

PROJECT MANUAL

**PRE-BID SITE VISIT SCHEDULED
ON MARCH 10, 2011
SEE ADVERTISEMENT FOR BIDS INSIDE**

PROJECT NO. 42072-C

**CONSTRUCTION WORK
UPGRADE ELECTRICAL DISTRIBUTION
SYSTEM
ELMIRA CORRECTIONAL FACILITY
1879 DAVIS STREET
ELMIRA, NY 14902-0500**

JANUARY 10, 2011



NYS OFFICE OF GENERAL SERVICES

Serving New York

ANDREW M. CUOMO
Governor

JAMES M. DAVIES, A.I.A.
Deputy Commissioner, Design and Construction

PROJECT NO. 42072-C

CONSTRUCTION WORK

**UPGRADE ELECTRICAL DISTRIBUTION SYSTEM
ELMIRA CORRECTIONAL FACILITY
1879 DAVIS STREET
ELMIRA, NY 14902-0500**

JANUARY 10, 2011

**CLIENT: NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES**

PROJECT TEAM LEADER: MICHAEL CALLAGHAN, P.E.

PREPARED BY

CHA CONSULTING

III Winners Circle
Albany, NY 12205

Petersen Group Architects

III Winners Circle
Albany, NY 12205

PREPARED FOR

State of New York
Office of General Services
35th Floor, Corning Tower
The Governor Nelson A. Rockefeller
Empire State Plaza
Albany, NY 12242
Phone (518) 474-0203
FAX (518) 473-7862



NOTE:....THE OFFICE OF GENERAL SERVICES REQUIRES GOOD FAITH EFFORTS ON THE PART OF ITS CONTRACTORS TO SOLICIT AND OBTAIN THE PARTICIPATION OF MINORITIES AND WOMEN AS SUBCONTRACTORS, AND EMPLOYEES IN ITS PROGRAMS.

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1.01 DRAWINGS

- A. The Contract Drawings, which accompany this Project Manual and form a part of the Contract Documents, are listed on the Title Sheet of the Drawings.
- B. The drawings for related contracts are listed on the Title Sheet for reference only. Examine the drawings for related contracts to ascertain the relationship of the Work to the related contracts.

END OF LIST

ADVERTISEMENT FOR BIDS

Sealed bids for Project Nos. 42072-C, 42072-H and 42072-E, comprising separate contracts for Construction Work, HVAC Work, and Electrical Work, Upgrade Electrical Distribution System, Elmira Correctional Facility, 1879 Davis Street, PO Box 500, Elmira (Chemung County), NY, will be received by the Office of General Services (OGS), Design & Construction Group (D&C), Contract Administration, 35th Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, on behalf of the Department of Correctional Services, until 2:00 p.m. on Wednesday, March 23, 2011, when they will be publicly opened and read. Each bid must be prepared and submitted in accordance with the Instructions to Bidders and must be accompanied by a certified check, bank check, or bid bond in the amount of \$53,200 for C, \$25,400 for H, and \$311,400 for E.

All successful bidders on a multiple trade project or the successful bidder with a bid over \$200,000 on a single trade project, will be required to furnish a Performance Bond and a Labor and Material Bond in the statutory form of public bonds required by Sections 136 and 137 of the State Finance Law, each for 100% of the amount of the Contract estimated to be between \$1,000,000 and \$2,000,000 for C, between \$500,000 and \$1,000,000 for H, and between \$10,000,000 and \$15,000,000 for E. The requirement for Labor and Material and Performance Bonds may be waived on a bid under \$200,000 on a single trade project.

Pursuant to State Finance Law §139-j and §139-k, this solicitation includes and imposes certain restrictions on communications between OGS D&C and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by OGS D&C and Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff are Frank Peris in the Bureau of Contract Awards, telephone (518) 474-0203, fax (518) 473-7862 and John Lewyckyj, Director of Contract Administration, telephone (518) 474-0201, fax (518) 486-1650. OGS D&C employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the bidder is debarred from obtaining governmental Procurement Contracts. Bidders responding to this Advertisement must familiarize themselves with the new Legislative and State Finance Law requirements and will be expected to affirm that they understand and agree to comply on the bid form. Further information about these requirements can be found within the project manual or at <http://www.ogs.state.ny.us> and go to About OGS, Rules Regulations and Policy, Advisory Council on Procurement Lobbying.

The completion date for this project is 730 days after the Agreement is approved by the Comptroller.

The only time prospective bidders will be allowed to visit the job site to take field measurements and examine existing conditions of the project area will be at 11:00 a.m. on March 10, 2011, at the OGS D&C Field Office, Elmira Correctional Facility, 1879 Davis St, Elmira, NY. Prospective bidders are urged to visit the site at this time. Prospective bidders or their representatives attending the pre-bid site visit will not be admitted on facility grounds without proper photo identification. Note that parking restrictions and security provisions will apply and all vehicles will be subject to search.

Phone the office of Jeff Vann, (607) 734-0592 ext 112 a minimum of 72 hours in advance of the date to provide the names of those who will attend the pre-bid site visit.

It is the policy of the State and the Office of General Services to encourage minority business enterprise participation in this project by contractors, subcontractors and suppliers, and all bidders are expected to cooperate in implementing this policy.

The Office of General Services reserves the right to reject any or all bids.

The Bidding and Contract Documents for this Project are available on compact disc (CD) only, and may be obtained for an \$8.00 deposit per set, plus a \$2.00 per set shipping and handling fee. Contractors and other interested parties can order CD's on-line through a secure web interface available 24 hours a day, 7 days a week. Please use the following link at the OGS website for ordering and payment instructions: <http://www.ogs.state.ny.us/bu/dc/esb/acquirebid.asp>.

For questions about purchase of bid documents, please send an e-mail to D&C.Plans@ogs.state.ny.us, or call toll free at 1-877-647-7526.

For additional information on this project, please use the following link: <http://www.ogs.state.ny.us/bu/dc>.

James M. Davies, AIA
Deputy Commissioner
Design and Construction

DOCUMENT 002113

INSTRUCTIONS TO BIDDERS

1. EXAMINATION OF DOCUMENTS

- 1.1 Carefully examine and be familiar with the Bidding and Contract Documents.
- 1.2 Examine information concerning subsurface or other latent physical conditions. It is presented in good faith but is not intended as a substitute for personal investigation, interpretations, or judgment of the Contractor.

2. VISIT TO THE SITE

- 2.1 Visit the Site of the Work prior to submitting bid. Refer to the Advertisement for Bids for any special instructions.
- 2.2 Become familiar with restrictions and regulations established by the Facility. Existing restrictions and regulations will not be considered as grounds for any additional cost over the Contract sum.
- 2.3 Assume the risk of encountering any subsurface or other latent physical condition that can be reasonably anticipated on the basis of documentary information provided by the State and from inspection and examination of the Site.
- 2.4 Interpretations of Contract Documents by Facility Personnel are not binding.

3. DESIGNATED, PERMISSIBLE, IMPERMISSIBLE CONTACTS AND QUESTIONS

- 3.1 The designated contacts during the restricted period for this procurement will be Frank Peris in the Bureau of Contract Awards, telephone (518) 474-0203, fax (518) 473-7862 and John Lewyckyj, Director of Contract Administration, fax (518) 486-1650.
- 3.2 State Finance Law §139-j recognizes a series of permissible contacts that can go to other than the designated contacts, as follows:
 - 3.2.1 The submission of written proposals in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract.
 - 3.2.2 The submission of written questions to a designated contact set forth in a request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract, when all written questions and responses are to be disseminated to all offerers who have expressed an interest in the request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract.
 - 3.2.3 Participation in a conference provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from offerers intending to result in the procurement contract.
 - 3.2.4 Complaints by an offerer regarding the failure of the person or persons designated by the procuring governmental entity pursuant to this section to respond in a timely manner to authorized offerer contacts made in writing to the office of general counsel of the procuring governmental entity, provided that any such written complaints shall become a part of the procurement record.
 - 3.2.5 Offerers who have been tentatively awarded a contract and are engaged in communication with a governmental entity solely for the purpose of negotiating the terms of the procurement contract after being notified of tentative award.
 - 3.2.6 Contacts between designated governmental staff of the procuring governmental entity and an offerer to request the review of a procurement contract award.
 - 3.2.7 Contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity

conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding.

- 3.2.8 Complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction.
 - 3.2.9 Written protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required by law, and where such communications and any response thereto are made in writing and shall be entered in the procurement record pursuant to section one hundred sixty-three of the state finance law.
 - 3.2.10 Complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office.
 - 3.2.11 Permissible Contacts are only with the procuring agency unless specifically excepted.
- 3.3 Impermissible contacts include those that a reasonable person would infer are intended to influence a Governmental Procurement and occur during the restricted period of a governmental procurement between the offerer and any member, officer or employee of any governmental entity; provided, however, that nothing in this section shall be deemed to prohibit an offerer from communicating with a member of the state legislature or legislative staff about a governmental procurement. Contacting a person or entity other than the designated contact person during the restricted period, when such contact does not fall within one of the exemptions, is also an impermissible contact.
- 3.4 Direct all questions regarding the intent or meaning of the drawings or specifications to the OGS website at:
- <https://www3.ogs.state.ny.us/dnc/contractorConsultant/esb/ESBPlansAvailableIndex.asp>
- All responses to appropriate pre-bid inquiries will be communicated via the OGS website. Those inquiries resulting in clarification and or changes to the bid documents will be communicated by Addenda to all persons who have obtained drawings and specifications.
- 3.5 Pre-bid inquiries answered by means other than Addenda will not be binding.

4. PREPARATION OF BIDS

- 4.1 Prepare each bid on the official form furnished by the State. ***Enter all amounts in numerals in whole dollar amounts.*** Make no erasures, cross-outs, whiteouts, write-overs, obliterations, or changes of any kind in the Bid Form phraseology, in the entry of unit prices, or anywhere on the Bid Form. Fill in all blank spaces legibly. An illegible entry may disqualify the bid in its entirety. If a mistake is made, use a new Bid Form. No post bid meetings will be afforded to any bidder to explain or clarify illegible or changed entries.
- 4.2 If the Project Manual contains Section 012300 - Alternates, indicate the amounts to be added to or deducted from the base bid in the spaces provided on the Bid Form. If the Work is to be performed at no change in cost, indicate the word "NONE". Any bid which fails to indicate an amount with the words "ADD" or "DEDUCT" or the word "NONE", for each alternate, will be held to be informal and may be rejected.
- 4.3 Sign the Bid Form in the space provided. An officer or a principal of a corporation or a partnership signing for the bidder shall print or type the legal name of the person, partnership, or corporation on the line provided and place his/her signature after "SIGN BID HERE". The same procedure shall apply to the bid of joint venture by two or more firms, except that the signature and title of an officer or a principal of each member firm of the joint venture shall be required. All signatures must be original. Mechanically reproduced signatures or copies are not acceptable. Submitted Bid Forms that do not conform to these requirements will be disqualified.
- 4.4 Mailing Address: Include street address. Addenda sent by other than US Postal Service cannot be delivered to Post Office Boxes.
- 4.5 Note in the space designated on the Bid Form, the Addenda by numbers and dates, which have been received. If no Addenda have been received, insert the word "NONE".
- 4.6 All bidders must complete an Offerer Disclosure of Prior Non-Responsibility Determinations, Form DCA-3, and include it with their Bid Form.

- 4.7 All bids on a multiple trade project or a bid over \$200,000 on a single trade project must include the cost of Labor and Material and Performance Bonds. The requirement for Labor and Material and Performance Bonds may be waived on a bid under \$200,000 on a single trade project.

5. BID SECURITY INFORMATION

- 5.1 Bid security is required as a guarantee that the bidder will enter into the Contract and furnish a satisfactory Performance Bond and Labor and Material Bond within the time specified on the Bid Form. Submit bid security in the amount indicated in the Advertisement for Bids in one of the following forms:
- 5.1.1 Certified check or bank check drawn upon a legally incorporated bank or trust company (payable to the Office of General Services).
 - 5.1.2 Bid Bond on a Design and Construction form to be issued by a Surety licensed in the State of New York.
- 5.2 Upon submission of a certified check or bank check, the bid security of the successful bidder will be returned (check issued by the State Comptroller's Office) pending acceptance of the required bonds and the execution of Contract. The second low bidder's bid security will be returned after the low bidder executes the Contract or with the submission of an approved Substitute Bid Bond on the Design and Construction form. The bid security of all other bidders with checks will be returned as soon as possible after the low bidder has been determined.
- 5.3 Bid Bonds submitted as bid security will not be automatically returned to the Contractor. Firms requesting to have bonds returned may do so in writing provided they are not the first or second low bidder prior to award. Only those requests made in writing, directed to the Bureau of Contract Awards shall be considered for return.
- 5.4 Sign the Bid Bond in the space provided. An officer or a principal of a corporation or a partnership signing for the bidder shall print or type the legal name of the person, partnership, or corporation on the line provided and place his/her signature above "Principal". The same procedure shall apply to the bid security of joint venture by two or more firms, except that the signature and title of an officer or a principal of each member firm of the joint venture shall be required. The same procedure shall apply to the signature for the Attorney-in-Fact. All signatures must be original. Mechanically reproduced signatures or copies are not acceptable for either signature. Submitted Bid Security that does not conform to these requirements will be disqualified.

6. SUBMISSION OF BID

- 6.1 Submit Bid Form, bid security and form DCA-3 – Offerer Disclosure of Prior Non-Responsibility Determinations in a sealed envelope. Use envelope furnished for that purpose by the State. Telephone or telegraph bids will not be accepted.
- 6.2 All bids must be received before the time specified, and at the place designated for the receipt of bids.
- 6.3 A late bid will be considered if: (1) its arrival at the place designated after the time specified can be shown by documentary or other proofs to be due to mishandling of the Office of General Services and (2) that absent such mishandling, the bid would have arrived timely. Delays in the mail or any other means of transmittal, including couriers or agents of the State, other than employees of the Office of General Services will not suffice to excuse late arrival.
- 6.4 A late bid not eligible for consideration will be returned unopened with notification of the reason for its refusal.

