INVITATION FOR BIDS

BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY
(E-Mail or Fax Bid Submissions Are NOT Acceptable)

<table>
<thead>
<tr>
<th>BID OPENING DATE:</th>
<th>SEPTEMBER 14, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>TIME:</td>
<td>2:00 PM</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INVITATION FOR BIDS NUMBER:</th>
<th>1067</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>TITLE:</th>
<th>Group 74300 – Scrap Metal Removal Services (Attica CFI)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>SPECIFICATION REFERENCE:</th>
<th>As Incorporated Herein</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CONTRACT PERIOD:</th>
<th>November 1, 2017 through October 31, 2020 (with renewal options)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>ADDRESS INQUIRIES TO:</th>
<th>Kathleen Gallagher, Supervisor CI Purchasing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone No.</td>
<td>(518) 436-6321, Ext. 2510</td>
</tr>
<tr>
<td>E-mail address:</td>
<td><a href="mailto:Kathleen.Gallagher@doccs.ny.gov">Kathleen.Gallagher@doccs.ny.gov</a></td>
</tr>
</tbody>
</table>

The bid must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and Chapter 1 of the Laws of 2005 (Procurement Lobbying Act), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at: Procurement Lobbying: [http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html](http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html)

Bidders are requested to retain Appendix A and Appendix B for future reference.

<table>
<thead>
<tr>
<th>Bidder's Federal Tax Identification No.:</th>
<th>NYS Vendor Identification Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Do Not Use Social Security Number)</td>
<td>(See “New York Vendor File Registration Clause”)</td>
</tr>
</tbody>
</table>

If applicable, place an “x” in the appropriate box (check all that apply):

- ☐ NYS Small Business
- ☐ Minority Owned Business
- ☐ Women Owned Business

Legal Business Name of Company Bidding: D/B/A – Doing Business As (if applicable):

Street  City  State  Zip  County

Cash Discounts will not be considered in determining low bid, but cash discounts of any size may be considered in awarding tie bids.

% Cash Discount for payment within 15 days of delivery and/or receipt of voucher
% Cash Discount for payment within 30 days of delivery and/or receipt of voucher

If you are not bidding, place an “x” in the box and return this page only.

☐ WE ARE UNABLE TO BID AT THIS TIME BECAUSE___________________________________________________.

Bidder’s Signature: Printed or Typed Name:

Title: Date:

Phone : ( ) - ext ( )  Toll Free Phone : ( ) - ext ( )
Fax : ( ) - ext ( )  Toll Free Fax : ( ) - ext ( )

E-mail Address: Company Web Site:
NOTICE TO BIDDERS

1. Read the entire IFB document. Note the key issues such as: event dates, mandatory requirements, services required, and bid packaging requirements.

2. The successful Bidder must meet all of the mandatory requirements. Only one contract will result from this IFB.

3. Note the name, address, and email of the designated contacts. These are the only individuals that you are allowed to communicate with regarding this IFB (see Section 1.2 - Designated Contact).

4. Any amendments, clarifications, responses to questions, and updates to this IFB will be posted on the NYS Contractor Reporter’s website (https://www.nyscr.ny.gov/) and Corcraft’s website (http://www.corcraft.org).

5. It is the responsibility of the Bidder to address all amendments, clarifications or updates pertaining to this IFB. All applicable amendment information must be incorporated in the bidder’s bid.

6. Take advantage of the Questions and Answers period. All questions must be submitted in writing to the designated email address by the date and time specified in Section 1.3 - Key Events/Dates.

7. Review the IFB document and your bid. Make sure all requirements are addressed and all submission copies are identical and complete.

8. Package your bids as instructed in Section 2 - Bid Submission. Ensure your bid conforms to the packaging requirements. Bids not packaged accordingly may be deemed non-responsive.

9. Submit your bid so that it is received by the designated due date and time (see Section 1.3 - Key Events/Dates). Corcraft will not consider for award bids received after the due date and time indicated.
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Appendix B – General Specifications
Appendix C – M/WBE Requirements and Forms
Appendix D – Required Procurement Forms

Attachment 1 – Bid Cost Form
Attachment 2 – Bid Submission Checklist
Attachment 3 – Bid Declination Form
SECTION 1 INTRODUCTION

1.1 Overview

This Invitation for Bids (IFB) is being released by the New York State Department of Corrections and Community Supervision, Division of Industries (Corcraft). Corcraft manufactures a variety of product using inmate labor and sells these products to state and local governments.

Corcraft is seeking to procure Scrap Metal Removal Services for Attica Correctional Facility, Division of Industries (Attica CFI), which manufactures metal products.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Kathleen Gallagher, has been designated the Primary contact for this solicitation and may be reached by email for all inquiries regarding this solicitation.

Kathleen Gallagher, Supervisor CI Purchasing
NYS Department of Corrections and Community Supervision
Division of Industries
550 Broadway
Albany, New York 12204
Email: Kathleen.Gallagher@doccs.ny.gov

In the event the Primary designated contact is not available, Wayne Woeller is the Alternate designated contact:

Wayne Woeller, Office Assistant III
Attica Correctional Facility
Division of Industries
639 Exchange Street
Attica, New York 14011
Email: Wayne.Woeller@doccs.ny.gov

Contacting anyone other than the designated contacts may result in rejection of bid. See details in Section 5.2 – Summary of Policy and Prohibitions on Procurement Lobbying.

All questions and inquiries must be submitted in writing via email, citing the particular bid section and paragraph number, to the designated Contract. Please reference “IFB 1067” on the subject line of your email.
Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid.

Answers to all questions of a substantive nature will be posted in the form of a formal addendum at the following websites: NYS Contract Reporter [https://nyscr.ny.gov](https://nyscr.ny.gov) and Corcraft [http://www.corcraft.org](http://www.corcraft.org). Any questions received after the due date and time (see Section 1.3 - Key Events/Dates) may not be addressed. The addendum will become part of the ensuing contract.

Bidders entering into a contract with the State are expected to comply with all the terms and conditions contained herein.

### 1.3 Key Events/Dates

The table below outlines the schedule for important action dates. If the State finds it necessary to change any of these dates, notification will be accomplished through an addendum to this IFB.

<table>
<thead>
<tr>
<th>Events</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invitation for Bids (IFB) Issued</td>
<td>August 22, 2017</td>
</tr>
<tr>
<td>Deadline for Written Bidders Questions</td>
<td>September 7, 2017 by 3:00 PM (EST)</td>
</tr>
<tr>
<td>Corcraft Issues Responses to Written Bidders Questions (estimated)</td>
<td>September 8, 2017, 2017</td>
</tr>
<tr>
<td>Bids Due to Corcraft</td>
<td>September 14, 2017 by 2:00 PM (EST)</td>
</tr>
<tr>
<td>Contract Start Date</td>
<td>November 1, 2017</td>
</tr>
</tbody>
</table>

### 1.4 Minimum Bidder Qualifications

Bidders are advised that Corcraft’s intent is to ensure that only qualified and reliable contractors enter into a contract to perform the work as defined in this document.

**The State considers the following qualification(s) to be a pre-requisite in order to be considered as a qualified bidder for the purposes of the solicitation.**

The following minimum requirements **must** be met by each bidder:

- Bidder’s company must have been in continuous operation for at least three (3) consecutive years.
- Bidder must have at least three (3) years experience providing scrap metal removal services.
The Division of Industries recognizes that there may be equally qualified and reliable Bidders who do not meet all of the above requirements specifically, as stated, but may in fact meet the objectives and criteria intended in some other manner. However, the Bidders shall have the burden of demonstrating to the Division of Industries’ satisfaction that it can, in fact, perform the work. Bidders are asked to describe their capabilities to provide the services requested in this Solicitation. The Bidder shall submit satisfactory evidence to the above mentioned qualifications. The details for submission requirements are located in Section 2.

The Division of Industries retains the right to request any additional information, investigate, or make any inquiry pertaining to the Bidder’s capabilities, qualifications, and procedures used to accomplish all work under this contract, as it deems necessary to ensure safe and satisfactory work. The State may waive any of the above requirements if the State deems that the bidder is capable.

The Division of Industries shall have the right to reject responses to this solicitation of any Bidder who is unable to provide satisfactory evidence as to the above mentioned qualifications.

1.4.1 Additional Requirements

a. Client References

Upon request, all bidders must provide a minimum of three (3) references, including references from two of the bidder’s largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the:

- Name, address, contact person, telephone number, fax number, and number of years bidder has serviced the referenced account;
- Volume of business performed within the past three years for each referenced account.

b. Financial Stability

If requested, bidder must document its ability to service a contract with dollar sales volume similar to scope of this bid through submission of financial statements documenting past sales history. The bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five business days. The state reserves the right to request additional documentation from the bidder and to request reports on financial stability from independent financial rating services. The state reserves the right to reject any bidder who does not demonstrate financial stability sufficient for the scope of this bid.
SECTION 2.  BID SUBMISSION

2.1  IFB Questions and Clarifications

Please direct all questions and requests for clarification regarding this IFB to the
designated contact as identified in Section 1.2.

Questions and clarifications regarding this IFB must be submitted in writing via email
referencing the IFB number, page number, and section/subsection and emailed to the
designated contact as identified in Section 1.2.  Please reference “IFB 1067” in the
subject line.

Prospective Bidders should note that all clarifications and exceptions, including those
relating to the terms and conditions of the contract, are to be resolved prior to the
submission of a bid.  The deadline for questions and inquiries is by 3:00 p.m. EST on the
date specified in Section 1.3 – Key Events/Dates.  Official answers to all questions of a
substantive nature will be given to all prospective Bidders in the form of a formal
addendum, which will be posted to the following websites: NYS Contract Reporter
by addendum are considered official.

