

**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES (OGS)**

**CONTINUOUS RECRUITMENT
FOR THE CENTRALIZED NEGOTIATED CONTRACT FOR THE ACQUISITION OF
VOTING SYSTEMS AND BALLOT MARKING OR OTHER VOTING DEVICES ACCESSIBLE TO
INDIVIDUALS WITH DISABILITIES AND RELATED SERVICES**

New York State Contract #

Contractor Reference #

[INSERT: CONTRACTOR NAME]

DESIGNATED STATE CONTACTS: OGS Procurement Services Group		
Lori L. Bahan Purchasing Officer I Telephone No (518) 474-1912 E-mail: lori.bahan@ogs.state.ny.us	Wendy Reitzel Purchasing Team Leader Telephone No. (518) 473-9057 Email: wendy.reitzel@ogs.state.ny.us	Michele Reale Associate Attorney Telephone No. (518) 474-5607 Email:michele reale@ogs.state.ny.us
DESIGNATED STATE CONTACTS: New York State Board of Elections		
Anna Svizzero Director of Election Operations Telephone No. (518) 473-5086 E-mail: asvizzero@elections.state.ny.us	Joseph Burns Deputy Director of Election Operations Telephone No. (518) 473-5086 E-mail: jburns@elections.state.ny.us	Kimberly Galvin Special Counsel 518/473-5086 kgalvin@elections.state.ny.us
Robert Warren Certification Project Manager Telephone No. (518) 473-5086 E-mail: rwarren@elections.state.ny.us	John Ferri Voting Equipment Specialist II Telephone No. (518) 473-5086 E-mail: jferri@elections.state.ny.us	

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

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

THIS CONTRACT is for the acquisition (purchase or lease) of Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services and accessories, consumables, training, maintenance and other related services (including, but not limited to, consulting and training), made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law, § 163, and _____ (hereinafter "Contractor"), with its principal place of business

at:

CALENDAR OF EVENTS:

The list below outlines the schedule for important action dates. If OGS and the New York State Board of Elections (NYSBOE) finds it necessary to change the dates, notification will be accomplished through an addendum to the IFB. Dates after the submission deadline are tentative.

Advertisement in Contract Reporter	September 24, 2007
Distribution of C.R.	November 27, 2007
Letter of Intent (Mandatory)	On or After November 8, 2007
Receipt of Proposals and Continuous Recruitment	On or After November 23, 2007
Completion of Negotiations /Vendor Responsibility Review (Estimated)	TBD
Submittal of Draft Award Document to BOE for Review (Estimated)	TBD
BOE Review (Estimated)	TBD
Approval by OSC (Estimated)	TBD

LETTER OF INTENT TO BID

Vendors planning to submit a proposal in response to this IFB must indicate their intent to do so by sending a Letter of Intent to Bid to the OGS' Designated Contacts named below. This letter must specify the name of the company, the name of the company's primary contact person for the purposes of all future communication regarding the IFB and bidder's proposal, and the contact person's address, telephone number, fax number and e-mail address. This letter must specifically reference the IFB # and state whether they intend to bid on Lot, Lot II or both.

The Letter of Intent to Bid may be e-mailed or faxed. Letters must be received on or after **November 8, 2007** by:

Designated Contact:

Wendy Reitzel
Team Leader
OGS Procurement Services Group
NYS Office of General Services
Corning Tower, 38th Floor
Empire State Plaza
Albany, New York 12242
(518) 473-9057
Fax: (518) 486-6867
Email: wendy.reitzel@ogs.state.ny.us

PROCUREMENT LOBBYING TERMINATION:

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

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SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

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

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

INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

APPENDIX A:

Appendix A, Standard Clauses For New York State Contracts, dated November 2010, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference.**

APPENDIX B:

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY (hereinafter the "Questionnaire"):

OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A Questionnaire is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the "Questionnaire." The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Bidder, the Bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid opening date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

TAX LAW 5-A AMENDED APRIL 26, 2006 (APPENDIX 2)

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

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

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

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Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

MERCURY-ADDED CONSUMER PRODUCTS:

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

INQUIRIES/ISSUING OFFICE:

All inquiries concerning this solicitation shall be addressed to the following designated contacts:

PRIMARY CONTACT

Lori L. Bahan
NYS Office of General Services
Procurement Services Group
Corning Tower - 38th Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 474-1912
FAX No. (518) 486-6867
E-Mail: lori.bahan@ogs.state.ny.us

SECONDARY CONTACT

Wendy Reitzel
NYS Office of General Services
Procurement Services Group
Corning Tower - 38th Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 473-9057
FAX No. (518) 486-6867
E-Mail: wendy.reitzel@ogs.state.ny.us

SECONDARY CONTACT

Michele Reale
NYS Office of General Services
Procurement Services Group
Corning Tower - 41st Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 474-5607
FAX No. (518) 473-4973
E-Mail: michele.reale@ogs.state.ny.us

All questions should be submitted in writing no later than two weeks prior to the date on which **Proposals and Continuous Recruitment Begins (November 19, 2007)**, citing the particular bid section and paragraph number. The prospective bidder should notify the DESIGNATED CONTACT of any term, condition, etc., that precludes the vendor from submitting a compliant, responsive bid. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Bidders entering into a contract with the State are expected to comply with **all** the terms and conditions contained herein. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing contract.

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DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

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

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

FREEDOM OF INFORMATION LAW:

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. **SHOULD YOU FEEL YOUR FIRM'S BID/PROPOSAL CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE. SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION. REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/PROPOSAL FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.**

NEW YORK STATE PROCUREMENT CARD:

See "Procurement Card" in Appendix B, OGS General Specifications. All bidders shall indicate if they will accept the NYS Purchasing Card for orders not to exceed \$15,000 (see Questions at end of bid document).

PRE-BID CONFERENCE:

The Commissioner and the New York State Board of Elections reserve the right to hold a pre-bid conference in order for Bidders to obtain additional information. The date and time of the pre-bid conference will be provided in advance. All questions must be submitted electronically in Word format (attached to an e-mail) prior to the conference and must reference the section, page number and specific paragraph of the solicitation that you are questioning. Questions should be phrased in the form of a question and be germane to the solicitation.

SAMPLE STATEMENT OF WORK

A sample Statement of Work is attached hereto as Exhibit "3" to aid bidders in the preparation of their bid submissions.

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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 your bid or renewal.

1. Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
- B) Certificate of Workers' Compensation Insurance:
 - 1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
 - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
- C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

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:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
- B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
- C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The Office of General Services, Procurement Services Group, Team __, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

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METHOD OF AWARD:

Awards shall be made by Lot on a statewide basis to responsive and responsible bidders. Because of the varied nature of these products, award will be made to more than one vendor for each Lot. Awards shall be made only to Bidders whose price list indicates that products and services will be delivered at a reasonable price as determined by the New York State Office of General Services. "Reasonable prices" may be determined by reviewing discounts and net prices and pricing offered on any previously awarded NYS contract, pricing offered by other Bidders for this solicitation and contracts with other state or governmental entities, etc. New York State reserves the right to reject any Bidder who does not demonstrate competitive pricing for this contract.

Awards will be made only to established manufacturers, authorized dealers or other authorized representatives taking into consideration delivery offered and all product information available.

The State reserves the right to make "NO AWARD" on individual listings or sub-items.

Award will be made as a two step process; the first step is that the Bidders submits voting systems and/or ballot marking or other voting devices accessible to individuals with disabilities and related services that comply with the mandates of New York State Election Law, and meet the Election Assistance Commissions 2005 Voluntary Voting Systems Guidelines <http://www.eac.gov/voting%20systems/voting-system-certification/2005-vvsg> to the extent that they are consistent with State law. OGS will then negotiate the contract and award contracts for systems submitted for purchase and leasing. However, the Contractor is not yet authorized to actually sell or lease Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services to Authorized Users until step 2 is completed. NOTE: Any negotiations shall be made in writing with the Designated Contacts from OGS and the New York State Board of Elections. The second step requires the New York State Board of Elections to certify voting systems and ballot marking devices for use in New York State. Vendors shall be responsible for payment of the cost of the certification process, as determined by the New York State Board of Elections. Prospective contractors should be aware that there is an application fee of \$5,000, unless such requirement is waived by the BOE, and testing costs are estimated at \$1,000,000.00 unless such requirement is waived by the BOE. Upon completion of the certification process, OGS, in conjunction with the New York State Board of Elections, will approve the certified systems for purchase or lease under the contract.

NOTE: Issues involving the system certification are to be referred to the Designated Contacts for BOE.

QUALIFICATION OF BIDDERS:

Bids will be accepted only from established manufacturers, authorized dealers or other authorized representatives. Any dealer or authorized representative of the manufacturer submitting a bid hereby guarantees that it is an authorized dealer or authorized representative of the manufacturer, that the manufacturer has agreed to supply the dealer or representative with all quantities of products required by the dealer or representative in fulfillment of its obligations under any resultant contract with the State, and that it will provide a certificate from the manufacturer acknowledging this level of support if requested.

Bidder must be capable of processing and shipping large numbers of orders to various destinations.

Bidders must maintain service facilities and have trained personnel available to service the products furnished to the Authorized Users. Bidders must guarantee in writing to keep such machines and systems in good working order for at least five years without additional cost and will satisfactorily perform their service obligations under the contract. Bidders must be able to provide training and support by trained personnel. Bidders must guarantee in writing that they will perform satisfactorily their training obligations under the contract.

Bidder must have adequate financial and other resources to implement a statewide contract to all county BOEs.

Bidder must be a responsible contractor as evidenced by the State Standard Vendor Responsibility Questionnaire (SVRQ) contained herein.

Bidder shall submit, with their bid, a normal production schedule which demonstrates how many machines and/or ballot marking or other voting devices accessible to individuals with disabilities and related services can be produced per day in the normal course of business

Bidder must demonstrate that it meets all other requirements of the solicitation.

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CONTRACT PERIOD AND RENEWALS:

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

The contract dates may be adjusted forward beyond two months only with the approval of the successful Bidder. If, however, the Bidder is not willing to accept an adjustment of the contract dates beyond the two month period, the State reserves the right to proceed with an award to another Bidder.

The parties may renew the contract, upon approval of the NYS Comptroller, upon expiration of the original term for an additional one (1) year term. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

CANCELLATION FOR CONVENIENCE:

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

REMEDIES FOR BREACH:

In the event of a breach by the Contractor, it is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. Minimum Cures:

i. Minimum cures: Unless otherwise agreed to by the Authorized User, at a minimum, in order to be able to address a failure of voting machine(s) or a failure in the provision of support and/or services, from pre-election day 30 up to pre-election day 15, Contractor shall provide phone support which shall be available on each of said days, from 7:00 am to 10:00 pm, Eastern Time. When a problem with voting machine hardware, or software manifests itself within this 15-day period, and same is unable to be resolved with phone support as provided by the Contractor, upon such notice by the Authorized User, on-site support/assistance must be provided by the Contractor within 24 hours of such notice. If after such on-site support/assistance, the failure still has not been resolved, upon notice of the board, new, replacement equipment must be delivered to the board, no later than 48 hours after such notice. For the period of pre- Election Day 15 to pre-Election Day 1, telephone support shall be provided 24 hours a day, seven days a week. In addition, Contractor shall provide, upon request, on-site support/assistance and/or equipment replacement as soon as requested, but in no event to exceed the time set for the prior critical period [pre-Election Day 30 to 15.]

ii. Beyond the State's statutory and regulatory requirements, for the period including Election Day minus 1, Election Day and Election Day plus 1, telephone support must be available during this entire 72-hour period. On Election Day, in addition to phone support as defined above, the Contractor, upon notice of the Authorized User, shall promptly provide on-site support.

iii. For the post election period, which is defined at Election Day plus 1 through Election Day plus 15, phone support shall be provided by the Contractor, on each of said days, between the hours of 7:00 am until 10:00 pm, EST. If such phone support does not resolve the failure, on-site support must be provided within 24 hours, and if after such on-site support, the failure has not been resolved, new replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice by the Authorized User.

iv. In non-critical periods, except during the conduct of quarterly maintenance processes, phone support shall be made available by the Contractor, on each business day, between the hours of 8:00 am and 6:00 pm, Eastern Time. If such phone support fails to resolve the voting equipment or system failure, the Contractor must provide for an on-site service call within 10 business days of such notice by the Authorized User, and if the failure remains unresolved, Contractor must provide replacement within 30 days of such notice by the Authorized User, or by day 1 of the next ensuing critical period prior to an election.

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REMEDIES FOR BREACH: (Cont'd)

Cover/Substitute Performance In the event of Contractor's material breach not cured within the applicable notice and cure period, the Commissioner, in conjunction with the NYS Board of Elections, and/or any Authorized Users may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner and the NYS Board of Elections, and/or any Authorized Users, are unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product and Services of equal or comparable quality, the Commissioner and the NYS Board of Elections, and/or any Authorized Users, may acquire acceptable replacement Product and Services of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner and the NYS Board of Elections, and/or any Authorized Users, be deducted from the Contract quantity and payments due Contractor.

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

c. Bankruptcy In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction. Any sums required to be expended by the Authorized User in order to carry out their statutory election responsibilities shall be reimbursed promptly by the Contractor or deducted by the Authorized User from payments due or to become due to the Contractor on the same or another transaction.

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

SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

CONTINUOUS RECRUITMENT:

This IFB is a Continuous Recruitment bid to obtain qualified Bidders to provide Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services. OGS intends to make awards through the Continuous Recruitment of bids. This IFB will result in a group of Contracts which become effective upon approval by the Office of the State Comptroller (OSC). Bidders who are rejected or who missed this initial opportunity to submit a bid will be allowed to respond to the requirements of this IFB at any time under the "Continuous Recruitment" parameters, and those bids will be processed as soon as is practicable and will become effective upon approval by OSC.

(Continued)

CONTINUOUS RECRUITMENT: (Cont'd)

Continuous Recruitment is a contracting process offered through the NYS Office of General Services which is designed to assist Vendors to do business with the State of New York more easily and in a timelier manner. Key objectives are:

- i. Ability to award contracts to new Bidders on an on-going basis;
- ii. Ability of the State to respond to fluid changes in the Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services marketplace as technology issues change;
- iii. Ease the duplicative requirements otherwise imposed on Bidders when filing bids, and
- iv. Allow newly emerging technologies or Bidder specialties to be quickly recognized and included by amendment to existing contracts.

A. Continuous Recruitment is unique in that there is no public bid opening or fixed date for submission of bids. Bids will begin to be accepted on November 19, 2007 and can be received at any time up to twelve months prior to the expiration date of the contract term. Three copies of the bid response shall be submitted.

B. The start date for each Bidder's contract will vary according to the date of bid submission and OSC approval. All contracts awarded based upon this IFB will terminate simultaneously on the future anniversary date of the Office of the State Comptroller's approval of the first contract(s) resulting from this bid including any resulting extensions.

C. All future bids submitted under the Continuous Recruitment provisions must meet all requirements of IFB 21231 and the submissions will be evaluated using the same evaluation criteria applied to submissions received when IFB 21231 was originally issued.

DISCOUNTS:

Bidder may offer discount(s) from the manufacturer's pricelist in effect at the time of the bid opening. Should price updates be issued prior to the award of these contracts, the updates should be sent as soon as possible for inclusion in any resulting award:

The Bidder may bid in one of the following three ways:

1. Option 1 - a uniform percentage discount from pricelist.
2. Option 2 - a uniform percentage discount per product category offered. (Categories along with their discount must be clearly defined on the bid price list and may be determined by the vendor to offer best available pricing).
3. Option 3 - line item percentage discount from items on pricelist.

The percent discount offered must be stated within two decimal places.

Volume discounts are optional, but encouraged and may be used as a basis for recommending award. Volume discounts may be applied for a specified dollar amount (determined by the Bidder) and may be applied per Purchase Order, cumulatively per Authorized User and/or cumulatively statewide. Bidder shall indicate the basis for applying these discounts in the space provided on the bid form. It is advised that a procurement record be maintained documenting the basis for this selection.

The State reserves the right to:

1. Accept or reject any or all bids
OR
2. Accept or reject any or all products and services included in the Bidder's pricelist
AND
3. Add products and/or services, with the agreement of the Bidder/Contractor, if it is in the best interest of the State to do so.

Discounts shall not be reduced for the entire contract period; they may, however, be increased at any time during the contract period (as in short term promotional discounts).

Bidders are encouraged to offer their best possible pricing through the bid format offered. However, Bidders and Contractors may negotiate better pricing with OGS, the New York State Board of Elections and Authorized Users at any time. Bid categories are as follows:

(Continued)

DISCOUNTS: (Cont'd)

Lot 1 Categories:

1. Voting Systems and Accessories
2. Software and Applicable Licensing Fees
3. Maintenance
4. Support
5. Training
6. Supplies
7. Consumables

Lot 2 Categories:

1. Ballot Marking or Other Voting Devices Accessible To Individuals With Disabilities and Accessories
2. Software and Applicable Licensing Fees
3. Programming
4. Maintenance
5. Support
6. Training
7. Supplies
8. Consumables

MINIMUM ORDER:

Minimum order shall be \$100.00.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the contractor's option, shipping costs from the contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the authorized user.

PAYMENTS:

Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal acceptance notice for the specified Product by the Authorized User's Purchasing Official. Such notification shall not be unreasonably withheld. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Payment shall be due upon acceptance in accordance with the following Payment Schedule. The Payment Schedule contains incremental payment in which for example, 70% of the cost of the Initial Pollsite Voting System order shall be paid upon Acceptance, 15% upon use of the PVS in an Election and 15% after use of the PVS in a successful election conducted throughout the jurisdiction (including at least one General Election.)