7. MODIFICATION OF BID

Bid modifications by amendment will only be considered on condition that: (1) the amendment arrives before the time specified, and at the place designated for receipt of bids, (2) the amendment is in writing and executed by a principal of the bidder firm, and (3) the bid, as amended, conforms in all respects with the Contract Documents.

8. WITHDRAWAL OF BID

- 8.1 A bid may be withdrawn at any time prior to the time specified for receipt of bids.

- 8.2 Not more than 5 business days after the bid opening or a scheduled pre-award meeting which ever comes later, a low bidder may request the withdrawal of its bid based on a mistake. The request must be submitted via certified or registered mail to the address to which the bid was directed. The Contracting Officer may conduct or have conducted on his/her behalf a fact-finding proceeding to develop information concerning the request for withdrawal. A request for withdrawal of a bid made after the specified number of days allowed shall result in automatic forfeiture of the bid security.
- 8.3 Following a timely request for withdrawal of a bid, the bid security will be returned if the bidder establishes by credible evidence, including original documents when requested, the following:
- 8.3.1 An error, clerical as opposed to judgmental in nature and verifiable by written evidence, occurred in the computation of the bid,
- 8.3.2 The error constitutes either an unintentional and substantial computational error or an unintentional omission of a substantial quantity of labor and/or material from the final bid computation,
- 8.3.3 The absence of gross negligence in the preparation of the bid. For the purposes of this subparagraph, gross negligence may include,
- i) the apparent failure of a bidder to account for two (2) or more categories (divisions) of work,
 - ii) the use of multiple erroneous quotations from subcontractors or suppliers,
 - iii) the submission to the Contracting Officer of a bid withdrawal request within the preceding six (6) months.
- 8.4 If the bidder fails to meet its burden of proof, the request to withdraw without penalty shall be denied and its bid security will be forfeited and become the property of the State. The decision of the Contracting Officer shall be final and conclusive.
- 8.5 Once a request to withdraw is made, the Bidder is ineligible for award. The Contracting Officer shall continue to progress the award process considering only the remaining bids.

9. DISQUALIFICATION

- 9.1 Any bid which fails to conform to the requirements of the Bidding and Contract Documents may be rejected.
- 9.2 The Commissioner may waive any informality or afford the bidder an opportunity to remedy any deficiency resulting from a minor informality or irregularity.
- 9.3 The State reserves the right to disqualify bidders, before or after bid opening, upon evidence of collusion with third parties or other illegal practices upon the part of the bidder.
- 9.4 Bidders may review the list of common Bid Informalities and Bid Disqualifications at:

<https://www3.ogs.state.ny.us/dnc/contractorConsultant/esb/informalitylist.asp>

10. GOVERNING LAWS AND REGULATIONS ADMINISTERED BY OTHER DEPARTMENTS

- 10.1 Taxes: All taxes pertaining to the Work must be paid. Address inquiries regarding taxes to the Tax Collecting Agency. For information regarding sales and use taxes contact the Sales Tax Bureau, Department of Taxation and Finance.
- 10.2 While all applicable laws, rules and regulations of the State of New York are incorporated by reference in this Contract, take special note of the provisions of the Labor Law and Industrial Code Rule 23 relative to the safety of workers and of persons lawfully occupying or using the premises. Address inquiries regarding labor law provisions to the Labor Department.
- 10.3 Anti-Discrimination Clause: Discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status is prohibited.

11. OPENING OF BIDS

Bids will be opened as announced in the Advertisement for Bids.

12. DETERMINATION OF CONTRACTOR'S RESPONSIBILITY

12.1 The State Public Buildings Law requires that contracts for public work in the State of New York be awarded to the lowest responsible and reliable bidders as will best promote the public interest.

12.2 In order to assist the State in determining the responsibility and reliability of the apparent low bidder for any competitively bid contract of \$10,000 or more, and any proposed subcontract work valued at \$10,000 or more, each apparent low bidder and all proposed subcontractors will be required to submit a "New York State Vendor Responsibility Questionnaire For Profit Construction" (Form CCA-2) prior to contract award or subcontractor approval.

The Office of General Services recommends that vendors file the required CCA-2 form online via the New York State VendRep System. To enroll in and use the VendRep System, see the VendRep System Information 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>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by e-mail at ciohelpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website <http://www.osc.state.ny.us/vendrep>, or may telephone the Office of the State Comptroller's Help Desk.

12.3 After the bids are opened, the apparent low bidder shall complete and file the CCA-2 (online OR paper questionnaire) within five (5) days. Vendors using the online system may certify (or recertify) and file the CCA-2 electronically via the New York State VendRep System (<https://portal.osc.state.ny.us>).

12.4 It is recommended that all bidders become familiar in advance with all of the requirements of the CCA-2.

12.5 All bidders must submit a completed Offerer Disclosure of Prior Non-Responsibility Determinations (Form DCA-3) along with their Bid Form.

12.6 The determination of responsibility will include a review to ensure the Contractor has not knowingly and willfully violated the provisions of the Procurement Lobby Law or New York State Finance Law §139-j and §139-k.

12.7 New York State Finance Law §139-k (2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, a Contractor must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.

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

13. AWARD OF CONTRACT

13.1 The Contract may be awarded to the lowest responsible and reliable bidder as will best promote the public interest.

- 13.2 If alternates are included in the bidding documents, the State reserves the right to accept or reject any or all alternates. The State shall determine the lowest bid by adding to or deducting, from the Base Bid Amount of the bidders, the additive or deductive alternates, if any, that the State elects to accept after the opening of the bids. Alternates will be accepted in the order they are set forth in the contract documents.
- 13.3 The State reserves the right to reject any or all bids, and advertise for new bids, if in its opinion the best interest of the State will thereby be promoted. In the event that all bids are rejected, each bidder will be so notified.
- 13.4 A bidder may withdraw its bid if no award is made within forty-five (45) days after the receipt of bids. A written notice must be submitted via certified or registered mail to the address in Paragraph 3.4 of these Instructions to Bidders prior to approval of the contract by the Comptroller of the State of New York. The notice must clearly state that the withdrawal is based on the fact that the contract was not awarded within 45 days after the receipt of bids.

14. REFUND FOR DRAWINGS AND SPECIFICATIONS

Refunds of deposits for each set of bidding and contract documents obtained will be made as follows:

- 14.1 Successful Bidder: Refund of full amount of deposit for all sets obtained.
- 14.2 No refunds of shipping and handling fees will be made.

15. OMNIBUS PROCUREMENT

- 15.1 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.
- 15.2 Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
One Commerce Plaza, 9th Floor
Albany, NY 12245
Telephone: (518) 473-0499
FAX: (518) 486-7577

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

NYS Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245
Telephone: (518) 292-5250
FAX: (518) 292-5803

16. SURETY BOND

If required, the Contractor shall furnish Performance and Payment Bonds in an amount equal to one hundred percent (100%) of the total Contract price as security for the faithful performance of this Contract, and for the payment of all persons performing labor or furnishing materials in connection with this contract. These bonds are to be executed on the State Comptroller's form and the surety company must be licensed in the State of New York, have a Best Rating of A- or better and appear on the most recent published Department of the Treasury's Listing of Approved Sureties (Department Circular 570) at the time of filing the bonds.

17. VENDOR PROTEST POLICY

It is the policy of the Office of General Services to provide all vendors, prospective bidders, bidders, suppliers and contractors with an opportunity to resolve complaints or inquiries related to bid solicitations, contract awards, or other associated contract award actions. The Office of General Services encourages vendors to seek resolution of complaints related to bid solicitations, contract awards, or other associated actions through consultation with the agency designated contact(s). All such complaints will be given impartial and timely consideration. Vendors may also file formal written protests. A copy of the Design and Construction Vendor Protest Policy and Procedures may be obtained by contacting the designated contact or by visiting the OGS website at <http://www.ogs.state.ny.us>.

18. POLICY ON TIED BIDS

A tie-bid is defined as an instance where bids are received from two or more Bidders who are the low responsive Bidders, and their offers are identical. It is the policy of the Office of General Services to settle the outcome of tie-bids by either drawing a name from a hat or flipping a coin within 24 hours of the bid opening. All affected firms will be notified of the tie, the time and place of the resolution of the tie and shall be invited to witness the outcome. Attendance is not mandatory. The drawing/flip will be held at the Office of General Services, Bureau of Contract Awards, 35th Floor, Corning Tower, Albany, New York. Two impartial witnesses will be provided and shall be present. All attendees will acknowledge the results of the tie-breaker on the bid tabulation sheet. All firms affected by the tied bids will be notified of the results. The results pursuant to this provision shall be considered final.

19. WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of the vendor's bid or renewal.

19.1. Proof of Compliance with Workers' Compensation Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall: (1) obtain such coverage from an insurance carrier; or (2) be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan; or (3) be legally exempt from obtaining Workers' Compensation insurance coverage.

An ACORD 25 form is **NOT** acceptable proof of workers' compensation coverage.

A Contractor seeking to enter into a contract with the State of New York **MUST** provide **ONE** of the following forms to the Office of General Services upon request, prior to award:

19.1.1 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.state.ny.us, under the heading "Forms"; **OR**

19.1.2 C-105.2 – *Certificate of Workers' Compensation Insurance* (the contractor's insurance carrier will send this form to the Office of General Services upon request); contractors insured through the New York State Insurance Fund should use their version of the form, the U-26.3; **OR**

19.1.3 SI-12 – *Certificate of Workers Compensation Self-Insurance* (the contractor should call the Workers' Compensation Board's Self-Insurance Office at 518 402-0247), **OR** GSI-105.2 – *Certificate of Participation in Workers' Compensation Group Self-Insurance* (the contractor's Group Self-Insurance Administrator will send this form to the Office of General Services upon request).

19.2 Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall: (1) obtain such coverage from an insurance carrier; or (2) be a Board-approved self-insured employer; or (3) be legally exempt from obtaining disability benefits coverage.

A Contractor seeking to enter into a contract with the State of New York **MUST** provide **ONE** of the following forms to the Office of General Services upon request, prior to award:

19.2.1 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, <http://www.wcb.state.ny.us> under the heading "Forms"; **OR**

19.2.2 DB-120.1 – *Certificate of Disability Benefits Insurance* (the contractor's insurance carrier will send this form to the Office of General Services upon request); **OR**

19.2.3 DB-155 – *Certificate of Disability Benefits Self Insurance* (the contractor should call the Workers' Compensation Board's Self-Insurance Office at 518 402-0247).

19.3 All of the above-referenced forms, except the CE-200, SI-12 and the DB-155 must show the following as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder):

NYS Office of General Services – Design & Construction Group
Division of Contract Administration
35th Floor, Corning Tower, GNARESP
Albany, NY 12242

20. ELECTRONIC CONTRACTOR PAYMENTS (ECP)

20.1 The ECP Program is initiated with an Electronic Contractor Payments (ECP) Certification Form that is forwarded to the contractor with the project agreement and bond forms. This form must be completed, executed and returned with the executed Contract agreement in order for the contractor to participate in the ECP program. The executed ECP Certification Form will remain on file. Note that the certification will apply to this contract and to future ECP-eligible contracts.

20.2 Upon final approval of the contract, an email will be sent to the contractor's designated e-mail address with a hyperlink that will enable the firm to register, using a temporary password, on the OGS Design & Construction Vendor Interface. The temporary password will be sent to the contractor in letter form mailed on the same day.

20.3 The OGS Vendor Interface website will provide the ability to view contract information, submit the detailed estimate and payments requests electronically, and communicate with OGS Design & Construction.

END OF DOCUMENT

DOCUMENT 002213

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - AFFIRMATIVE ACTIONS

This Supplement modifies the Instructions to Bidders. Where any part of the Instructions to Bidders is modified by this supplement, the unaltered provisions of that part shall remain in effect.

Add the following:

21. GOALS

21.1 To insure meaningful participation of minority and women workers and certified Minority and Women-Owned Business Enterprises (“M/WBEs”) in the Project, the Commissioner of General Services has established goals set forth in the Supplementary Conditions.

21.2 All bidders should note that important definitions and conditions relating to the foregoing MBE, WBE and Minority and women workforce goals are contained in the Supplementary Conditions.

21.3 In order to assist the State in determining compliance with the goals set forth in the Supplementary Conditions the apparent low bidder will be required to submit a “Utilization Plan” (Form BDC-328) prior to contract award or subcontractor approval. Blank copies of the form are included in the Appendix of this Project Manual and may be mechanically reproduced. Additional copies may be obtained upon request from the address listed in Paragraph 21.2 below.

21.4 The apparent low bidder must submit a completed “Utilization Plan” (Form BDC-328) to the address on the form within five working days after the bids are opened.

22. CERTIFICATION

22.1 All Minority and Women-Owned Business Enterprises (“MBEs” or “WBEs”) proposed as contractors, subcontractors or suppliers must be certified by the NYS Department of Economic Development, Division of Minority and Women’s Business Development, 30 South Pearl Street, Albany, NY 12245, to be eligible for MBE or WBE credit on this project.

22.2 UPON WRITTEN REQUEST, The New York State Office of General Services’ Office of Minority and Women-Owned Business Enterprises will provide a computer printout of certified MBEs and WBEs in specific trades for a given geographical are of New York State. This printout can be requested by writing to the following:

Office of Minority and Women-Owned Business Enterprises
35th Corning Tower
Empire State Plaza
Albany, NY 12242

Request may be made by FAX using the following number:

(518) 486-2679

23. SANCTIONS FOR NON-COMPLIANCE

23.1 Refer to Article 25.6, Document 007307, Supplementary Conditions - Affirmative Actions, for "Sanctions for Non-Compliance".