Any questions received after the due date and time as noted in Section 1.3 may not be
addressed.  Corcraft will issue responses on or about the date listed in Section 1.3 –
Key Events/Dates.  It is each bidder’s responsibility to visit the above websites to
determine if any addenda are issued regarding this solicitation prior to submitting a bid.

Note:  All contacts are subject to certain restrictions defined in State Finance Law §139-
j and k (see Section 5.2 – Summary of Policy and Prohibitions on Procurement
Lobbying).

2.2  Bid Format and Content

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

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

2.2.1  Cover Letter

Bidder shall submit with bid a cover letter, signed by a Bidder Representative
authorized to make contractual obligations, attesting to their qualifications, and must
provide the following:

a.  Confirmation that the bidder understands all the terms and conditions
    contained in this IFB and will comply with all the provisions of this IFB.
Further, that should the contract be awarded to your company, you would be prepared to begin services on the date indicated in Section 1.3.

b. The bidder agrees to adhere to the Scope of Services (see Section 4).

c. The full contact information of the bidder’s representative that Corcraft shall contact regarding the bid.

d. Complete address, telephone number, and fax number of the Bidder’s office or headquarters.

e. Name of the contact person who will handle the day-to-day customer requests, in regard to this contract. The bidder shall provide the address, telephone number, fax number and e-mail address for company personnel that will serve under the resultant contract.

f. The letter must also state whether or not subcontractors will be used, and the name, address, telephone number, fax number, e-mail address, and intended role of each proposed subcontractor that will serve under the resultant contract.

g. A description of bidder’s experience in providing scrap metal services.

h. An overview of company’s experience in providing scrap metal removal services of similar scope and size for commercial or governmental accounts.

i. The bidder is willing to keep proposed bid in effect for 90 days.

2.2.2 Pricing

Bidders are required to submit pricing using the Bid Cost Form (see Attachment 1). Bidders must submit pricing for all Lots/Items to be considered for contract award.

Failure to provide pricing for all Lots/Items will deem the bid non-responsive and will be rejected.

Bidder’s bid price shall be inclusive of all costs including travel, licenses, insurance, administrative, profit, all labor and equipment costs, reporting or other requirements, all overhead costs, and other ancillary costs. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed to be understood by the Bidder and included herein.

The estimated quantities used on the Bid Cost Form is for evaluation purposes only. Actual quantities may be higher or lower depending on Corcraft’s needs. There is no guarantee of quantities under any contract resulting from this IFB. Contractor will be paid for actual quantity of scrap metal removed.
2.2.3 Required Procurement Forms

Bidder shall submit the completed documents in Appendix D.

Note: Corcraft reserves the right to request any additional information deemed necessary to ensure that the Bidder has the ability to fulfill the requirements of the resulting contract.

2.3 Bid Preparation

All bids must be completed in ink or machine (computer, typewriter, etc.) produced. Bids submitted handwritten in pencil will be disqualified.

2.4 Packaging of IFB Response

Please refer to Attachment 2 – Bid Submission Checklist for the number of originals and number of exact copies required to be submitted with bid.

The bid documents must be submitted to the address as indicated in Section 2.5 below by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Bidder’s complete name and address
- IFB Number – 1067 (this document)
- Bid Due Date and Time: (as indicated in Section 1.3 - Key Events/Dates)

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

2.5 Instructions for Bid Submission

Only those Bidders who furnish all required information, including signed bid addenda, if any, will be considered.

Bid must be received in a sealed package marked "Bid Submission IFB #1067" and forwarded to:

Attn: Kathleen Gallagher
NYS Department of Corrections and Community Supervision
Division of Industries
Bid Submission IFB #1067
550 Broadway
Albany, NY 12204

The Division of Industries will not consider emailed or faxed bid submissions.

The State of New York will not be held responsible for any costs incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution and approval of a contract.
Bids must be received at the address listed above on or before the date and time indicated in Section 1.3 - Key Events/Dates. Any bid received after this date and time will not be accepted.

**Bidders assume all risks for timely, properly submitted deliveries.** The received time of bids will be determined by the clock at the location noted above.

Hand deliveries of bid submissions will be accepted only between the hours of 8 a.m. – 4 p.m., Monday through Friday, excluding State holidays.

Bidders mailing their bids must allow sufficient mail delivery time to ensure receipt of their bid packages at the specified location and office no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the bidding entity, shall not excuse late bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late bid submissions. The Division of Industries cannot be responsible for the actions of your chosen carrier.

Bids must remain open and valid for 90 days from the due date, unless the time for awarding the contract is extended by mutual consent of the Division of Industries and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90-day period until either tentative award of the contract by the Division of Industries is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract shall consist of written notice to that effect by the Division of Industries to the successful Bidder. This IFB remains the property of the State at all times, and all responses to this IFB, once delivered, become the property of the State.
SECTION 3. ADMINISTRATIVE INFORMATION

3.1 Issuing Office

This IFB is being released by the New York State Department of Corrections and Community Supervision, Division of Correctional Industries (Corcraft).

3.2 Method of Award

Award shall be made by Lot. The award determination will be based on the quoted percentage, PLUS or MINUS, and will be awarded to the Contractor with the offer which is in the best interest of the State.

Payment will be calculated using your quotation as a percentage plus or minus using the closest American Metal Market (AMM) Publication, Buffalo District Prices, in effect prior to date of pickup. The referenced AMM index will be as follows:

   Item No. 1: AMM SCRAP IRON AND STEEL PRICES; DEALER SELLING PRICES; NO.1 HEAVY MELT; BUFFALO.

The contractor will be required to provide Attica CFI a copy of the AMM price index effective on the date of pickup with their remittance payment.

Any negotiated contract must conform to the laws of New York State and will be subject to approval by the Department of Law and the Office of the State Comptroller. The contract will not be considered fully executed until formal approval has been granted by the Department of Law and the Office of the State Comptroller.

3.3 Bid Submission Checklist

Bid Submission Checklist (see Attachment 2) is intended to acquaint the bidder with all items of information that are to be submitted with the bid. Failure to submit any item may result in rejection of the bid.

3.4 Contract Period

It is the intention of the State to enter into a contract for the term as stated on the Invitation for Bids except that the commencement and termination dates appearing on the Invitation for Bids may be adjusted forward unilaterally by the State for any resulting contract for up to two calendar months, by indicating such change on the Notice of Contract Award.

The contract dates may be adjusted forward beyond two months only with the approval of the successful bidder. If, however, the bidder is not willing to accept an adjustment of the contract dates beyond the two month period, the State reserves the right to proceed with an award to another bidder.
Prices or discounts quoted are to be firm for the entire period of the contract. Price escalation or discount reduction will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid, its specifications and subsequent contract award. Price decreases or discount increases are permitted at any time.

If mutually agreed between the Division of Industries and the contractor, the contract may be renewed under the same terms and conditions for an additional period not to exceed a total contract term of five (5) years.

3.5 Cancellation for Convenience

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

3.6 Method of Payment

The invoice certification shall contain the Contract ID number (i.e.: X000028); the name of the Division of Industries; the location where service was performed; and, either in its body or as an attachment shall contain a copy of the report (in accordance with Section 4.3.B – Administrative and Reporting Requirements) itemizing scrap amounts received during that month.

Payment shall be remitted to the NYS Department of Corrections and Community Supervision, Division of Industries, 550 Broadway, Albany, NY 12204-2802, within thirty (30) calendar days with supporting documentation.

3.7 Past Practice

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

3.8 Bid Exceptions

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

3.9  Dispute Resolution

It is the policy of the Division of Industries to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations or contract awards. The Division of Industries and the Office of the State Comptroller encourage vendors to seek resolution of disputes through consultation with the Division of Industries. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.

3.10  Examination of Contract Documents

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

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

3. Any addendum issued prior to the bid due date must be acknowledged by signature, dated and be submitted on or before the bid due date. In awarding a contract any written addenda will become a part thereof.

4. Any verbal information obtained from, or statements made by, representatives of the Division of Industries shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, shall become a part of the contract.

3.11  Inspection of Books

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

<table>
<thead>
<tr>
<th>AG</th>
<th>Attorney General of New York State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder or Offeror or Proposer</td>
<td>Any individual, partnership, firm, corporation or entity submitting a bid to the State pursuant to this IFB.</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Commissioner of the Department of Corrections and Community Supervision or duly authorized representative.</td>
</tr>
<tr>
<td>Contractor or Vendor</td>
<td>The successful company awarded a contract pursuant to this IFB.</td>
</tr>
<tr>
<td>Corcraft</td>
<td>NYS DOCCS, Division of Industries</td>
</tr>
<tr>
<td>DOCCS</td>
<td>NYS Department of Corrections and Community Supervision</td>
</tr>
<tr>
<td>EST</td>
<td>Eastern Standard Time</td>
</tr>
<tr>
<td>Facility</td>
<td>Correctional Facility</td>
</tr>
<tr>
<td>Issuing Office</td>
<td>NYS DOCCS, Division of Correctional Industries</td>
</tr>
<tr>
<td>Invitation for Bids (IFB)</td>
<td>This solicitation document.</td>
</tr>
<tr>
<td>OSC</td>
<td>New York State Office of the State Comptroller</td>
</tr>
<tr>
<td>State</td>
<td>The People of the State of New York, which shall also mean NYS DOCCS, Division of Industries.</td>
</tr>
</tbody>
</table>
SECTION 4. SCOPE OF SERVICES

4.1 Scope of Services

The NYS Department of Corrections and Community Supervision, Division of Industries (Corcraft), is inviting bids for scrap metal removal services for the collection and removal of scrap metal from Attica Correctional Facility, Division of Industries (Attica CFI).

