part number listed in the Detailed Specifications. The cost must include all shipping charges.

## **PRICE**

Price is F.O.B. destination, freight pre-paid and added to invoice

## **METHOD OF AWARD**

**Grand Total Bid – Award shall be made by Grand Total to the lowest responsive and responsible bidder. The state reserves the right to make no award on this IFB.**

## **REQUEST FOR CHANGE**

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing prior to effectuation. Such requests are subject to approval by the State Comptroller.

## **APPENDIX A**

The contractor agrees to comply with Appendix A, New York State Contract Clauses.

## **APPENDIX D1**

The contractor agrees to comply with Appendix D1, New York State Department of Health General Specifications.

## **CONTRACT PAYMENTS**

Payments cannot be processed by the NYS Department of Health until the contract items have been delivered in satisfactory condition. Payment will be based on an invoice used in the supplier's normal course of business; however, such invoice must contain sufficient data including, but not limited to, Contract No., purchase order number, description of material, quantity, unit and price per unit, as well as Federal Identification Number. Properly completed vouchers are required to be forwarded to the Office of the State Comptroller for audit and payment. Agencies are urged to process vouchers expeditiously.

## **NOTE TO AGENCY**

When placing orders against this contract, please forward a copy of the PO to:

*NYS Department of Health  
Bureau of Emergency Medical Services  
433 River Street - Suite 303  
Troy, NY 12180*

## **PURCHASE ORDERS**

Purchase orders are effective and binding upon the contractor when placed in the mail addressed to the contractor at the address shown herein.

## **MINIMUM ORDER**

There is no minimum order.

## **TERMINATION**

The NYS Department of Health reserves the right to cancel the contract upon 30 day written notice for: (1) Unavailability of Funds; (2) Cause; (3) Convenience. Failure of the contractor to provide the required goods in accordance to the contract, the NYS Department of Health reserves the right to cancel the contract upon 30 day written notice. If the agreement is terminated, the NYS Department of Health shall be liable only for payment of goods received prior to the effective date of termination.

## **TERMS AND CONDITIONS**

The contractor agrees to comply with all specifications of *NYS Department of Health 0609201240*, **dated 11/20/06**.

## **NEW YORK STATE LOBBYING ACT TERMINATION PROVISION**

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

## Vendor Information

<b>Name of Company</b>		<b>Federal Tax ID Number</b>
<b>Company Address</b>		<b>Purchase Order Address</b>
<b>Name of Company Official Submitting Bid (Print or Type)</b>		<b>Title</b>
<b>Authorized Signature</b>		<b>Date</b>
<b>Phone</b>		<b>Extension</b>
<b>Toll Free Phone</b>		<b>Extension</b>
<b>Fax</b>		<b>Extension</b>
<b>E-Mail Address</b>		
<b>Company Web Site</b>		

**Person or Persons to Contact for Expediting New York State Contract Orders:**

<b>Name (s)</b>	
<b>Phone</b>	<b>Extension</b>
<b>Toll Free Phone</b>	<b>Extension</b>
<b>Fax</b>	<b>Extension</b>
<b>E-Mail Address (es)</b>	

## Appendix C-1 - Bid Form

Name of Company	Federal Tax ID Number
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Estimated Quantity	Item Description	Price Each	Total
2	2 break out rooms (square footage no less than 1,000 square feet) Each to accommodate 40 people (1st day)		
1	1 room (square footage no less than 3,000 square feet) Room to accommodate 80 people. (1st day)		
80	AM Food Beverage (coffee, tea, decaff, danish and bagels) (1st day)		
80	PM Lunch (deli platter, side salads, hot soup, dessert, coffee, tea, decaff and either soda or iced tea. (1st day)		
1	Stenographer's table with electric (1st day)		
6	Microphones (1st day)		
1	Stand alone microphone with podium (1st day)		
1	1 room (square footage no less than 3,000 square feet) Room to accommodate 80 people. (2nd day)		
80	AM Food/Beverage (coffee, tea, decaff, danish and bagels) (2nd day)		
6	Microphones (2nd day)		
1	Stand alone microphone with podium (2nd day)		
1	Stenographer's table with electric (2nd day)		