END OF DOCUMENT

DOCUMENT 002218

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - PRE-BID SITE VISIT

This Supplement modifies the Instructions to Bidders. Where any part of the Instructions to Bidders is modified by this supplement, the unaltered provisions of that part shall remain in effect.

2. VISIT TO THE SITE

Change 2.1 to Read:

2.1 Prospective bidders will be allowed to visit the job site to take field measurements and examine existing conditions of the project area only during the pre-bid site visit. Prospective bidders are urged to visit the site at this time. Prospective bidders or their representatives attending the pre-bid site visit will not be admitted on facility grounds without proper photo identification. Parking restrictions and security provisions will apply and vehicles will be subject to search. The date, time, location of the pre-bid site visit, and the phone number are included in the Advertisement for Bids.

Bidders are strongly encouraged to visit the project site to assess the following project conditions or quality standards:

The facility is a secured. Facility and will require special considerations during construction. Power Distribution system upgrades to existing buildings may be located within tight locations.

Phone a minimum of 72 hours in advance of the pre-bid site visit with the names of those who will attend.

END OF DOCUMENT

DOCUMENT 002219

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - QUALIFICATIONS OF BIDDERS

This Supplement modifies the Instructions to Bidders. Where any part of the Instructions to Bidders is modified by this supplement, the unaltered provisions of that part shall remain in effect.

Add the following Articles:

24. QUALIFICATIONS OF BIDDERS

24.1 The Contracting Officer or their representative may conduct a pre-award meeting to consider the responsiveness of the bid submitted by the apparent low bidder. Bidders will be notified of the time and place of the meeting. On a case by case basis, the State will examine and evaluate the bid as responsive by considering the contractors understanding of: the overall project scope, estimated cost, utilization of proposed sub-contractors, expertise, and past performance in completing similar contracts.

24.2 The Contracting Officer or their respective representative will conduct an investigation to determine the responsibility of any Bidder, including the ability of any Bidder to perform the Work. Bidders shall furnish to the Officer all information and data requested, including the Bidders detailed estimate, and complete financial data, within the time and in the form and manner requested. The Contracting Officer reserves the right to reject any bid if the evidence required by the Officer is not submitted as requested, or if the evidence submitted by or the investigation of any Bidder fails to satisfy the Contracting Officer that the Bidder is responsible, or is able and qualified to carry out the obligations of the Contract, or to complete the Work as indicated in the Contract Documents, or able to reasonably perform the Work for the Bid Amount.

24.3 The criteria contained in Executive Order No. 170.1 Uniform Guidelines for Determining the Responsibility of Bidders will be applied in the evaluation of Bidders. Special criteria that will be considered in establishing the responsibility of the Bidders shall include, but not be limited to established experience in performing the Work required by the Contract Documents. Experience will be viewed from both the comparable projects as well as the experience and knowledge of construction of the firm's personnel.

25. APPROVAL OF SUBCONTRACTORS/SUBCONTRACT LIMITS

25.1 When requested by the Contracting Officer or his representative, Bidders shall, within the time specified by the Officer, submit to the Officer the names of the Subcontractors the Bidder proposes to use on the project. The Contracting Officer reserves the right to disapprove the use of any proposed Subcontractor. In such an event the Bidder shall submit the name of another Subcontractor in like manner within the time specified by the Officer. The Bidder shall have and will make no claim for compensation if the Contracting Officer disapproves any proposed Subcontractor. The Contracting Officer reserves the right to reject any bid if the names of proposed Subcontractors, or additional subcontract information, are not submitted as required.

END OF DOCUMENT

DOCUMENT 003113

PRELIMINARY PROJECT SCHEDULE

A detailed Preliminary Project Schedule will be made available for review by the Contractors after award of the Contract to further assist in final Project Schedule preparation in accordance with Section 013113.

After execution of the CMU-01 Agreement (blank included on last page of this document), the Project Schedule will become the basis for coordinating the work activities, measuring progress, and approving progress payments.

PROJECT NO. _____

PROJECT NAME: _____

REPORT DATE: _____

REPORT NAME(S): _____

It is agreed that the Project Schedule defined by the above listed computer reports has been reviewed and is accepted for use in coordinating, scheduling, and monitoring the work of all related contracts.

FOR THE CONSTRUCTION CONTRACTOR: _____ DATE: _____

FOR THE HVAC CONTRACTOR: _____ DATE: _____

FOR THE PLUMBING CONTRACTOR: _____ DATE: _____

FOR THE ELECTRICAL CONTRACTOR: _____ DATE: _____

THE DIRECTOR'S REPRESENTATIVE: _____ DATE: _____

END OF DOCUMENT

DOCUMENT 003132

GEOTECHNICAL DATA

The subsurface investigation for this project was performed on October 31, 2003, and included the advancement of four (4) test borings. URS Corporation of Buffalo, New York monitored the advancement of all test borings and prepared the subsurface exploration logs included in this document. The approximate locations of all test borings are shown on the Contract Drawings.

The observed water levels and/or conditions noted on the subsurface logs are as recorded at the time of exploration. These water levels and/or conditions may vary considerably with time, according to the prevailing climate, rainfall, or other factors and are otherwise dependent on the duration of and method used in the explorations program.

Sound engineering judgment was exercised in preparing the subsurface logs. This information was prepared and is intended for State design and estimate purposes only. Its presentation is for the purpose of providing intended users with access to the same information available to the State. These subsurface logs are presented in good faith and are not intended as a substitute for personal investigation, independent interpretations, or judgment of the bidders.

DETACH AND USE THIS FORM

BID FORM FOR: 42072-C

**CONSTRUCTION WORK
UPGRADE ELECTRICAL DISTRIBUTION SYSTEM
ELMIRA CORRECTIONAL FACILITY
1879 DAVIS STREET
PO BOX 500
ELMIRA, NY 14902**

State of New York
Office of General Services
Design and Construction Group
Division of Contract Administration
35th Floor, Corning Tower
The Gov. Nelson A. Rockefeller
Empire State Plaza
Albany, NY 12242

THIS IS A 2 PAGE BID FORM. ALL PAGES MUST BE COMPLETED.

THE STATE RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS. EACH BID FORM SHALL BE ACCOMPANIED BY BID SECURITY (AS DESCRIBED IN THE INSTRUCTIONS TO BIDDERS) IN THE AMOUNT STATED IN THE ADVERTISEMENT FOR BIDS.

The Undersigned agrees to complete the Work within the time stated in Section 011000 of the Specifications.

The Undersigned acknowledges his/her understanding of the social policy concerning minority and women business participation in the State building construction program, and pledges to cooperate with the State in the implementation of this policy, and further pledges to exert good faith efforts to achieve participation of minority and female employees.

The Undersigned certifies, as to each of the occupations listed in the Prevailing Rate Schedule applicable to this Project, the ability and willingness to exert good faith efforts to achieve the goal for minority and women workforce participation set forth in the Supplementary Conditions.

The Undersigned certifies the ability and willingness to exert good faith efforts to achieve the goal for Minority and Women-Owned Business Enterprise participation set forth in the Supplementary Conditions.

The Undersigned declares that the Bidding and Contract Documents have been carefully examined and that all things necessary for the completion of the Work shall be provided.

The Undersigned agrees that the bid security shall become the property of the State if this bid is accepted by the State and he/she does not submit executed copies of the Agreement within 10 days of receipt of a written request. A Performance Bond and a Labor and Material Bond, each in an amount equal to the contract sum, shall be supplied with the executed Agreement and shall be the statutory form of public bonds required by Sections 136 and 137 of the State Finance Law.

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

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

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

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

(4) This contract shall not cause or result in a violation of Section 73(4) of the Public Officers Law which states: "No officer or employee of a state agency, member of the legislature or legislative employee or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall sell any goods or services having a value in excess of twenty-five dollars to any state agency unless pursuant to an award or contract let after public notice and competitive bidding."

(5) This contract shall not cause or result in a violation of Section 74(3)(e) of the Public Officers Law which states: "No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the State with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties."

(6) The bidder recognizes New York State Finance Law §139-j and §139-k and understands and agrees to comply with all of its requirements and procedures.

Addenda to the Contract Documents are available at:
<https://www3.ogs.state.ny.us/dnc/contractorConsultant/esb/ESBPlansAvailableIndex.asp>.

The Undersigned acknowledges receipt and review of all Addenda to the Contract Documents on the above website, listed by number in the space below:

The Undersigned proposes to perform the Work required for this project in accordance with the Contract Documents for the following amount:

BID AMOUNT

1.	All Work except Allowance(s)	\$ _____	<u>.00</u>
2.	Allowance(s) (As described in Section 012100)	\$ _____	<u>64,200.00</u>
	Total Bid Amount (Sum of 1. & 2.)	\$ _____	<u>.00</u>

SIGN BID HERE _____
Authorized Signature

PRINT NAME OF SIGNER _____

TITLE OF SIGNER _____

OFFICIAL COMPANY NAME _____

MAILING ADDRESS _____
Street

City State Zip Code

TELEPHONE NO. _____ FAX NO. _____
Area Code Area Code

E-MAIL ADDRESS _____

**FORM OF BID BOND - BID SECURITY
STATE OF NEW YORK
OFFICE OF GENERAL SERVICES - DESIGN AND CONSTRUCTION**

Sub. 3, Sec. 8 - Public Buildings Law

KNOW ALL MEN BY THESE PRESENTS, That _____

(Name of Contractor)

(Address)

(hereinafter called the "Principal") and _____
a corporation created and existing under the Laws of the State of _____ having its principal office in the City of _____ duly licensed as an insurance company in the State of New York, (hereinafter called the "Surety"), are held and firmly bound unto The People of the State of New York (hereinafter called the "State"), in the full and just sum of \$53,200 good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made, and done, the Principal binds themselves (himself, itself), their (his, its) heirs, executors and administrators, successors and assigns, and the Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

WHEREAS, the Principal has submitted to the Office of General Services of the State of New York a proposal for Construction Work, Upgrade Electrical Distribution System, Elmira Correctional Facility, 1879 Davis Street, PO Box 500, Elmira, NY.

AND

WHEREAS, the Principal intends to file this bond to guarantee that the Principal will execute a contract and furnish performance and labor and material bonds required by the terms of the Principal's proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the Principal shall promptly submit an executed agreement and furnish performance and labor and material bonds required by the terms of the Principal's proposal, then this obligation shall be null and void, otherwise to remain in full force and virtue.

NOW, THEREFORE, the condition of the foregoing obligation is such that if the Principal fails to promptly submit and executed agreement and furnish performance and labor and material bonds required by the terms of the Principal's proposal, then the Surety itself, its successors and assigns, jointly and severally, shall pay the whole sum of money previously set forth in this document to the State.

IN TESTIMONY WHEREOF, the Principal has hereunto set their (his, its) hand and seal and the Surety has caused this instrument to be signed by its Attorney-in-fact, _____

and its corporate seal to be hereunto affixed.
Signed, sealed and delivered in the presence of:

(Corporate seal
of Principal if a corporation)

(L.S.)

(L.S.)

Principal

Company

(Corporate seal of Surety Co.)

Attorney-in-fact

Witness

Name

Name

(Acknowledgment by principal, unless it be a corporation)

STATE OF NEW YORK

SS.:

COUNTY OF _____

On this ____ day of _____, 20____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Notary Public County

(Acknowledgment by principal, if a corporation)

STATE OF NEW YORK

SS.:

COUNTY OF _____

On this ____ day of _____, 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of the _____; the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public County

(Acknowledgment by Surety Company)

STATE OF NEW YORK

SS.:

COUNTY OF _____

On this ____ day of _____, 20____, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of the _____; the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Notary Public County

Offerer Disclosure of Prior Non-Responsibility Determinations

See instructions on next page before completing this form.

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____ Date: _____

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

No

Yes

If yes, please answer the next questions:

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

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below and attach additional pages as necessary.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below and attach additional pages as necessary.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

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

By: _____ Date: _____

Signature

Instructions for Completing the DCA-3

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

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

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

Instructions:

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

This document must accompany each Bid Form, Letter of Interest, or Proposal submitted by an offerer and will be required for any contract amendments over \$15,000. This document must also accompany each Emergency Contract Bid Form.

STATE OF NEW YORK - EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES - DESIGN & CONSTRUCTION GROUP

**DOCUMENT 007213
GENERAL CONDITIONS
AUGUST 2010 EDITION**

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GENERAL CONDITIONS – AUGUST 2010

ARTICLE 1 - THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of the Agreement, the Performance and Payment Bonds, the General Conditions, the Supplementary Conditions, Appendix A, the Drawings and Specifications, Addenda issued prior to the receipt of bids and all subsequent modifications and changes issued pursuant to the General Conditions.

1.1.1 The Performance and Payment Bonds are not a part of Single Trade Contract less than two hundred thousand dollars.

1.2 The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, either written or oral including the bidding documents.

1.3 The Contract may not be modified except in accordance with the General Conditions.

1.4 The project is designed in accordance with the Building Codes of New York State and its reference standards. In no instance shall the Contractor deviate from the contract documents except as provided for in the contract. The Contractor shall notify the State of any deviations or conflicts observed that may violate the Building Codes.

ARTICLE 2 - DEFINITIONS

2.1 The following terms shall have the meanings ascribed to them in this Article, wherever they appear in the Contract Documents.

2.2 The term "Agency" means the officer, board, department, commission, authority, fund or public benefit corporation executing the Agreement.

2.3 The term "Commissioner" means the Commissioner of General Services.

2.4 The term "Comptroller" means the Comptroller of the State of New York.

2.5 The term "Contracting Officer" means the Director of Contract Administration of the Design and Construction Group of the Office of General Services or his representative designated in writing.

2.6 The term "Contractor" means the person, firm or corporation executing the Agreement or the successor or assignee of the Contractor approved in writing by the Contracting Officer. If the text requires, the term

includes the person, firm or corporation executing any Agreement in furtherance of the Project or the successors or assigns approved in writing by the Contracting Officer.