CONFLICT OF TERMS:

Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. **Appendix A** (Standard Clauses for NYS Contracts)
- b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph. Included herein shall be Purchase Orders issued by Authorized Users, any attachments thereto and any documents used to clarify the terms of the same.
- d. **Bid Documents** (Other than **Appendix A**).

(Continued)

CONFLICT OF TERMS: (Cont'd)

- i. Bid Specifications prepared by the Authorized User.
 - ii. Appendix B (General Specifications).
 - iii. Incorporated Contract Appendices and Exhibits, including but not limited to Exhibit 1 link to New York State Election Law Article 7 Title II, Exhibit 2 link to Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations Part 6209, Exhibit 3 Statewide Demographic Information, Sample Statement of Work, Sample Maintenance and Support Submission and Sample Training Submission and Exhibit 4 Sample Certification/Authorization Forms, Exhibit 5 Sample Ballots and Appendix C Required Contractor Submissions: (# 1 Mandatory Contractor Questionnaire, # 2 Contractor, Reseller & Distributor Information,) following the order of precedence as stated for Contract above.
- e. **Contractor's Bid or Mini-Bid Proposal.**

There will be no unincorporated appendices to this contract. All documents referenced in the contract and made a term thereof will be physically attached to the contract.

PRICELISTS AND CATALOGS:

Contractor shall complete the pricelist provided herein and shall specify whether prices offered are for purchase or lease. Pricelists shall also state whether prices includes cost of travel, meals and lodging where applicable. In addition, Contractor may be required to furnish, without charge, price lists identical to those accepted with their bid, including any changes (additions, deletions, etc.) pursuant to the contract, to Authorized Users which request them. Price lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. Upon request the Contractor shall assist Authorized Users in the use of price lists.

INTERNET ACCESS TO CONTRACT & PRICING INFORMATION:

Access by Authorized Users to Contract terms and pricing information may be made available and posted on the Internet.

DELIVERY:

Delivery must be made as ordered to each Authorized User according to the specific details included in the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor and shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board of Elections. Said procedures shall comply with §6209.10 and the guidelines established by the New York State Board of Elections. The Authorized User and the Contractor shall mutually agree to a delivery schedule as required by §6209.9(A)(4)(a) of the New York State Board of Elections' Regulations. Said agreed upon delivery schedule shall be adhered to by the Contractor.

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

ESTIMATED QUANTITIES:

The total estimated quantity is 20,000 machines for Lot I and an estimated maximum of 6,500 devices for Lot II. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish a report containing both state agency and authorized non-state agency contract purchases by the fifteenth of the month following the end of each six month period. In addition to contractor direct sales, contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. Contractors shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://205.232.252.35/>.

(Continued)

REPORT OF CONTRACT PURCHASES: (Cont'd)

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each contractor at time of award for completion in accordance with the contract terms and conditions:

<u>Item/ SubItem Number</u>	<u>Product or Catalog Number (Model or Version Number)</u>	<u>Product/ Service Description</u>	<u>Total Quantity Shipped to State Agencies</u>	<u>Total Quantity Shipped to Authorized Non-State Agencies</u>	<u>Total \$ Value</u>
					\$
				Grand Total	\$

The report is to be submitted to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name.

The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

CONTRACT UPDATES - ADDITION AND DELETION PRODUCTS:

Product changes to Contract are addressed in the following manner. In order to expedite processing of a change request that involves more than one specified category below, each request should be submitted separately to OGS.

a) **AUTO ADDS / DELETIONS** - "Auto Adds/Deletions" are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a "discount from list". "Auto Adds/Deletions" include: i) adding new products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. Contractor shall forward the updated Contract price list to OGS for prior approval before changes (additions or deletions) are made to the Contract. Contractor may not supply new product offerings until after receipt of OGS approval. While price decreases (ii) may take effect at any time, Contractor shall provide to OGS new updated price lists. For category (iii) Auto Deletions, Contractor must supply documentation supporting the unavailability of the product to the US market. Contractor should note, however, that all "Auto Adds" or Deletions approved by OGS are subject to a post audit by the Office of the State Comptroller.

b) **REGULAR ADD** - "Regular Adds" are requests for i) price increases for Products incorporated under the Contract for other than previously approved pricing structure, and ii) addition of new products to the Contract which do not fall under the previously established price structure or discounts for Product types previously approved under the Contract. Regular Adds include but are not limited to newly added manufacturer's product lines, re-bundled Products or Services, etc. Regular Adds must be submitted to OGS for prior approval, and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to pre-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing. Contractor may not supply new product offerings until after receipt of OGS approval of the "Regular Add."

c) **SPECIAL ADD** - Contract changes and updates that do not fall within either of the above categories will be processed as "Special Adds". Special Adds are changes that are not specifically covered by the terms of the Contract but inclusion is found to be in the best interest of the State. Contractor must provide a justification of reasonableness of the prices offered and a statement explaining why it is in the best interest of the State to approve the new Products. Special Adds are subject to pre-audit by the Office of the State Comptroller. If approved, OGS staff will notify Contractor in writing. Contractor may not supply new offerings until after receipt of OGS approval of the "Special Add."

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PERFORMANCE BOND:

Upon receipt of certification by the New York State Board of Elections, the Contractor has fifteen (15) business days to forward a Performance Bond in the amount of 0.5% of the total estimated value of each Lot (One Hundred Eighty Million dollars (\$180,000,000.00) for Lot I and the value of Lot II is estimated to be Thirty Five Million dollars (\$35,000,000.00) for a maximum of 6500 ballot marking devices) to the New York State Board of Elections. If the Performance Bond is not received by the close of business on the 15th day, the award may be cancelled and award made to the next best value responsible bidder. The Performance Bond must be maintained for five years unless said term is extended after agreement by both parties. OGS has the right to recover damages under the terms and conditions of the Contract on behalf of the State where standard arrangements for the refund of monies cannot be recovered by a credit issued by the Contractor against present or future payments due, or under circumstances where the Contractor has refused credits to the State where such credits are due under the terms of the Contract. The New York State Board of Elections may permit substitution of a performance bond of a lesser value during the term of the contract.

The State and the Contractor agree that recovery against the Performance Bond will be subject to the following conditions:

(1) FOR AMOUNTS LESS THAN \$1,000,000

- (a) signed and dated certification from an authorized representative of the State of New York ("State") stating that:
 - (i) as applicable, Contractor has failed to issue credits under Contract No. _____ with the State;
 - (ii) the State and Contractor have attempted, through good faith dispute resolution efforts undertaken at the Contractor's Vice-Presidential levels and equivalent State senior executive management levels, to resolve such matters to the parties' satisfaction, and such attempts have not been successful;
 - (iii) after the conclusion of such dispute resolution efforts, the State notified Contractor, as applicable, by either overnight express mail with verifiable delivery or by certified mail, return receipt requested, of the unresolved matters, and, in such notice, gave Contractor 30 days from receipt of such notice to remedy such matters.
 - (iv) as applicable, Contractor did not satisfactorily remedy such matters; and
 - (v) the State has calculated the amount of the damages requested in the draft in accordance with the provisions of the Contract and the laws governing the Contract.

(2) FOR AMOUNTS MORE THAN \$1,000,000

- (a) signed and dated certification from an authorized representative of the State containing the statements set forth in paragraphs 1(a)(i) through 1(a)(v) above, and
- (b) such certification shall have attached a certified copy of a final order of a court of competent jurisdiction finding that as applicable, Contractor materially breached and defaulted under the Contract, and that Contractor is liable to the State in the amount requested in the draft. Partial drafts will be permitted.

(3) FOR ALL AMOUNTS

- (a) any notice of the issue or the material breach will be specific as to the nature of the issue or the material breach claim and the remedy sought to satisfy such claim.
- (b) drafts shall be drawn periodically upon confirmation of the claim by the State and the Contract with partial drafts will be permitted.
- (c) all drafts must reference the number and issue date of the Performance Bond and have attached the certified letter of notice of identifying either the issue or the material breach that was sent to Contractor, as applicable. Draft(s) must clearly specify that they are drawn under the Performance Bond and must be presented to the issuer not later than thirty (30) days after expiration of the Contract term.

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REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS:

Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and/or Services and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and Services or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products and/or Services to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and Services and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below. Products purchased for use by the voting public in an election shall not be refurbished, reconditioned or retrofitted Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities. All other items with recycled, recyclable, recovered, refurbished, reconditioned, retrofitted or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product and Services.

EPA ENERGY STAR PROGRAM:

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all products offered to comply with EPA Energy guidelines for energy efficiency.

FINANCIAL STABILITY:

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

WARRANTIES:

See "Warranties" in Appendix B, OGS General Specifications. At time of bid opening, product offered must meet all requirements of this solicitation including full commercial/retail availability. Product literature and specifications must also be available.

RESERVATION:

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated purchase.

TRAVEL, MEALS & LODGING:

Unless expressly set forth to the contrary, NYS net prices set forth in the Contract shall be deemed inclusive of travel, meals and lodging, wherever applicable. Where travel, meals and lodging are allowed over and above the NYS Net Prices, reimbursement to Contractor for such costs for employees who do not reside in the local commuting area for the work site, shall be made in accordance with the State's Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.

ENTIRE AGREEMENT:

This Contract and the referenced appendices constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of the Attorney General and the Comptroller for the State of New York. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein.

SEVERABILITY:

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

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DISPUTE RESOLUTION POLICY:

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

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 your bid or renewal.

1. Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
- B) Certificate of Workers' Compensation Insurance:
 - 1) Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
 - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
- C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

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:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

- A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
- B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
- C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

(Continued)

WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS: (Cont'd)

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The Office of General Services, Procurement Services Group, Team __, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

DETAILED SPECIFICATIONS

LOT 1: VOTING SYSTEMS AND RELATED SERVICES:

Detailed Specifications for Lot I can be found in Exhibit 1 and 2 of this solicitation. In addition, the bidder shall comply with the following training requirements for Lot 1:

INSTRUCTION OF PERSONNEL:

At the time the bid is submitted, the vendor shall provide detailed information regarding in-person training as follows:

- The maximum number of participants per training session.
- The duration of training based on vendor-recommended roles and responsibilities.
- The cost and terms for training to include both regionalized and on-site county training.
- The cost and terms for training in the procedures to be used to accomplish ballot configuration and ballot programming.

Within ten business days of acceptance by the Contractor of a Purchase Order, the Contractor and the Authorized User shall agree upon mutually-acceptable training dates for the contractor to provide live instruction by qualified personnel sufficient to ensure that the product is operating correctly and operator-maintained so as to perform to the full extent of its design capabilities. The Authorized Users shall designate personnel to receive instruction.

In addition, Contractors of VOTING SYSTEMS shall, prior to delivery, provide training for Authorized User personnel in the following areas:

- Training on unpacking, assembling and acceptance testing of the equipment.
- Training for proper use of the equipment, including maintenance, storage and transportation procedures.
- Instruction on procedures to be followed by inspectors at polling places.

INSTRUCTION MATERIALS:

Prior to the commencement of any training, the Contractor(s) shall furnish to the Authorized User complete instruction materials, (video, graphics, audio or text) for the VOTING SYSTEMS and all accessibility features. These instruction materials shall include the following:

- Training on unpacking, assembling and acceptance testing of the equipment.
- Training on adjusting and aligning the equipment.
- Training for proper use of the equipment, including maintenance, storage and transportation procedures.
- Training in the procedures to be used to accomplish ballot face layout and ballot programming.
- Training on operating the product (including layout and interconnection diagrams and schematic and wiring diagrams).
- Training on preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable).
- Training on voter education on the use of the VOTING SYSTEMS and any accessibility devices (including methods to be used by eligible voters to mark a ballot).
- Training on procedures to be followed by inspectors at polling places.

All training materials shall also be provided to the Authorized Users at no additional cost in electronic version to enable the Authorized User to incorporate the training material in the Authorized User's training procedures and training manuals and outreach materials.

(Continued)

INSTRUCTION MATERIALS: (Cont'd)

This requirement is separate from, and in addition to, any materials otherwise provided with the bid.

In addition, within ten (10) business days of the State Board approving for use such VOTING SYSTEMS, and prior to the commencement of any training of Authorized Users, the Contractor(s) shall furnish to the NYSBOE five (5) complete sets of instruction materials, (video, graphics, audio or text) for each product and component supplied to the Authorized Users. These instruction materials shall include:

- Training on unpacking, assembling and acceptance testing of the equipment.
- Training on adjusting and aligning the equipment.
- Training for proper use of the equipment, including maintenance, storage and transportation procedures.
- Training in the procedures to be used to accomplish ballot face layout and ballot programming.
- Training on operating the product (including layout and interconnection diagrams and schematic and wiring diagrams).
- Training on preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable).
- Training on voter education on the use of the new voting machines and any accessibility devices (including methods to be used by eligible voters to mark a ballot).
- Training on procedures to be followed by inspectors at polling places.

This requirement is separate from, and in addition to, any materials otherwise provided with the bid.

The vendor shall permit the NYSBOE and Authorized Users to duplicate these materials for use in public education and training programs.

All training materials shall also be provided to the NYSBOE at no additional cost in electronic version to enable the NYSBOE and/or Authorized Users to incorporate the training material in the Authorized User's training procedures and training manuals and outreach materials.

Lot 2: BALLOT MARKING OR OTHER VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES.

The NYSBOE intends to approve for use at elections in New York State conducted after September 1, 2008, ballot marking devices (BMD) that meet the accessibility provisions of the Help America Vote Act of 2002 (Public Law 107-252) and the provisions contained herein.

In order for a BMD to be considered for approval by the NYSBOE for use, it shall comply with the minimum requirements stated herein:

All capabilities to electronically record or tabulate a vote must be inoperable or absent. The intention of this requirement is to preclude the use of the BMD as an electronic vote recording or tallying system until such time, if any, as those features of such BMD are certified for use by the NYSBOE.¹

¹ Examples of what would not be acceptable are: The printing or displaying of the election results when the polls are closed for the day, or
Allowing a poll worker to have the ability to view or manipulate electronically recorded vote information.

Accessibility provisions for usability by voters who are disabled:

- Be constructed to allow a voter with disabilities to mark his or her vote choices.
- Permit inspectors of elections to easily and safely place the BMD in an accessible position.
- Be equipped with a voting device with tactile discernible controls, designed pursuant to Election Law Section 7-202 to meet the needs of voters with limited reach and/or hand dexterity, allow them the ability to mark their ballot, and shall include, for example: raised buttons of different shapes and colors, large or raised numbers or letters, and light pressure switches.
- Be equipped with an audio voting feature, pursuant to Election Law Section 7-202. The audio feature shall be able to be used either independently or simultaneously with the on-screen display. The audio voting feature shall allow for the complete content of the ballot in all required languages, to be communicated to the voter in a voice which permits a voter who is blind or visually impaired to mark a secret ballot using voice-only or tactile discernible controls. The audio voting feature shall include a feature that, if selected, will allow a voter to control the volume of the voice within the ranges contained in the 2005 Voluntary Voting System Guidelines.
- Be equipped with a pneumatic switch voting attachment which can be operated orally by gentle pressure or the creation of a vacuum through the inhalation or exhalation of air by the voter including, but not limited to, a sip-and-puff switch voting attachment.

Bidders shall provide documentation, cost information and sources for any additional accessibility devices which may work in conjunction with their proposed system, including but not limited to rocker paddles, if available.

Ballot provisions:

- As to the printing and arrangement of ballots, all ballots shall meet the requirements as to form and content provided in the Election Law.
- Ballots shall be printed in black print on a white background and, in the case of a primary, allow for only the identification portion of the ballot to appear in different colors to identify each political party according to the color assigned to such party pursuant to law.
- Ballots shall include machine-readable code and also human-readable code, to identify different ballot styles.

The types of ballots used and their form, type size and arrangement must be approved by the NYSBOE.

Provisions for noise level:

- BMDs shall be constructed in a manner so that noise levels of the system or equipment during operation will not interfere with the duties of the election inspectors or the voting public.
- The noise level of write-in components of the BMD shall be so minimal that it will be virtually impossible under normal conditions for someone at the table used by the inspectors of elections to determine that a write-in vote is being marked or has been marked.

(Continued)

Provisions for voter privacy:

- The BMD shall be constructed so that no one within the polling site will be able to see how a voter is marking their ballot.
- The BMD shall be provided with a curtain, screen, shield or other privacy device, which shall allow voters with a range of disabilities to, either electronically or manually, open, close or otherwise use the device with ease when entering and exiting the BMD.
- The privacy and anonymity of all voters shall be preserved during the process of marking and verifying ballot choices.
- The privacy and anonymity of all voters whose paper records contain any of the alternative languages chosen for making ballot selections shall be maintained.
- Information for the purposes of auditing paper records that may permit a voter to reveal his or her ballot choices shall be displayed so as not to be memorable to the voter.

Ballot Marking Device integrity and security:

- The BMD shall not include any device or functionality potentially capable of externally transmitting or receiving data via the internet or via radio waves or via other wireless means.
- The BMD must be secure against attempts to interfere with correct system operation. The bidder shall identify each potential point of attack. For each potential point of attack, the bidder shall identify the technical safeguards embodied in the BMD to defend against attack, and the procedural safeguards that the vendor has recommended be followed by the election administrators to further defend against that attack. Each defense shall be classified as preventative, if it prevents the attack in the first place; detective if it allows detection of an attack; or corrective if it allows correction of the damage done by an attack. Security requirements and provisions shall include the ability of the system to detect, prevent, log and recover from the broad range of security risks identified. These procedures shall also examine system capabilities and safeguards claimed by the vendor to prevent interference with correct system operations. The NYSBOE, with the assistance of a contractor(s), shall conduct tests to confirm that the security requirements defined herein have been completely addressed. Notwithstanding any other provisions of these requirements, the NYSBOE shall determine whether all or a portion of such security requirements and security provisions shall be available for public inspection, but shall exclude any information which compromises the security of the BMD.
- The BMD shall contain software and hardware required to perform a diagnostic test of system status, to demonstrate that the system is fully operational and that all voting positions are operable.
- The BMD printers shall be physically secure from tampering.
- The BMD shall communicate with its printers over a standard, publicly documented printer port using a standard communication protocol.
- The printer shall not be permitted to communicate with any other system or machine other than the single BMD to which it is connected.
- The printer shall only be able to function as a printer: it cannot store information or contain or provide any services that are not essential to system function, (e.g., provide copier or fax functions) or have network capability.