**Failure to Answer the Questions will Delay the Evaluation of your Bid and May Result in Rejection of your Bid.**

<b>Pricing</b> - Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies on similar products, quantities, terms and conditions?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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<b>Business Information</b>	
1. Are you a New York State Resident Business?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Total number of people employed by your business:	_____
3. Total number of people employed by your business in New York State:	_____
4. Is your business independently owned and operated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Is your business at least 51% owned and controlled by women, or 50% owned and controlled by minority group members (i.e., Black, Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, have you been certified or registered?	<input type="checkbox"/> Yes <input type="checkbox"/> No
List certification or registration authority:	_____

<b>Place of Manufacturer of Product(s) Bid</b>	
1. All NYS Manufacture?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. All Manufactured outside NYS?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Manufactured in NYS <u>and</u> Outside NYS?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, Location (State) where more than half the value is added to the product(s) bid:	_____

<b>Bidder's Principal Place of Business</b> - Principal Place of Business is the location of the primary control, direction and management of the enterprise.	_____
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\_\_\_\_\_  
Bidder's Signature

\_\_\_\_\_  
Date

# Appendix C - Bid Form

(For procurements using OGS Backdrop contracts or where no RFP/IFB was issued)

## NEW YORK STATE DEPARTMENT OF HEALTH

### BID FORM

PROCUREMENT TITLE: \_\_\_\_\_ FAU # \_\_\_\_\_

Bidder Name:

Bidder Address:

Bidder Fed ID No:

A. \_\_\_\_\_ bids a total price of \$ \_\_\_\_\_  
(Name of Offerer/Bidder)

A. Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Request for Proposal* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid, Request for Proposal, or other solicitation document*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at:

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

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

No Yes

If yes, please answer the next questions:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes



1. The NYS Department of Health, at the STATE's designated payment office address included in this AGREEMENT; and
2. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and
3. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

E. Offerer/Bidder agrees to provide the following documentation either *with their submitted bid/proposal or upon award* as indicated below:

With Bid	Upon Award	
<input type="checkbox"/>	<input type="checkbox"/>	1. A completed N.Y.S Taxation and Finance Contractor Certification Form ST-220.
<input type="checkbox"/>	<input type="checkbox"/>	2. A completed N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)
<input type="checkbox"/>	<input type="checkbox"/>	3. A completed State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term

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\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

**NEW YORK STATE  
DEPARTMENT OF HEALTH**

**NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ FAU # \_\_\_\_\_

Bidders choosing not to bid are requested to complete the portion of the form below:

- We do not provide the requested services. Please remove our firm from your mailing list
- We are unable to bid at this time because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Please retain our firm on your mailing list.

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

**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 nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

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

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but 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 -- 7<sup>th</sup> 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.

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APPENDIX D1

GENERAL SPECIFICATIONS  
(Commodities and Non-Technology Services)

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

**TABLE OF CONTENTS**

**GENERAL**

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

**BID SUBMISSION**

7. International Bidding
8. Bid Opening
9. Bid Submission
10. Facsimile Submissions
11. Authentication of Facsimile Bids
12. Late Bids
13. Bid Contents
14. Extraneous Terms
15. Confidential/Trade Secret Materials
16. Prevailing Wage Rates
17. Taxes
18. Expenses Prior to Contract Execution
19. Advertising Bid Results
20. Product References
21. Recycled or Recovered Materials
22. Products Manufactured In Public Institutions
23. Pricing
24. Drawings
25. Site Inspection
26. Procurement Card
27. Samples

**BID EVALUATION**

28. Bid Evaluation
29. Conditional Bid
30. Clarification/Revisions
31. Prompt Payment Discounts
32. Equivalent or Identical Bids
33. Performance Qualifications
34. Disqualification for Past Performance
35. Quantity Changes Prior To Award
36. Release of Bid Evaluation Materials
37. Timeframe for Offers

**TERMS & CONDITIONS**

38. Contract Creation/Execution
39. Participation in Centralized Contracts
40. Modification of Contract Terms
41. Scope Changes
42. Estimated/Specific Quantity Contracts
43. Best Pricing Offer
44. Purchase Orders
45. Product Delivery
46. Weekend and Holiday Deliveries
47. Shipping/Receipt of Product
48. Title and Risk of Loss
49. Re-Weighing Product
50. Product Substitution
51. Rejected Product
52. Installation
53. Repaired or Replaced Product/Components
54. On-Site Storage
55. Employees/Subcontractors/Agents
56. Assignment/Subcontractors
57. Performance/Bid Bond
58. Suspension of Work
59. Termination
60. Savings/Force Majeure
61. Contract Billings
62. Default - Authorized User
63. Interest on Late Payments
64. Remedies for Breach
65. Assignment of Claim
66. Toxic Substances
67. Independent Contractor
68. Security/Confidentiality
69. Cooperation With Third Parties
70. Contract Term - Renewal
71. Warranties