2.7 The term "days" means calendar days.

2.8 The term "Director" means the Director of Construction of the Design and Construction Group of the Office of General Services who will have general direction and supervision of the Work.

2.9 The term "Director's Representative" means the employee or agent of the Design and Construction Group designated in writing by the Director as such. Under the general supervision of the Director, the Director's Representative shall have complete charge of the Work and shall exercise full supervision and direction of the Work. Where the Contract Documents specifically designate a person to perform a function or duty, that person shall be the Director's Representative but only for the performance of that function or duty. Where the word "directed" appears in the Contract Documents, the words "by the Director's Representative" shall be deemed inserted thereafter in each case except where it is obviously inappropriate in context.

2.10 The term "Group Director" means the Deputy Commissioner for Design and Construction, Office of General Services.

2.11 The term "liquidated damages" means the amount of money to be assessed against the Contractor for delay in physical completion of the Work.

2.12 The term "physical completion" means the date upon which the Director's Representative certifies that all deficiencies noted on the Final Inspection List have been corrected and is evidenced by issuance of the Physical Completion Report.

2.13 The term "premises" means all land, buildings, structures and all other things of any kind located on or adjacent to the Site and owned, occupied or otherwise used by the State.

2.14 The term "product data" means manufacturer's catalog sheets, brochures, standard diagrams, illustrations, schedules, performance charts, test data, standard schematic drawings, specifications and installation instructions.

2.15 The term "Project" means Work at the same Site carried out pursuant to one or more sets of Contract Documents.

2.16 The term “provide” means furnish and install complete, in place and ready for operation and use.

2.17 The term “sample” means physical examples submitted by the Contractor of materials, equipment or workmanship to establish a standard which the Contractor is required to meet and to show the quality, type, range of color, finish, and texture of the material intended to be furnished for the Work.

2.18 The term “shop drawing” means an original drawing prepared by a Contractor, subcontractor, supplier or distributor which illustrates some portion of the Work showing fabrication, layout, fitting or erection details.

2.19 The term “Site” means the area within the contract limit, as indicated by the Contract Documents, including all land, buildings, structures and other things located within those limits.

2.20 The term “State” means the State of New York.

2.21 The term “substantial completion” means that the Work or major milestones there of as contemplated by the terms of this contract are sufficiently complete so that the Work can be used for the purpose for which it is intended.

2.22 The term “Work” means all that which is required of the Contractor by the Contract Documents including labor, materials, tools and equipment.

2.23 The term “Offerer” shall mean the individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement.

ARTICLE 3 - INTERPRETATION OF CONTRACT DOCUMENTS

3.1 The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. It is not intended to include work not properly inferable from the Contract Documents.

3.2 Upon the Contractor’s written request, the Director’s Representative may issue written interpretation or drawings necessary for the proper execution or progress of the Work which interpretation shall be consistent with and reasonably inferable from the Contract Documents.

3.3 The language of the Contract Documents is directed at the Contractor unless specifically stated otherwise.

3.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

3.5 In the event of conflicting provisions in the Contract Documents, the drawings will take precedence over the specifications.

3.6 In the event of conflicting provisions within the drawings, the following order of precedence for resolution of the conflict shall apply: the more specific provision will take precedence over the less specific; if not resolved, the less stringent will take precedence over the more stringent; if not resolved, the less expensive item will take precedence over the more expensive. On all drawings, figures take precedence over scaled dimensions.

3.7 In the event of conflicting provisions within the specifications, the following order of precedence for resolution of the conflict shall apply: the more specific provision will take precedence over the less specific; if not resolved, the less stringent will take precedence over the more stringent; if not resolved, the less expensive item will take precedence over the more expensive.

3.8 If during the performance of the work, the Contractor identifies a conflict in the Contract Documents; the Contractor shall promptly notify the Director’s Representative in writing of the conflict and advise as to the course of action the Contractor proposes to follow. The Director’s Representative shall promptly acknowledge the notification in writing and advise the Contractor, pursuant to Paragraph 3.2 of these General Conditions, as to the interpretation to be followed in the performance of the Work.

ARTICLE 4 - SUBMITTALS

4.1 The Contractor and the Director shall adhere to the submittal and scheduling requirements specified in Division 01 - General Requirements.

4.2 The Contractor shall approve all submittals before submitting them. By such approval, the Contractor represents that it has determined and verified field measurements, field construction criteria, materials, catalog numbers, and similar data and that it has checked and coordinated shop drawings, product data and samples with the requirements of the Contract Documents and that it has verified the completeness, correctness, and accuracy of the submittal.

4.3 The Director’s approval of shop drawings, product data and samples shall not relieve the Contractor

of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has previously informed the Director of any anticipated deviation utilizing the required deviation request form, (available at the OGS D&C website), at the time of submission. Written approval of the specific deviations as outlined on the request form shall be required. The Director's approval shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings, product data or samples.

4.4 Portions of the Work requiring shop drawings, product data, quality assurance information, or sample submittals shall not be commenced until the appropriate submittals have been approved by the Director.

4.5 The Contractor shall deliver to the Director, in the detail and form and at the time the Director shall require, information concerning the Contractor's operations and proposed operations upon the Project all in accordance with Division 01 - General Requirements.

4.6 During the term of this Project, the Director may require any Contractor to modify any schedules which it has submitted either before or after they are approved so that the Work of any contract in furtherance of the Project may be properly progressed and so that changes in the Work or the work of related contracts is properly reflected in the schedules.

4.7 Where indicated under the specific submittal requirements of the specifications, a re-evaluation fee of \$250.00 will be assessed against the Contractor for each re-evaluation required of any submittal package that is deemed incomplete, or lacking appropriate content or required format as required by the individual specification section.

ARTICLE 5 - MATERIALS AND LABOR

5.1 All materials, equipment and articles used permanently in the Work which become the property of the State shall be new unless specifically stated otherwise.

5.2 Asbestos Free Materials: All materials used for construction shall be free of asbestos containing materials unless the materials containing the asbestos have been previously approved for use by the State. If asbestos is found in installed products not previously approved by the State, then it will be the responsibility of the contractor to abate the asbestos containing material and replace the work with new asbestos free materials at no cost to the State of New York in compliance with the requirements of the contract.

5.3 Except where specifically provided otherwise, whenever any product is specified by brand name, i.e.,

manufacturer's or supplier's name or trade name and catalog or model number or name, the intent is not to limit competition but to establish a standard of quality which the Director has determined is necessary. The words "or equal" shall be deemed inserted in each instance. The Contractor may use any product equal to that named in the Contract Documents which is approved by the Director and which meets the requirements of the Contract Documents providing the Contractor gives timely notice of the Contractor's intent in accordance with the submittal and scheduling requirements of Division 01 - General Requirements.

5.4 The Contractor shall have the burden of proving at the Contractor's own cost and expense, to the satisfaction of the Director, that the proposed product is equal to the named product. The Director may establish criteria for product approval. The Director shall determine with absolute discretion whether a proposed product is to be approved.

5.5 If the Contractor fails to comply with the provisions of this Article, or if the Director determines that the proposed product is not equal to that named, the Contractor shall supply the product named.

5.6 The Contractor shall have and make no claim for the extension of time or for damages because the Director requires a reasonable period of time to consider a product proposed by the Contractor or because the Director disapproves such a product.

5.7 Where optional materials or methods are specified, or where "or equal" submissions are approved, the Contractor shall make all adjustments to contingent Work, whether the contingent Work be the Work of its contract or the Work of other Contractor's, necessary to accommodate the option or "or equal" product it selects without extra or additional cost.

5.8 Royalties and Patents: The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the State harmless from loss on account thereof, except that the State shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer is specified.

ARTICLE 6 - CONTRACTOR'S SUPERVISION

6.1 The Contractor shall designate in writing competent supervision and/or management representatives as required below to represent the Contractor at all times with authority to act for the Contractor. All Direction given to the Contractor's Representatives shall be as binding as if given to the Contractor. A Superintendent or Project Manager shall be classified as management representatives included in the Contractor's overhead and

shall perform management, supervisory and/or administrative tasks (non labor) only. Individuals listed under this Article shall have the ability to effectively communicate (verbal and written) with all parties associated with the administration/supervision of this contract.

6.1.1 For contracts valued up to \$500,000 the contractor shall provide a supervisor for the Contractor's staff who shall be in attendance at the site throughout the active performance of the Work.

6.1.2 For contracts valued from \$500,000 to \$2,000,000 the Contractor shall provide a Superintendent for the Contractor's staff who shall be in attendance at the site throughout the active performance of the Work until Substantial Completion. Upon Substantial Completion the contractor shall provide a supervisor who shall be in attendance at the site throughout the active performance of the Work until Physical Completion. The Superintendent shall have the authority to direct and schedule the Work, shall attend all project meetings, shall coordinate the Work of subcontractors, and make purchase and cost decisions on behalf of the Contractor.

6.1.3 For contracts valued from \$2,000,001 to \$5,000,000 the contractor shall provide a Superintendent for the Contractor's staff who shall be in attendance at the site throughout the active performance of the Work until Substantial Completion. Upon Substantial Completion the contractor shall provide a supervisor who shall be in attendance at the site throughout the active performance of the Work until Physical Completion. The Superintendent shall have the authority to direct the Work, attend all project meetings, and coordinate the Work of subcontractors. The Contractor shall also provide a Project Manager who shall attend project meetings, maintain submittal and approval system, and be responsible for change order/field order responses and negotiations. The Contractor shall provide required information to the Director's Representative for the Project Schedule.

6.1.4 For contracts valued from \$5,000,001 to \$10,000,000 the contractor shall provide a Project Manager and Superintendent for the Contractor's staff that shall be in attendance at the site throughout the active performance of the Work until Substantial Completion. Upon Substantial Completion the contractor shall provide a supervisor who shall be in attendance at the site throughout the active performance of the Work until Physical Completion. The Superintendent shall have the authority to direct the Work, and coordinate the Work of subcontractors. The Project Manager shall attend project meetings, maintain the project schedule, maintain submittal and approval

system, and be responsible for change order/field order responses and negotiations.

6.1.5 For contracts valued for more than \$10,000,000 the contractor shall provide a Project Manager and Superintendent for the Contractor's staff who shall be in attendance at the site throughout the active performance of the Work until Substantial Completion. Upon Substantial Completion the contractor shall provide a supervisor who shall be in attendance at the site throughout the active performance of the Work until Physical Completion. The Superintendent shall have the authority to direct the Work, attend all project meetings, and coordinate the Work of subcontractors. The Project Manager shall attend project meetings, maintain the project schedule, maintain submittal and approval system, and be responsible for change order/field order responses and negotiations. If at any time there are more than five subcontractors performing work on the site simultaneously an additional Superintendent is required coordinate their Work.

6.2 Should the Director deem any employees of the Contractor incompetent or negligent or for any cause unfit for their duty, the Contractor shall dismiss them and they shall not again be employed on the Work.

6.3 Before any part of the Contract shall be sublet or material purchased, the Contractor shall submit to the Director in writing the name of each proposed subcontractor and supplier and obtain the Director's written consent to such subcontractor and supplier. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor and supplier by the Director or Contracting Officer without causing delay in the work of the Project. The Contractor shall promptly furnish such information as the Director or Contracting Officer may require concerning the proposed subcontractor's and supplier's ability and qualifications, and Minority/Women Owned Business Enterprises Status. Each request for approval of a subcontractor whose subcontract will be valued at \$10,000.00 or more shall also be accompanied by a NYS Vendor Responsibility Questionnaire - For-Profit Construction properly completed and executed by the proposed subcontractor.

6.4 The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its subcontractors.

6.5 The Contractor shall be responsible for informing its subcontractors and suppliers of all the terms, conditions and requirements of the Contract Documents including, but not limited to the General

Conditions, Supplementary Conditions, the Drawings and Specifications, Appendix A, and changes made by Addenda.

ARTICLE 7 - USE OF PREMISES

7.1 If the Premises are occupied, the Contractor, its subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the Premises and shall perform the Work in such a manner as not to unreasonably interrupt or interfere with the conduct of business.

7.2 Any request received by the Contractor from any source other than the Director or the Director's Representative to change the Work or its sequence shall be referred to the Director's Representative for determination.

7.3 The Contractor, its subcontractors and their employees shall not have access to or be admitted to any area of the Premises outside the Site except with the written permission of the Director's Representative.

ARTICLE 8 - PERMITS AND COMPLIANCE

8.1 The Contractor shall obtain, maintain and pay for all permits and licenses legally required and shall give all notices, pay all fees and comply with all laws, rules and regulations applicable to the Work at no additional cost.

ARTICLE 9 - INSPECTION AND ACCEPTANCE

9.1 The Director's Representative will inspect and test the Work at reasonable times at the Site, unless the Director determines to make an inspection or test at a place of production, manufacture or shipment. Such inspection or test shall be conclusive as to whether the material and workmanship inspected or tested conforms to the requirements of the Contract. Such inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Director to reject the completed Work.

9.2 The Contractor shall, without charge, promptly correct any Work the Director's Representative finds does not conform to the Contract Documents unless in the public interest the Director consents to accept such Work with an appropriate adjustment on the Contract sum and/or to any terms and conditions of the Contract. The Contractor shall promptly remove rejected material from the Premises.

9.3 If the Contractor does not promptly correct rejected Work including the work of other subcontractors destroyed or damaged by removal, replacement, or correction, the Director may (1) correct

such Work and charge the cost thereof to the Contractor; or (2) terminate the Contract in accordance with Article 13 of the General Conditions.

9.4 The Contractor shall furnish promptly without additional charge all facilities, labor, material and equipment reasonably needed to perform in a safe and convenient manner such inspections and tests as the Director's Representative requires.

9.5 The Contractor shall keep the Director's Representative informed of the progress of the Contractor's Work and particularly when the Contractor intends to cover Work not yet inspected or tested. All inspection and tests by the Director's Representative shall be performed in such manner as not to unreasonably delay the Work.