(Continued)

- The BMD shall provide for the ability for poll workers, prior to the opening of polls on election day, to demonstrate that the ballot storage devices are empty.
- Tamper-evident seals or physical security measures shall protect the connection between the printer and the BMD, so that the connection cannot be broken or interfered with without leaving extensive and obvious evidence.
- The BMD's printers shall be highly reliable and easily maintained.
- The BMD should include a printer port to which a commercial off-the-shelf printer could be attached for the purposes of printing paper records and any additional records.
- The BMD shall detect errors and malfunctions such as paper jams or low supplies of consumables such as paper and ink that may prevent paper records from being correctly displayed and printed.
- If an error or malfunction occurs, the BMD attached to the malfunctioning printer shall suspend ballot marking operations and shall present a clear indication to the voter and election workers of the error or malfunction.
- The bidder shall provide at the time of the bid, estimated quantities of supplies of consumable items such as paper and printer ink necessary to operate from opening to closing of polls for each fifty (50) ballots voted.
- The bidder shall also include on its price lists submitted and the completed price list for Lot II provided in the solicitation price list cost information and shall also provide contact information for procurement of supplies of consumable items necessary to operate the device.
- Printing devices should contain paper and ink of sufficient capacity so as not to require reloading or opening equipment covers or enclosures and circumventing security features, or reloading shall be able to be accomplished with minimal disruption to voting and without circumvention of security features such as seals.
- Bidder documentation shall include specifications regarding the temperature and humidity ranges specified by the manufacturer for the storage of printer consumables.
- Bidder documentation shall include procedures for investigating and resolving malfunctions including but not limited to unreadable paper records, paper jams, low ink, misfeeds and power failures.
- Bidder documentation shall include procedures for ensuring, in the case of malfunctions, that paper records are correctly marked.
- Protective coverings intended to be transparent on BMDs shall be maintainable via a predefined cleaning process.
- The paper record shall be sturdy, clean, and of sufficient durability to be used for manual tabulation. The paper record shall be able to be stored and remain fully readable without degradation for 22 months within the temperature and humidity ranges specified by the manufacturer, but at a minimum temperature range of at least from -20 degrees to 140 degrees Fahrenheit, and at humidity as high as 98%.

(Continued)

In addition to the requirements above, a BMD shall meet the following provisions:

- The BMD shall be constructed so as to allow for a voter to vote for all candidates who may be nominated and on all ballot proposals which may be submitted.
- The BMD shall provide a method for a voter to vote indicating their selection for any person for any office, whether or not nominated as a candidate (write-in) by any party or independent body.
- The BMD shall be constructed so that a voter cannot mark a ballot for a candidate or for a ballot proposal for whom or on which he or she is not lawfully entitled to vote.
- The BMD must prevent voters from over-voting and indicate to the voter specific contests or ballot issues for which no selection or an insufficient number of selections has been made, and provide the voter with the opportunity to correct the ballot before the ballot is marked.
- The BMD shall provide an opportunity such that any voter, including voters who are blind or visually impaired, may privately and independently verify their selections and the ability to privately and independently change such selections or correct any error before the ballot is marked.
- The BMD shall provide a feature to permit a voter to independently verify their paper ballot after it has been marked, including voters who are blind or visually impaired.
- The BMD shall provide a lock or locks, or other device or devices, the use of which, immediately after the polls are closed or the operation of the BMD for such election is completed, will absolutely secure the BMD and prevent the marking of additional ballots.
- The BMD shall provide sufficient space to display the ballot configuration provided, however, in the alternative, such information may be displayed within the official ballot.
- The BMD shall retain all paper produced in a manner intended and designed to protect the privacy of the voter. Votes shall allow for manual tabulation and shall be preserved in accordance with the provisions of Section 3-222 of the Election Law.
- The BMD shall provide sufficient illumination to enable the voter to see the ballot.
- The BMD shall contain a device which enables all the election inspectors and poll watchers at such polling place to determine when the BMD has been activated for voting and when the voter has completed marking his or her ballot.
- The BMD shall permit the primaries of at least five parties to be conducted at a single election utilizing the BMD, and accommodate such number of different ballot styles at a single election as may be required by the NYSBOE and/or the county board of elections.
- The BMD shall be capable of conducting both pre-election and post-election testing of the BMD that demonstrates accurate ballot layout presentation and the ability to accurately mark ballots reflecting the choices made by voters.

(Continued)

- The BMD shall permit alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a) such that it must have the capacity to display the full ballot in the alternative languages required by the federal Voting Rights Act if such BMD is to be used where such alternative languages are required or where the local board deems such feature necessary.
- The bidder shall provide at the time of the bid documentation information and shall include on the price lists submitted and the completed price list for Lot II provided in the solicitation costs related to the addition of new language capabilities which may be required by reason of demographic changes identified by the decennial federal census.
- The BMD shall provide a battery power source in the event that the electric supply used to make the BMD function is disrupted. The battery power source shall operate the device and allow for the marking of ballots for a period not less than 2 hours to ensure that the device can shut down prior to the battery power failure, and can resume functionality when power is provided or restored without significant or intrusive power-up procedures. Such batteries must be rechargeable and have a minimum five-year life when used under normal conditions. In the event of a power failure, the device shall perform a normal shut-down not less than one hour before battery power is depleted, and shall notify the election inspector that the system will do so.
- The BMD shall make a paper record which shall allow for a manual tabulation and allow for preservation in accordance with the provisions of Election Law, Section 3-222.
- The BMD shall be capable of showing the information on both the display screen and the paper in a font size of 3.0 mm, and should be capable of showing the information in at least two font ranges, a) 3.0-4.0 mm and b) 6.3-9.0 mm, under control of the voter. The voter shall also be able to control the contrast of the display screen.
- The BMD shall be accompanied by instructions for performing the verification process made available to the voter, in accessible formats, in a location on or near the BMD.
- The BMD shall display and print a paper record in any of the alternative languages chosen for making ballot selections. Candidate names and other markings not related to the ballot selection on the paper record shall appear in English.
- The BMD shall allow the voter to approve or reject the paper record.
- Bidder documentation shall include procedures for returning a BMD to correct operation after a voter has used it incompletely or incorrectly.
- The bidder shall, without additional cost, provide to the purchaser a five-year guarantee of parts and service that such BMD equipment shall be kept in good working order. Shipping costs for any factory repairs or part replacement will be incurred by the bidder.
- The BMD shall provide a means by which the ballot configuration may be positively verified to ensure that it corresponds to the format of the ballot face and the election configuration.
- The bidder shall include on its price lists submitted and the completed price list for Lot II provided in the solicitation cost terms and shall provide documentation to include alternative options for BMD printers that are capable of printing ballots in a size where the measurement of the smallest width of such ballot is greater than 8-1/2 inches.

(Continued)

LOT 2: BALLOT MARKING OR OTHER VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES:

INSTRUCTION OF PERSONNEL:

At the time the bid is submitted, the vendor shall provide detailed information regarding in-person training as follows:

- The maximum number of participants per training session.
- The duration of training based on vendor-recommended roles and responsibilities.
- The cost and terms for training to include both regionalized and on-site county training
- The cost and terms for training in the procedures to be used to accomplish ballot configuration and ballot programming.

Within ten business days of acceptance by the Contractor of a Purchase Order, the Contractor and the Authorized User shall agree upon mutually-acceptable training dates for the contractor to provide live instruction by qualified personnel sufficient to ensure that the product is operating correctly and operator-maintained so as to perform to the full extent of its design capabilities. The Authorized Users shall designate personnel to receive instruction.

In addition, Contractors of BMDs shall, prior to delivery, provide training for Authorized User personnel in the following areas:

- Training on unpacking, assembling and acceptance testing of the equipment.
- Training for proper use of the equipment, including maintenance, storage and transportation procedures.
- Instruction on procedures to be followed by inspectors at polling places.

INSTRUCTION MATERIALS:

Prior to the commencement of any training, the Contractor(s) shall furnish to the Authorized User complete instruction materials, (video, graphics, audio or text) for the BMD and all accessibility features. These instruction materials shall include the following:

- Training on unpacking, assembling and acceptance testing of the equipment.
- Training on adjusting and aligning the equipment.
- Training for proper use of the equipment, including maintenance, storage and transportation procedures.
- Training in the procedures to be used to accomplish ballot face layout and ballot programming.
- Training on operating the product (including layout and interconnection diagrams and schematic and wiring diagrams).
- Training on preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable).
- Training on voter education on the use of the BMD and any accessibility devices (including methods to be used by eligible voters to mark a ballot).
- Training on procedures to be followed by inspectors at polling places.

All training materials shall also be provided to the Authorized Users at no additional cost in electronic version to enable the Authorized User to incorporate the training material in the Authorized User's training procedures and training manuals and outreach materials.

This requirement is separate from, and in addition to, any materials otherwise provided with the bid.

In addition, within ten (10) business days of the State Board approving for use such BMD, and prior to the commencement of any training of Authorized Users, the Contractor(s) shall furnish to the NYSBOE five (5) complete sets of instruction materials, (video, graphics, audio or text) for each product and component supplied to the Authorized Users. These instruction materials shall include:

- Training on unpacking, assembling and acceptance testing of the equipment.
- Training on adjusting and aligning the equipment.
- Training for proper use of the equipment, including maintenance, storage and transportation procedures.
- Training in the procedures to be used to accomplish ballot face layout and ballot programming.
- Training on operating the product (including layout and interconnection diagrams and schematic and wiring diagrams).
- Training on preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable).
- Training on voter education on the use of the new voting machines and any accessibility devices (including methods to be used by eligible voters to mark a ballot).
- Training on procedures to be followed by inspectors at polling places.

This requirement is separate from, and in addition to, any materials otherwise provided with the bid.

The vendor shall permit the NYSBOE and Authorized Users to duplicate these materials for use in public education and training programs.

All training materials shall also be provided to the NYSBOE at no additional cost in electronic version to enable the NYSBOE and/or Authorized Users to incorporate the training material in the Authorized User's training procedures and training manuals and outreach materials.

SUBMISSION, TESTING AND EXAMINATION OF BMDs:

The NYSBOE shall cause the BMD to be examined and a report of the examination to be made. Such examination shall include a determination as to whether the BMD meets the provision of these requirements, and shall include a thorough review and testing of any electronic or computerized features of the device. Such report shall state an opinion as to whether the kind of BMD so examined can safely and properly be used by voters and local boards of elections at elections, under the conditions prescribed herein and the requirements of the federal Help America Vote Act. If the report states that the BMD can be so used, and the board after its own review so determines, in accordance with subdivision four of Section 3-100 of the Election Law, the BMD shall be deemed approved, and may then be purchased for use at elections as herein provided.

Submission with Bid.

The vendor shall submit with the bid, completed ballot configuration and ballot coding based upon the pre-qualification test data as defined in Exhibit 5.

The vendor shall acknowledge that the fees for the examination of a BMD shall be assessed against the vendor by the NYSBOE based upon the cost to the NYSBOE for examination and or any regression testing of such BMD by an outside contractor, laboratory or other authorized examiner.

A vendor submitting a bid shall affirm that the submitted BMD complies with all applicable requirements found herein, and is suitable for use by voters to mark a ballot at elections in New York State.

The vendor shall quote and provide a statewide, uniform price for each unit of the BMD.

The submitted BMD's software shall not contain any code, procedures or other material which may disable, disarm or otherwise affect in any manner, the proper operation of the BMD, or which may damage the BMD, any hardware, or any computer system or other property of the NYSBOE or county board, including but not limited to 'viruses', 'worms', 'time bombs', and 'drop dead' devices that may cause the BMD to cease functioning properly at a future time.

Any submitted BMD shall provide methods through security seals or device locks to physically secure against attempts to interfere with correct device operations. Such physical security shall guard access to device panels, doors, switches, slots, ports, peripheral devices, firmware, and software.

(Continued)

The vendor shall disclose, in the bid, any pecuniary interest in or any direct or indirect control over any testing laboratory as defined NYCRR 9 Part 6209.1(34) or which may be used in connection with testing or acquisition of BMDs or voting systems.

Submission to the NYSBOE.

BMD and other devices accessible to individuals with disabilities, must be approved for use by the NYSBOE prior to use. Each complete BMD, all documentation prescribed herein, must be submitted to the NSYBOE for testing purposes no later than 11 am Eastern Standard Time ten (10) business days after a bid opening. Deliveries must be completed as inside delivery and include the following:

- Each complete BMD including all accessibility components.
- A certified or bank check in the amount of \$5,000 shall accompany such submission, and be applied towards the actual cost of the examination.
- The election management software.
- Media containing the test general election and test primary election ballot definition code in all required text and audio translations of alternative languages, including English.
- The BMD shall be pre-programmed with the test general election ballot definition code in all required text and audio translations of alternative languages, including English.
- Audio translation shall include instruction for voters to utilize the BMD for all test ballot styles in alternative languages, including English (Spanish, Korean, Mandarin, and Cantonese).
- An adequate supply of proprietary and non-proprietary consumables as follows:
- Vendor-recommended paper ballot stock sufficient to test the marking of 1,100 ballots. If ballots are to be pre-printed, the vendor shall provide 500 pre-printed test general election ballots and for each of the three test primary election ballots, 200 each. All test ballots shall include alternative languages, including English (Spanish, Korean, Mandarin, and Cantonese). A minimum of ten percent (10%) of the test ballots shall be presented in English plus one of each of the alternative languages identified above.

All vendors shall submit to the NYSBOE with their BMD, sworn affidavits from the president, chief executive officer or chief operating officer of the vendor, disclosing any contributions made within the United States by any of those officers, by the vendor itself, or by any controlling shareholder to any political party or candidate for any office, within two years prior to the date the BMD is submitted. After the submission of any BMD, or after the submission of any such affidavit, a vendor must submit to the Election Operations Unit, an affidavit at the end of each calendar quarter (March 31, June 30, September 30 and December 31), disclosing whether or not any new contribution has been made. The submission of such affidavits shall be required throughout the period during which the BMD is approved for use in New York.

All vendors shall submit with their BMD, information regarding past or pending court cases involving their BMD or its major components, any evidence of fraud, faulty systems, or failure to correct past problems.

Vendors submitting a BMD for approval must also provide additional systems to be used by the NYSBOE for the purposes of conducting tests.

If the BMD is approved for use by the NYSBOE, the specific BMD and components examined by the NYSBOE shall become the property of the NYSBOE for as long as the BMD or equipment is in use in the State or for such shorter period as the NYSBOE shall so determine. BMD's not approved shall be disposed of pursuant to the vendor's direction.

The vendor shall provide service and normal maintenance of said BMD or equipment after approval and shall supply to the NYSBOE, at no cost, any modification to the BMD for upgrading of any feature during the period that said BMD is offered for sale and use in the State.

Vendors shall submit recommendations for acceptance and maintenance testing to ensure that the software and/or firmware in BMDs purchased and used by county boards of elections is identical to that which was approved.

Examination:

The BMD shall be examined by examiners or testing laboratories to be selected for such purpose by the NYSBOE. Each examiner or laboratory shall receive compensation and expenses for making an examination and report as to each BMD examined by him or it. Neither any member of the NYSBOE nor any examiner or owner or employee of any testing laboratory shall have any pecuniary interest in any BMD. Any form of BMD not so approved, cannot be used at any election.

(Continued)

When any change is made in the operation or material of any feature or component of any BMD which has been approved pursuant to the provisions of this section, such BMD must be submitted for such re-examination and re-approval pursuant to the provisions defined herein as the state board of elections deems necessary.

If at any time after any BMD has been approved pursuant to the provisions of the Election Law, the State Board of Elections has any reason to believe that such BMD does not meet all the requirements for BMDs, it shall forthwith cause such BMD to be examined again in the manner prescribed herein. If the opinions in the report of such examinations do not state that such BMD can safely and properly be used by voters at elections, the NYSBOE shall forthwith rescind its approval of such BMD. After the date on which the approval of any BMD is rescinded, no BMD of such type may be used or purchased for use in this state. The NYSBOE may examine all BMDs of such type which were previously purchased, to determine if they may continue to be used in elections in this state.

Examination will have the following principal objectives:

- To demonstrate the ability of a voter to mark a ballot using the BMD.
- To demonstrate the ability of the BMD to mark a ballot accurately.
- To demonstrate the ability of the voter to verify their ballot, to include notification of any undervote(s), and/or overvote(s), if any and that the BMD allows the voter to correct same; if they choose.
- To demonstrate the ability of the voter to independently verify their ballot after the BMD has marked the ballot.
- To demonstrate that the BMD's hardware and software operate in a manner consistent with a voter's ability to mark a ballot.
- To demonstrate that the BMD's vendor-provided security requirements and security provisions are identified for each system function and operating mode, and that all features function as described.
- Independently identify any additional security procedures, tasks or features which the BMD shall accommodate, and verify that such additional requirements are in place and function as required.