**GENERAL**

**1. APPLICABILITY** The terms and conditions set forth in this Appendix D1 are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Department of Health, or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Appendix D1 shall govern such procurements or contracts unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

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

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

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

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

- a. Appendix A (Standard Clauses for NYS Contracts)
- b. **Contract/Clarification Documents**  
Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractor's Bid or Mini-bid.
- c. **Mini-Bid Project Definition** (If any)
- d. **Bid Documents** (Other than Appendix A)
  - i. Bid Specifications prepared by the Issuing Entity
  - ii. Appendix D1 (General Specifications)
- e. **Contractor's Bid or Mini-Bid Proposal**

**6. DEFINITIONS** Terms used in this Appendix D1 shall have the following meanings:

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

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

**AUTHORIZED USER(S)** Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other

entity shall be held solely responsible for liabilities or payments due as a result of its participation.

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

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

**BID DOCUMENTS** Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. Appendix A (Standard Clauses for NYS Contracts), Appendix D1 (General Specifications). Where these *General Specifications* are incorporated in negotiated contracts which have not been competitively bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

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

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

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

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

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

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

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

c. **Back-Drop Contracts** Multiple award centralized contracts where the Department of Health defines the specifications for a Product

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

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

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

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

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

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

**GROUP** A classification of Product (commodities, services or technology).

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

**ISSUING ENTITY** The Department of Health or Authorized User who issues the Bid Documents for a procurement.

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

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

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

**LICENSEE** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who

took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred.

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

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

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

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

**DOH** The New York State Department of Health

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

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

**PURCHASE ORDER** The Authorized User's fiscal form or format which is used when making a purchase.

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

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

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

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

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

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

**STATE** State of New York

## **BID SUBMISSION**

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

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

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

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

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

- "BID ENCLOSED (bold print, all capitals)
- Group Number
  - IFB or RFP Number
  - Bid Submission date and time"

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

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

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

11. **AUTHENTICATION OF FACSIMILE BIDS** The act of submitting a bid by facsimile transmission, including an executed

signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

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

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

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

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

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

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

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

15. **CONFIDENTIAL / TRADE SECRET MATERIALS** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the *Freedom of Information Law* must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

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

- a. **“Public Works” and “Building Services” - Definitions**
- i. **Public Works** *Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the contract. The wage and hours provision applies to any work performed by Contractor or subcontractors.*
- ii. **Building Services** *Labor Law Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.*
- b. **Prevailing Wage Rate Applicable to Bid Submissions** *A copy of the applicable prevailing wage rates to be paid or provided are attached to the solicitation. Bidders must submit bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, Bidders may not submit bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. **Bids which fail to comply with this requirement will be disqualified.***
- c. **Wage Rate Payments / Changes During Contract Term** *The wages to be paid under any resulting contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the contract term that apply to the classes of individuals supplied by the Contractor on any projects which result from this contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the contract term as required by law.*
- d. **Public Posting & Certified Payroll Records** *In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:*
- i. **Posting** *The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.*
- ii. **Payroll Records** *Contractors and sub-contractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.*
- iii. **Submission of Certified Payroll Transcripts for Public Works Contracts Only** *Contractors and sub-contractors on public*

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

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

- e. **Day’s Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law)** *No laborer, worker or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the contract site or for the protection of the life and limb of the persons using the contract site.*

**17. TAXES**

- a. *Unless otherwise specified in the Bid Specifications, the quoted bid price includes all taxes applicable to the transaction.*
- b. *Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-State Authorized Users must offer their own proof of exemption where required. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.*
- c. *Purchases by Authorized Users other than the State of New York may be subject to such taxes, and in those instances the tax should be computed based on the contract price and added to the invoice submitted to such entity for payment.*

**18. EXPENSES PRIOR TO CONTRACT EXECUTION** *The Issuing Entity is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract execution.*

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

20. **PRODUCT REFERENCES**

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

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

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

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

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

22. **PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products which are manufactured or produced in public institutions will be rejected.

23. **PRICING**

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

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

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

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

e. **COPS or Third Party Financing** If acquisition of Product is financed through Certificates of Participation (COPS) or third party financing, Contractor may be required as a condition of contract award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.