9.5.1 The Contractor shall be responsible for all required tests and appropriate test schedules, approvals and inspections pursuant to the Contract Documents.

9.5.2 The Contractor shall be back-charged with any cost of inspection when the Work is not ready at the time specified by the Director's Representative for inspection, or for deficient work that shall require re-testing.

9.6 Should the Director's Representative determine at any time before acceptance of the entire Work to examine Work already completed by removing, uncovering or testing the same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, materials and equipment to conduct such inspection, examination or test. If such Work is found to be defective or nonconforming in any material respect, the Contractor shall defray all the expenses of such examination and satisfactory reconstruction. If the Work is found to meet the requirements of the Contract Documents, the Contractor shall be compensated for the additional services involved in such examination and reconstruction by order on contract and, if completion of the Work has been delayed thereby, shall receive a suitable extension of time.

9.7 No previous inspection or certificates of payment shall relieve the Contractor from the obligation to perform the Work in accordance with the Contract Documents. The final payment shall not relieve the Contractor of the responsibility for failing to comply with the Contract Documents.

9.8 The Contractor shall remedy all defects, paying the cost of any damage to other work or property of the State resulting there from, which shall appear within a period of one year from the date of physical completion.

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

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

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

ARTICLE 10 - ORDERS ON CONTRACT (CHANGE ORDERS)

10.1 The State may make changes by altering, adding to or deleting from the Work, and adjusting the Contract sum accordingly. All changed Work shall be executed in conformity with the terms and conditions of the Contract Documents unless otherwise provided in the order on contract. Any change in the Contract sum or time for completion of the described work of the order on contract shall be contained in the order on contract. Any change in schedule resulting from an order on contract will be issued in accordance with the provisions of Paragraphs 4.6 and 13.5 of these General Conditions.

10.2 No written or oral instructions shall be construed as directing a change in the Work unless in the form of an order on contract signed by the Contracting Officer. The order on contract shall describe or enumerate the Work to be performed, state the amount (if any) to be added to or deducted from the Contract sum and state the time allowed (if any) for the performance of the changed work. If the extent or cost of the Work is not determinable until after the changed Work is performed,

the order on contract shall specify the method for determining the cost and extent of the changed Work when completed. If the Contractor disagrees as to any element of the order on contract, the Contractor shall promptly indicate such disagreement in writing by certified mail directed to the Contracting Officer and shall promptly proceed in accordance with the order on contract. The Contractor's letter of disagreement shall identify by number the order on contract with which the Contractor is disagreeing, the elements with which the Contractor disagrees and a statement as to why there is a disagreement on each element. The letter of disagreement shall be accompanied by documentation of every material element of the Contractor's basis for disagreement. The Contracting Officer shall promptly review the Contractor's letter and supporting documentation and advise the Contractor in writing of any modifications to the order on contract or of the confirmation of the order on contract as issued. The Contracting Officer may, in the exercise of discretion, conduct informal discussions or meetings with the Contractor and/or State Officials, employees or agents prior to rendering a decision.

10.3 If the Contractor is required to perform Work for which the Contractor believes it is entitled to an order on contract, the Contractor shall give the Director prompt written notice and await instructions before proceeding to execute such Work. The Contractor shall thereafter proceed diligently with the performance of the contract in accordance with the Director's instructions. The Contractor shall maintain complete cost records including but not limited to time and payroll records, material invoices and delivery tickets, equipment rental and purchase invoices for itself and all subcontractors, suppliers and material-men when the Contractor performs work which the Contractor believes is extra or additional work. Failure to maintain such records shall waive any right to extra and additional costs beyond those costs supported by actual cost records.

10.4 The Contracting Officer shall determine the value of any order on contract by one or more of the methods provided in Division 01 - General Requirements.

10.5 Irrespective of the method used or to be used by the State in determining the value of a change order, the Contractor shall after receipt of a request, promptly submit to the State a detailed breakdown of the Contractor's estimate of the value of the omitted or extra work. The Contractor shall submit evidence, satisfactory to the Contracting Officer, to substantiate each and every item that constitutes his proposal for the change. The State shall promptly respond to such submission.

10.5.1 The contractor shall submit a responsive cost proposal to the Director's Representative in proper

form subject to the provisions of this Article. The contractor shall respond no later than 30 days from the date of a "request for proposal" from the Director's Representative. Should the contractor fail to respond or submit the required cost proposal within the 30 day requirement, the State shall determine a fair market value for the work proposed and will issue an order on contract or field order to the contract. The Contractor, by failing to respond or provide an acceptable proposal; waives any claim or rights to any extra and or additional costs as determined by the Contracting Officer.

10.6 Unless otherwise specifically provided for in a change order, the compensation specified therein for extra work includes full payment for both the extra work covered thereby and for any damage or expense caused the Contractor by any delays to other work to be done under the Contract resulting from or on account of said extra work, and the Contractor waives all rights to any other compensation for said extra work, damage or expense.

10.7 No order on contract which creates a liability on the State shall be binding unless approved by the Office of the State Comptroller.

ARTICLE 11 - SITE CONDITIONS

11.1 If the Contractor encounters subsurface or other latent physical conditions at the Site which differ substantially from those shown, described or indicated in such information provided by the State or from any information which is a public record and which subsurface or other latent physical condition could not have been reasonably anticipated from that information or from the Contractor's own inspection and examination of the Site, the Contractor shall give immediate written notice to the Director before any such condition is disturbed. The Director shall promptly investigate and, if it is determined that the conditions substantially differ from those which should have been reasonably anticipated, shall make such changes in the Drawings and Specifications as may be required. If necessary, the Contract sum and completion date shall be adjusted, to reflect any increase or decrease in the cost of, or time required for, performance of the Contract.

ARTICLE 12 - SUSPENSION OF WORK

12.1 The Director may order the Contractor in writing to suspend, delay, or interrupt performance of all or any part of the Work for a reasonable period of time as the Director may determine.

12.2 Upon receipt of a suspension order, the Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate

affirmative measures to protect such Work from loss or damage.

12.3 The Contractor specifically agrees that a suspension, interruption or delay of the performance of the Work pursuant to this Article for a period or periods not exceeding thirty days in total shall not increase the cost of performance of the Work of this Contract other than costs directly related to demobilization and remobilization for the Work, temporary services costs, equipment rental which cannot be practically suspended and temporary protection measures which are unusual but necessary.

ARTICLE 13 - TIME OF COMPLETION AND TERMINATION FOR CAUSE

13.1 All time limits stated in the Contract are of the essence of the Contract.

13.2 Termination for Cause.

13.2.1 If in the judgment of the Group Director, the Contractor fails or refuses to prosecute the Work in accordance with the Contract, or is failing to complete the Work within the time provided by the Contract, the Group Director may terminate the Contract by written notice. In such event, the Group Director shall order the surety to complete the Work.

13.2.2 If it is determined after the award of the contract that there exists any cause of so serious or compelling a nature, including but not limited to, submission to a contracting agency of a false or misleading statement on a NYS Vendor Responsibility Questionnaire, or in some other form in connection with a bid for or award of this or any other contract or a request for approval of a subcontractor, that it raises questions about the present responsibility of a contractor or subcontractor, the Group Director may terminate the Contract by written notice. In such event, the Group Director may or may not in his sole discretion, order the surety to complete the Work.

13.2.3 The Director will notify the Contractor and Surety that the State is considering declaring the Contractor in default and will arrange a hearing with the Contractor and the Surety to discuss methods of performing and completing the contract work.

13.2.4 If the State formally declares the contractor in default the State will demand upon the Surety to complete any and all remaining work pursuant to the terms of the Contract and the Surety Takeover Guidelines incorporated as Appendix B. The Surety may undertake to perform and complete the work itself, through its agents or through independent contractors approved by the State. The State will agree to pay the

balance of the Contract price to the Surety in accordance with the terms and conditions of the Contract or to the designee authorized in writing by the surety upon acceptance of the Surety's completion plan pursuant to Appendix B. incorporated herein.

13.2.5 The surety agrees to complete any investigation into the default of the Contractor and advise the Group Director as to its intended course of action within ten days of receipt of the written notice of default. That notice will detail the underlying reasons for the default and provide pertinent documentation including the surety takeover guidelines of the Contracting Officer. Any request by a surety for execution of a takeover agreement, shall be delivered to the Contracting Officer for consideration, within the same ten day period. No changes in the terms and conditions of the Contract will be considered. All rights remedies and defenses of the parties are reserved and no rights, remedies or defenses of the parties are waived, by virtue of the surety's agreement to assume contract performance under the bond

13.2.6 The Surety may elect to forfeit the remaining penal sum of the Performance Bond within twenty days of notification of default by the State; with no additional penalties imposed, upon the execution of a release prepared by the State. The State will determine the value of the remaining Work based upon its investigation of the Work in place against payments previously authorized. As soon as a practical the Surety will tender payment therefore to the State.

13.2.7 If the surety fails or refuses to complete the Work within twenty five days of the notification of the contractors default or if the Surety fails or refuses to complete the work within the time frames allotted by the State, the Group Director may take over the Work and prosecute it to completion by contract publicly let or otherwise, and may take possession of and utilize in completing the Work, such of the Contractor's materials, equipment and plant as may be on the Site of the Work. Whether or not the right to terminate is exercised, the Contractor and the Surety shall be liable for any damage to the State resulting from the failure or refusal to complete the Work in accordance with the Contract or the failure to complete the Work within the time provided by the Contract.

13.2.8 Should the Surety fail to commence the work the Group Director will notify the Surety that the State is considering declaring the Surety in default and will arrange a hearing with the Surety to discuss methods of performing and completing the contract work. It is the policy of the Office of General Services, Design and Construction Group to let a Contract for the remaining work after the 21st day of the demand upon the Surety to complete the Work pursuant to the terms and conditions

of the Contract, and the Performance Bond filed with the Office of the State Comptroller.

13.3 The amount of Liquidated Damages shall be the product of \$1,000.00 times the number of days of delay in physical completion of the work. Upon the assessment of such damages the State may withhold the sum of the damages contemplated from payments to avoid an overpayment to any firm where damages would apply.

13.3.1 If the Group Director terminates the Contract, damages shall consist of liquidated damages, if any, until the Work is physically completed, plus any increased costs occasioned the State in completing the Work.

13.3.2 If the Group Director does not terminate the Contract, the damages shall consist of liquidated damages, if any, until the Work is physically completed.

13.4 The Contract shall not be so terminated nor the Contractor charged with resulting damage if:

13.4.1 The delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers, and

13.4.2 The Contractor notifies the Director in writing of the causes of delay within ten days from when the Contractor knew or ought to have known of any such delay.

13.5 The Director will ascertain the facts and the extent of the delay and extend the time for completing the Work when, in the Director's judgment, the findings of fact justify such an extension, and the Director's findings of fact shall be final and conclusive on the parties.

13.6 If after notice of termination of the Contract, it is determined for any reason the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

13.7 The rights and remedies of the State provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

13.8 The State, as defined in Article 2 of these General Conditions, reserves the right to terminate this contract in the event it is found that the certification filed by the offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Governmental Entity may exercise its termination right by providing written notification to the offerer in accordance with the written notification terms of the contract.

ARTICLE 14 - TERMINATION OF CONTRACTOR'S EMPLOYMENT FOR THE CONVENIENCE OF THE STATE OF NEW YORK

14.1 The Group Director may terminate this Contract whenever the public interest so requires by delivering to the Contractor a notice of termination specifying the extent to which performance of Work under the Contract is terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from such termination. The State shall pay the Contractor the sum of:

14.1.1 The costs actually incurred by the Contractor, subcontractors, and sub-subcontractors or their suppliers up to the effective date of such termination, and

14.1.2 The cost of settling and paying claims, provided the concurrence of the Contracting Officer is obtained prior to agreeing to any such settlement, arising out of the termination of Work under subcontracts or orders exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of Work under this Contract, which amounts shall be included in the cost on account of which payment is made under 14.1.1 above, and

14.1.3 An amount determined by adding to the amount of the costs under 14.1.1 above a sum equal to 20% (comprised of 10% overhead and 10% profit) thereof, provided, however, that if it appears that the Contractor would have sustained a documentable loss on the entire Contract had it been completed, an appropriate adjustment shall be made reducing the amount to be paid under this Article to reflect the indicated rate of loss.

14.2 In no event shall the Contractor's compensation exceed the total Contract amount.

14.3 The detailed estimate or amount of progress payments made to the Contractor prior to the day termination was effective shall not be conclusive evidence of costs incurred but progress payments shall be offset against any payment which the State makes to the Contractor as a result of such termination.

ARTICLE 15 - DISPUTES

15.1 The Contractor specifically agrees to submit, in the first instance, any dispute or disagreement relating to the performance of this Contract to the Group Director, who shall render a decision in writing and furnish a copy thereof to the Contractor. The Contractor agrees that this clause does not apply to any dispute or disagreement which involves delay, acceleration, interference or any other act or omission constituting a breach of contract; any matter relating to extensions of time, bonuses or liquidated damages; to the value of any order on contract or field order (issued pursuant to Division 01 - General Requirements); any termination for cause or convenience; or to termination costs allowable pursuant to contract.

15.2 The Contractor must request such decision in writing by certified mail no more than fifteen days after the Contractor knew or ought to have known of the facts which are the basis of the dispute or disagreement. Such writing shall identify the nature of the dispute or disagreement; identify the person who rendered the decision or interpretation involved and the date of the decision or interpretation with which the Contractor disputes or disagrees, attaching a copy of such decision or interpretation; contain a statement of the contractual basis for the dispute or disagreement; and identify the relief sought.

15.3 The Group Director may cause an investigation to be made of the circumstances involving the dispute or disagreement and may cause a fact-finding proceeding to be conducted before rendering the decision.

15.4 The Contractor agrees that the decision of the Group Director shall be final and conclusive. Nothing in this Contract shall be construed as making final the decision of any administrative official upon a question of law.