Whenever the NYSBOE is satisfied that a BMD has been proven to meet or exceed these requirements and the vendor is able to provide documentation for the state board to establish that those requirements have been met, then the NYSBOE may, in its discretion, accept such documentation as satisfaction of the required tests.

Exhibit 5 contains samples of one (1) general election ballot, and three (3) primary ballots.

Source Code Escrow for Licensed Products and/or Services

Vendors shall be required to comply with the source code escrow provisions of the Election Law (Section 7-208) and Regulations (Section 6209.6(F)(10) and as set forth by the New York State Board of Elections.

TRAINING OF PERSONNEL:

Within ten business days of the acceptance by the contractor of a purchase order, the contractor shall provide training by qualified personnel sufficient to ensure that the product is operated and operator-maintained, so as to perform to the full extent of its design capabilities. The Purchaser shall designate personnel which are to receive instruction.

Contractors of Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services shall, prior to delivery, provide training for boards of elections personnel in the following areas:

- training on unpacking, assembling and acceptance testing of the equipment;
- training for proper use of the equipment, including maintenance, storage and transportation procedures;
- training in the procedures to be used to accomplish ballot face layout and ballot programming; and,
- provide instruction materials which include procedures to be followed by inspectors at polling places.

The vendor shall allow duplication of these materials, or shall supply sufficient copies for distribution to all elections inspectors.

(Continued)

INSTRUCTION MATERIALS:

Within 10 business days of acceptance of the purchase order, the contractor(s) shall furnish to the authorized user complete instruction materials, (video, graphics, audio or text) for the product and for each component supplied. The instruction material shall include complete instructions for voter education, and unpacking, inspecting, installing, adjusting, aligning, which include procedures to be followed by inspectors at polling places, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable. This requirement is separate from and in addition to materials previously provided with the bid.

Within 10 business days of completion of the contract, the contractor(s) shall furnish to the NYSBOE complete instruction materials, (video, graphics, audio or text) for the product and for each component supplied. The instruction material shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, which include procedures to be followed by inspectors at polling places, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable. The vendor shall also include complete voter education instruction materials on the use of the new voting machines and any accessibility devices, on methods to be used by eligible voters to cast a vote and have that voted counted. The vendor shall permit the NYSBOE to duplication of these materials.

ATTACHMENTS:

EXHIBIT 1: Link to NYS Election Law;

EXHIBIT 2: Link to NYS Election Code and Regulations;

EXHIBIT 3: Statewide Demographic Information, Sample Statement of Work, Sample Maintenance and Support Submission
and Sample Training Submission;

EXHIBIT 4: Sample Certification and Authorization Forms;

EXHIBIT 5: Sample Ballots;

APPENDIX A: Standard Clauses for New York State Contracts;

APPENDIX B: General Specifications;

APPENDIX C: Contractors' Required Submissions;

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties as set forth in Appendix B, Clause 37. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CONTRACTOR

THE PEOPLE OF THE STATE OF NEW YORK

By: _____
Name: _____
Title: _____
Contractor Firm Name: _____
Federal Tax Identification #: _____

By: _____
Name: _____
Title: _____
Office of General Services

APPROVED AS TO FORM
ERIC T. SCHNEIDERMAN
New York State Attorney General

APPROVED
THOMAS DINAPOLI
New York State Comptroller

CORPORATE ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss.:

On the _____ day of _____ in the year _____, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Notary Public

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

LOT 1: VOTING SYSTEMS

CATALOG/PRICELIST BID:

Name

Date

You may bid using one of the following Options:

Option I

Uniform catalog discount (applies to all items on pricelist)
Please list any exclusions on a separate sheet if there are items
you do not wish to offer

Discount

_____%

Or

Option II

Category discount/net pricing itemized.

Check here if
bidding this option

Please list any exclusions on a separate sheet if there are items
you do not wish to offer

Option II may be bid as manufacturer's discounts, category discounts or in any way Bidder feels best pricing would be
attained.

Category designation	List Price	Discount %	Net Price

Option III

Line Item Discount

Check here if
bidding this option

Bidder shall include itemized pricelist with bid which includes all items with list pricing, discounts and net prices.

(Continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

LOT 1: (Cont'd)

Volume Discounts

Additional Volume Discount: (See; "Discounts"):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS

For single order to one location in dollars.

Please specify the amount that applies:

VOLUME PRICING-PRICE BREAKS

For cumulative contract purchases per customer.

Please specify the amount that applies:

VOLUME PRICING-PRICE BREAKS

For aggregate contract purchases in dollars statewide.

Please specify the amount that applies:

Discount

\$ _____ %
\$ _____ %
\$ _____ %

\$ _____ %
\$ _____ %
\$ _____ %

\$ _____ %
\$ _____ %
\$ _____ %

Total number of items offered:

Guaranteed Delivery:

_____ days A/R/O

(Continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

**LOT 2: BALLOT MARKING DEVICES OR OTHER VOTING DEVICES ACCESSIBLE TO INDIVIDUALS
WITH DISABILITIES**

CATALOG/PRICELIST BID:

Name

Date

You may bid using one of the following Options:

Option I

Uniform catalog discount (applies to all items on pricelist)
Please list any exclusions on a separate sheet if there are items
you do not wish to offer

Discount

_____ %

Or

Option II

Category discount/net pricing itemized.

_____ Check here if
bidding this option

Please list any exclusions on a separate sheet if there are items
you do not wish to offer

Option II may be bid as manufacturer's discounts, category discounts or in any way Bidder feels best pricing would be
attained.

Category designation	List Price	Discount %	Net Price

Option III

Line Item Discount

_____ Check here if
bidding this option

Bidder shall include itemized pricelist with bid which includes all items with list pricing, discounts and net prices.

(Continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

LOT 2: (Cont'd)

Volume Discounts

Additional Volume Discount: (See; "Discounts"):

Use additional pages as needed

VOLUME PRICING-PRICE BREAKS

For single order to one location in dollars.

Please specify the amount that applies:

VOLUME PRICING-PRICE BREAKS

For cumulative contract purchases per customer.

Please specify the amount that applies:

VOLUME PRICING-PRICE BREAKS

For aggregate contract purchases in dollars statewide.

Please specify the amount that applies:

Discount

\$ _____ %
\$ _____ %
\$ _____ %

\$ _____ %
\$ _____ %
\$ _____ %

\$ _____ %
\$ _____ %
\$ _____ %

Total number of items offered:

Guaranteed Delivery:

_____ days A/R/O

(Continued)

Lot 1: Voting Systems

Items
Categories
Lot 1: Voting Systems
Pollworker Training
Classes for Board Trainers
Classes for Pollworkers
Pollworker Training Materials
Staff Training
Classes for EMS Technical Staff
Classes of EMS End Users
Classes for VMTs
Classes for Additional Board Staff
Hardware and Software Modifications
Planning and Design
Development Work
Testing
Development and Implementation Services (Interface with County Systems, Audio Ballot Production, Pollworker Training Program, Voter Education Program, Procedures)
Planning and Design
Development Work
Material Production
Testing

Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities

Order Form/Price List:

Vendor:

Items		Vendor Prices		
Categories		Unit Price	Unit Price Per Day	Unit Price Per Hour
Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities				
Accessible Voting Devices				
Demonstrator/Training Voting Equipment				
Laptops/Computers				
Smart Card Read/Writers				
Uninterruptible Power Supplies				
Battery (Per SBOE Regulations)				
Extended Life Battery (16 hours)				
Other Ancillary Equipment (Specify)				
Accessories				
Head Phones				
Sip & Puff Devices				
Rocker Paddles				
Accessible Keyboards				
Other Accessibility Devices (Specify)				
Ballot Access Cards				
Voting Booths				
Privacy Screens				
Ballot Boxes (spares)				
Tables				
Other Accessories (specify)				

(Continued)

Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities

Order Form/Price List:

Vendor:

Items		Vendor Prices		
Categories		Unit Price	Unit Price Per Day	Unit Price Per Hour
Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities				
Election Day Supplies & Consumables				
Report Paper Rolls				
VVPAT Paper Rolls				
Printer Ink/Toner				
Sip and Puff Straws				
Sip & Puff Filters				
Head Phone Ear covers				
Privacy Sleeves				
Paper Ballots				
Other Consumables (specify)				

(Continued)

Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities

Order Form/Price List:

Vendor:

Items		Vendor Prices		
Categories		Unit Price	Unit Price Per Day	Unit Price Per Hour
Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities				
Election Management System (EMS)				
Server				
Server Backup Device				
Smart Card Read/Writers				
Portable Memory Devices (PMDs) (spares)				
PMD Read/Writer				
UPS Backup Device				
Printers				
Cables				
Laptops/Computers				
Other Hardware (Specify)				
EMS Software License - Individual/Named User				
EMS Software License - Concurrent Users				
EMS Software License - Processing Capacity				
Other Software (Specify)				
Pollworker Training				
Classes for Board Trainers				
Classes for Pollworkers				
Pollworker Training Materials				

(Continued)

Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities

Order Form/Price List:

Vendor:

Items		Vendor Prices		
Categories		Unit Price	Unit Price Per Day	Unit Price Per Hour
Lot 2: Ballot Marking Devices or Other Voting Devices Accessible To Individuals with Disabilities				
Staff Training				
Classes for EMS Technical Staff				
Classes of EMS End Users				
Classes for VMTs				
Classes for Additional Board Staff				
Hardware and Software Modifications				
Planning and Design				
Development Work				
Testing				
Development and Implementation Services (Interface with County Systems, Audio Ballot Production, Pollworker Training Program, Voter Education Program, Procedures)				
Planning and Design				
Development Work				
Material Production				
Testing				

(Continued)

Vendor:

[illegible]

21231CR Voting Systems 1-19-11

Exhibit No. 1

New York State Election Law

Article 7

Title II

The New York State Election Law can be found at:

http://www.elections.state.ny.us/portal/page?_pageid=35,1,35_8424:35_8445&_dad=portal&_schema=PORTAL

(Continued)

Exhibit No. 2

The New York State Code Rules and Regulations Regarding Voting System Standards can be found at:
<http://www.elections.state.ny.us/NYSBOE/law/6209Regulations.pdf>

(Continued)

Exhibit No. 3

Explanation of Documents in Exhibit 3

1. Statewide Demographic Information
 2. Sample Statement of Work
 3. Sample Maintenance and Support Submission
 4. Sample Training Submission
-
1. Statewide demographic information is provided, to help vendors understand the depth and breadth of New York's election administration community. Vendors need to understand the several audiences for which training must be provided, and the significant maintenance and support requirements that counties may choose to require. It is important for vendors to understand that New York encompasses unique election jurisdictions – from the City of New York to the smallest of counties, and vendors may be required to meet the unique needs of each county in which they intend to provide voting systems and related services.
 2. County Boards may choose to draft a Statement of Work, which will become an attachment to their respective purchase orders. The sample provided herein is illustrative only, and is provided so as to give vendors an overview of the sorts of expectations County Boards of Elections may want a vendor to meet. Such a Statement of Work, if executed by a County Board, may become part of a binding purchase order.
 3. The sample Maintenance and Support Submission provided herein is illustrative only, and is provided so as to give vendors an overview of the sorts of maintenance and support levels a County Board of elections may expect of a vendor. Such a Maintenance and Support Submission, if executed by a County Board, may become part of a binding purchase order.
 4. The sample Training Submission provided herein is illustrative only, and is provided so as to give vendors an overview of the various levels of training a County Board of elections may expect of a vendor, and the various audiences for which training must be provided. Such a Training Submission, if executed by a County Board, may become part of a binding purchase order.

(Continued)

NYSVoter Enrollment Statistics

April 1, 2007



Region OUTSIDE NEW YORK CITY

County	Democratic	Republican	Independence	Conservative	Working families	Green	Libertarian	Rent is too Hi	Socialist Workers Party	Blank	Total
Albany	94,003	45,558	7,891	2,962	594	836	26	0	0	43,083	194,953
Allegany	7,063	14,649	949	400	132	92	0	0	0	4,785	28,070
Broome	44,217	48,888	4,572	1,472	525	585	36	0	0	22,374	122,669
Cattaraugus	17,220	20,429	1,747	1,043	209	146	5	0	0	9,865	50,664
Cayuga	16,886	20,193	2,139	1,375	174	192	6	0	0	10,275	51,240
Chautauque	31,335	31,141	4,669	2,025	339	284	20	0	0	20,831	90,645
Chemung	17,061	23,593	2,373	607	195	152	7	0	0	10,149	54,137
Chenango	8,175	14,442	1,310	478	141	169	9	0	0	6,586	31,310
Clinton	18,156	17,420	2,510	439	151	234	9	0	0	11,605	50,524
Columbia	13,241	14,363	2,427	1,385	170	284	15	0	0	12,515	44,401
Cortland	9,187	11,632	1,248	436	115	138	1	0	0	6,697	29,454
Delaware	8,007	14,101	1,160	485	89	152	2	0	0	5,597	29,593
Dutchess	52,939	57,112	7,030	3,381	541	640	38	0	0	47,720	169,401
Erie	331,011	186,825	21,979	13,766	2,528	2,070	74	0	0	117,292	675,545
Essex	6,566	13,719	1,478	198	46	109	3	0	0	4,825	26,944
Franklin	9,968	10,639	1,292	318	79	107	6	0	0	4,986	27,395
Fulton	7,499	17,609	1,151	402	106	81	4	0	0	4,971	31,823
Genesee	9,610	16,598	1,383	840	144	96	10	0	0	7,541	36,222
Greene	7,128	13,613	1,274	835	93	103	2	0	0	7,910	30,958
Hamilton	1,051	3,347	150	50	3	13	1	0	0	587	5,202
Herkimer	10,907	20,646	1,817	508	111	102	3	0	0	6,594	40,688
Jefferson	16,865	26,988	2,497	770	186	139	6	0	0	12,232	59,683
Lewis	4,490	9,459	550	230	40	38	3	0	0	2,489	17,299
Livingston	10,984	18,278	1,567	764	118	164	13	0	0	8,691	40,579
Madison	11,415	18,497	2,271	822	179	183	3	0	0	9,445	42,815
Monroe	166,520	148,302	14,725	7,996	1,175	1,519	134	0	0	106,862	447,233
Montgomery	11,014	11,942	1,273	611	102	77	4	0	0	5,300	31,323
Nassau	325,565	350,502	21,538	9,705	1,833	1,455	54	0	0	198,631	909,283

(Continued)



NYSVoter Enrollment Statistics
April 1, 2007

Region OUTSIDE NEW YORK CITY

County	Democratic	Republican	Independence	Conservative	Working families	Green	Libertarian	Rent too Hi	Socialist Workers Party	Blank	Total
Niagara	57,451	47,989	4,443	2,645	759	397	10	0	0	22,986	136,660
Oneida	43,188	52,404	5,141	1,560	293	236	0	0	0	22,959	125,781
Onondaga	98,400	98,266	11,187	4,707	1,241	1,134	75	0	0	75,395	290,405
Ontario	19,623	28,743	2,870	1,201	159	290	11	0	0	15,337	68,234
Orange	67,438	76,352	7,228	3,532	582	707	13	0	0	45,139	200,991
Orleans	6,263	12,165	851	480	133	65	6	0	0	5,521	25,484
Oswego	19,549	38,480	3,197	1,732	303	228	7	0	0	16,437	79,933
Otsego	10,876	14,858	1,568	428	126	229	1	0	0	7,506	35,592
Putnam	17,250	22,778	2,522	2,241	145	189	9	0	0	15,919	61,053
Rensselaer	29,038	29,553	5,955	5,135	1,015	437	30	0	0	33,521	104,684
Rockland	79,423	44,348	4,782	3,677	434	336	2	0	0	41,188	174,190
Saratoga	36,092	68,728	6,466	1,973	325	578	46	0	0	35,528	149,736
Schenectady	34,721	29,925	4,039	2,863	588	290	3	0	0	22,611	95,040
Schoharie	5,088	7,953	905	331	62	88	5	0	0	4,549	18,981
Schuyler	3,824	5,710	549	212	75	108	136	0	0	2,894	13,508
Seneca	6,429	8,731	670	452	86	81	5	0	0	3,993	20,447
St. Lawrence	22,413	23,974	2,524	700	177	217	6	0	0	11,982	61,993
Steuben	14,676	31,131	2,020	767	187	186	13	0	0	9,167	58,147
Suffolk	277,360	332,003	29,367	20,765	3,211	2,230	130	0	4	241,713	908,803
Sullivan	23,629	17,720	1,894	1,198	171	263	5	0	0	15,481	60,361
Tioga	9,166	16,229	1,390	376	118	139	6	0	0	6,555	33,979
Tompkins	26,990	16,372	2,079	374	201	1,141	39	0	0	14,681	61,877
Ulster	39,151	34,257	4,345	2,670	434	1,257	31	0	0	39,242	121,387
Warren	9,977	21,944	1,825	568	129	220	7	0	0	8,177	42,847
Washington	8,865	17,532	1,719	567	147	156	2	0	0	7,945	36,933
Wayne	13,938	24,971	2,288	1,370	202	159	7	0	0	13,941	56,876
Westchester	266,272	166,147	19,419	10,869	1,553	1,290	0	0	0	145,679	611,229
Wyoming	6,675	12,338	960	473	83	54	0	0	0	5,308	25,891

(Continued)