Contractor shall furnish suitable containers for the collection of all scrap metal from Attica CFI on a regular schedule. The contractor will have all scrap metal removed from Attica CFI, weighed and certified by an impartial third party. The certificate must then be submitted to Attica CFI as soon as possible, or along with payment at the latest, for payment to be accepted.

The Division of Industries will provide the necessary manual labor required to load the scrap into the container and/or conveyances provided by the contractor for removal. The scrap metal will be removed under the supervision of the Department of Corrections and Community Supervision (DOCCS) employees and the contractor must comply with all DOCCS security and transportation regulations and protect the plant, property, and equipment of Attica CFI.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. Bidders should pay strict attention to the bid submission date and time to prevent disqualification.

Subcontracting for any of the above items will be acceptable to the Division of Industries. Please refer to Section 5.8 – Subcontracting for guidelines.

4.2 Correctional Facility Security Requirements

Attica CFI shall contact the contractor to request delivery of an empty container and request removal of a full container. When removal of a container is required, contractor shall relocate the full container from Attica CFI’s Industrial Shop to the correctional facility’s “Locked Gates,” where the full container must be inspected and held for a minimum of 24 hours.

4.3 Compliance

The successful bidder shall comply with all New York State Department of Transportation Rules and Regulations concerning the safe removal of the scrap metal, and DOCCS, Corcraft and Attica CFI assumes no responsibility for any violations of these aforementioned rules or regulations.
4.4 Administrative and Reporting Requirements

A. Contract Meetings:
   1. The Contractor shall be responsible for the completion of a variety of administrative and reporting requirements, and the cost of it shall be included in the base bid price.
   2. Upon award of a contract and prior to the start of any work, the Contractor shall be available for an initial job meeting with the Division of Industries representative. This meeting shall include:
      a. Contractor’s submission of a work schedule to be reviewed and approved by the Division of Industries.
      b. A review of all Division of Industries facility use rules.
      c. An introduction for each respective Division of Industries organization, chain of command, etc.
   3. Subsequent to the initial meeting, Division of Industries is encouraged to meet with their awarded services Contractor on a regular basis to discuss the following:
      a. Review job progress and quality of work.
      b. Identify and resolve problems, which impede planned progress.
      c. Coordinate the efforts of all involved to ensure compliance with all terms and conditions of the contract.
      d. Maintain a sound working relationship between the Contractor and the Division of Industries, and a mutual understanding of the contract.
      e. Maintain sound working procedures.
      f. Review the service performance.

B. Reporting Requirements:
   1. Following the end of each month, Contractor shall furnish a report itemizing all scrap amounts received during that month. The report is to be submitted to Attica Correctional Facility, Division of Industries, 639 Exchange Street, Attica, NY 14011, to the attention of the Industrial Superintendent and shall reference the Contract Number, service period, and Contractor's name.
   2. Failure to submit the required report may be cause for disqualification of Contractor on the contract and for future contracts.
SECTION 5. CONTRACT CLAUSES AND REQUIREMENTS

5.1 Conflict of Terms and Conditions

Conflicts between documents shall be resolved in the following order of precedence:
   a. Appendix A
   b. This Invitation For Bids
   c. Appendix B
   d. Bidder’s Bid

APPENDIX A
Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. Please retain this document for future reference.

APPENDIX B
Appendix B, Department of Corrections and Community Supervision General Specifications, dated April 2016, attached hereto, is hereby expressly made a part of this Bid Document as fully as if 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.

5.2 Summary of Policy and Prohibitions on Procurement Lobbying

In reference to State Finance Law §§139-j and 139-k, this bid includes and imposes certain restrictions on communications between the Division of Industries and the bidder during the procurement process. The bidder is restricted from making contacts from the date of bid advertisement in the NYS Contract Reporter through final approval of the contract award by the Office of the State Comptroller, with anyone other than designated Division of Industries staff, unless it is contact that is among certain statutory exceptions as per State Finance Law Section 139-j(3)(a). Designated staff is identified on the cover page of this Invitation for Bids. Division of Industries employees are also required to obtain certain information when contacted during the “restricted period” and to make a determination of responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection of the bid, and in the event of two findings within a four-year period, the bidder is debarred from obtaining future State contracts. Further information about these requirements can be found at http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html.

5.3 Procurement Lobbying Termination

In accordance with the “Vendor Responsibility Disclosure” clause and/or “Termination – for Cause” in Appendix B, General Specifications and/or New York State Finance Law Section 139-k and/or Tax Law § 5-a, the Division of Industries reserves the right to terminate a contract by providing ten (10) days written notification to the Contractor, for cause in the event of determination made after an award with respect to vendor non-responsibility, or in the event of determination that certification filed in accordance with State Finance Law Section 139-k and/or Tax Law § 5-a was intentionally false or intentionally incomplete.
5.4 Sales and Compensating Use Tax Certification Requirements

Complete **Form ST-220-CA Contractor Certification.** The Contractor must file Form ST-220-CA to certify that it has filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date that the Contractor files Form ST-220-CA. Bidders may access and complete Form ST-220-CA by using the following link: [http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf).


5.5 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should you feel your firm’s bid contains any such trade secrets or other confidential or proprietary information, you **must submit a request to except such information from disclosure.** Such request must be in writing, must state the reasons why the information should be accepted from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a bid 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.

5.6 General Requirements

The Bidder agrees to

1. adhere to all State and Federal laws and regulations in connection with the contract; and,

2. notify the Division of Industries of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.

The Bidder agrees that

3. In any contract resulting from this IFB, it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action; and,
4. Any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Division of Industries.

5. For reasons of safety and public policy, in any contract resulting from this IFB, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

6. For purposes of any contract resulting from this IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

7. The Division of Industries’ interpretation of specifications shall be final and binding upon the Contractor.

8. The Division of Industries will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.

9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Division of Industries.

10. **Inspection** – For purposes of any contract resulting from this IFB, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Division of Industries may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.

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

12. It is the Contractor’s responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.

13. The Division of Industries reserves the right to reject and bar from the facility any employee hired by the Contractor.
5.7 Contract Terms

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

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

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

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

5.8 Subcontracting

The Contractor agrees not to subcontract any of its services, unless as indicated in its bid, without the prior written approval of the Division of Industries. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under the contract resulting from this IFB to be subcontracted to qualified, responsible subcontractors, subject to approval of the Division of Industries. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this the contract resulting from this IFB must be fully explained by the Contractor to the Division of Industries. As part of this explanation, the subcontractor must submit to the Division of Industries a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of the contract resulting from this IFB.

The Contractor retains ultimate responsibility for all services performed under the contract resulting from this IFB.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the contract resulting from this IFB including, but not limited to, the body of the contract resulting from this IFB, Appendix A – Standard Clauses for New York State Contracts and IFB #1056. Unless waived in writing by the Division of Industries, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Division of Industries, as the sole intended third party beneficiary of such subcontract. The Division of Industries
reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Division of Industries or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Division of Industries.

The Division of Industries reserves the right, at any time during the term of the contract resulting from this IFB, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in the contract resulting from this IFB.

The Contractor shall give the Division of Industries immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor’s duties under the contract resulting from this IFB. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the contract resulting from this IFB.

If at any time during performance under the contract resulting from this IFB total compensation to a subcontractor exceeds or is expected to exceed $100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

5.9 Procurement Rights

The State of New York reserves the rights for the following:

1. Reject any and all bids received in response to this Solicitation.

2. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

3. Correct Bidders’ mathematical errors and waive or modify other minor irregularities in bids received, after prior notification to the Bidder.

4. Utilize any and all ideas submitted in the bids received.

5. Negotiate with Bidders responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.

6. Begin contract negotiations with Bidder(s) to serve the best interests of the State should the Division of Industries be unsuccessful negotiating a contract with the selected Contractor within 21 days of selection notification.

7. Waive any non-material requirement not met by all Bidders.

8. Not make an award from this Solicitation or withdraw any tentative awards made as a result of this Solicitation.
9. Make an award under this Solicitation in whole or in part.

10. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.

11. Seek clarifications of bids.

12. Disqualify any bidder whose conduct and/or bid fails to conform to the requirements of the IFB.

13. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available.

14. Change any of the scheduled dates stated herein with written notice to all bidders who have received this IFB.

15. Waive any requirements that are not material.

16. If two or more bids are found to be substantially equivalent, the Division of Industries, at its sole discretion, will determine award.

Please Note: The State is not liable for any costs incurred by Bidders in the preparation and production of bids or for any work performed prior to the issuance of a contract.

5.10 Debriefings

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to the final contract approval, the Division of Industries shall, upon request, provide a debriefing which would be limited to review of the requesting bidder’s bid. Requests for a debriefing prior to final contract approval by an unsuccessful bidder(s) must be addressed to Division of Industries in writing. The debriefing prior to final contract approval must be requested in writing within 15 calendar days of notification that the bidder’s submission was unsuccessful.

After the final contract approval, the Division of Industries shall, upon request, provide a debriefing to any bidder that responded to the IFB, regarding the reason that the bid submitted by the unsuccessful bidder was not selected for a contract award. Requests for debriefings by an unsuccessful bidder(s) must be addressed to the Division of Industries in writing. The post-award debriefing should be requested in writing by the bidder within 30 calendar days of contract approval by OSC.
5.11 Termination

5.11.1 Agency Termination

The Division of Industries reserves the right to cancel the complete contract or any part thereof, at any time, giving the Contractor sixty (60) days written notice for convenience or unavailability of funds. If in the judgment of the Division of Industries, the Contractor fails or refuses to perform the work in accordance with the contract, the Division of Industries may terminate the contract immediately by written notice for cause.