ARTICLE 16 - STATUTORY REQUIREMENTS FOR UTILIZATION OF MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

16.1 Pursuant to Section 313 of Article 15-A of the Executive Law of the State of New York, the Director of the Division of Minority and Women's Business Development has promulgated rules and regulations (Parts 140 through 145 of Subtitle N of Title 9 New York Code of Rules and Regulations) (the

“Regulations”) for the purposes of ensuring that certified Minority and Women owned Business Enterprises shall be given the opportunity for meaningful participation in the performance of State contracts and to facilitate the award of a fair share of State contracts and subcontracts to such business enterprises.

16.2 The Contractor shall make a good faith effort to solicit active participation in the Work by enterprises identified in the directory of certified businesses obtainable from the Division of Minority and Women’s Business Development, New York State Department of Economic Development.

16.3 The Contractor agrees, as a material condition of this contract, to be bound by the provisions of Section 316 of Article 15-A of the Executive Law of the State of New York which relates to the resolution of disputes which may arise under this Article.

16.4 The Contractor agrees to include the provisions of Paragraphs 16.2 and 16.3 of these General Conditions in every subcontract it enters into as to Work in connection with this Contract in such a manner that the provisions will be binding upon such subcontractor. However, the provisions of this paragraph shall not be binding upon the Contractor or its subcontractors in the performance of work or the provision of services that are unrelated, separate or distinct from this Contract as expressed by its terms.

16.5 The Regulations referred to in Paragraph 16.1 of these General Conditions require, among other things, that a bidder or proposer for a State contract submit a utilization plan which shall identify certified Minority or Women Owned Business Enterprises which the bidder/proposer intends to use in connection with the performance of the proposed State contract. Such a utilization plan shall be submitted after bids are opened but prior to contract award.

16.5.1 Pursuant to the Regulations: (1) the Commissioner may require the submission by the Contractor of compliance reports relating to the implementation of and adherence to the utilization plan in performing the Contract; (2) the Commissioner shall allow the Contractor to apply for a partial or total waiver of the Minority and Women Owned Business participation requirements; (3) the Contractor may file a complaint with the Executive Director of the Division of Minority and Women’s Business Development regarding a denial of a request for waiver of Minority and Women Owned Business participation requirements; (4) the Commissioner may file a complaint with the Executive Director of the Division of Minority and Women’s Business Development in the event the Contractor fails to comply with the Minority and Women Owned Business participation requirements set forth in this

Contract; and (5) the Commissioner may disqualify the Contractor’s bid or proposal as being non-responsive for failure to remedy notified deficiencies contained in the Contractor’s utilization plan after an administrative hearing on the record, reviewing all grounds for disqualification stated by the Commissioner and taking into consideration all the criteria set forth in Section 313 of the Executive Law.

16.5.2 The Contractor is referred to the entirety of the provisions of Section 316 of Article 15-A of the Executive Law of the State of New York and of the Regulations for the Contractor’s full familiarization with their applicable provisions as terms of this Contract.

ARTICLE 17 - COORDINATION OF SEPARATE CONTRACTS

17.1 The State may award other contracts which affect the Work of this Contract. In that event, the Contractor shall coordinate its Work with the work of other contractors in such manner as the State may direct. Each contractor shall control and coordinate the work of its subcontractors, if any. The State shall approve or require the modification of the work schedules of all contractors to the end that the Project may be progressed as expeditiously as the case permits.

17.2 If any part of the Work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report in writing to the Director’s Representative any defects in such work. The Contractor’s failure to inspect and report shall constitute an acceptance of the other contractor’s work as fit and proper for the reception of the Contractor’s Work.

17.3 The Director’s Representative shall issue appropriate directions and take such other measures to coordinate and progress the Work as may be reserved to the State in the Contract, and which an ordinarily reasonable project owner in similar circumstances would be expected to take.

17.4 The award of more than one contract for the Project requires sequential or otherwise interrelated contractor operations, and will involve inherent delays in the progress of any individual contractor’s work. Accordingly, the State does not guarantee the unimpeded operations of any contractor. The Contractor acknowledges these conditions, and understands that the Contractor shall bear the risk of all delays caused by the presence or operations of other contractors engaged by the State and delays attendant upon any State-approved construction schedule.

17.5 The State shall not be liable for delays which occur by reason of any contractor’s failure to comply

with directions of the State or because of the neglect, failure or inability of any contractor to perform its work efficiently.

17.6 The Contractor shall defend, indemnify and hold the State harmless from any and all claims or judgments of damages and from costs and expenses to which the State may be subjected or which it may suffer or incur by reason of or based upon an allegation of the Contractor's failure to promptly comply with the directions of the Director's Representatives.

17.7 Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the State for the performance of work upon the Site of work which may be necessary to be performed for the proper prosecution of the Work to be performed hereunder, or through any act or omission of a subcontractor of such contractor, the Contractor shall have no claim against the State for such damage, but shall have a right to recover such damage from the other contractor under the provision similar to the following provision which has been or will be inserted in the contract with such other contractors.

17.8 Should any other contractor having or who shall hereafter have a contract with the State for the performance of work upon the Site sustain any damage through any act or omission of the Contractor hereunder or through any act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and to indemnify and hold the State harmless from all such claims.

ARTICLE 17A - DELAYS

17A.1 For the purposes of this Contract, the term delay includes delay, disruption, interference, inefficiencies, impedance, hindrance and acceleration.

17A.2 The Contractor agrees to make claim only for additional costs as defined in Document 012200, section 1.01, paragraph H from causes listed below, attributable to delay in the performance of this contract, occasioned by any act or omission to act by the State or any of its representatives. The Contractor also agrees that delay from any other cause shall be compensated for solely by an extension of time to complete the performance of the work.

17A.2.1 The failure of the State to take reasonable measures to coordinate and progress the work.

17A.2.2 Extended delays attributable to the State in the review or issuance of orders on contract or field orders, in shop drawing reviews and approvals or as a result of the cumulative impact of multiple orders on

contract, which constitute a qualitative change to the project work and which have a verifiable impact on project costs.

17A.2.3 The unavailability of the site for such an extended period of time which the Director determines to significantly affect the scheduled completion of the contract.

17A.2.4 The issuance by the Director of a stop work order relative to a substantial portion of work for a period exceeding thirty days.

17A.3 The Contractor shall provide "notice of claim" of an anticipated claim for delay to the Contracting Officer by personal service or certified mail no more than fifteen days after the Contractor knew or ought to have known of the facts which form the basis of the claim. The Contracting Officer shall acknowledge receipt of the Contractor's notice, in writing, within five days. The Contractor agrees that the State shall have no liability for any damages which accrue more than fifteen days prior to the delivery or mailing of the required notice. The notice shall at a minimum provide a description of any operations that were, are being, or will be delayed, the date(s) and reasons for the delay, and, to the extent known, the information required by Paragraph 17A.6 of these General Conditions. In no case, shall oral notice to the Director's Representative or contracting officer constitute notice under this provision or be deemed to constitute a waiver of the written notice requirement. In no case, shall written notice to the Director's Representative or any other individual other than the Contracting Officer constitute notice under this provision or be deemed to constitute a waiver of the written notice requirement. The Contracting Officer is located at the following location:

Division of Contract Administration
Contracting Officer
35th Floor, Corning Tower
Albany, New York 12242

17A.4 Failure by the Contractor to adequately progress the completion of the work will be considered in determining the causes of delay. For any claim asserted under this Article, the Contractor shall keep detailed written records of the costs and shall make them available to the Contracting Officer at any time for the purposes of audit and review. Failure by the Contractor to provide the required written notice or to maintain and furnish records of the costs of such claims to the Contracting Officer shall constitute a waiver of the claim.

17A.5 The provisions of this Article apply only to claims for extra or additional costs attributable to delay and do not preclude determinations by the Director

allowing reimbursement for additional costs for extra work pursuant to Article 10 of these General Conditions.

17A.6 REQUIRED CONTENT OF CLAIM SUBMISSION.

17A.6.1 As noted in Paragraph 17.A.3 of these General Conditions, all claims for delay shall be submitted in writing to the Contracting Officer and must be in sufficient detail to enable the Contracting Officer to ascertain the basis and the amount of each claim. The following information shall be provided by the Contractor upon request of the Contracting Officer if not previously supplied:

a. A description of the operations that were delayed, the reasons for the delay and an explanation of how they were delayed.

b. A detailed factual statement of the claim providing all necessary dates, locations and items of work affected by the claim.

c. An as-built chart, "Critical Path Method" scheme or other diagram or chart depicting in graphic form how the operations were or are claimed to be adversely affected including the report and conclusions of all engineering and scheduling experts or other consultants, if any.

d. The date on which actions resulting in the claim occurred or conditions resulting in the claim became evident.

e. A copy of the approved project schedule and a copy of the "notice of claim" required for the specific claim by Paragraph 17A.3 of these General Conditions.

f. To the extent known, the name, function, and activity of each State official, employee or agent, involved in, or knowledgeable about facts that gave rise to such claim.

g. The name, function, and activity of each Contractor or subcontractor officer, or employee, involved in, or knowledgeable about facts that gave rise to such claim.

h. The identification of any pertinent documents, and the substance of any material oral communication relating to such claim.

i. The amount of additional compensation sought and a breakdown of that amount into the categories specified in Division 01 - General Requirements.

j. If an extension of time is also requested, the specific number of days for which it is sought and the basis for such request as determined by an analysis of the construction progress schedule.

17A.7 REQUIRED CERTIFICATION OF CLAIMS.

17A.7.1 When submitting any notice of claim or claim data, the Contractor must certify in writing and under oath:

a. That supporting data is accurate and complete to the Contractor's best knowledge and belief;

b. That the amount of the claim and the claim itself accurately reflects what the Contractor in good faith believes to be the State's liability.

17A.7.2 If the Contractor is an individual, the certification shall be executed by that individual. If the Contractor is not an individual, the certification shall be executed by a company official in charge of the Contractor's operations pertaining to this contract or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

17A.7.3 Failure to timely comply with any of the requirements of Article 17A for the submission of any claim for delay may constitute grounds for denial of such claim.

ARTICLE 18 - RESPONSIBILITY FOR DAMAGE

18.1 The Contractor shall faithfully perform and complete all of the Work required by the Contract, and has full responsibility for the following risks:

18.1.1 Loss or damage, direct or indirect, to any property owned by the State or to the Work including the building or structure in which the Work is being performed, or any other construction in progress whether being performed by any other contractor or the State, or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Director under this Contract or any other contract. The Contractor shall bear all such risk of loss or damage, until all of the Work covered by the Contract has been finally accepted. In the event of such loss or damage the Contractor shall forthwith repair, replace, and make good any such loss or damage without additional cost.

18.1.2 Injury to persons (including death resulting there from), or damage to property caused by an occurrence arising out of the performance of this Contract for which the Contractor may be legally liable under the laws of torts.

18.2 The Contractor, however, shall not be responsible for damages resulting from faulty design or from willful acts of State officials or employees or from negligence resulting solely from acts or omissions of the State, its officers or employees. Nothing herein shall vest in third parties any right of action beyond such as may legally exist irrespective of this Article.

18.3 The Contractor shall indemnify and save harmless the State, its employees and agents from suits, actions, damages, and costs of every name and description relating to the performance of this Contract

during its prosecution and until the acceptance thereof, and the State may retain such moneys from the amount due the Contractor as may be necessary to satisfy any claim for damages recovered against the State. The Contractor's obligations under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such moneys due the Contractor, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Contractor, subcontractor or the State.

ARTICLE 19 - INSURANCE - BUILDER'S RISK, LIABILITY AND WORKERS' COMPENSATION

19.1 Before commencing the Work and until the established Physical Completion date, all insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; and the Contractor shall furnish to the Contracting Officer a Certificate of Insurance in a form satisfactory to the Contracting Officer showing that the Contractor has complied with this Article. Insurance shall be maintained with insurance carriers licensed to do business in New York State and acceptable to the Contracting Officer; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; and shall be endorsed to provide written notice be given to the Contracting Officer at least thirty days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail, any notice shall be addressed to:

Division of Contract Administration
Director
35th Floor, Corning Tower
Albany, New York 12242

19.1.1 The endorsement shall name The People of the State of New York, its officers, agents, employees and the assigned construction manager as additional insureds there under. This additional insured shall be primary and non-contributory. (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 11 85 and a copy of which shall be furnished along with the Certificate of Insurance.) The Contracting Officer may modify the provisions of this Article when deemed in the best interest of the State by order on contract or field order.

19.1.2 The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect on an occurrence form, the following insurance with limits not less than those described in this article, and as required by the terms of this Contract, or as required by law, whichever is greater. If such insurance contains an

aggregate limit, it shall apply separately on a per job, per location basis.

19.1.3 The Contractor shall be solely responsible for the payment of all deductibles and Self Insured Retentions.

19.1.4 Not less than thirty days prior to the expiration date or renewal date of any insurance policies reflected on such certificates, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

19.2 The kinds and amount of insurance is as follows:

19.2.1 Workers' Compensation Insurance and Disability Benefits Law. A policy covering the obligations of the Contractor in accordance with the Workers' Compensation Law and the Disability Benefits Law covering all operations under the Contract, whether performed by the Contractor or by its subcontractor.

19.2.2 Commercial General Liability, and if necessary, Commercial Umbrella Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability resulting in Bodily Injury, Property Damage, Personal Injury or loss of use arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

If such insurance contains an aggregate limit, it shall apply separately on a per job, per location basis.

19.2.3 Comprehensive Business Automobile Liability, and if necessary, Commercial Umbrella Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

19.2.4 Builder's Risk: The Contractor shall be liable for any and all damages and losses to the Project prior to the State of New York's acceptance of the Project as fully completed except that the Contractor shall not be liable for:

19.2.4.1 Losses covered by the Builder's Risk property insurance provided by the State of New York; except that the Contractor shall be liable for the applicable deductible.