NYSVoter Enrollment Statistics

April 1, 2007



Region OUTSIDE NEW YORK CITY

County	Democratic	Republican	Independence	Conservative	Working families	Green	Libertarian	Rent is too Hi	Socialist Workers Party	Blank	Total
Yates	3,471	7,377	508	220	53	48	1	0	0	2,378	14,054
Region Total:	2,525,339	2,509,443	247,681	128,391	23,110	22,911	1,100	0	4	1,605,170	7,063,149
Region NEW YORK CITY											
County	Democratic	Republican	Independence	Conservative	Working families	Green	Libertarian	Rent is too Hi	Socialist Workers Party	Blank	Total
Bronx	485,077	49,263	12,404	3,489	2,452	478	7	0	0	93,040	646,210
Kings	884,291	123,695	24,034	4,782	4,183	3,446	57	0	0	210,416	1,254,904
New York	593,014	114,756	26,293	2,069	1,764	3,197	72	0	0	184,780	1,025,945
Queens	620,565	140,684	19,923	6,235	2,573	1,527	14	0	0	188,013	979,534
Richmond	112,657	77,544	6,512	4,191	908	339	7	0	0	50,142	252,300
Region Total:	2,795,604	505,942	89,166	20,766	11,880	8,987	157	0	0	726,391	4,158,893
Statewide Total:	5,320,943	3,015,385	336,847	149,157	34,990	31,898	1,257	0	4	2,331,561	11,222,042

(Continued)

2006 ANNUAL STATISTICAL INFORMATION REPORT

Polling Site/Voting Equipment Summary

COUNTY	# ED's in County	# Polling Sites/County	# Sites Where 2 or More ED's Vote	ED's w/2 or More Voting Machines Used
ALBANY	347	191	100	196
ALLEGANY	40	34	6	5
BROOME	190	123	41	7
CATTARAUGUS	79	52	21	11
CAYUGA	65	56	15	14
CHAUTAUQUA	125	97	18	4
CHEMUNG	86	53	21	15
CHENANGO	42	35	7	11
CLINTON	70	45	16	10
COLUMBIA	58	41	17	6
CORTLAND	42	42	7	7
DELAWARE	59	41	9	6
DUTCHESS	257	134	88	not given
ERIE	986	428	306	60
ESSEX	42	29	6	7
FRANKLIN	49	32	10	5
FULTON	50	40	7	0
GENESEE	53	34	16	1
GREENE	52	31	12	0
HAMILTON	12	12	0	2
HERKIMER	58	34	15	11
JEFFERSON	91	60	22	22
LEWIS	31	20	5	1
LIVINGSTON	61	42	12	0
MADISON	55	39	12	6
MONROE	837	405	266	32
MONTGOMERY	48	34	12	4
NASSAU	1,160	392	295	287
NY CITY	6,102	1,369	1,146	862
NIAGARA	181	114	56	2
ONEIDA	192	123	110	58
ONONDAGA	464	205	173	173
ONTARIO	92	54	27	0
ORANGE	322	180	101	11
ORLEANS	40	13	12	0
OSWEGO	124	58	38	0
OTSEGO	57	30	17	3

(Continued)

2006 ANNUAL STATISTICAL INFORMATION REPORT
Polling Site/Voting Equipment Summary

COUNTY	# ED's In County	# Polling Sites/County	# Sites Where 2 or More ED's Vote	ED's w/2 or More Voting Machines Used
PUTNAM	86	27	26	45
RENSSELAER	134	97	32	121
ROCKLAND	270	141	75	48
SARATOGA	196	110	50	21
SCHENECTADY	128	79	35	45
SCHOHARIE	28	22	6	6
SCHUYLER	18	18	0	1
SENECA	27	25	2	3
ST. LAWRENCE	102	72	24	5
STEUBEN	85	62	18	9
SUFFOLK	1,047	352	284	373
SULLIVAN	50	50	63	18
TIOGA	48	18	14	0
TOMPKINS	74	50	19	1
ULSTER	164	118	34	29
WARREN	70	27	20	0
WASHINGTON	52	52	10	3
WAYNE	67	40	16	7
WESTCHESTER	1,034	405	259	93
WYOMING	40	26	7	20
YATES	20	15	5	2
TOTALS:	16,359	6,508	4,042	2,687

(Continued)

2006 ANNUAL STATISTICAL INFORMATION REPORT

Inspector Summary

COUNTY	# Inspectors Appointed	# Attended	# Who Took Exam	# Failed Exam	# Alts. Appointed	# Classes Held	Class Size	Average Session
ALBANY	1,811	1,761	1,761	0	16	15	25 to 150	1 to 1 1/2 hrs.
ALLEGANY	172	236	236	2	62	11	15 to 25	2 1/2 to 3 hrs.
BROOME	1,220	810	810	0	133	20	35	2 hrs.
CATTARAUGUS	217	217	217	0	137	12	30 to 40	3 hrs.
CAYUGA	300	0	0	0	0	0	N/A	N/A
CHAUTAUQUA	1,005	504	504	1	251	20	40	2 hrs.
CHEMUNG	512	182	182	0	43	7	26	3 hrs.
CHENANGO	185	185	185	0	86	8	34	2 to 3 hrs.
CLINTON	300	300	300	0	8	7	40	2 hrs.
COLUMBIA	232	107	107	0	25	1	107	3 hrs.
CORTLAND	182	182	182	0	10	2	72	2 hrs.
DELAWARE	335	99	99	0	Not given	4	25	2 hrs.
DUTCHESS	1,220	1,038	1,038	0	N/A	13	80	2 hrs.
ERIE	3,884	N/A	N/A	N/A	428	N/A	N/A	N/A
ESSEX	170	170	170	0	89	5	50	2 hrs.
FRANKLIN	196	131	131	0	65	6	33	2 1/2 hrs.
FULTON	202	187	N/A	N/A	3	5	38	2 hrs.
GENESEE	212	36	36	0	106	4	12 to 15	1 1/2 to 2 hrs
GREENE	413	192	192	0	222	7	35	2 hrs.
HAMILTON	44	44	44	0	18	7	15	2 hrs.
HERKIMER	232	200	200	0	0	4	45 to 50	2 hrs.
JEFFERSON	364	250	250	0	115	6	60 to 75	3 hrs.
LEWIS	128	128	128	0	39	9	25 to 30	2 hrs.
LIVINGSTON	541	109	109	0	Not given	4	20 to 30	2 hrs.
MADISON	209	203	203	0	229	14	1 to 64	2 1/2 to 3 hrs
MONROE	3,325	3,824	3,824	76	1,464	103	65	2 hrs.
MONTGOMERY	230	225	225	0	30	10	25	2 hrs.
NASSAU	4,701	N/A	N/A	N/A	0	41	25 to 125	2 hrs.
NY CITY	78,154	31,058	31,058	1,014	3,960	1,330	1 to 75	3 hrs.
NIAGARA	681	272	272	0	328	10	25 to 30	2 hrs.
ONEIDA	894	907	907	13	143	14	60 to 111	2 hrs.
ONONDAGA	1,982	2,062	2,031	9	431	36	32 to 100	2 1/2 to 3 hrs
ONTARIO	401	388	388	0	20	10	30 to 40	1 1/2 hrs.
ORANGE	1,753	1,152	1,497	16	383	40	25	2 hrs.
ORLEANS	160	0	0	0	89	0	N/A	N/A
OSWEGO	496	454	454	0	12	24	20	3 hrs.
OTSEGO	389	389	389	3	0	30	12 to 28	2 to 2 1/2 hrs.

(Continued)

2006 ANNUAL STATISTICAL INFORMATION REPORT

Inspector Summary

COUNTY	# Inspectors Appointed	# Attended Class	# Who Took Exam	# Failed Exam	# Alts. Appointed	# Classes Held	Class Size	Average Session	Av
PUTNAM	527	819	457	3	24	10	46 to 158	2 hrs.	
RENSELAER	536	526	526	0	47	7	70	2 hrs.	
ROCKLAND	1,178	1,597	1,597	0	415	78	15 to 45	3 hrs.	
SARATOGA	1,477	808	808	0	166	10	65 to 100	2 to 3 hrs.	
SCHENECTADY	605	757	757	0	24	37	25 to 40	2 hrs.	
SCHOHARIE	120	120	120	0	23	4	36	3 hrs.	
SCHUYLER	83	85	85	0	39	7	14	3 hrs.	
SENECA	165	165	165	0	0	3	55	2 hrs.	
ST. LAWRENCE	418	418	418	2	88	17	15 to 25	2 1/2 to 3 1/2	
STEBEN	426	427	427	1	86	9	40	2 hrs.	
SUFFOLK	4,195	4,071	4,071	0	2,180	142	50	3 hrs.	
SULLIVAN	171	171	171	0	38	6	30 to 40	2 1/2 hrs.	
TIOGA	309	309	309	2	94	13	25	3 hrs.	
TOMPKINS	296	516	516	0	197	30	15	1 1/2 to 2 hrs.	
ULSTER	690	811	811	0	121	14	30 to 75	2 1/2 hrs.	
WARREN	457	307	307	0	53	25	15 to 20	2 1/2 hrs.	
WASHINGTON	254	231	231	0	12	8	35 to 40	3 hrs.	
WAYNE	450	102	102	2	0	8	12	2 to 3 hrs.	
WESTCHESTER	4,198	4,911	4,911	0	711	114	30 to 40	2 1/2 hrs.	
WYOMING	222	71	71	0	29	5	14	2 1/2 hrs.	
YATES	111	111	111	1	0	16	15	2 hrs.	
TOTALS:	124,340	65,335	65,100	1,145	13,292	2,402	1,111		

(Continued)

**Sample Statement of Work
For the Implementation of New Voting Systems**

The implementation of the proposed voting system shall include but not be limited to the following tasks:

- 1) **Manufacture & Deliver Voting Systems**
 - a) Deliver the requisite NYSBOE certified Voting System, including services, hardware, software, accessories and any other related components, as ordered by Authorized Users,
 - b) Have adequate staff available to facilitate in and/or conduct required acceptance testing tasks and procedures, pursuant to the regulations and requirements of the NYSBOE,
 - c) Provide the Authorized Users with complete storage specifications for voting systems.
- 2) **Enable Software and Hardware Modifications**
 - a) When so requested, work with Authorized Users to make county- requested modifications to the Voting System, and submit any such changes to NYSBOE, for certification.
- 3) **Assist in Procedures Development**
 - a) Assist in the development of new procedures and processes, including documentation for the conduct of elections in which the Voting System is to be used.
 - b) Identify the appropriate functional areas and relevant procedures to be affected by the Voting System.
 - c) Draft revisions to existing procedures, and/or create new procedures, as necessary.
 - d) Work with Authorized Users to draft, document, and test new procedures, for Authorized User approval and use.
- 4) **Develop Election Management System (EMS) Interfaces**
 - a) Develop interfaces between existing BOE systems and the Voting System, in a well-documented and secure fashion. Vendors should become familiar with county BOE elections environment, to understand fully the needs of the BOE to which the proposer intends to provide Voting Systems. Proposers may be requested to provide one or both of the following:
 - b) Manual Interface - Manual interface for sharing data (e.g. CD, DVD, memory card, etc.) between the county candidate and ballot access systems to the selected vendor's EMS. This would include a manual process for sharing ballot data between the county BOE's central offices, and respective county's voting equipment facility, if different,
 - c) Automated Interface - Automated interface between county candidate and ballot access systems and the proposed EMS, via a secure network. This may include a network-based interface (i.e.: WAN), between the county BOE's central offices and respective county's voting equipment facility, if different.
- 5) **Conduct Poll Site Evaluations**
 - a) Pursuant to New York State Rules and Regulations, and in conjunction with county BOE staff, visit every poll site to ensure that the poll site meets environmental and space requirements for the proper operation of the Voting System.
 - b) Draft a plan for visiting all poll sites, and create a report which identifies all corresponding issues which the county BOE must resolve prior to Voting System deployment.
- 6) **Conduct Testing**
 - a) Assist in any integration testing, as identified by the Authorized User, and in Logic and Accuracy testing and Ballot Proofing (text and audio), as requested.
- 7) **Provide Training Materials**

Provide training materials for appropriate county staff, as follows:

 - a) Develop training materials and training plans, including a train the trainer' program, for approval by the Authorized User, prior to the conduct of any training program.
 - b) Ensure training materials and presentations are appropriate for varied audiences, including Authorized User general staff, technicians, poll workers, coordinators, trainers, and such others as the Authorized User may identify.

(Continued)

- c) Consider, develop and propose presentation options including video, interactive CD, web-based and other media options.
 - d) Draft a methodology for incorporating specific Voting System training into existing inspector training programs.
- 8) Conduct Training
 - a) Conduct and/or assist in the conduct of Voting System training for all groups of end-users, as identified by the Authorized User. With regard to poll workers, work with the county and its agents to combine training programs with existing poll worker training curriculum.
- 9). Pre-election Assistance
 - a) Provide assistance, as identified by Authorized User, in the deployment of the Voting System, including poll site set-up. Outline methods for providing said assistance, for Authorized User review and approval, including but not limited to providing technical support for any pre-election Voting System setup.
 - b) Verify/validate that any and all agreed-to election day procedures are in place and working properly.
 - c) Verify/validate that any and all post-election procedures are in place and working as expected, in preparation for post-election activities.
 - d) Provide Audi Ballot training and related guides for Authorized User staff, and such other appropriate county BOE personnel, and assist in the creation of Audio Ballots, for use in elections.
 - e) Provide required technical assistance in the configuration of Audio Ballots.
 - f) Provide audio ballot creation services for the recording of ballot components, including candidate names in (at a minimum), English, Spanish, Korean, Cantonese and Mandarin.
- 10) Provide Election Day Assistance
 - a) Assist the Authorized User staff with Election Day procedures, as required and specified by Authorized User.
 - b) Provide technical assistance for the Authorized User and poll site staff, as required and specified by Authorized User.
- 11) Provide Post-election Assistance
 - a) Assist Authorized User staff with post-election procedures, as required and specified by Authorized User.
 - b) Provide post-election technical assistance for closing polls and other post-election procedures, as required and specified by Authorized User.
 - c) Provide vote tabulation assistance, as required and specified by Authorized User
- 12) Provide On-going Support
 - a) Provide day-to-day technical support to Authorized User staff, as specified by same.
 - b) Provide agreed-upon level of phone and on-site support for technical and procedural issues.

(Continued)

Sample Maintenance and Support Services Submission

The purpose of this Submission is to:

1. Give the County Boards the mechanism to state their requirements as part of their vendor evaluation process, then allowing for this document to ultimately be attached to a purchase order.
2. Provide the mechanism for recording in any subsequent agreement, the vendor's response to the specific County's requirements

Any language provided in the spread sheet found herein is meant to be illustrative, and counties are encouraged to tailor this document, to articulate their needs to any vendor.

This Submission contains both County Board of Elections maintenance and support requirements and the vendor's statement of how they will fulfill those requirements. This submission does not include the prices for maintenance and support services. Maintenance and Support Service Requirements are presented in seven categories:

1. Hardware and Software Modifications
2. Development and Implementation Services
3. Support Per Election
4. Acceptance Testing Support
5. Pollsite Surveys
6. Voting Machine Facility Assessment and Specifications
7. Maintenance

Each County can complete the left side of this Submission, describing its requirements for maintenance and support, estimated quantities, and projected timeframes for the receipt of the maintenance and support services, deliverables, and materials.

Each vendor can then complete the right side of this Submission, describing how they will meet the requirements. If the vendor intends to meet the County requirements as stated by the County, the vendor can indicate so in its response. If the vendor cannot meet the County's requirements, the vendor must indicate so in its response and describe how it proposes to provide maintenance and support services.

This Submission is intended as a one-time component of the initial purchase order. Over the five year term of the contract, however, Counties may to order maintenance and support services, as needed.

Each County may complete a Submission with their own detail requirements for maintenance and support services. Note that for the Development and Implementation Services section, categories are provided as a sample, and counties may have different or additional categories.

(Continued)

**Proposed
Submission 4
Maintenance and Support Services**

Maintenance and Support Requirements – To be Completed by Each County Board of Elections	Vendor Statement of Services – To be Completed by Each Vendor
County Name:	Vendor Name:

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
<p>1. Hardware and Software Modifications</p> <p><i>During the installation, acceptance testing, or development process, modifications may be required to the vendor’s software or hardware configuration. Additionally, over the five year contract, modifications may be required to meet changing legal mandates or business requirements.</i></p> <p><i>These modifications will require review by the New York State Board of Elections to determine recertification requirements. Vendors are responsible for requesting such reviews and recertification.</i></p>	<p>Year One:</p> <p><i>Planning and Design: xx Hrs</i></p> <p><i>Development Work:</i></p> <p><i>xx Hrs</i></p> <p><i>Testing:</i></p> <p><i>xx Hrs</i></p> <p>Subsequent Years:</p> <p><i>TBD</i></p>	<p><i>As Needed</i></p>		

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
2. Development and Implementation Services <i>This county require the vendor to work closely with us and various third party vendors, and provide the following for various functional areas:</i> <ul style="list-style-type: none"> • <i>Planning and Design</i> • <i>Development Work</i> • <i>Material Production</i> • <i>Testing</i> 	Year One: <i>Planning and Design: xx Hrs</i> <i>Development Work:</i> <i>xx Hrs</i> <i>Material Production:</i> <i>xx Hrs</i> <i>Testing: xx Hrs</i> Subsequent Years: <i>TBD</i>	<i>Upon commencement of contract through implementation in the Primary Election</i>		
<ul style="list-style-type: none"> • EMS Interface with Existing County Systems: <i>Develop a two-way interface by which election data from existing Board systems will be input into the EMS, and election results in the EMS will be transferred to Board systems.</i> 				

(Continued)

**GROUP 22300 - VOTING SYSTEMS AND RELATED SERVICES AND BALLOT MARKING OR OTHER
VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES**

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Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
<ul style="list-style-type: none"> Audio Ballot Production: Provide support for the development of Audio Ballots. The Board may use a third party vendor to record candidate names and instructions for audio ballots. 				
<ul style="list-style-type: none"> Pollworker Training Program: Provide material and support for the development and implementation of the pollworker training program, including diagrams, schematics, color photographs, training videos and tutorials (digital and hardcopy) as applicable and access to vendor staff and technical resources. 				
<ul style="list-style-type: none"> Voter Education Program: The Board has contracted with a third party Public Information (PI) and Education vendor for voter outreach and public relations efforts. The voting system vendor must provide material and support as required by the PI vendor, including diagrams, schematics, color photographs, training videos and tutorials (digital and hardcopy) as applicable and access to vendor staff and technical resources. 				