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

The Division of Industries may, upon sixty (60) days notice, terminate the contract resulting from this IFB in the event of the awarded Bidder’s failure to comply with any of the bid’s requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, the Division of Industries may also terminate any contract resulting from this IFB upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of creditors.

Furthermore, the Division of Industries shall have the right, in its sole discretion, at any time to terminate a contract resulting from this IFB, or any unit portion thereof, with or without cause, by giving sixty (60) days written notice of termination to the Contractor.

Any termination by the Division of Industries under this Section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against the Division of Industries, its agents and employees therefore for lost profits or any other damages.

5.11.2 Procurement Lobbying Termination

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

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) and any designated authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company and to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor id number on the first page of this bid document. Authorized resellers already registered should list the ten-digit vendor id number along with the authorized reseller information.

If your company is not currently registered with the New York State Vendor File administered by the Office of the State Comptroller (OSC), please visit: [http://www.osc.state.ny.us/vendor_management/](http://www.osc.state.ny.us/vendor_management/) for instructions on how to register.

Complete the OSC Substitute W-9 form [http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form with your bid.

To request assignment of a Vendor ID to access the VendRep System in advance of submitting your bid, contact the Office of the State Comptroller’s Help Desk at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@osc.state.ny.us

5.13 NYS Standard Vendor Responsibility Questionnaire

Bidder agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire (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, the Division of Industries 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.
The NYS Department of Corrections and Community Supervision, Division of Industries recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at https://portal.osc.state.ny.us.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller’s Help Desk at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the designated Division of Industries staff member whose name appears on the cover page of this Invitation for Bids or the Office of the State Comptroller’s Help Desk for a copy of the paper form.

It is the sole responsibility of the resultant contractor, at any time throughout the contract period, to promptly notify the VendRep System or the Division of Industries of any changes to its original responses in the questionnaire. Failure to do so may be sufficient cause for termination of the contract.

The contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the NYS DOCCS, Division of Industries (CORCRAFT), to present evidence of continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organization and financial capacity.

CORCRAFT reserves the right to suspend any or all activities under this Contract, at any time, when CORCRAFT discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of the suspension order. Contract activity may resume at such time CORCRAFT issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate CORCRAFT officials or staff, the Contract may be terminated by the NYS DOCCS, Division of Industries (CORCRAFT) at the Contractor’s expense where the Contractor is determined by CORCRAFT to be non-responsible. In such event, CORCRAFT may complete the contractual requirements in any manner deemed advisable and pursue available legal equitable remedies for breach.
5.14 M/WBE and EEO Requirements

See Appendix C for Contractor requirements and procedures. Return a completed M/WBE – EEO Policy Statement and a completed Staffing Plan (Form EEO 100) with your bid. Appendix C will be included in the Contract resulting from this IFB.

5.15 Service-Disabled Veteran-Owned Business

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: [http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf](http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf).

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of SDVOBs by completing the form entitled Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance (see Appendix D) and returning the completed form with your bid.
5.16 Encouraging Use of New York State Subcontractors and Suppliers

In an ongoing effort to use New York State (NYS) businesses, DOCCS encourages bidders to partner with NYS subcontractors and/or suppliers. For this solicitation, bidders should identify the NYS businesses that they plan to use if awarded the contract resulting from this solicitation by completing the form entitled Encouraging Use of New York State Businesses in Contract Performance (see Appendix D).

If known, please identify the businesses and attach the requested information. Return the completed form with your bid. If you do not plan to partner with a NYS business, please indicate this on the form and return it with your bid.

5.17 Surety Bond

At any time upon the request of the Department of Corrections and Community Supervision, Division of Industries, the bidder being considered for award or the contractor shall, within fifteen (15) days of request and at its own cost and expense, obtain and maintain in full force and effect for sixty (60) days after contract expiration:

- an irrevocable documentary LETTER OF CREDIT with a sound and reputable bank authorized to do business in the State of New York, OR
- a PERFORMANCE BOND signed by a surety company authorized to do business in the State of New York, OR
- a PAYMENT BOND signed by a surety company authorized to do business in the State of New York,

in the amount of $10,000 for the faithful performance of the contract. The LETTER OF CREDIT, PERFORMANCE BOND, PAYMENT BOND, etc., shall name as beneficiary the State of New York, Department of Corrections and Community Supervision, Division of Industries, and may be invoked to the benefit of the State of New York, Department of Corrections and Community Supervision, Division of Industries, upon delivery of a certified statement to the issuing bank or surety company that the contractor has failed to perform pursuant to the terms and conditions of its contract with the State of New York.

Upon request, the bidder shall immediately provide a letter from its bank or surety company stating that the letter of credit or bond will be provided if being considered for a contract or in the event of a contract. The Letter of Credit or Bond shall be provided on a yearly basis for each year, or portion, of the contract.
5.18 Contractor Insurance Requirements

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

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

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

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of “A-,” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. Corcraft may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

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

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.
A. **General Conditions Applicable to Insurance.** All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B Insurance Requirements below.

2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis.

3. **Certificates of Insurance/Notices.** Bidders and Contractors shall provide CORCRAFT with a Certificate or Certificates of Insurance, in a form satisfactory to CORCRAFT as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name The New York State Department of Corrections and Community Supervision, Division of Industries, Corcraft, 550 Broadway, Albany, NY 12204-2802 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to CORCRAFT and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.
- An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage. (See Section B3)

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

CORCRAFT generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although CORCRAFT reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by CORCRAFT. If an entire insurance policy is submitted but not requested, Corcraft shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition,
submission of an entire insurance policy not requested by CORCRAFT does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Department of Corrections and Community Supervision, Division of Industries, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor’s insurance.

5. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Department of Corrections and Community Supervision, Division of Industries, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above $100,000.00 are subject to approval from CORCRAFT. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor.

8. **Waiver of Subrogation.** For all liability policies and the workers’ compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer’s right of subrogation against The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if
the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Department of Corrections and Community Supervision, Division of Industries, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Department of Corrections and Community Supervision, Division of Industries, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. **Additional Insured.** The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as additional insureds: The People of the State of New York, the New York State Department of Corrections and Community Supervision, Division of Industries, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to CORCRAFT pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide CORCRAFT with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.
12. **Policy Renewal/Expiration**  Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to CORCRAFT. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to CORCRAFT, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by CORCRAFT.

13. **Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the CORCRAFT Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to CORCRAFT as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to CORCRAFT, CORCRAFT shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.
B. Insurance Requirements
Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Proof of Coverage is Due</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial General Liability</strong></td>
<td>Not less than $1,000,000 each occurrence</td>
</tr>
<tr>
<td>General Aggregate</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Products – Completed Operations Aggregate</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Personal and Advertising Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Medical Expenses Limit</td>
<td>$5,000</td>
</tr>
<tr>
<td><strong>Business Automobile Liability Insurance</strong></td>
<td>Not less than $1,000,000 each occurrence</td>
</tr>
<tr>
<td><strong>Workers’ Compensation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Disability Benefits</strong></td>
<td></td>
</tr>
</tbody>
</table>

1. **Commercial General Liability Insurance**: Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract).

Policy shall include bodily injury, property damage and broad form contractual liability coverage.
- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:
- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
• Defense and/or indemnification obligations, including obligations assumed under the Contract;
• Cross liability for additional insureds;
• Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the Contract;

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

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

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by Corcraft. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to Corcraft in accordance with the insurance requirements of any Contract resulting from this Solicitation.

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

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

Proof of Compliance with Workers’ Compensation Coverage Requirements:
- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers’ Compensation Board’s website (www.wcb.ny.gov);
- Form C-105.2 (9/07), Certificate of Workers’ Compensation Insurance, sent to Corcraft by the Contractor’s insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, Certificate of Workers’ Compensation Self-Insurance, available from the New York State Workers’ Compensation Board’s Self-Insurance Office, or

Proof of Compliance with Disability Benefits Coverage Requirements:
- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers’ Compensation Board’s website (www.wcb.ny.gov);
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to Corcraft by the Contractor’s insurance carrier upon request; or


**ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The NYS Department of Corrections and Community Supervision, Division of Industries, 550 Broadway, Albany, NY 12204 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).
Questions should be directed to The NYS Worker’s Compensation Board. Please call (518)486-6307 or visit www.wcb.ny.gov. An information pamphlet “Prove It to Move It Program” is available at www.wcb.ny.gov/content/main/Employers/ProveItToMoveIt.pdf

5.19 Out-of-State Employees Working in New York State

All out-of-state employers with employees working in New York State are required to carry a full, statutory New York State workers’ compensation insurance policy. An employer has a full, statutory New York State workers’ compensation insurance policy when New York is listed in Item “3A” on the Information Page of the employer’s workers’ compensation insurance policy. Disability benefits coverage is required if the business employs individuals in NYS for more than 30 days in a calendar year. Accordingly, if an out-of-state employer is getting a permit, license or contract from a government agency in New York State, then that employer must fulfill requirements effective under Workers’ Compensation Law Section 57. Also, every out-of-state employers doing any construction related activity in New York State is required to carry a full, statutory New York State workers’ compensation insurance policy.

The Workers’ Compensation Board is currently reviewing the part of this provision that primarily applies to out-of-state employees attending meetings, seminars or other minimal activities in New York State. The Board's review will encompass the comments and concerns of its stakeholders, and is seeking appropriate assistance to develop other rules implementing this section of the new law.