19.2.4.2 All policies shall be issued by insurance companies licensed to conduct such business under the laws of the State of New York, shall be written for the benefit of the State of New York and for the Contractor as their interests may appear, and shall run until the contract physical completion date. The State of New York must be listed as loss payee pursuant to this policy. Policies expiring on a fixed date before physical completion must be renewed and re-filed not less than thirty days before such expiration date.

19.2.5 If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance including asbestos, lead or mold, and those as defined by applicable State and federal laws and regulations, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the contract, and for two years after completion hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against OGS arising from Contractor's work. The State of New York shall be named as additional insured and this shall be primary.

19.2.5.1 If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

19.3 The Contractor may provide the required proof of insurance on industry forms provided that no other endorsements exclude, delete or restrict those coverage's provided for by this article. It is required that companies affording coverage list the company name in full as filed with the New York State Insurance Department. The contract number and project location must be provided in order to approve the certificate.

19.4 Should the Contractor fail to provide or maintain any insurance required by law the Contract will be considered null and void. Further, no contractor is permitted to access the project site without providing proof of proper insurance to the Contracting Officer or his designated representative. No payments will be authorized by the Contracting Officer to any firm who fails to comply with the provisions of this Article.

ARTICLE 20 - OCCUPANCY PRIOR TO COMPLETION AND ACCEPTANCE

20.1 The State shall have the right to take possession of or use any completed or partially completed portion of the Work. Written notice of such possession shall be given to the Contractor by the Director. The notice shall identify the date when such possession shall commence and the area, equipment or system involved. Written notice shall also be given the Contractor for any cessation of such possession by the State. Such possession or use shall not be deemed an acceptance of any Work. While the State is in such possession, the Contractor, notwithstanding the provisions of Article 18 of the Contract, shall be relieved of the responsibility for loss or damage to the Work except for that resulting from the Contractor's fault or negligence. If such possession or use by the State delays the progress of the Work or causes additional expense to the Contractor, an adjustment in the Contract price and/or the time of completion shall be made and the Contract modified in writing accordingly. The provisions relating to an adjustment in the Contract price or the time of completion contained in this paragraph shall not apply to occupancy or possession after Substantial Completion.

ARTICLE 21 - PAYMENT

21.1 The Contractor shall submit monthly, or at more frequent intervals if permitted in writing by the Contracting Officer, a requisition for a progress payment to the designated payment office for Work performed and materials furnished up to the date of the requisition, less any amount previously paid to the Contractor. Except as otherwise provided by this Contract, the Contracting Officer shall approve and cause to be paid the requisition for the progress payment less an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged and less any amount authorized by law to be retained. The requisition shall be in such form and supported by such evidence as the Contracting Officer may reasonably require. The designated payment office is listed as follows:

Division of Contract Administration
Bureau of Contract Performance
35th Floor, Corning Tower
Albany, New York 12242

21.1.1 For those contracts designated as Labor and Material reimbursement or similar type contracts, the contractor shall submit to the Contract Payment Audit Group no later than 60 days from the period of when the work occurred, acceptable proof of labor and material costs specific to the approved scope of work as verified by the Directors Representative, to the Contracting Officer for audit, verification and approval prior to the

submission of any payment. The Contract Payment Audit Group is located at the following location:

Division of Contract Administration
Contract Payment Audit Group
35th Floor, Corning Tower
Albany, New York 12242

21.1.2 The submittal of cost for reimbursement to the Contractor shall be in such form and supported by such evidence as the Contracting Officer may reasonably require.

21.1.3 For those contracts designated as Electronic Contractor Requisition (ECR) eligible, if the contractor agrees to participate (participation is not mandatory – a contractor may still elect to submit paper requisitions), the contractor shall provide an Electronic Contractor Requisition (ECR) Program Certification form which shall become part of this agreement. The contractor further certifies that the individual certifying the requisition is duly authorized to undertake requisitioning transactions. The contractor understands that the State will rely on the information disclosed in the contractor's requisition consistent with all of the provisions of this Article. A contractor need not submit electronic requisitions in order to receive electronic payments.

21.2 The Director or the Contracting Officer may refuse to approve the requisition or a portion of it if the Contractor is failing or refusing to prosecute the Work in accordance with the Contract.

21.3 Payment will be made for approved materials not yet incorporated in the Work which are in short and/or critical supply and for materials determined to be specifically fabricated for the project. Requisitions which require payment for materials shall be accompanied by a notarized statement certifying that the materials for which payment is requisitioned are the Contractor's property and have been suitably stored and insured. The Contractor shall provide such evidence of the value of the material stored as the Contracting Officer may reasonably require. The Contractor shall have full continuing responsibility to insure and protect such materials and maintain them in proper condition to fulfill Contract requirements when installed.

21.4 When the Work or major milestones thereof as contemplated by the terms of this Contract are substantially completed, the Contractor shall submit to the Contracting Officer a requisition for payment of the remaining amount of the Contract balance. Upon receipt of such requisition the Contracting Officer shall, except as otherwise provided by this Contract, approve and cause to be paid the remaining amount of the Contract balance less two times the value of any remaining items to be completed and an amount necessary to satisfy any

claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of Work are satisfactorily completed or corrected, the Contracting Officer shall cause to be paid, upon receipt of a requisition, for these remaining items less an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

21.5 No more than 60 days after the issuance of the Physical Completion Report, the Contractor shall submit to the Contracting Officer or his designated representative a requisition for payment of the remaining Contract balance. Upon receipt of this requisition, the Contracting Officer shall, except as otherwise provided by this Contract, approve and cause such requisition to be paid less any amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. The Contractor waives any claim or right to payment of any contract balance which has not been requisitioned for payment within 60 days of the issuance of the Physical Completion Report.

21.6 The final certificate letter will not be issued until all the labor and material required by the Contract has been furnished and completed, all disputes and claims relating to the performance of the Contract considered and disposed of and all accounts for extra work and materials and allowances for omissions have been rendered and considered. The Contractor waives any claim or right to additional compensation which has not been submitted in writing via certified or registered mail to the Contracting Officer pursuant to Article 17A, within thirty days of the issuance of the Physical Completion Report.

21.7 The final certificate letter will constitute the acceptance of the Work by the State, except as to Work thereafter found to be defective. The date of such certificate shall be regarded as the date of acceptance of the Work.

21.8 No payment will be made to a foreign Contractor until it furnishes satisfactory proof that it has paid all taxes required of foreign Contractors under the provisions of the New York State Tax Law. A foreign Contractor as used in this paragraph shall mean a Contractor denominated "foreign" by the New York State Tax Law.

21.9 The contractor is advised that consistent with Subdivision 3-a, of Section 220 of the Labor Law, the filing of certified payroll records is a condition precedent to payment of any sums due and owing to any person performing work on this project. The failure to file pursuant to this section will result in a payment delay until such time as the filing occurs.

21.10 The Contractor acknowledges that it will not receive payment on any requests for payment unless the contractor complies with the State Comptroller's electronic payment deposit procedures. Payments requested by the contractor will only be facilitated via electronic deposit, except where the Commissioner has expressly authorized payment by paper check.

ARTICLE 22 - AUDITS AND RECORDS

22.1 The Group Director, the Comptroller or their representatives shall have the right to examine all books, records, documents, and other data of the Contractor, subcontractors, material-men or suppliers relating to the bidding, pricing or performance of this Contract or any change or modification thereto for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. This right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.

22.2 The above materials shall be made available at the office of the Contractor, subcontractors, material-men or suppliers at all reasonable times for inspection, audit or reproduction until the expiration of six years from the date of the final certificate for the Contract.

22.3 If this Contract is completely or partially terminated, the records relating to the Work terminated shall be made available for a period of six years from the date of any resulting final settlement.

22.4 Records which relate to the Disputes Clause of this Contract or litigation or the settlement of claims arising out of the performance of this Contract shall be made available until such appeals, litigation or claims have been disposed of.

22.5 The Contractor shall insert a clause containing all of the provisions of Paragraphs 22.1 to 22.4 of these General Conditions in all subcontracts or purchase orders issued hereunder.

22.6 The Contractor shall make available to the Contracting Officer, upon written request, all records required to be kept by this Contract or by Article 3-A of the Lien Law. The failure to provide said records upon the receipt of the written request shall bar any recovery for claimed extra or additional costs under this Contract.

ARTICLE 23 – LABOR LAW PROVISIONS

23.1 The contractor shall post, in a location designated by the State, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this Project, a copy of all re-

determinations of such schedules for the Project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the Site, the Department of Labor notice that this Project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the State directs the contractor to post. The contractor shall provide a surface for such notices which is satisfactory to the State. The contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The contractor shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete.

23.2 The contractor shall distribute to each worker for this Contract a notice, in a form provided by the State, that this Project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of contractor and all Subcontractors and all employees of Suppliers entering the Site. Such notice shall be distributed to each worker before he or she starts performing any Work of this Contract. At the time of distribution, the contractor shall have each worker sign a statement, in a form provided by the State, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by Paragraph 23.9 of these General Conditions.

23.3 The contractor shall maintain on the Site the original certified payroll or certified transcripts thereof which the contractor and all of its Subcontractors are required to maintain pursuant to New York Labor Law Section 220. The contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to Paragraph 23.8 of these General Conditions.

23.4 A contractor or subcontractor who is required under New York Labor Law Section 220 to maintain transcripts of payroll records must submit to the contracting agency a transcript of the original payroll record within thirty days of issuance of its first payroll and every thirty days, thereafter. The copy of the payroll record must be subscribed and affirmed as true under penalty of perjury. The copy must include the contract number and should be directed to the Director's Representative at the job site. The Director's Representative is hereby designated as the individual responsible for the receipt, collection and review for authenticity of payroll records filed for this contract, consistent with Article 23.10, General Conditions and subparagraph (iii) and (iv) Section 220 Labor Law.

23.5 In accordance with New York Labor Law §222-H, the contractor agrees where the total cost of all work to be performed under the contract is at least two hundred fifty thousand dollars; all laborers, workers, and mechanics employed in the performance of this contract on the public work site, either by the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by this contract, shall be certified prior to performing any work on the project as having successfully completed a course in construction safety and health approved by the United States department of labor's occupational safety and health administration that is at least ten hours in duration.

23.6 In accordance with New York Labor Law § 220 (3) (a), the Contractor and every sub-contractor agrees to notify all laborers, workers or mechanics in their employ in writing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every laborer, worker or mechanic on their first pay stub and with every pay stub thereafter. At the beginning of performance of every public works contract, and with the first paycheck after July first of each year, the Contractor and every sub-contractor shall notify all laborers, workers, and mechanics in their employ in writing, in accordance with such form as is prescribed by the department, of the telephone number and address for the department. The notice shall also inform each laborer, worker, or mechanic of his or her right to contact the department or some other representative if, at any time while working for the public works contractor or sub-contractor, he or she does not receive the proper prevailing rate of wages or supplements for his or her particular job classification that he or she is entitled to receive under the contract.

ARTICLE 24 - STATUTORY REQUIREMENTS FOR RESTRICTIONS ON CONTACTS DURING THE PROCUREMENT PROCESS AND DISCLOSURE OF CONTACTS AND RESPONSIBILITY OF OFFERERS MISCELLANEOUS PROVISIONS

24.1 New York State Finance Law §139-k requires that every procurement contract award subject to the provisions of State Finance Law §139-k or §139-j shall contain a certification by the offerer that all information provided to the procuring governmental agency with respect to State Finance Law §139-k is complete, true and accurate. The Contractor shall provide that certification in his contract or agreement.

24.2 New York State Finance Law

24.2.1 New York State Finance Law § 139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility

determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163 (9). In accordance with State Finance Law § 139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.

24.2.2 As part of its responsibility determination, State Finance Law § 139-k(3) mandates consideration of whether an offerer fails to timely disclose or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. The required forms to be completed by the offerer must be submitted to the Governmental Entity conducting the government procurement. The Governmental Entity will have included the disclosure request in its solicitation of proposals or bid documents or specifications of contract documents, as applicable, for procurement contracts.

ARTICLE 25 – MISCELLANEOUS PROVISIONS

25.1 Appendix A, standard clauses for all N.Y. State contracts, is attached hereto and is made a part of this agreement as if set forth herein.

25.2 If, in carrying out this Work, a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the Board of Standards and Appeals, then the Contractor shall install, maintain and effectively operate such appliances and methods during the life of this Contract; and in case of Contractor's failure to comply, as provided by Section 222-a of the Labor Law, the Contract shall be void.

25.3 RETAINED PERCENTAGES: The Contractor agrees that, if the Contract Documents for this Contract includes Performance and Payment Bonds, the State shall retain five percent of the amount of each progress payment in accordance with Section 139-f of the State Finance Law. The Contractor further agrees that, if the Contract Documents for this Contract do not include Performance and Payment Bonds, the State shall retain ten percent of the amount of each progress payment in accordance with Section 139-f of the State Finance Law.

25.4 DOMESTIC STEEL: The Contractor agrees, that if the value of this contract exceeds \$100,000 all structural steel, reinforcing steel and other major steel items to be incorporated in the Work of this Contract shall be produced and made in whole or substantial part in the United States, its territories or possessions.

25.5 COMMENCEMENT OF ACTIONS: The time, as prescribed by law, within which an action on the contract against the Contractor must be commenced shall be computed from the completion of physical work. The Contractor may notify the State in writing that the physical work of the contract has been completed by specifying a completion date, which date shall be no more than thirty days previous to the date of such notice. The completion date set forth in such notice shall be deemed the date of completion of the physical work unless the State, within thirty days of receipt of such notice, notifies the Contractor in writing of its disagreement. Any notice pursuant to this paragraph shall be sent by the Contractor by Certified Mail and addressed to:

Division of Contract Administration
Contracting Officer
35th Floor, Corning Tower
Albany, New York 12242

25.5.1 In the event that the Contractor fails to send the notice provided for herein or the State disagrees in the manner provided for herein, the date of completion of the physical work shall be determined in any other manner provided by law.