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
<ul style="list-style-type: none"> Procedures: Provide support for the development of technical and operational procedures related to the implementation and operation of the new voting system. The Board may use a third party training vendor for this effort. 				
<ul style="list-style-type: none"> Other: There may be other services required by the Board. The vendor should describe any additional development and implementation services not mentioned above. The vendor shall also describe a pricing mechanism to accommodate these services. 				

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
3. Support Per Election <i>On-site vendor support is required during different time periods and in different capacities for each election. The level of vendor support will differ from election to election with the amount of support diminishing over time.</i>				
<ul style="list-style-type: none"> Onsite Pre-Election EMS Support: Provide support during EMS set-up, data input, testing and deployment. 	<p>Year One: <i>About xx days; may include evenings and weekends.</i></p> <p>Subsequent Years: <i>TBD, anticipated to decrease over time</i></p>	<p><i>4 weeks before each Election</i></p>		
<ul style="list-style-type: none"> Onsite Pre-Election Voting Equipment: Provide support for functional testing, acceptance Testing, LAT Testing, writing PMDs, and machine set-up. 	<p>Year One: <i>xx vendor VMT support staff over 6 weeks</i></p> <p>Subsequent Years: <i>TBD, anticipated to decrease over time</i></p>	<p><i>4 - 6 weeks before each Election</i></p>		

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
<ul style="list-style-type: none"> Onsite Election Day: Provide support for pollworkers, each support person to travel among xx Election Districts 	<p>Year One: xx poll worker support personnel</p> <p>Subsequent Years: TBD, anticipated to decrease over time</p>	Election Day		
<ul style="list-style-type: none"> Onsite Election Day VMTs: Provide support for VMTS responding to trouble calls. 	<p>Year One: xx vendor VMT support staff</p> <p>Subsequent Years: TBD, anticipated to decrease over time</p>	Election Day		
<ul style="list-style-type: none"> Onsite Election day BOE Call Center: Provide support to Board staff receiving trouble calls 	<p>Year One: xx onsite vendor personnel</p> <p>Subsequent Years: TBD, anticipated to decrease over time</p>	Election Day		

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
<ul style="list-style-type: none"> Onsite Canvass/Recanvass EMS: Provide support for Board staff for canvass/recanvass activities 	<p>Year One: x vendor personnel (1 in each borough)</p> <p>Subsequent Years: TBD, anticipated to decrease over time</p>	2 week period after Election Day		
<ul style="list-style-type: none"> Onsite Post Election Voting Equipment: Provide support for VMT for post election activities 	<p>Year One: xx vendor VMT support staff</p> <p>Subsequent Years: TBD, anticipated to decrease over time</p>	Two week period after Election Day		
<p>4. Acceptance Testing Support Provide onsite support during State-mandated Acceptance Testing which begins within 72 hours of voting equipment. Delivery.</p> <p>Provide support during acceptance testing of EMS.</p>	<p>Year One: x vendor support personnel</p> <p>Subsequent Years: TBD, minimal</p>	<p>Following each delivery of voting equipment</p> <p>Following delivery of EMS</p>		

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? "Yes" or "No"	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If "No", Describe Proposed Maintenance and Support Services
5. Pollsite Surveys <i>Per New York State Election law the vendor in conjunction with county staff must visit every pollsite to verify that the pollsite meets environmental requirement for the proper operation of the proposed pollsite voting system and provide a report of required modification for each pollsite.</i>	Year One: xx Poll sites Countywide Subsequent Years: None	<i>Immediately upon commencement of the contract and completed in enough time to the Board to make modifications</i>		
6. Voting Machine Facilities Assessment and Specifications <i>Provide assistance to the Board in the physical development of Voting Machine Facilities to accommodate the new voting system for year round storage, maintenance and election staging.</i>	Year One: x voting machine facility(ies) in each county. Subsequent Years: None	<i>Immediately upon commencement of the contract and completed in enough time to the Board to make modifications</i>		

(Continued)

Maintenance and Support Requirements	Estimated Quantities	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Maintenance and Support Services if they Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Maintenance and Support Services
7. Maintenance <i>Required if maintenance over and above that mandated by Election Law.</i>	<i>Year One:</i> <i>TBD</i> <i>Subsequent Years:</i> <i>TBD</i>			

(Continued)

Sample Training Services Submission

The purpose of this Submission is to:

3. Give the County Boards the mechanism to state their requirements as part of their vendor evaluation process, then allow for this document to ultimately be attached to a purchase order.
4. Provide the mechanism for recording in any subsequent agreement, the vendor's response to the specific County's requirements

Any language provided in the spread sheet found herein is meant to be illustrative, and counties are encouraged to tailor this document, to articulate their needs to any vendor.

This Submission contains both the County Board of Elections Training requirements and the vendor's statement of how they will fulfill those requirements. This submission does not include the prices for training services. Training Requirements are presented in seven categories:

8. Classes for Board Trainers
9. Classes for Poll workers
10. Poll worker Training Materials
11. Classes for EMS Technical Staff
12. Classes of EMS End Users
13. Classes for Voting Machine Technicians (VMTs)
14. Classes for Additional Board Staff

Each County may complete the left side of this Submission, describing its requirements for training, estimated quantities, and projected timeframes for the receipt of the training services and materials.

Each vendor may complete the right side of this Submission, describing how they will meet the requirements. If the vendor intends to meet the County requirements as stated by the County, the vendor can indicate so in its response. If the vendor cannot meet the County's requirements, the vendor must indicate so in its response and describe how it proposes to provide training services.

This Submission is intended as a one-time component of the initial purchase order. Over the five year term of the contract, however, Counties may to order maintenance and support services, as needed.

Each County may complete a Submission with their own detail requirements for maintenance and support services. Note that for the Development and Implementation Services section, categories are provided as a sample, and counties may have different or additional categories.

(Continued)

Training Services Submission

Training Requirements – To be Completed by Each County Board of Elections	Vendor Statement of Services – To be Completed by Each Vendor
County Name:	Vendor Name:

Training Requirements	Estimated Quantities For First Election	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Training Services if They Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Training Services
1. Classes for Board Trainers <i>The Board conducts poll worker training classes. They will continue to conduct classes to cover all election related operations. Although during the initial years of implementation the vendor’s trainers may conduct the training segment on the new equipment, the Board’s trainers must also be trained by the vendor on the new equipment as they will resume full training responsibilities in the future.</i>	Year One: <i>Sufficient number of classes to train xx Board Trainers with no more than x attendees per class, with each Board Trainer receiving at least two sessions</i> Subsequent Years: <i>TBD</i>	<i>Prior to the commencement of poll worker training classes.</i>		

(Continued)

Training Requirements	Estimated Quantities For First Election	Projected Timeframes	Vendor Will Fulfill Requirements? "Yes" or "No"	Vendor Proposes Training Services if They Will Not Fulfill Requirements as Requested. If "No", Describe Proposed Training Services
<p>2. Classes for Pollworkers</p> <p><i>In my County, we anticipate that a vendor trainer will be present at each poll worker class to:</i></p> <ul style="list-style-type: none"> • <i>Provide accurate training on the poll site voting equipment</i> • <i>Conduct hands-on practice sessions with small groups of class attendees</i> • <i>Help administer competency testing</i> • <i>Provide repeat instruction to participants as needed</i> 	<p>Year One:</p> <p><i>xxxx Poll Workers, approximately xx participants in each class, (approx. xx Classes)</i></p> <p><i>Classes to be conducted over a period of several months before the Primary Election (90 – 120 day period)</i></p> <p><i>Classes may be conducted simultaneously in different training sites throughout the County. Some classes are conducted during evening hours and on the weekend.</i></p> <p><i>Remedial or make-up classes may be required between the Primary Election and the General Election</i></p> <p><i>Training instructors must be available in quantities to be present at all poll worker classes, and vendor must be responsible to cover their staff days off or sick days.</i></p> <p>Subsequent Years:</p> <p><i>TBD, anticipated to decrease over time</i></p>	<p><i>90 – 120 day period before Primary Election</i></p> <p><i>Remedial pr make-up classes between the Primary Election and the General Election</i></p> <p>(Continued)</p>		

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Training Requirements	Estimated Quantities For First Election	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Training Services if They Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Training Services
<p>5. Classes for EMS End Users</p> <p><i>Board staff will enter the results of the election into the EMS, and perform other necessary functions. Staff must be trained to perform all relevant EMS functions.</i></p> <p><i>Classes will be conducted at the County BOE offices.</i></p>	<p>Year One:</p> <p><i>xx classes in my County, with approximately xx persons per class.</i></p> <p>Subsequent Years:</p> <p><i>None</i></p>	<p><i>60 – 90 days before the election</i></p>		
<p>6. Classes for VMTs</p> <p><i>Board Voting Machine Technicians (VMTs) will perform all functions related to the voting system equipment, including: Acceptance Testing, LAT Testing, writing PMDs, set-up for the election, take-down after the election, maintenance, troubleshooting on Election Day. Quarterly testing etc. VMTs must be trained to perform all relevant voting system functions (EMS included).</i></p>	<p>Year One:</p> <p><i>Sufficient number of classes to train xx VMTs with no more than xx attendees per class, with each VMT receiving instruction on each of the functional areas required of a VMT.</i></p> <p>Subsequent Years:</p> <p><i>TBD, anticipated to decrease over time</i></p>	<p><i>Prior to the time period when each of the functions are to be performed (e.g., training of acceptance testing prior to the delivery of machines)</i></p>		

(Continued)

Training Requirements	Estimated Quantities For First Election	Projected Timeframes	Vendor Will Fulfill Requirements? “Yes” or “No”	Vendor Proposes Training Services if They Will Not Fulfill Requirements as Requested. If “No”, Describe Proposed Training Services
7. Classes for Additional Board Staff <i>Additional Board Staff will require overview training on the new voting system.</i>	Year One: <i>xx classes at the Board’s Office</i> Subsequent Years: <i>None</i>	<i>60 – 90 days before the election</i>		

(Continued)

Exhibit No. 4

Sample Certification and Authorization Forms

3a. BOARD OF ELECTIONS SAMPLE CERTIFICATION FORM

3b. Office of General Services Sample Authorization Form

NOTE: The State Board of Elections and the Office of General Services retains the right to modify their respective forms.

4a. BOARD OF ELECTIONS SAMPLE CERTIFICATION FORM

VOTING SYSTEM CERTIFICATION

Whereas, the _____, by letter dated _____, 2006, requested the New York State Board of Elections to certify their electronic voting machine, commonly known as the _____, and

Whereas, said voting system was examined and tested pursuant to the provisions of The New York State Election Law Article 7 title II and Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations 6209 of the of the State Board of Elections, and

Whereas, said voting system was determined to meet all statutory and regulatory provisions

Whereas, _____ has placed the source code for the above-captioned versions in an escrow account designated by the New York State Board of Elections,

Now, therefore, the New York State Board of Elections and the New York State Office of General Services certifies that the _____ voting system may be sold and used for elections conducted in the State of New York. The New York State Office of General Services as issued PC _____ to _____ for the NYS Term Contract for Voting Systems.

Co-Executive Director
New York State Board of Elections

Co-Executive Director
New York State Board of Elections

DATED: _____, 20____

(Continued)

4b. OFFICE OF GENERAL SERVICES SAMPLE AUTHORIZATION FORM



STATE OF NEW YORK
EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP
Corning Tower – 38th Floor
Empire State Plaza
Albany, New York 12242

CONTRACTOR AUTHORIZATION TO SELL FORM	
OGS CONTRACT NO.: _____	DATE OF SUBMISSION: _____
CONTRACT PERIOD: From: _____ To _____	VENDOR CONTACT: NAME: _____
GROUP NO. & DESCRIPTION: _____ _____	PHONE NO: _____
	FAX NO.: _____
	E-MAIL: _____

The above named Contractor is authorized to sell their Voting System commonly known as the _____
in the State of New York.

FOR OGS USE ONLY
OGS APPROVAL: Name: _____ Title: Director, Procurement Services Group Date: _____

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Exhibit No. 5

Sample Ballots

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

(Continued)

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(Continued)

STANDARD CLAUSES FOR NYS CONTRACTS

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

- 1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
- 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.
- 7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **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 Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX B

GENERAL SPECIFICATIONS

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

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

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

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

a. Appendix A (Standard Clauses for NYS Contracts)

b. Mini-Bid Project Definition if applicable and in accordance with the terms and conditions of the Back-Drop Contract.

c. Contract and other writing(s) setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph. Included herein shall be Purchase Orders issued by Authorized Users, any attachments thereto and any documents used to clarify the terms of the same.

d. Bid Documents (Other than Appendix A).

i. Bid Specifications prepared by the Authorized User.

ii. Appendix B (General Specifications).

iii. Incorporated Contract Appendices and Exhibits, including but not limited to Exhibit 1 link to New York State Election Law Article 7 Title II, Exhibit 2 link to Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations Part 6209, Exhibit 3 Statewide Demographic Information, Sample Statement of Work, Sample Maintenance and Support Submission and Sample Training Submission and Exhibit 4 Sample Certification/Authorization Forms, Exhibit 5 Sample Ballots; Appendix C Required Contractor Submissions: (# 1 Mandatory Contractor

Questionnaire, # 2

Contractor, Reseller & Distributor Information,) following the order

of precedence as stated for Contract above.

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

There will be no unincorporated appendices to this contract. All documents referenced in the contract and made a term thereof will be physically attached to the contract.

5. DEFINITIONS Terms used in this Appendix B shall have the following meanings:

AFFILIATE Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

AUTHORIZED USER'S PURCHASING OFFICIAL A County Board of Elections employee who conducts purchasing for that county.

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described Products and/or Services or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

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

BID DOCUMENTS Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Products and/or Services. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS

Contracts), Appendix B, (General Specifications). Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

d. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or

instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner and the NYS Board of Elections in accordance with the requirements of the State Finance Law.

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

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

CONTRACTOR Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner in conjunction with the NYS Board of Elections.

CRITICAL PERIOD Thirty (30) days prior to and after the election in which such Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services are used.

DELIVERY Delivery of the Equipment shall include but not be limited to all software, hardware, documentation, and services needed to support election activities. The Contractor shall provide the Equipment along with providing the related services in accordance with this Contract.

DESIGNATED CONTRACTOR REPRESENTATIVE

The Contractor official authorized in writing to act on behalf of the Contractor in all matters relating to the Contract.

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

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

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

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

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

FIRMWARE a computer program stored in read-only memory

either programmable or nonprogrammable, that becomes a permanent part of the computing device that is not subject to change or modification without review by the State Board.

GROUP A classification of Products and/or Services, services or technology which is designated by OGS.

HARDWARE the actual voting or ballot counting device.

INITIAL ASSEMBLY Placing and assembly of the Products and/or Services in the required locations.

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

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

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

LICENSOR A Contractor who transfers rights in proprietary Products and/or Services to Authorized Users in accordance with the rights and obligations specified in the Contract.

MACHINE FAILURE Shall include the failure of all the voting machine's hardware, and any auxiliary components and devices.

MAINTENANCE The activities associated with the repair of any Products and/or Services acquired under this Contract.

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

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

NEW PRODUCTS AND/OR SERVICES RELEASES (Products and/or Services Revisions) Any commercially released revisions to the licensed version of a Products and/or Services as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Products and/or Services.

NOTICE AND CURE PERIOD The period in time during which the defaulting party must be notified of a default and during which they must fix the cause of the same

OGS The New York State Office of General Services.

PROCUREMENT RECORD Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.

PRODUCTS AND/OR SERVICES A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Products and/or Services"

includes Software.

PROJECT WARRANTY PERIOD Five (5) years from the date of acceptance of the Products and/or Services by each Authorized User

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

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

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

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

RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner in conjunction with the NYS Board of Elections.

. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS In conjunction with the NYS Board of Elections.

ROUTINE PREVENTIVE MAINTENANCE Any steps recommended by Vendors to ensure the good and proper working order of Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities, and such routine maintenance as provided for by the SBOE in §6209.10

SINGLE SOURCE A procurement where two or more Bidders can supply the required Product and Services, and the Commissioner, in conjunction with the NYS Board of Elections, may award the contract to one Bidder over the other.

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

SOFTWARE Software means any programming instructions used by the vote counting system, including but not limited to system programs and application programs. System programs include but are not limited to the operating system, control programs, communication programs, database managers, and device drivers. Application programs include but are not limited to, any program that processes the data

SOFTWARE FAILURE Failure occurring in either the EMS or within the individual voting system devices

SOFTWARE TRANSFER AND GRANT Software Transfer means the transfer of the license to use particular software product from the purchaser of the license (the voting system vendor) to the Authorized User. Software transfers apply to

third party operating systems, database management systems, etc. Software grant means the grant of a license to use by the owner of the license (the voting system vendor) to the Authorized User. Software grants apply to voting system applications (such as the Election Management Software).

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

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

STATE State of New York.

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

SUPPORT Services supplied by the Contractor to assist the Authorized Users in the transition to a new voting system and shall be provided during the pre-election, election day and post-election time periods. Such services shall usually be provided on-site and will be provided for both the voting equipment and the EMS system.