It may be appropriate to check the yellow pages, contact your insurance broker, carrier or agent, check with your trade association, or conduct additional research to find the most appropriate insurance coverage for your company. In addition, a New York State workers’ compensation policy may be obtained from the New York State Insurance Fund by calling 1-866-697-4332. Please contact the Board's Bureau of Compliance at 1-866-298-7830 if you have any questions regarding these requirements.

5.20 Indemnification

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

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

5.22 Ethics Requirements

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.
5.23 Conflicts of Interest

A. The Contractor must provide form “Vendor Assurance of No Conflict of Interest or Detrimental Effect,” signed by an authorized executive or legal representative attesting that the Contractor’s performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is renderingservices.

B. The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of the contract resulting from this IFB. The Contractor shall have a duty to notify the Division of Industries immediately of any actual or potential conflicts of interest.

C. In conjunction with any subcontract under the contract resulting from this IFB, the Contractor shall obtain and deliver to the Division of Industries, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Division of Industries a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

D. The Division of Industries and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The Division of Industries will review the nature of any relationships and reserves the right to terminate the contract resulting from this IFB for any reason, or for cause, if, in the judgment of the Division of Industries, a real or potential conflict of interest cannot be cured.

5.24 Non-Collusive Bidding Certification

In accordance with New York State Finance Law §139-d, by submitting its bid each bidder and each person signing on behalf of any other bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

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

In the event that the bidder is unable to certify as stated above, the bidder shall provide a signed statement which sets forth in detail the reasons why the bidder is unable to furnish the certificate as required in accordance with State Finance law Section 139-d(1)(b).

5.25 **DOCCS Departmental Directives, Policies and Procedures**

The Contractor shall agree to abide by all relevant departmental directives, policies and procedures. All of the Contractor’s employees and subcontractors that provide services are subject to background checks.

Upon award of the contract, the Contractor will be provided with appropriate instructions with respect to Department rules, regulations, and directives.
PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

NOTES TO BIDDERS: FAILURE TO ANSWER THE QUESTIONS WILL DELAY THE EVALUATION OF YOUR BID AND MAY RESULT IN REJECTION OF YOUR BID.

- Has Bidder completed the New York State Vendor Responsibility Questionnaire?

  _____ YES, filed online
  (OR)
  _____ YES, paper copy attached

- If Bidder completed the Questionnaire online, has Bidder certified or recertified the Vendor Responsibility Questionnaire no more than six (6) months prior to the bid opening date?

  _____ YES  _____ NO
NOTES TO BIDDERS: (Cont’d)

- Person or persons to contact for expediting New York State contract orders:

  Name: __________________________
  Title: __________________________
  Telephone Number: ( ) __________
  Toll Free Telephone Number: ( ) __________
  Fax Number: ( ) __________
  Toll Free Fax Number: ( ) __________
  E-Mail Address: __________________________

- Person or persons to contact in the event of an emergency occurring after business hours or on weekend/holidays:

  State Normal Business Hours (Specify M-F, Sat, Sun): __________________________
  Name: __________________________
  Title: __________________________
  Telephone Number: ( ) __________
  Fax Number: ( ) __________
  Pager Number: ( ) __________
  Cellular Telephone Number: ( ) __________
  E-Mail Address: __________________________
PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY’S NAME IN THE BOX

Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Is your company a Minority or Women-Owned Business Enterprise, certified in accordance with Article 15A of the New York State Executive Law as defined below?

   ________YES _________NO

2. Is your company listed in the Empire State Development Directory of Certified Minority and Women Owned Businesses?

   http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

   NOTE: Contractors certified and listed in the Empire State Development’s Directory of Certified Minority and Women-Owned Business Enterprises* will be identified by Division of Industries as MBEs and/or WBEs in the Division of Industries Contract Award Notification upon award of the contract.

   ________YES _________NO

   MINORITY-OWNED
   WOMEN-OWNED
   MINORITY AND WOMEN-OWNED

*For further information and or application please contact New York State Department of Economic Development, Division of Minority and Women-Owned Business Enterprise at 518-292-5250 (Albany) or 212-803-2414 (New York City).

"Minority or Women-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

(a) at least fifty-one percent owned and controlled by the minority members and/or women;
(b) an enterprise in which such minority and/or women ownership interest is real, substantial and continuing;
(c) an enterprise in which such minority and/or women ownership has and exercises the authority to independently control the day-to-day business decisions; and
(d) an enterprise independently owned, operated and authorized to do business in New York State.

3. Is your company a New York Small Business Concern as defined in accordance with Article 11 of the New York State Finance Law?

   ________YES _________NO

"Small Business Concern” means a business which:

(a) is resident in New York State;
(b) is independently owned and operated;
(c) is not dominant in its field; and,
(d) employs one hundred or fewer persons.
4. Total number of people employed by your business in New York State:

5. **BIDDER’S PRINCIPAL PLACE OF BUSINESS**:  
   
   *"Principal Place of Business" is the location of the primary control, direction and management of the enterprise.*

6. **"NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES"**

   In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

   (Answer Yes or No to one or both of the following, as applicable),

   A. have business operations in Northern Ireland:

      _______YES _______NO

   If yes,

   B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.

      _______YES _______NO
7. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Pursuant to Procurement Lobbying Law (SFL §139-j)

A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?
   If yes, please answer the following question:
   _______YES _______NO

B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?
   _______YES _______NO

C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?
   If yes, please provide details regarding the finding of non-responsibility:
   Governmental Entity: ____________________________________________
   Date of Finding of Non-responsibility: ________________________________
   Basis of Finding of Non-Responsibility: ________________________________
   (add additional pages if necessary)
   _______YES _______NO

D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?
   If yes, please provide details:
   Governmental Entity: ____________________________________________
   Date of Termination or Withholding of Contract: ________________________
   Basis of Termination or Withholding: ________________________________
   (add additional pages if necessary)
   _______YES _______NO
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE
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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,
whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: nwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

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 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;

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

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

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

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

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE
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To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

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APRIL 2016
GENERAL

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

2. DEFINITIONS Terms used herein shall have the following meanings:

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

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

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

d. BID SPECIFICATIONS A written description drafted by DOCCS or an Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term “Bid Specifications” shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

e. COMMISSIONER The Commissioner of DOCCS or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

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

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

2. Centralized Contracts Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction’s contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. Back-Drop Contracts Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

4. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by DOCCS in accordance with the requirements of the State Finance Law.

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

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

h. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Commissioner.

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

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

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

l. 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.

m. GROUP A classification of a Product that is designated by DOCCS.

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.
o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. “Licensed Software” includes Error Corrections, upgrades, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, programs, code or data conversion, or custom programming).

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

q. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee’s right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

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

s. MINI-BID A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

t. DOCCS The New York State Department of Corrections and Community Supervision.

u. PATCH Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

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

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

x. REQUEST FOR PROPOSALS (RFP) A type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on “best value,” as defined by the State Finance Law, to one or more responsive and responsible Bidders.

y. REQUEST FOR QUOTATION (RFQ) A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

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

aa. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the DOCCS Commissioner.

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

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

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

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

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

gg. STATE State of New York.

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

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

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

kk. THIRD-PARTY SOFTWARE Any software that is developed independently of Contractor and which may be governed by a separate license.

ll. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.
BID SUBMISSION

3. INTERNATIONAL BIDDING All Bids, including 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 Bids submitted which do not meet the above criteria will be rejected.

4. 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.

5. LATE BIDS Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner’s sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

6. CONFIDENTIAL/TRADE SECRET MATERIALS

a. BIDDER/CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder/Contractor. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder/Contractor. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The Commissioner’s or Authorized User’s receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

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

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

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

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

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

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

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

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

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

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

8. **TAXES**

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

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

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

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

10. **PRODUCT REFERENCES**

a. “Or Equal” In all Solicitations or Bid Specifications, the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced.

References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The 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 Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

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

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

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

13. **PRICING**

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

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

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

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

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

f. **Specific price decreases:**
   - **(i) GSA Changes:** Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or
   - **(ii) Commercial Price List Reductions:** Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or
   - **(iii) Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and
   - **(iv) Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

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

14. **SITE INSPECTION** Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder’s ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

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

**BID EVALUATION**

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

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

18. **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 Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

19. **TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

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

21. **CONTRACT PUBLICITY** Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.
22. **CONTRACT CREATION/EXECUTION** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidders upon the Commissioner’s mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

23. **CONTRACT TERM - EXTENSION** In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

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

25. **PARTICIPATION IN CENTRALIZED CONTRACTS**
   a. **State Agencies** All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits purchases to specific State Agencies.
   
   b. **Non-State Agency Authorized Users** Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.
   
   c. **Voluntary Extension** Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law.
   
   d. **Responsibility for Performance** Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to hold the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User’s or Contractor’s failure to perform in accordance with its obligations under the Contract.
   
   e. **Contract Migration** Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

26. **MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users 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 any Authorized User 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 and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User 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 an Authorized User 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.

27. **SCOPE CHANGES** The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the DOCCS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

28. **ESTIMATED/SPECIFIC QUANTITY CONTRACTS** Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

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.

29. **EMERGENCY CONTRACTS** In the event that a disaster emergency is declared by Executive Order under Section 28 of Article
2-B of the Executive Law, or the Commissioner determines pursuant to his or her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract, as the Commissioner in his or her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

30. **PURCHASE ORDERS** Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

All Purchase Orders issued pursuant to a Contract let by the Commissioner must be identified with the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor’s order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

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

31. **PRODUCT DELIVERY** Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and 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 a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner’s discretion, the Contract.