25.6 WORKER'S COMPENSATION LAW: In accordance with Worker's Compensation Law (WCL) §141-b (Suspension and Debarment), any person subject to a final assessment of civil fines or penalties or a stop-work order, or that has been convicted of a misdemeanor for a violation of WCL §§ 26 (Enforcement of Payment in Default), 52 (Effect of Failure to Secure Compensation) or 131 (Payroll Records), and any substantially-owned affiliated entity of such person, shall

be ineligible to submit a bid on or be awarded any such public work contract or subcontract with the State, any municipal corporation or public body for a period of one (1) year from the final determination or conviction. Any person convicted of a felony under Article 8 (Administration) of the WCL, or a misdemeanor under WCL §§125 (Job Description Prohibited Based on Prior Receipt of Benefits) and 125-a (Civil Enforcement) shall be ineligible to submit a bid or be awarded any public work contract or subcontract with the State, any municipal corporation or public body for a period of five (5) years from such conviction.

25.7 ENVIRONMENTAL CONSERVATION LAWS: The Contractor certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Law (ECL) section 19-0323, to be used under this Contract, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification for a waiver under this law will be the responsibility of the Contractor.

25.8 REPORTING OF ILLEGAL ACTIVITY: During the term of the contract, the Contractor agrees to report any observed or suspected illegal activity of its employees, agents or other third parties, to the Contracting Officer at 518-474-0201, the Group Director, OGS Legal Services, the State Inspector General or other law enforcement agency. Failure to report criminal conduct associated with a contract awarded by the Office of General Services, will be considered a material breach of the contract and may provide grounds for disqualification of the subject Contractor or Subcontractor for award of future contracts. The Contractor will include the provisions of this section in every subcontract, in such a manner that the provisions will be binding upon each Subcontractor as to work performed in connection with the State contract.

TABLE OF CLAUSES

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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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

5. NON-DISCRIMINATION REQUIREMENTS.

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

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

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded

based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION.

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be

afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the

United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation,

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

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

1. If the Contractor performs the Contract, the Surety and the Contractor shall have no obligation under the Performance Bond.
2. The Surety's obligation under this Bond shall arise after:
 - 2.1 The State has notified the Contractor and the Surety in writing that the State is considering declaring a Contractor in default, or
 - 2.2 The State has declared a Contractor in default and formally terminated the Contractor's right to complete the Contract, and
 - 2.3 The State has agreed to pay the Balance of the Contract Price to the Surety or to a Contractor selected to complete the Contract in accordance with the terms of the Contract with the State.
3. The Surety shall promptly and at its own expense, take the following actions:
 - 3.1 Undertake to perform and complete the Contract, through its agent or retained contractor; according to the following schedule:

Day 1-10	Immediately begins its investigation and advises OGS of its Representatives.
Day 10-25	Visits Site with OGS representatives to review the contract documents and completed work; and determines extent of acceptable Work.
Day 25-30	Submits proposed completion contractor, completion plan, and CPM as required, for approval by the Office of General Services.
4. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on the Bond, and the State shall be entitled to enforce any remedy available pursuant to the terms of the contract.
5. After the State has terminated the Contractor's right to complete the Contract, and if the Surety elects to act then the responsibilities of the Surety to the State shall not be greater than those of the Contractor under the Contract, and the responsibilities of the State to the Surety shall not be greater than those provided under the Contract. To the limit of the amount of this Bond, the Surety is obligated to correct defective work and complete the work of the Contract in a timely manner.
6. The penal sum of the Performance Bond furnished by the contractor to the State, approved and filed with the Office of the State Comptroller, in no way shall be impaired or affected by any other bond that may relate to the contract in question.

Day 30-44 As completing contractor, the surety or its representative, presents its list of subcontractors to OGS for approval. Additionally an Insurance Certificate naming the Surety and completion Contractor as named insured must be submitted to the Contracting Officer prior to the beginning any completion of the Work. The completion plan and schedule is returned to Surety.

Day 45 Surety begins the Completion of the Work.

END OF DOCUMENT

DOCUMENT 007306

SUPPLEMENTARY CONDITIONS - WARRANTY EXTENSION

This supplement modifies the General Conditions. Where any part of the General Conditions is modified by this supplement, the unaltered provision of that part shall remain in effect.

ARTICLE 9 - INSPECTION AND ACCEPTANCE

9.8 Add the following sub-paragraph:

9.8.1 The one year period required by Paragraph 9.8 of the General Conditions is extended and supplemented for part of the work as described in Section 074113 of the Specifications.

END OF DOCUMENT

SUPPLEMENTARY CONDITIONS - AFFIRMATIVE ACTIONS

This supplement modifies the General Conditions. Where any part of the General Conditions is modified by this supplement, the unaltered provisions of that part shall remain in effect.

ARTICLE 16 - STATUTORY REQUIREMENTS FOR UTILIZATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

Add the following:

16.6 Participation by Minority and Women-Owned Business Enterprises (M/WBEs): The Contractor Shall use every good faith effort to provide for meaningful participation by M/WBEs in the Work. Such good faith efforts shall include at least the following:

- (a) Dividing the Work to be subcontracted into smaller portions where technically feasible.
- (b) Actively and affirmatively soliciting bids for subcontracts from certified M/WBEs, including circulation of solicitations to minority and Women Contractors' Associations. Contractor shall maintain records detailing the efforts made to provide for meaningful M/WBEs contacted and, if any such M/WBE is not selected as a joint venturer or subcontractor, the reasons for such decision.
- (c) Making plans and specifications for prospective work available to certified M/WBEs, in sufficient time for review.
- (d) Utilizing the services and cooperating with those organizations providing technical assistance in connection with M/WBE participation.
- (e) Utilizing the list of certified M/WBEs maintained by the New York State Department of Economic Development, Division of Minority & Women's Business Development for the purpose of soliciting bids for subcontracts soliciting bids for subcontracts and supplies.
- (f) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate to insure that appropriate to insure that the Contractor will meet its obligations hereunder.
- (g) Insuring that provision is made to provide progress payments to certified M/WBEs on a timely basis.
- (h) Not requiring bonds from and/or providing bonds and insurance of certified M/WBEs where appropriate.
- (i) The Contractor shall include the foregoing provisions in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or supplier.

Add the following articles:

ARTICLE 25 - AFFIRMATIVE ACTION

25.1 Participation by Minority Persons and Women: The Contractor shall use every good faith effort to ensure meaningful participation by Minority persons and women in the Work. Such good faith efforts shall include at least the following:

- (a) Ensure and maintain a working environment free of harassment, intimidation and coercion. The Contractor shall specifically ensure that all foremen, superintendents and other supervisory are aware of and carry out the Contractor's obligation to maintain such working environment.
- (b) Establish and maintain a current list of Minority and women recruitment sources and notify such sources and Minority community organizations when employment opportunities are available, and maintain a record of the sources' and organizations' responses.
- (c) Maintain a file of the names and addresses of each Minority person and woman of what referred to it by an

D&C DJA

individual, recruitment source or community organization and of what action was taken with respect to each such referred individual. If the individual was not employed by the Contractor, the file should set forth reasons therefore.

- (d) Promptly notify the State when the union or unions with which the Contractor has a collective bargaining agreement has not referred to Contractor a Minority person or woman sent by the Contractor to such union for employment in the work, or when it has other information that the union referral process has impeded efforts to meet its obligations.
- (e) Disseminate the Contractor's equal employment opportunity policy within its organization by including it in any employee handbook or policy manual; by publicizing it in company newspapers and annual reports; and by advertising such policy at reasonable intervals in union publications. The equal employment opportunity policy should be further disseminated by conducting staff meetings to explain and discuss the policy; by posting of the policy at the site of any work and by review of the policy with employees.
- (f) Disseminate the Contractor's equal employment opportunity policy externally by informing and discussing it with all recruitment sources and community organizations; by advertising in news media, specifically including Minority and women news media; and by notifying and discussing it with all subcontractors.
- (g) Make both specific and reasonably recurrent, written and oral recruitment efforts, directed at Minority and women's organizations, schools with substantial Minority and women enrollment, and to Minority and Women recruitment and training organizations within the Contractor's recruitment area.
- (h) Validate all tests and other selection requirements.
- (i) Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect.
- (j) Ensure that all facilities and company activities are nonsegregated except that to separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (k) Continually monitor all personnel activities to ensure that its equal employment opportunity policy is being carried out including the evaluation of Minority and women employees for promotional opportunities on an annual basis, and the encouragement of such employees to seek those opportunities.
- (l) File monthly compliance reports relating to the operation and implementation of approved affirmative action programs.
- (m) The contractor shall include the foregoing provisions (a) through (l) in every subcontract or purchase order so that such provision will be binding upon each subcontractor or supplier.

ARTICLE 26 - MINORITY AND WOMEN PARTICIPATION

26.1 Goals for Minority and Women Workforce Participation:

- (a) The Contractor shall exert good faith efforts to achieve a 9% goal for minority and women workforce participation for each occupation utilized in the work on an occupation by occupation basis including trainees.
- (b) The Minority and women workforce participation goals are expressed for each that occupations a percentage equal to the person-hours of training and employment in that occupation of Minority and women workers used by the Contractor and any subcontractor in the work, divided by the total person-hours of training and employment of all workers in that occupation (including supervisory personnel) used by the contractor and any subcontractor in the Work..
- (c) The required participation for Minority and women employment and training must be substantially uniform throughout the Work.
- (d) The Contractor shall not participate in the transfer of Minority or women employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the Contractor's obligations hereunder.
- (e) In achieving the goals for Minority and women workforce participation in the Work, the Contractor shall make every good faith and reasonable to effort to find and employ qualified Minority and women supervisory personnel and journeypersons.
- (f) The nonworking hours of trainees or apprentices may not be considered in meeting the goals for minority

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and women workforce participation contained in meeting (1) such trainees or apprentices are employed by the Contractor during the training period, (2) the Contractor has made a commitment to employ the trainees or apprentices at the completion of their training, subject to the availability of employment opportunities; and (3) the trainees are trained pursuant to a training program approved by the State.

- (g) The Contractor shall include the foregoing provisions in every subcontract, so that such provisions will be binding upon each subcontractor.

26.2 Goals for Minority and Women-owned Business Enterprise Participation:

- (a) The Contractor shall exert good faith efforts to achieve a 5% goal for Minority Business Enterprise participation in the Work.
- (b) The Contractor shall exert good faith efforts to achieve a 10% goal for Women-Owned Business Enterprise participation in the Work.
- (c) The goal for participation in the conduct of the Work is expressed as a percentage equal to the dollar value of the Work performed divided by the Contract Sum. (1) Where the cost to the Contractor of a single item of equipment exceeds twenty-five percent of the total contract price and where the Contractor has shown good faith efforts to obtain such equipment from M/WBE manufacturers and suppliers, the cost of such equipment shall be deducted from the contract sum prior to computing the M/WBE participation.

26.3 The dollar value of the Work performed by M/WBEs will be determined as: (1) Where an M/WBE is not the Contractor - the dollar value of the Work subcontracted to M/WBEs, provided, however, that where materials are purchased from an M/WBE, which acts merely as a conduit for goods manufactured or produced by a non-M/WBE, only that portion of the price paid for such materials which will accrue as profit to the M/WBE and/or the fee received by the M/WBE shall be included for the purpose of determining the dollar value of Work performed by M/WBEs (2) Where the Contractor is a joint venture including one or more M/WBEs as joint venturers - the Contract Sum multiplied by the percentage of the joint venture's profits (or losses) which are to accrue to the M/WBE joint venturer(s) under the joint venture agreement; and (3) Where any M/WBE is the Contractor or where the Contractor is a joint venture consisting entirely of M/WBEs, and the Contractor can document good faith efforts to subcontract to M/WBE subcontractors and/or suppliers - the Contract Sum.

26.4 Compliance Reports: The Contractor Shall file monthly compliance reports with the State regarding compliance with the provisions of this Article. Compliance reports shall be filed within such time, shall contain such information and shall be in such form as the State may prescribe.

26.5 Access to the Contractor's Books: The Contractor shall permit access to its books, records and accounts by the State for purposes of investigation to ascertain compliance with the provisions of this Article. The contractor shall include this provision in every subcontract so that such provision will be binding upon each subcontractor.

26.5.1 Upon a showing by the Contractor of full compliance with its approved affirmative action program the State will waive a Contractor's failure to achieve the goal for minority and women workforce participation.

26.5.2 Upon a showing by the Contractor of the sue of every good faith effort to achieve the goal for Minority and/or Women-Owned Business Enterprise participation in the Work, the State will waive a Contractor's failure to achieve the goal for minority and/or Women-Owned Business Enterprise participation.

26.6 Sanctions for noncompliance:

- (a) In the event the Contractor fails to achieve the goal for the minority and women workforce participation and is not granted a waiver under the provisions of 26.5.1, the State may withhold from the final payment as additional liquidated damages for the Contractor's failure to achieve the goal for minority and women workforce participation a sum equaling the difference between (1) all sums which would have been paid to minority and women employees had the Contractor achieved the goal for minority and women workforce participation set forth in this Agreement and (2) such sums actually paid to minority and women employees

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in accordance with this Agreement.

- (b) In the event the Contractor fails to achieve the goal for Minority and/or Women-Owned Business Enterprise participation and is not granted a waiver under the provisions of 26.5.2, the State may withhold from the Final Payment as additional liquidated damages for the Contractor's failure to achieve the goal for Minority and/or Women-owned Business Enterprise participation in the Work a sum equaling the difference between (1) all sums which would have been paid to M/WBEs had the Contractor achieved the goal for Minority and/or Women-Owned Business Enterprise participation in the Work set forth in this Agreement, and (2) such sums actually paid to M/WBEs for the Work in accordance with this Agreement.

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