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

TRAINING Services supplied by the Contractor to train Authorized Users on the design, composition, maintenance, testing and operation of the new voting system, for both the voting equipment and the EMS system, and includes direct hands-on instruction, testing of student participants, and instructional materials for board technical, end-user and Voting Machine Technicians, Board of Elections staff members, as well as poll workers. See solicitation for Training and Training Material Requirements.

VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product and Services, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product and Services manufacturer.

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

7. BID OPENING Bids may, as applicable, be opened publicly. The Commissioner and the NYS Board of Elections reserve the right at any time to postpone or cancel a scheduled Bid opening.

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

A Bid return envelope, if provided with the Bid Specifications,

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

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

"BID ENCLOSED (bold print, all capitals)

- Group Number
- IFB or RFP Number
- Bid Submission date and time"

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

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

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

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

10. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a Bid by facsimile transmission, including an executed signature page or as otherwise specified in the Bid Documents, shall be deemed a confirming act by Bidder which authenticates the signing of the Bid.

11. LATE BIDS For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Bid Documents or if no place is specified in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the Bid opening. For

purposes of Bid openings held and conducted by Authorized Users other than OGS, the term late Bid is defined as a Bid not received in the location established in the Bid Specifications at or before the date and time specified for the Bid opening. Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner and the NYS Board of Elections.

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

13. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid nonresponsive and may result in rejection of the Bid. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: Product and Services literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

a. Contractor Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner, the NYS Board of Elections or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

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

15. RELEASE OF BID EVALUATION MATERIALS

Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner and the NYS Board of Elections.

16. FREEDOM OF INFORMATION LAW During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or

other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the Commissioner and the NYS Board of Elections to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner and the NYS Board of Elections reserve the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

17. TAXES

- a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.
- b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.
- c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.
- d. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

18. EXPENSES PRIOR TO CONTRACT EXECUTION

The Commissioner, the NYS Board of Elections and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid or best and final offers or for any work performed prior to Contract execution.

19. ADVERTISING RESULTS The prior written approval of the Commissioner and the NYS Board of Elections is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The

Contractor shall also obtain the prior written approval of the Commissioner and the NYS Board of Elections relative to the Bid or Contract for press or other media releases.

20. PRODUCT AND SERVICES REFERENCES

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

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

21. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS

Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and/or Services and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and Services or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products and/or Services to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and Services and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below. Products purchased for use by the voting public in an election shall not be refurbished, reconditioned or retrofitted Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities. All other items with recycled, recyclable, recovered, refurbished, reconditioned retrofitted or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product and Services.

22. PRODUCTS AND/OR SERVICES

MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products and/or Services that are manufactured or produced in public institutions will be rejected.

23. PRICING

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

b. Net Pricing Unless otherwise required by the Bid Specifications, prices shall be net, including transportation,

customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

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

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

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

f. Best Pricing Offer During the Contract term, if substantially the same or a smaller quantity of a Product and Services is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner and the NYS Board of Elections, shall be immediately reduced to the lower price.

Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

(i) GSA Changes: Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor’s list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

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

g. Best and Final Prices As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

24. DRAWINGS

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

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the

Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User’s representative.

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

25. SITE INSPECTION Site inspection is required for this contract. Bidders are required to inspect each poll site, for environmental or other conditions for pre-existing deficiencies that may affect the installed Products and Services, to be provided and, which may affect Bidders’ ability to properly deliver, install or otherwise provide the required Products and Services or the Authorized User’s ability to operate the Products and Services provided. All inquiries regarding such conditions shall be made in writing. Bidders shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidders must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and initial assembly of the required Products and Services or provide the requested Products and Services. Bidders should refer to §6209.9(a)(3) of the New York State Board of Elections’ Regulations for specific requirements.

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

The Contractor shall not process a transaction for

payment through the credit card clearinghouse until the purchased Products and/or Services have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product and Services in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for Products and/or Services returned as defective or faulty.

27. SAMPLES

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

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

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

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

d. Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by, or for, the Commissioner and the NYS Board of Elections) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner, and the NYS Board of Elections, the sample or Product and Services submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner and the

NYS Board of Elections may reject the Bid. If an award has been made, the Commissioner and the NYS Board of Elections may cancel the Contract at the expense of the Contractor.

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner and the NYS Board of Elections, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor. Certification testing must be done prior to the purchase of PVSs by Authorized Users.

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

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

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

30. CLARIFICATIONS / REVISIONS Prior to award, the Commissioner and the NYS Board of Elections reserve the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.

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

32. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner, and the NYS Board of Elections, to award a Contract to one or more of

such Bidders shall be final.

33. PERFORMANCE AND RESPONSIBILITY

QUALIFICATIONS The Commissioner, and the NYS Board of Elections, reserve the right to investigate or inspect at any time whether or not the Product and Services, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, and the NYS Board of Elections, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product and Services Offered/Bid. If the Commissioner and the NYS Board of Elections determine that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner, and the NYS Board of Elections, may reject such Bid or terminate the Contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsible.

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

36. TIMEFRAME FOR OFFERS The Commissioner, and the NYS Board of Elections, reserve the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9) (e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner, and the NYS Board of Elections, written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner and the NYS Board of Elections, be accepted or rejected.

37. CONTRACT CREATION / EXECUTION Except for

contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with the successful Bidder(s), upon mailing or electronic communication by the Commissioner and the NYS Board of Elections to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner and the NYS Board of Elections.

38. PARTICIPATION IN CENTRALIZED CONTRACTS

The following shall not limit or inhibit the authority of the OGS Commissioner and the NYS Board of Elections under State Finance Law, Section 163 (10) (e) (Piggybacking):

a. Agencies All State Agencies may utilize and purchase under any state Centralized Contract let by the Commissioner, in conjunction with the NYS Board of Elections, unless the Bid Documents limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through state Centralized Contracts where permitted by law, the Contract or the Commissioner, in conjunction with the NYS Board of Elections.

c. Voluntary Extension Purchase Orders issued against a State Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner, the NYS Board of Elections and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163 (3) (iv) of the State Finance Law.

d. Responsibility for Performance Participation in state Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-state agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

39. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all

transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner, the NYS Board of Elections and Contractor.

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

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

40. SCOPE CHANGES The Commissioner and the NYS Board of Elections reserve the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner and the NYS Board of Elections may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

41. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

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

43. PURCHASE ORDERS Unless otherwise authorized in

writing by the Commissioner and the NYS Board of Elections, no Product and Services is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner and the NYS Board of Elections, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner, in conjunction with the NYS Board of Elections, must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product and Services information with the Contractor prior to placement of the Purchase Order. All documents that are attached to a Purchase Order issued by an Authorized User become a part of the Contract. If the Contractor does not accept the terms of such attachments, then the Contractor shall notify the Authorized User of their disagreement at the time of receipt of the Purchase Order and may not accept such Purchase Order until agreement is reached as to the terms of the said attachments. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order.

Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor. If, with respect to an Agency Specific Contract let by the OGS Commissioner, in conjunction with the NYS Board of Elections a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and the NYS Board of Elections and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner and the NYS Board of Elections with a corresponding reduction in the Contract quantity and price.

44. PRODUCTS AND SERVICES DELIVERY

Delivery for Acceptance Testing:

Vendors must make delivery of machines for acceptance testing to the centralized acceptance testing location specified by the New York State Board of Elections and the New York State Office of General Services as required by the New York State Board of Elections. Once acceptance testing is completed, the vendor is responsible for repackaging and shipping the machines to the Authorized User. Delivery shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board of Elections. Said procedures shall comply with §6209.10 and the guidelines established by the New York State Board of Elections.

General Delivery After Acceptance Testing:

Delivery must be made as mutually agreed to in the purchase order issued by the Authorized User or the New York Office of General Services. It is expected that there will be in initial delivery, to accommodate Authorized User training and outreach needs, and incremental deliveries, as per production schedules provided by vendors, with the balance of machines delivered no later than 30 days prior to use by the applicable County Board of Elections and in accordance with the terms of the Contract or Contract Award Notice.

Delivery shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board §6209.10 and the guidelines established by the New York State Board of Elections. The acceptance testing period will be based upon the time identified in the State Board's dry run of system-specific acceptance testing, which would not include any time provided to a vendor to cure an identified failure. The Authorized User and the Contractor shall mutually agree to a delivery schedule as required by §6209.9(A)(4)(a) of the New York State Board of Elections' Regulations. It is expected that there will be in initial delivery, to accommodate Authorized User training and outreach needs, and incremental deliveries, as per production schedules provided by vendors, with the balance of machines delivered no later than 30 days prior to use by the applicable County Board of Elections and in accordance with the terms of the Contract or Contract Award Notice.

Said agreed upon delivery schedule shall be adhered to by the Contractor.

The decision of the Commissioner and the NYS Board of Elections as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately, but in no event more than three (3) days from the date that the contractor first learns of the delay or potential for delay in delivery, notify the Commissioner, the NYS Board of Elections and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner and the NYS Board of Election's discretion, the Contract.

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products and/or Services have been received, inspected and accepted by the Authorized User. Acceptance is expected to begin within seventy-two hours of delivery and shall be completed in accordance with the acceptance testing procedures developed by the New York State Board of Elections after they conduct their dry-run of system-specific acceptance testing, but such time period does not include any time provided to a Contractor to cure an identified failure.

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

46. SHIPPING/RECEIPT OF PRODUCT AND SERVICES

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

b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall

not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

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

47. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products and/or Services have been received, inspected and accepted by the Authorized User. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Acceptance testing shall be the testing that is required by the New York State Board of Elections in compliance with §6209.10 and the guidelines established by the New York State Board of Elections. The acceptance testing period will be based upon the time identified in the State Board's dry run of system-specific acceptance testing, which would not include any time provided to a vendor to cure an identified failure. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products and/or Services received. Any delivery of Product and Services that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner and the NYS Board of Elections. Upon notification of rejection, risk of loss of rejected or non-conforming Product and Services shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product and Services as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

48. RE-WEIGHING PRODUCT AND SERVICES

Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

49. PRODUCT AND SERVICES SUBSTITUTION In the event a specified manufacturer's Product and Services listed in the Contract becomes unavailable or cannot be supplied by the

Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product and Services deemed in writing by the Commissioner and the NYS Board of Elections to be equal to or better than the specified Product and Services must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product and Services prior to the written approval of the Commissioner and the NYS Board of Elections may be cause for cancellation of Contract. In no event shall substitutions be made for any equipment certified by the NYS Board of Elections.

50. REJECTED PRODUCT AND SERVICES Upon receipt of Product and Services, acceptance testing shall be conducted pursuant to processes established by the New York State Board of Elections and consistent with 9 NYCRR part 6209.10 (F) the Authorized User shall promptly evaluate its acceptability. If Product and/or Services are found to be unacceptable, the reasons for its unacceptability will be documented in a Notice of Unacceptability which shall be signed by the Authorized User's Purchasing Official and delivered to the Designated Contractor's Representative. When Product and Services are rejected, the contractor shall have 15 days to remedy the unacceptability of the Product and Services and resubmit it to the Authorized User in compliance with §6209.10(F). If after the fifteen days the Product is still found to be unacceptable by the Authorized User, the Authorized User may at its discretion, reject the Product and Services. When Product and/or Services is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User and the Authorized User shall have the right to seek equivalent Product from another Contractor at the expense of the original Contractor.

51. INITIAL ASSEMBLY Where initial assembly is required; Contractor shall be responsible for placing and assembly of the Product in the required locations ("Initial Assembly.") All materials used in the initial assembly shall be of good quality and shall be free from any and all defects that would mar the appearance of the or render it structurally unsound. Initial Assembly includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

52. REPAIRED OR REPLACED PARTS /

COMPONENTS Where the Contractor is required to repair, replace or substitute Product and Services or parts or components of the Product and Services under the Contract, the repaired, replaced or substituted Products and/or Services shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as

set forth in the Additional Warranties Clause herein. Replaced or repaired Product and Services or parts and components of such

Product and Services shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product and Services standards may be permitted by the Commissioner, the NYS Board of Elections or Authorized User. Before installation, all proposed substitutes for the original manufacturer's installed

parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than

the original part or component being replaced.

53. ON-SITE STORAGE With the written approval of the Authorized User, materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk.

54. EMPLOYEES, SUBCONTRACTORS & AGENTS All employees, Subcontractors or agents performing work under the

Contract must be trained staff or technicians who meet or exceed

the professional, technical and training qualifications set forth in

the Bid Specifications or the Bid Documents, whichever is more

restrictive, and must comply with all security and administrative

requirements of the Authorized User. The Commissioner and the

NYS Board of Elections reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based

on, including but not limited to, professional, technical or training

qualifications, quality of work or change in security status or noncompliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner and the NYS Board of Elections reserve the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

55. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner and the NYS Board of Elections. Such written consent shall not be unreasonably withheld by the Commissioner and the NYS Board of Elections. Failure to obtain consent to assignment from the Commissioner and the NYS Board of Elections User shall revoke and annul such Contract. Notwithstanding the foregoing, the State

shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and the NYS Board of Elections. and seek written agreement from the Commissioner and the NYS Board of Elections. which will be filed with the Comptroller. The Commissioner and the NYS Board of Elections reserve the right to reject any proposed assignee in his/her discretion. Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

56. SUBCONTRACTORS AND SUPPLIERS The Commissioner and the NYS Board of Elections reserve the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner and the NYS Board of Elections determine that the company is not qualified; the Commissioner and the NYS Board of Elections determine that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

57. PERFORMANCE / BID BOND The Commissioner and the NYS Board of Elections require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Such bond or other security shall be in the form prescribed by the Commissioner and the NYS Board of Elections. See solicitation for further details.

58. SUSPENSION OF WORK The Commissioner and the NYS Board of Elections, in their sole discretion, reserve the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner and the NYS Board of Elections. issue a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice

shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner and the NYS Board of Elections.

59. TERMINATION

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

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

c. For Violation of Executive Order Number 127 or any subsequent law or Executive Order that supersedes it: The Commissioner and the NYS Board of Elections reserve the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127 was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the Contract.

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

e. For Violation of Revised Tax Law 5a: The Commissioner and the NYS Board of Elections reserve the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the

Commissioner and the NYS Board of Elections may exercise their termination right by providing written notification to the Contractor.

60. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor, the NYS Board of Elections or the Commissioner in the performance of the Contract which non- performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner and the NYS Board of Elections with written notice of any force majeure occurrence as soon as the delay is known. Neither the Contractor, the NYS Board of Elections nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor, the NYS Board of Elections and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner and the NYS Board of Elections where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner and the NYS Board of Elections may:

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

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

61. CONTRACT BILLINGS Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to

each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal notice of inspection for the specified Product by the Authorized User's Purchasing Official. Such notification shall not be unreasonably withheld. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Payment shall be due once all products have been delivered, received, inspected and accepted by the Authorized User and /or services have been satisfactorily performed. Payment for products will then be made in accordance with the following Payment Schedule which contains incremental payment in which 60% is paid at the completion of acceptance testing and acceptance at the central location, 20% is paid at delivery to the Authorized User after the completion of acceptance testing and 20% is paid after the first general election. Submission of an invoice and payment thereof shall not preclude the Commissioner and the NYS Board of Elections from reimbursement or demanding a price adjustment in any case where the Product and Services delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate. Contractor shall provide, upon request of the Commissioner and the NYS Board of Elections, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and the NYS Board of Elections and in a media commercially available from the Contractor. The Commissioner and the NYS Board of Elections may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

62. DEFAULT – AUTHORIZED USER

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

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products and/or Services delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to the Commissioner, the NYS Board of Elections and the Authorized User, suspend additional shipments of Product and Services or provision of services to such entity until such time as

reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

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

d. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

a. State Agencies The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

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

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

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

a. Minimum Cures:

i. Minimum cures: Unless otherwise agreed to by the Authorized User, at a minimum, in order to be able to address a failure of voting machine(s) or a failure in the provision of support and/or services, from pre-election day 30 up to pre-Election Day 15, Contractor shall provide phone support which shall be available on each of said days, from 7:00 am to 10:00 pm, Eastern Time. When a problem with voting machine hardware, or software manifests itself within this 15-day period, and same is unable to be resolved with phone support as provided by the Contractor, upon such notice by the Authorized User, on-site support/assistance must be provided by the Contractor within 24 hours of such notice. If after such on-site support/assistance, the failure still has not been resolved, upon notice of the board, new, replacement equipment must be delivered to the board, no later than 48 hours after such notice. For the period of pre-election day 15 to pre-Election Day 1, telephone support shall be provided 24 hours a day, seven days a week. In addition, Contractor shall provide, upon request, on-site support/assistance and/or equipment replacement as soon as requested, but in no event to exceed the time set for the prior critical period [pre-Election Day 30 to 15.]

ii. Beyond the State's statutory and regulatory requirements, for the period including Election Day minus 1, election day and Election Day plus 1, telephone support must

be available during this entire 72-hour period. On Election Day, in addition to phone support as defined above, the Contractor, upon notice of the Authorized User, shall promptly provide on-site support.

iii. For the post election period, which is defined at Election Day plus 1 through election day plus 15, phone support shall be provided by the Contractor, on each of said days, between the hours of 7:00 am until 10:00 pm, EST. If such phone support does not resolve the failure, on-site support must be provided within 24 hours, and if after such onsite

support, the failure has not been resolved, new replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice by the Authorized User.

iv. In non-critical periods, except during the conduct of quarterly maintenance processes, phone support shall be made available by the Contractor, on each business day, between the hours of 8:00 am and 6:00 pm Eastern Time. If such phone support fails to resolve the voting equipment or system failure, the Contractor must provide for an on-site service call within 10 business days of such notice by the Authorized User, and if the failure remains unresolved, Contractor must provide replacement within 30 days of such notice by the Authorized User, or by day 1 of the next ensuing critical period prior to an election.