32. **WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Contract or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

33. **SHIPPING/RECEIPT OF PRODUCT**

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

   b. **Shipping Charges** Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User’s payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states “charges prepaid” for all shipments.

   c. **Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor’s failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

34. **TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS** Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products 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 Contract or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner. Title, risk of loss, and acceptance for technology Products shall be governed by the Product Acceptance clause.
35. PRODUCT SUBSTITUTION  In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner’s written approval may be cause for termination of Contract.

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

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

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

39. EMPLOYEES, SUBCONTRACTORS AND AGENTS  All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract or the Purchase Order, and must comply with all security and administrative requirements of the Authorized User that are communicated to the Contractor. The Commissioner and the Authorized User reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by the Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with 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 or the Purchase Order. The Commissioner and the Authorized User reserve the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

40. ASSIGNMENT  In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Commissioner verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor’s business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file with the Commissioner a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes DOCCS responsibilities for the Contract.

41. SUBCONTRACTORS AND SUPPLIERS  The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior DOCCS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor’s list of companies with which New York State cannot do business; the Commissioner’s determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

42. SUSPENSION OF WORK  The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon
The Contractor is determined by the Commissioner to be non–responsible for any delay in or failure of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

43. TERMINATION

a. For Cause For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor the Authorized User shall be liable for any of Contractor’s costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

c. For Violation of Sections 139-j and 139-k of the State Finance Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

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

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

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

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

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

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

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

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

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

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.
Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. “Extreme and unforeseen volatility in the marketplace” is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor’s performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the DOCCS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

45. CONTRACT INVOICING

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

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

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

46. DEFAULT – AUTHORIZED USER

a. Breach by Authorized User An Authorized User’s breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User’s performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 30 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User’s purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least 10 business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

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

47. PROMPT PAYMENTS

a. By State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCCR § 18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency Authorized Users. Neither DOCCS nor the State Comptroller is responsible for payments on any purchases made by a non-State agency Authorized User.

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

48. REMEDIES FOR BREACH Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days...
following written notice by the Commissioner or an Authorized User, the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

a. **Cover/Substitute Performance** In the event of Contractor’s material, uncured breach, the Commissioner or Authorized User may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Commissioner or Authorized User is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner or Authorized User may acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.

b. **Withhold Payment** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User.

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

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

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

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

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

50. **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 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 Safety Data Sheet must be provided to and approved by the Authorized User.

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

52. **SECURITY** Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

53. **COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

54. **WARRANTIES**

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

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

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

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

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

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

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor’s warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer’s Product.

Where Contractor, Third-Party Software vendor, or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through Contractor’s warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer’s Product.

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

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor’s approval.

d. Virus Warranty The Contractor represents and warrants that any Product acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at an Authorized User’s Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Authorized User must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

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

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

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

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

55. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

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

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

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

57. INDEMNIFICATION RELATING TO INFRINGEMENT
The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor’s approval; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

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

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

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

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

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

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User’s satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

59. DISPUTE RESOLUTION PROCEDURES
It is the policy of DICCS to provide interested parties, as defined in the DOCCS Dispute Resolution Procedures, with an opportunity to
administratively resolve disputes, complaints or inquiries related to
Solicitations, contract awards and contract administration. DOCCS
encourages interested parties to seek resolution of disputes through
consultation with DOCCS staff. All such matters shall be accorded
impartial and timely consideration. Interested parties may also file
formal written disputes. A copy of the DOCCS Dispute Resolution
Procedures may be obtained by contacting the designated contact for
the Solicitation. DOCCS reserves the right to change the procedures
set forth in the Dispute Resolution Procedures without seeking a
Contract amendment.

To the extent the scope of the Solicitation or Contract includes the
sale, development, maintenance, or use of information technology
Products such as software, computer components, systems, or
networks for the processing, and distribution, or storage, or storage
of data, the following clauses shall govern, as applicable.

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

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

Licensee and Contractor may agree to alternative licensing rights (e.g.,
subscription, term, virtual) for specific Products used by the
Contractor in performing the services, provided such agreement is
reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable.
Such licensing rights will be specified in an applicable Purchase Order
or other document approved by Licensee and Contractor.

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

c. **Product Documentation** Contractor shall provide Product
Documentation electronically to Licensee at no charge. If Product
Documentation is made available to customers in hard copy,
Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up,
royalty-free perpetual license in the Product Documentation to make,
reproduce, and distribute, either electronically or otherwise, copies of
the Product Documentation as necessary to enjoy full use of the
Product in accordance with the Contract.

d. **Product Technical Support & Maintenance** Licensee shall
have the option of electing the Product technical support and
maintenance ("maintenance") set forth in the Contract by giving
written notice to Contractor any time during the Centralized Contract
term. Contractor shall fully disclose all terms and conditions of
maintenance available to Licensee, including the extent to which
updates, upgrades, revisions, and new releases are included in
maintenance. Maintenance terms and any renewals thereof are
independent of the expiration of the Centralized Contract term and
shall not automatically renew.

Unless otherwise provided by written agreement between the
Contractor and Licensee, maintenance offered shall include, at a
minimum, (i) the provision of Error Corrections, updates,
enhancements, revisions, Patches, and upgrades to Licensee, and (ii)
help desk assistance at no additional cost, either by toll-free telephone
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or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Licensee does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

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

f. Restricted Use By Third Parties Third parties retained by Licensee shall have the right to use the Product to maintain Licensee’s business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third party has executed, or agrees to execute, the Product manufacturer’s standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor (“Non-Disclosure Agreement”); and (iii) such third party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party’s compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase “cold site storage” means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase “disaster recovery” means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

h. Confidentiality Restrictions If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee’s use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

61. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have 30 days from the date of delivery to accept hardware Products and 60 days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance.

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

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional 30 day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.
If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User’s agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

62. AUDIT OF LICENSED PRODUCT USAGE  Contractor shall have the right to periodically audit, no more than annually, at Contractor’s expense, use of licensed Product at any Site where a copy of the Product resides. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee’s security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee’s normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor’s U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

63. NO HARDSTOP OR PASSIVE LICENSE MONITORING  Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee’s security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Licensee shall be entitled.

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES  This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order:

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

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

(iii) For purposes of this clause, “Custom Products” means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for Authorized User under the Contract.

b. Title to Project Deliverables  Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:  1. Hardware - Title and ownership of Existing hardware Products shall pass to Authorized User upon acceptance.

2. Software - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor (“Existing Licensed Product”), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor’s standard license.
agreement; provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User’s satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User’s Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Authorized User is a State Agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the Third-Party Software vendor’s standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor’s business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purposes as stated in paragraph (b)(2), above.

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

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

e. Contractor’s Obligation with Regard to Third-Party Software Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor’s standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor’s sole cost and expense.

65. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer’s certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

66. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) Licensee’s option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers (“date of notice”) that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall
be required to: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. **The provisions of this section do not apply if the Contractor is not the Product manufacturer.**
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APPENDIX C

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:
REQUIREMENTS AND PROCEDURES

I. General Provisions

A. The Department of Corrections and Community Supervision (hereinafter referred to as “DOCCS”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to “DOCCS, to fully comply and cooperate with DOCCS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to DOCCS pursuant to the Contract and applicable law.

II. Contract Goals

A. For purposes of this Contract, DOCCS hereby establishes an overall goal of 0 percent for MWBE participation, 0 percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 0 percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: https://ny.newnycontracts.com.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.
C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:

1. Evidence of outreach to MWBEs;
2. Any responses by MWBEs to the Contractor’s outreach;
3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by DOCCS with MWBEs; and,
5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

B. In performing the Contract, the Contractor shall:

1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to DOCCS within seventy-two (72) hours after the date of the notice by DOCCS to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, DOCCS may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
4. The Contractor’s EEO policy statement shall include the following language:
   a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
   b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.

c. 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.

d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph “E” of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form EEO 100 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by DOCCS.

D. Form EEO-1 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by DOCCS on a QUARTERLY (non-construction) or MONTHLY (construction) basis during the term of the Contract.

2. Separate forms shall be completed by the Contractor and any subcontractors.

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

IV. MWBE Utilization Plan

A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by DOCCS, through the New York State Contract System (“NYSCS”), which can be viewed at https://ny.newyorkcontracts.com, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to DOCCS, either prior to, or at the time of, the execution of the contract.

B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.

C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a
material breach, DOCCS shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by DOCCS. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, DOCCS shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

B. If DOCCS, upon review of the MWBE Utilization Plan, quarterly or monthly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, DOCCS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly/Monthly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly (non-construction) or monthly (construction) MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to DOCCS by the 10th day following the end of each quarter or month as applicable during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

A. Where DOCCS determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to DOCCS liquidated damages.

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

C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by DOCCS, the Contractor shall pay such liquidated damages to DOCCS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.
MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MWBE AND EEO POLICY STATEMENT

I, __________________________ (the awardee/contractor) agree to adopt the following policies with respect to the project being developed or services rendered at

This organization will require its contractors and subcontractors to take good faith actions to achieve the MWBE contract participation goals and provide Equal Employment Opportunities set by NYS DOCCS for the State-funded project by taking the following steps:

MWBE

(1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.

(2) Utilize ESD Directory of State certified MWBEs and solicit bids from them directly.

(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MWBEs.

(4) Where feasible, divide the work into smaller portions to increase participation by MWBEs and encourage the formation of joint ventures and other partnerships among MWBE contractors to encourage their participation.