24. **DRAWINGS**

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

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

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

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

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

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

27. **SAMPLES**

a. **Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be

made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.

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

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

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

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

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

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

## BID EVALUATION

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

made in compliance with the Bidder's conditional or revocable terms in the offer.

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

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

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

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

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

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

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

Refusal by the low Bidder to so extend or reduce its bid price may result in the rejection of its bid and the award of such contract to the lowest responsible Bidder who accepts the revised requirements.

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

**37. TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

### **TERMS & CONDITIONS**

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

**39. PARTICIPATION IN CENTRALIZED CONTRACTS** The following shall not limit or inhibit the DOH 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 Department of Health, 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 DOH 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 DOH Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service contracts to those additional entities authorized to utilize commodity contracts under Section 163 (3) (iv) of the *State Finance Law*, which would comprise all entities authorized under prior laws.

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

State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the contract.

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

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

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

**41. SCOPE CHANGES** The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The Commissioner may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

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

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

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

**44. PURCHASE ORDERS** Unless otherwise authorized in writing by the Commissioner, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or canceled pursuant to the

authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

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

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

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

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

**47. SHIPPING / RECEIPT OF PRODUCT**

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

**b. Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB Destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges are understood to not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall

be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments.

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

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

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

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

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

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

debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**53. REPAIRED OR REPLACED PRODUCT / COMPONENTS**

Where the Contractor is required to repair, replace or substitute products or components under the Contract, the repaired, replaced or substituted products shall be subject to all terms and conditions for new products set forth in the contract, including product warranties.

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

**55. EMPLOYEES / SUBCONTRACTORS / AGENTS**

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

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

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

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

**58. SUSPENSION OF WORK** The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at any time, in the best interests of the State or Issuing Entity. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor is not to

accept any purchase orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of work.

**59. TERMINATION**

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

If the annual volume of business done by the Contractor is less than the minimum annual volume criteria established for the Contract for two consecutive contract years, the Contract may be terminated for cause. For purposes of this paragraph, contract year is defined as the first full four quarters reported after award, in accordance with the Reporting/Monitoring Contract Performance clause included in the Contract, and each of the same four quarterly periods thereafter until contract termination.

**b. Reserved**

**c. For Violation of Executive Order Number 127:** The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the contract.

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

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

**b.** Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of

the Products which are the subject of the delay, which purchases may be deducted from the contract quantity; or

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

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

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

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

**62. DEFAULT - AUTHORIZED USER** An Authorized User's breach shall not be deemed a breach of the centralized contract. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future contract payments.

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

**63. INTEREST ON LATE PAYMENTS**

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

b. **By Non-State Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute

applicable to non-State Authorized Users. Neither is the Department of Health nor the Office of the State Comptroller responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

i. Purchase from other sources; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. **Product Performance** Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance

standards and documentation, and the documentation fully describes the proper procedure for using the Products.

- b. **Indemnification** To fully indemnify and save harmless the State, Authorized Users and their respective officers, agents and employees without limitation from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract including: i) personal injury, damage to real or personal tangible property, ii) negligence, either active or passive, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual proprietary rights, provided that the State or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (c) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or Authorized User may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.
- c. **Title and Ownership Warranty** Full ownership, clear title free of all liens, or the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the State and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.
- d. **Contractor Compliance** To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the bid/ contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.
- e. **Product Warranty** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Every Product, including any substituted or replacement Product delivered, must be unconditionally guaranteed against faulty material and workmanship for a period of one year from and after the date the Product is accepted unless otherwise specified by the Commissioner. Furthermore, the Contractor agrees to extend its warranty period by the cumulative periods of time, after notification, during which the Product 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 period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor. This warranty shall survive any termination of the contract in accordance with the warranty term.

- f. Replacement Parts Warranty Where the provision of services requires the replacement or repair of Product, any replaced or repaired component, part or Product shall be new and shall, if available, be replaced by the original manufacturer's component, part or Product. Remanufactured components meeting new product standards may be permitted by the Commissioner or Authorized User. All proposed substitutes for the original manufacturer's installed Product must be approved by the Authorized User before installation. The Product or part shall be equal to or of better quality than the original Product being replaced. Any Product replaced by the Contractor under the contract shall be guaranteed for the remainder of the warranty period under (d) above and replaced at no cost to the Authorized User if found defective during that time.
- g. Date/Time Warranty Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

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