Cover/Substitute Performance In the event of Contractor's material breach not cured within the applicable notice and cure period, the Commissioner, in conjunction with the NYS Board of Elections, and/or any Authorized Users may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner and the NYS Board of Elections, and/or any Authorized Users, are unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product and Services of equal or comparable quality, the Commissioner and the NYS Board of Elections, and/or any Authorized Users, may acquire acceptable replacement Product and Services of lesser or greater quality. Such purchases may, in the discretion of the Commissioner and the NYS Board of Elections, and/or any Authorized Users, be deducted from the Contract quantity and payments due Contractor.

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

c. Bankruptcy In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product and Services. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The

Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction. Any sums required to be expended by the Authorized User in order to carry out their statutory election responsibilities shall be reimbursed promptly by the Contractor or deducted by the Authorized User from payments due or to become due to the Contractor on the same or another transaction.

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

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

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

Before any chemical Product and Services is used or applied on or in any building, a copy of the Product and Services label and Material Safety Data Sheet must be provided to and approved by

the Authorized User agency representative.

67. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of

the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

68. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

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

70. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner, in conjunction with the NYS Board of Elections, may be extended by the Commissioner, in conjunction with the NYS Board of Elections, for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

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

a. Product and Services Performance Contractor warrants and represents that Products and/or Services delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Product and Services.

b. Title and Ownership Warranty Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) a perpetual license to use any Product transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

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

d. Product and Services Warranty Unless recycled or recovered materials are acceptable in accordance with the "Recycled or Recovered Materials" clause, Product offered

shall be standard new equipment, current model or most recent release of regular stock Product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of five (5) years from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall

extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty"). Where Contractor, the Independent Software Vendor "ISV," or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product and Services.

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

e. Replacement Parts Warranty If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product and Services during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor. Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial

warranty period offered by the manufacturer for the individual part or component.

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

g. Date/Time Warranty Contractor warrants that Product and Services(s) furnished pursuant to this Contract shall, when used in accordance with the Product and Services 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 and/or Services must perform as a package or system, this warranty shall apply to the Products and Services as a system. Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services. This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product and Services 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.

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

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

j. Warranty Limitations

1. Notwithstanding any other terms or provisions of this Contract, Contractor is not obligated to repair or replace, and Contractor's warranty obligations shall not be applicable to, any of the following:

- a. paper, seals, batteries, or other consumable parts or supplies,
- b. products which have been repaired or altered by persons other than those expressly approved in writing by Contractor,
- c. products from which the serial numbers have been removed, defaced or changed,
- d. products damaged as a result of accident, disaster, theft, vandalism, neglect, abuse, use of any product for a purpose other than the purpose for which it is designed or use not in accordance with documentation furnished by Contractor,

e. products which have been subjected to physical, mechanical or electrical stress or alteration or any conversion by persons other than those expressly approved in writing by Contractor,

f. damage resulting from or occurring in connection with use, custody or control of any machine or any component thereof by any person other than an Authorized User, employee of an Authorized User, or authorized poll workers and voters during the course of an election. Excludes AU third parties such as transporter, trainer or consultant. So if transporter damages a voting machine, county must pay additionally for its repair. If county damages machine through abuse or neglect, it must pay for repair. Should be a definition of damage or wear due to "normal use".

2. Authorized User's exclusive remedy and Contractor's entire liability for breach of the limited warranty in contract, tort or otherwise, will be, at Contractor's option, repair or replacement of defective components during the Project warranty period. If, however, the identical part or component in any one particular machine experiences an identical failure more than two (2) times in any twelve (12) month period during the term of the Project warranty period, Authorized User may, at its option, require that Contractor replace that specific machine.

72. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner and the NYS Board of Elections that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner and the NYS Board of Elections. Failure to comply or failure to provide proof may constitute grounds for the Commissioner and the NYS Board of Elections to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner and the NYS Board of Elections. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Executive Order No. 127 and Sections 139-j and 139-k of the State Finance Law.

73. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users and the New York State Board of Elections, their Commissioners, officers and employees from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users. Contractor shall have control over the defense of such claims and lawsuits, subject to the participation and approval rights

of the State, by and through the Commissioner, the New York State Board of Elections, Authorized Users, the New York State Attorney General or any other authorized party.

74. INDEMNIFICATION RELATING TO THIRD

PARTY RIGHTS The Contractor will also indemnify and hold the Authorized Users and the New York State Board of Elections, their Commissioners, officers and employees harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users and/or and the New York State Board of Elections, their Commissioners, officers and employees in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users and/or and the New York State Board of Elections, their Commissioners, officers and employees gross negligence or willful misconduct, provided that the State Authorized Users and the New York State Board of Elections, their Commissioners, officers and employees shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. Contractor shall have control over the defense of such claims and lawsuits, subject to the participation and approval rights of the State, by and through the Commissioner, the New York State Board of Elections, Authorized Users, the New York State Attorney General or any other authorized party. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible. The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product and Services without Contractor's approval. In the event that an action at law or in equity is commenced against the Authorized User arising out of a

claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Authorized User and secure a continuance to permit the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

75. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

- a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and/or Services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and/or Services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.
- b.** The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c.** Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

76. INSURANCE Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

77. SOFTWARE LICENSE GRANT AND TRANSFER

Where Products are acquired on a licensed basis the following shall constitute the license grant

- a. License Scope** Licensee is granted a non-exclusive,

perpetual license to use, execute, reproduce, display, perform, or

merge the Products within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Products may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured

by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Products to and for use by any Authorized Users otherwise licensed to use the Products, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder. Licensee shall also receive at no additional cost, the transfer of licenses for all third party software necessary to operate and maintain the Contractor's offered voting system.

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

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Products and Services Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License

- Concurrent Users - 10 copies per site

- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion. Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Products and Services) and distribute, either electronically or otherwise, copies of Products and Services Documentation as necessary to enjoy full use of the Products and Services in accordance with the terms of license.

d. Products and Services Technical Support & Maintenance Licensee shall have the option of electing the Products and Services technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew. Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products and Services so as to provide Licensee with the ability to utilize the Products and Services in accordance with the Product and Services documentation without significant functional

downtime to its ongoing business operations during the maintenance term.

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

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give notification within thirty (30) days to Contractor of such move(s) and certify in writing that the Products and Services is not in use at the prior site."

There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Products and Services to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Outsourcers / Facilities

Management, Service Bureaus / or Other Third Parties

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

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

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Products and Services and related Documentation in connection with: i) reproducing a reasonable number of copies of the Products and Services for archival backup and disaster recovery procedures in the event of destruction or corruption of the Products and Services or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Products and Services and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Products and Services not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Products and Services to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Products and Services in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Products and Services are a trade secret, copyrighted and proprietary Products and Services. Licensee and its employees will keep the Products and Services strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Products and Services to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

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

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

78. PRODUCTS AND/OR SERVICES ACCEPTANCE

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware Products and/or Services and sixty (60) days from the date of delivery to accept all other Products and/or Services. Acceptance shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance

testing by an Authorized User. Said procedures shall comply with §6209.10 and the guidelines established by the New York State Board of Elections. These procedures will include a check list and reporting form, created by the SBOE, for use at said test in order to implement the provisions of §6209.19 of the New York State Board of Elections' Regulations. The Authorized User and the Contractor shall mutually agree to a delivery schedule as required by §6209.9(A)(4)(a) of the New York State Board of Elections' Regulations. Said agreed upon

delivery schedule shall be adhered to by the Contractor. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner, the NYS Board of Elections or Authorized User agrees to accept the Products and/or Services at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have

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

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Products and/or Services is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Products and/or Services fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Products and/or Services as provided herein. If the Products and/or Services do not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Products and/or Services and return all defective Products and/or Services to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Products and/or Services to perform in accordance with the functionality tests or Products and/or Services specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

79. AUDIT OF LICENSED PRODUCTS AND/OR SERVICES USAGE

Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Products and/or Services at any site where a copy of the Products and/or Services resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days

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

**80. OWNERSHIP/TITLE TO PROJECT
DELIVERABLES**

a. Definitions

(i) For purposes of this paragraph, "Products and/or Services." A deliverable furnished under this Contract by or through Contractor, including existing and custom Products and/or Services, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this paragraph, "Existing Products and/or Services." Tangible Products and/or Services and intangible licensed Products and/or Services that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular Products and/or Services were in existence prior to the commencement of the Project.

(iii) For purposes of this paragraph, "Custom Products and/or Services." Products and/or Services, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products and/or Services:

1. Hardware - Title and ownership of Existing Hardware Products and/or Services shall pass to Authorized User upon Acceptance.

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

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

c. Transfers or Assignments to a Third Party Financing Agent

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

d. Sale or License of Custom Products and/or Services Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)

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

e. Contractor's Obligation with Regard to ISV (Third Party) Products and/or Services

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

81. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Products and/or Services developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Products and/or Services invoice as proof of license.

Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

82. PRODUCTS AND/OR SERVICES VERSION

Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Products and/or Services certified by the New York State Board of Elections for use in the State at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

83. CHANGES TO PRODUCTS AND/OR SERVICES OR SERVICE OFFERINGS

a. Products or Service Discontinuance Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product or Service is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and the NYS Board of Elections, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Products and/or Services or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Products and/or Services replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Products and/or Services.

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

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

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

84. NO HARDSTOP/PASSIVE LICENSE MONITORING

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

Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

85. SOURCE CODE ESCROW FOR LICENSED PRODUCTS AND/OR SERVICES Vendors shall be required to comply with the source code escrow provisions of the Election Law and as set forth by the State Board of Elections.

FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 20, 24, 25, 26, 28, 29, 30, 31, 32, 35, 48, 49, 51, 53 and 36

I N D E X

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APPENDIX C

CONTRACTOR'S REQUIRED SUBMISSIONS

<p>SUBMISSION #1 MANDATORY CONTRACTOR QUESTIONNAIRE [CONTRACTOR MUST ANSWER ALL QUESTIONS]</p>
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(Continued)

**PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX**

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Bidder

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

- Has Bidder completed the New York State Vendor Responsibility Questionnaire?
- If Bidder completed the Questionnaire online, has Bidder certified or recertified the Vendor Responsibility Questionnaire no more than six (6) months prior to the bid opening date?
- Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B, OGS General Specifications. If "NO", please explain on a separate sheet.
- Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply.)

If yes, will you offer New York State pricing equal to or better than your GSA or VA pricing?

If yes, a copy of the GSA or VA schedule is required. Have you included a copy?
- Is this product available only on a "direct from the manufacturer basis" or can pricing be obtained from dealers or distributors? Check one:

If you are a manufacturer and have checked "Other", please attach listing of authorized dealers and distributors.
- Do you have your catalog available on the Internet?

If yes, do you have the ability to make NY pricing available along with your catalog on line?
- Does bidder offer Electronic Access Ordering (EDI)?
- If awarded a contract, will bidder accept the New York State Procurement Card for orders not to exceed \$15,000.00?

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

_____ YES _____ NO

_____ YES _____ NO

_____ GSA _____ VA _____ NO

_____ GSA _____ VA _____ NO

_____ GSA _____ VA _____ NO

___ Manufacturer ___ Other

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

(Continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
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Bidder

NOTES TO BIDDERS: (Cont'd)

- If bidder limits the maximum acceptable card amount to less than \$15,000, please indicate the maximum amount:

Additional discount for purchases made with the NYS
Procurement Card:

- Are any products offered manufactured from recycled materials?

Are any products offered remanufactured (restored to its
original performance standards and function)?

Are any products offered Energy Star Compliant?
(If YES to any of the above, please attach specifics.)

- If awarded a contract, will bidder honor orders
for less than the minimum order?

If YES, will shipping costs be added in accordance
with the "Minimum Order" clause?

OR

If YES, will bidder ship at no additional cost?

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

Name:

Title:

Telephone Number:

Toll Free Telephone Number:

Fax Number:

Toll Free Fax Number:

E-Mail Address:

\$ _____

_____ %

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

_____ YES _____ NO

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PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY’S NAME IN THE BOX

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Bidder

NOTES TO BIDDERS: (Cont’d)

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

State Normal Business Hours (Specify M-F, Sat, Sun):

Name:

Title:

Telephone Number:

Fax Number:

Pager Number:

Cellular Telephone Number:

E-Mail Address:

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PLEASE USE BLACK INK OR TYPEWRITER WHEN
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Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

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

_____ YES _____ NO

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

_____ YES _____ NO

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

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

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

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

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

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

_____ YES _____ NO

"Small Business Concern" means a business which:

- (a) is resident in New York State;
- (b) is independently owned and operated;
- (c) is not dominant in its field; and,
- (d) employs one hundred or fewer persons.

- ☐ MINORITY-OWNED
- ☐ WOMEN-OWNED
- ☐ MINORITY AND WOMEN-OWNED

(Continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE
INSERTED YOUR COMPANY'S NAME IN THE BOX

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Bidder

4. Total number of people employed by your business in
New York State:

5. **PLACE OF MANUFACTURE OF PRODUCT(S) BID:**
(Indicate Yes or No for either A, B or C)

- A. All NYS Manufacture
B. All Manufactured outside NYS
C. Manufactured In NYS and Outside NYS
If yes to C above, Location (State) where more than
half the value is added to the product(s) bid:

_____ YES _____ NO
_____ YES _____ NO
_____ YES _____ NO

State of _____

6. **BIDDER'S PRINCIPAL PLACE OF BUSINESS*:**

*"Principal Place of Business" is the location of the primary
control, direction and management of the enterprise.

State of _____

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

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

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

A. have business operations in Northern Ireland:

_____ YES _____ NO

If yes,

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

_____ YES _____ NO

(Continued)

PLEASE USE BLACK INK OR TYPEWRITER WHEN
PREPARING YOUR BID. BE SURE YOU HAVE INSERTED
YOUR COMPANY'S NAME IN THE BOX

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Bidder

8. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

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

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

If yes, please answer the following question:

_____ YES _____ NO

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

_____ YES _____ NO

- C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

_____ YES _____ NO

If yes, please provide details regarding the finding of non-responsibility:

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-Responsibility:
(add additional pages if necessary)

- D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

_____ YES _____ NO

If yes, please provide details:

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:
(add additional pages if necessary)

(Continued)

Submission # 2
Contractor Information

Contractor Information (for Ordering and Contract Administration Purposes)

1. CONTRACTOR/COMPANY INFORMATION	
Company Name:	
Address: (From first page of Contract)	
FEDERAL ID #:	
Source Code Escrow Agent:	
Name:	
Address:	
Phone Number:	

2. CENTRALIZED CONTRACT	
Contract Administrator Name:	
Title:	
Mailing Address:	
Telephone Number:	
E-mail:	
FAX:	

3. SALES/BILLING	
Contact Name:	
Title:	
Address:	
Telephone Number:	
E-mail:	
FAX:	

4. MAINTENANCE/ SERVICE	
Contact Name:	
Title:	
Address:	
E-mail:	
WWW Address:	
Telephone Number:	FAX:
Contract "Toll" Free Support Phone Number:	Hours of Availability:

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Appendix 2

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD) {Updated 01/08}
Contractor Certification to Covered Agency (ST-220-CA)

(Continued)



New York State Department of Taxation and Finance

Contractor Certification

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

ST-220-TD
(5/07)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business		City	State
			ZIP code
Contractor's mailing address (if different than above)			
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)	
		()	
Covered agency name OGS PSG	Contract number or description		Estimated contract value over the full term of the contract (but not including renewals) \$ N/A
Covered agency address Corning Tower, The Governor Nelson A. Rockefeller Plaza, Albany, NY 12242		Covered agency telephone number	

General information

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

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

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

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

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN**

CAMPUS

ALBANY NY 12227

Privacy notification

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

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

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

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

Need Help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from
8 00 A M to 5:00 P M (eastern time),
Monday through Friday

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U S and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233

(Continued)

Page 2 of 4 ST-220-TD (5/07)

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, 3 below. Make only one entry in each section below.

Section 1 - Contractor registration status

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- ☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 - Affiliate registration status

- ☐ The contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 - Subcontractor registration status

- ☐ The contractor does not have any subcontractors.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this _____ day of _____, 20 ____

(sign before a notary public)

(title)

(Continued)

Schedule A - Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

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

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration In Progress

Column A - Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B - Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C - Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D - ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E - Sales tax ID number - Enter only if different from federal EIN in column D.

Column F - If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

(Continued)

Individual, Corporation, Partnership, or LLC Acknowledgment

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

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

_____he resides at _____.

Town of _____,

County of _____,

State of _____; and further that:

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

- ☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): _he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): _he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No. _____



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

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

ST-220-CA

(6/06)

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

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

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:
(Mark an X in only one box)

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

Sworn to this _____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions**General Information**

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

If you have questions, please call our information center at 1 800 698-2931.

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

When to complete this form

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

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

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

(Continued)

Page 2 of 2 ST-220-CA (6/06)

Individual, Corporation, Partnership, or LLC Acknowledgment

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

On the day _____ of _____ in the year 20____, before me personally appeared _____
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

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

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

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

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

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

Notary Public

Registration No.

Privacy notification

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

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

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

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Persons with disabilities: In compliance with the Americans with
Disabilities Act, we will ensure that our lobbies, offices, meeting rooms,
and other facilities are accessible to persons with disabilities. If you have
questions about special accommodations for persons with disabilities,
please call 1 800 972-1233

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