(5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof. The Contractor will also maintain, or, where appropriate, require its subcontractors to maintain and submit, as required by DOCCS, records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.

(6) Ensure that project payments to MWBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and/or other credit requirements may be waived and/or appropriate alternatives are developed to encourage MWBE participation.

(7) This organization will include the provisions of sections (1) through (6) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, and will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation 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, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics.

(c) At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status, domestic violence victim status, arrest or conviction record, or predisposing genetic characteristics, and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.

(d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this ______ day of __________________, 20__

Sign: __________________________

Print: __________________________ Title: __________________________
Minority/ Women Business Enterprise Liaison

______________________________ is designated as the Minority/Women Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises—Equal Employment
Opportunity (MWBE—EEO) program.

____________________________________
(Authorized Representative)

Title: ______________________________

Date: ______________________________

Contact:

NYS Department of Corrections and Community Supervision
Division of Industries (CORCRAFT)
ATTN: Purchasing Unit
550 Broadway
Albany, NY 12204-2802
SUBMIT WITH BID OR PROPOSAL, or within a reasonable time thereafter as requested by DOCCS, but prior to Contract Award.

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<td>□ Contractor</td>
<td>□ Contractor’s work force to be utilized on this contract</td>
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<td>□ Subcontractor</td>
<td>□ Contractor’s total work force</td>
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Contractor/Subcontractor’s Name:

Contractor/Subcontractor’s Address:

FEIN: [ ]

Telephone #: [ ]

Enter the total number of employees for each classification.

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<td>Disabled (M)</td>
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<td>Veteran (M)</td>
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Executive/Senior level Officials & Managers

First/Mid level officials & Managers

Professionals

Technicians

Sales Workers

Administrative Support Workers

Craft Workers

Operatives

Laborers and Helpers

Service Workers
General instructions: All Offerors must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor’s total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor’s total work force, the Offeror shall complete this form for the contractor’s current total work force. Subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor must complete this form upon request of DOCCS.

Instructions for completing:
1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate type of work force being reported.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading “Work force by Gender.”
6. Break down the total work force by race/ethnic background and enter under the heading “Work force by Race/Ethnic Identification.”
7. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION
Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

**WHITE** - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

**BLACK** – (Not of Hispanic origin) A person who has origins in any of the black racial groups of Africa.

**HISPANIC or LATINO** - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

**ASIAN & PACIFIC ISLANDER** - All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**AMERICAN INDIAN or ALASKAN NATIVE** - A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community recognition.

**OTHER CATEGORIES**
- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity (ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VETERAN** - an individual who served in the military during time of war.
APPENDIX D

REQUIRED PROCURMENNT FORMS

NOTE: The following documentation will be required upon notice of tentative award:

- Required Certificate of Insurance (see Section 5.17 for insurance types and policy limits)
- Business Automobile Liability Insurance Attestation Form, if applicable (see Appendix D)
- Proof of Compliance with NYS Workers’ Compensation Coverage Requirements (see Section 5.17) *(Only the following forms are acceptable: C-105.2, SI-12, U-26.3, GSA-105.s or CE-200.)*
- Proof of Compliance with NYS Disability Benefits Coverage Requirements (see Section 5.17) *(Only the following forms are acceptable: DB-120.1, DB-155 or CE-200.*
Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this IFB, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this IFB does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm’s ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this IFB;
5. During the negotiation and execution of any contract resulting from this IFB, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this IFB, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this IFB should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Print Name: ________________________________ Title: ________________________________

Signature: ______________________________________ Date: ________________________________

This form must be signed by an authorized executive or legal representative.
USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of SDVOBs by responding to the questions below and including the responses with their bid/proposal:

Bidder/Proposer Name___________________________ Solicitation #__________

Bidder/Proposer Address______________________________________________

Are you a bidder/proposer that is a NYS certified SDVOB? Yes __ No __

If yes, what is your DSDVBD Control #? ______________

Will NYS certified SDVOBs be used in the performance of this contract?

Yes __ No __

If yes, identify the NYS certified SDVOBs that will be used below. (If additional space is required, please add to the table below).

<table>
<thead>
<tr>
<th>SDVOB Name</th>
<th>SDVOB Address</th>
<th>DSDVBD Control #</th>
<th>Contract #</th>
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Nature of Participation % of Total Work Performed $ Amount

Authorized Signature ___________________________ Date ____________________

Contractor will report on actual participation by each SDVOB during the term of the contract to the contracting agency/authority on a quarterly basis according to policies and procedures set by the contracting agency/authority.

NOTE: Information about set asides for SDVOB participation in public procurement can be found http://www.ogs.ny.gov/Core/SDVOBA.asp which provides guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.
ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State Contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contacts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? __________  __________

Yes  No

If yes, identify New York State businesses that will be used and attach identifying information.
Bidder Compliance & Understanding of SFL 139-j and 139-k

This page shall be completed and submitted with your bid/proposal or offer in accordance with Chapter 1 of the Laws of 2005, and New York State Finance Law Sections 139-j and 139-k. Failure to complete and submit this page shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer.

**Bidder Compliance with State Finance Law Section 139-k:**

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

By: ___________________________ Date: ________________

Name: __________________________

Title: __________________________

Contractor Name: ________________________________

Contractor Address: __________________________________________________________

____________________________________________________________________________

**Bidder Understanding of State Finance Law Section 139-j:**

Bidder affirms that it understands and agrees to comply with the procedures of the Division of Industries relative to permissible contacts as required by State Finance Law Section 139-j (3) and Section 139-j (6) (b).

By: ___________________________ Date: ________________

Name: __________________________

Title: __________________________

Contractor Name: ________________________________

Contractor Address: __________________________________________________________

____________________________________________________________________________
CONTRACTOR CERTIFICATION FORMS
(Pursuant to Section 5-A of the Tax Law)

Form ST-220-TD (4 pages)
If filing with the Department of Taxation & Finance for the first time, or previously submitted information needs to be updated, these 4 pages must be removed from this bid, completed, signed and submitted directly to the Department of Taxation and Finance.
(Bidders may also access and complete a fillable Form ST-220-TD by using the following link:
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

Form ST-220-CA (2 pages)
Regardless of whether ST-220-TD is being filed/updated for this bid or not, these 2 pages must be completed, signed and returned with this bid.
(Bidders may also access and complete a fillable Form ST-220-CA by using the following link:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)
Need help?
Telephone assistance
Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431
Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

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

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

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006). See Need help? for more information on how to obtain this publication.

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

Mail completed form to:
NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826
Complete Sections 1, 2, and 3 below. Make only one entry in each section.

**Section 1 – Contractor registration status**

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

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

**Section 2 – Affiliate registration status**

- The contractor does not have any affiliates.

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

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

**Section 3 – Subcontractor registration status**

- The contractor does not have any subcontractors.

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

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

Sworn to this ___ day of ______________ , 20 ___

__________________________  ______________________________
(sign before a notary public)  (title)
Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding $300,000 cumulative sales threshold

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

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</table>
Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF

) SS.

COUNTY OF

On the ___ day of ____________ in the year 20__, before me personally appeared _______________________________, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

he resides at ____________________________________________________________ ,

town of _______________________________________________________________ ,

County of ____________________________________________________________ ,

State of ____________________; and further that:

(Mark an X in the appropriate box and complete the accompanying statement.)

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

☐ (If a corporation): _he is the__________________________________________

of ___________________________________________ , the corporation described in said instrument; that, by authority of the Board

of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for

purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and

on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a________________________________________

of ___________________________________________ , the partnership described in said instrument; that, by the terms of said

partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth

therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said

partnership as the act and deed of said partnership.

☐ (If a limited liability company): _he is a duly authorized member of ________________________________

LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument

on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed

the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited

liability company.

__________________________________________

Notary Public

Registration No. __________________________________________
New York State Department of Taxation and Finance

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

ST-220-CA
(12/11)

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

<table>
<thead>
<tr>
<th>Contractor name</th>
<th>For covered agency use only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor’s principal place of business</td>
<td>Contract number or description</td>
</tr>
<tr>
<td>City</td>
<td>State</td>
</tr>
<tr>
<td>Contractor’s mailing address (if different than above)</td>
<td>Estimated contract value over the full term of contract (but not including renewals)</td>
</tr>
<tr>
<td>Contractor’s federal employer identification number (EIN)</td>
<td>Contractor’s sales tax ID number (if different from contractor’s EIN)</td>
</tr>
<tr>
<td>Contractor’s telephone number</td>
<td>$</td>
</tr>
<tr>
<td>Covered agency address</td>
<td>Covered agency name</td>
</tr>
<tr>
<td>Covered agency telephone number</td>
<td></td>
</tr>
</tbody>
</table>

I, ______________________, hereby affirm, under penalty of perjury, that I am ______________________ of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

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

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with ________________ (insert contract number or description) and, to the best of the contractor’s knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ___ day of ________________, 20___

_____________________________
(sign before a notary public) (title)

Instructions

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

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

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

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

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

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

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

STATE OF } 
COUNTY OF 

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

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

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

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

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

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

Notary Public

Registration No.

Privacy notification

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

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

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

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

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?

Visit our Web site at www.tax.ny.gov
- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.
**NOTE**: The following documentation will be required upon notice of tentative award:

**Business Automobile Liability Insurance Attestation – IFB #1067**

In the event that your firm does not currently possess all Business Automobile Liability Insurance as required by this solicitation, your firm will be required to complete the attached attestation and this attestation must be signed by an individual who is authorized to bind the organization in a contract.

Please return a signed original hard copy of the attestation, signed in black or blue ink, to follow addressed to:

NYS Department of Corrections and Community Supervision  
Division of Industries  
Corcraft  
550 Broadway  
Albany, NY 12204-2802
To comply with the Business Automobile Liability Insurance Requirements outlined in IFB #1067 issued by the New York State Department of Corrections and Community Supervision, Division of Industries, I hereby certify that (please check one option below):

☐ The undersigned organization does not currently own, lease, or hire any vehicles which will be used to fulfill the requirements of any contract resulting from the above referenced solicitation; Based upon the foregoing, the undersigned organization does not currently possess Business Automobile Liability Insurance as required by this solicitation;

If, during the term of any contract resulting from the above referenced solicitation, the undersigned organization acquires, leases, or hires a vehicle or vehicles that will be used to fulfill the requirements of any contract resulting from the above referenced solicitation, the undersigned organization will obtain Business Automobile Liability Insurance that meets all of the requirements set forth in the above referenced solicitation and provide Division of Industries with evidence of such coverage in the form of a certificate within ten (10) business days following the date the Business Automobile Liability Insurance coverage is bound. Subsequently, the undersigned organization will provide Division of Industries with copies of all applicable endorsements (i.e. an additional insured endorsement) upon receipt. Proof of coverage and applicable endorsements shall be submitted to: The New York State Department of Corrections and Community Supervision, Division of Industries, CORCRAFT, 550 Broadway, Albany, New York 12204-2802.

The undersigned organization understands that a failure to provide or maintain any insurance required by above referenced solicitation or any contract resulting from that solicitation after the undersigned organization acquires, leases, or hires a vehicle or vehicles that will be used to fulfill the requirements of any contract resulting from the above referenced solicitation shall be treated as a breach or default under that contract and the undersigned organization shall still be held accountable for any obligations, responsibilities or liabilities under the above referenced solicitation or any contract resulting from that solicitation;

☐ The undersigned organization does not currently own or lease any vehicles which will be used to fulfill the requirements of any contract resulting from the above referenced solicitation, however the organization does hire and/or utilize non-owned vehicles to fulfill the requirements of any contract resulting from the above referenced solicitation;

Based upon the selection of this option, the undersigned organization must obtain and maintain in full force and effect, at their own expense, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

<table>
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<tr>
<th>Insurance Type</th>
<th>All Lots</th>
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<tbody>
<tr>
<td>Business Automobile Liability Insurance</td>
<td>Not less than $1,000,000 each occurrence</td>
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</table>

Such insurance shall cover liability arising out of hired and/or non-owned automobiles.

If, during the term of any contract resulting from the above referenced solicitation, the undersigned organization acquires or leases a vehicle or vehicles that will be used to fulfill the requirements of any contract resulting from the above referenced solicitation, the undersigned organization will obtain Business Automobile Liability Insurance that meets all of the requirements set forth in the above referenced solicitation and provide Division of Industries with evidence of such coverage in the form of a certificate within ten (10) business days following the date the Business Automobile Liability Insurance coverage is bound. Subsequently, the undersigned organization will provide Division of Industries with copies of all applicable endorsements (i.e. an additional insured endorsement) upon receipt. Proof of coverage and applicable endorsements shall be submitted to: The New York State Department of Corrections and Community Supervision, Division of Industries, CORCRAFT, 550 Broadway, Albany, New York 12204-2802.

The undersigned organization understands that a failure to provide or maintain any insurance required by above referenced solicitation or any contract resulting from that solicitation after the undersigned organization acquires or leases a vehicle or vehicles that will be used to fulfill the requirements of any contract resulting from the above referenced solicitation shall be treated as a breach or default under that contract and the undersigned organization shall still be held accountable for any obligations, responsibilities or liabilities under the above referenced solicitation or any contract resulting from that solicitation.
Business Automobile Liability Insurance Attestation – IFB #1067 (Cont’d)

Signature Block

Authorized Signature:  

Print/type Name:  

Title:  

Organization:  

Date Signed:  

RETURN BUSINESS AUTOMOBILE LIABILITY INSURANCE ATTESTATION FORM
IFB #1067 - BID COST FORM

No alteration, erasure or addition is to be made on this page. If your bid differs from the specifications, attach a separate sheet and if necessary explain such deviation(s) or qualification(s).

PRICE TO INCLUDE PICKUP OF SCRAP METAL FROM:

Attica Correctional Facility
Division of Industries
639 Exchange Street
Attica, NY 14011

LOT (Item No. 1)

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<tr>
<th>Item No.</th>
<th>Description</th>
<th>Estimated Quantities</th>
<th>Quote per High Quote</th>
<th>Gross Ton</th>
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<td>#1 Heavy Melting</td>
<td>350,000 lbs.</td>
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<td>PLUS/MINUS</td>
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Guaranteed Pickup in Working Days
Notification

__________ Working Days
ATTACHMENT 2

BID SUBMISSION CHECKLIST
**IFB #1067 - Bid Submission Checklist**

All Bidders must complete and submit the Bid Submission Checklist to certify that all required information, including mandatory forms and document requirements for the IFB, have been completed and/or met and included in this bid submission.

<table>
<thead>
<tr>
<th>Check Box</th>
<th>Checklist Item</th>
<th>Number of Originals</th>
<th>Number of Exact Copies</th>
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<tr>
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<td>Completed &amp; Signed IFB Cover Page, which shall include:</td>
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<td>✓ Bidder’s Federal Tax Identification Number</td>
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<td></td>
<td>✓ Bidder’s NYS Vendor Identification Number</td>
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<td>✓ Bidder’s Signature</td>
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<td>Cover Letter, signed by authorized representative, providing all required information/documentation (see Section 2.2.1)</td>
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<td>Completed Bid Cost Form (see Attachment 1)</td>
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<td>Signed Copies of any addenda released for this solicitation.</td>
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<td>Responses to Bidder Questions (see Pages 42-46)</td>
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<td>Bid Submission Checklist (this form)</td>
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**Required Procurement Forms (see Appendix D)**

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<th>Checklist Item</th>
<th>Number of Originals</th>
<th>Number of Exact Copies</th>
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<tr>
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<td>Vendor Assurance of No Conflict of Interest or Detrimental Effect</td>
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<td>Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance</td>
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<td>Encouraging Use of NYS Businesses in Contract Performance</td>
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<td>Vendor Responsibility Questionnaire (see Section 5.12):</td>
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<td>Online Questionnaire Certified Date:_______ OR</td>
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<td>Paper Questionnaire Submission</td>
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<td>Bidder Compliance &amp; Understanding of SFL 139-j and 139-k</td>
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<td>Contractor Certification Forms</td>
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<td>Form ST-220-TD (File directly with NYS Tax Dept.)</td>
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<td>Form ST-22-CA (Submit with bid submission)</td>
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**M/WBE – EEO Required Forms (see Appendix C)**

<table>
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<th>Check Box</th>
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<th>Number of Originals</th>
<th>Number of Exact Copies</th>
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<tbody>
<tr>
<td></td>
<td>M/WBE – EEO Policy Statement</td>
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<td>EEO Staffing Plan</td>
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SIGNATURE ____________________________________________

COMPANY NAME ________________________________________

PRINTED NAME ________________________________________

TITLE ______________________________________________

DATE ______________________________________________

**NOTE:** The following documentation will be required upon notice of tentative award:
- Required Certificate of Insurance (see Section 5.17 for insurance types and policy limits)
- Business Automobile Liability Insurance Attestation Form, if applicable (see Appendix D)
- Proof of Compliance with NYS Workers’ Compensation Coverage Requirements (see Section 5.17) *(Only the following forms are acceptable: C-105.2, SI-12, U-26.3, GSA-105.s or CE-200.)*
- Proof of Compliance with NYS Disability Benefits Coverage Requirements (see Section 5.17) *(Only the following forms are acceptable: DB-120.1, DB-155 or CE-200.)*
New York State  
Division of Correctional Industries  

NON-BID RESPONSE FORM

A required activity of the IFB process is the compiling of a Bid Tabulation. Ideally, this tabulation should incorporate not only those proposals submitted but also feedback from vendors receiving the IFB to determine why proposals were not submitted. Your cooperation in completing this form is requested should your company/agency decide not to respond to the below identified IFB. Please forward your response to:

Kathleen Gallagher, Supervisor CI Purchasing  
New York State Division of Correctional Industries  
550 Broadway  
Albany, New York 12204-2802

Company name: ____________________________________________
Address: ___________________________________________________
City, State, Zip: _______________________________________________
Telephone: ___________________________________________________
IFB Number: 1067
IFB Title: Scrap Metal Removal Services

☐ My company/agency did not bid on the above identified IFB but please leave our company/agency on your bidder’s list.
☐ My company/agency did not bid on the above identified IFB and we wish to be excluded from your bidder’s list for future IFB considerations.

REASONS FOR NOT SUBMITTING A BID

☐ Work or service requested not performed by the company. Please indicate your organization’s type of work or service performed: ____________________________________________________________
☐ Bid request received too late. Insufficient time to plan, estimate and submit a bid.
☐ Too busy to consider bidding on this contract.
☐ Unable to meet specifications/other considerations in this proposal.
☐ Specifications in the IFB were unclear.
☐ Unwilling to accept liability or responsibility for damages.
☐ Unable to meet insurance requirements.
☐ Unable to bid on all components (i.e., all locations).
☐ Reluctant to contract with the State because of the many standard requirements.
☐ Previous unfavorable experience with state contracts/work. Please explain: ____________________________________________________________
☐ Other (specify): ____________________________________________________________

Name ____________________________ Title ____________________________

Signature ____________________________ Date ____________________________