

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
CONTRACT EXTENSION AGREEMENT WITH
Election Systems & Software, LLC
Award 22659 Contract No. PC66394**

THIS AGREEMENT, (hereinafter referred to as the "Agreement" or the "Contract Extension Agreement") effective on the date of OGS signature, by and between the People of the State of New York, acting by and through the Office of General Services (hereinafter "OGS" or the "State"), with offices at the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12242, and Election Systems & Software, LLC, (hereinafter referred to as the "Contractor"), with an office at 11208 John Galt Blvd. Omaha, NE 68137. The State and the Contractor are individually referred to as a "Party" and collectively referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, the Contractor was awarded a contract (hereinafter referred to as the "Contract") with the State of New York, which is effective from February 1, 2014 until January 31, 2019; and

WHEREAS, the Contract contains the option for the Parties to renew the Contract, upon the approval of OGS and the New York State Board of Elections (hereinafter referred to as the "SBOE"), upon expiration of the original term for an additional one-year term and Section 70 of Appendix B of the Contract allows for an additional one-year extension of the Contract by the Commissioner of General Services (hereinafter referred to as the "Commissioner") in conjunction with SBOE; and

WHEREAS, in accordance with the terms of the Contract as stated in the preceding clause, the Parties extended the term of the Contract until January 31, 2021 (hereinafter referred to as the "Termination Date"); and

WHEREAS, Pursuant to the Short Term Extension provision of the Contract, the Parties and SBOE extended the term of the Contract until April 30, 2021 or until a replacement contract becomes effective; and

WHEREAS, The parties wish to further extend the terms of the contract by mutual agreement for a period of three months or until a new contract is awarded, whichever occurs first.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties do hereby agree as follows:

1. TERM

In accordance with the terms of the Contract, the contract is extended until July 31, 2021, or until a new contract is awarded, whichever occurs first.

2. SEVERABILITY

In the event that any one or more of the provisions of this Contract Extension Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Contract Extension Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

3. ALL OTHER TERMS

Except as herein modified in this Contract Extension Agreement, all other terms of the Contract not changed by this Agreement shall remain in full force and effect as set forth in the Contract. In the event of a conflict between the terms of this Agreement and the Contract, the terms of this Agreement shall control. In the event of a conflict between Appendix A and the Contract or this Agreement, the terms of Appendix A shall control.

Remainder of the Page is Left Intentionally Blank

IN WITNESS WHEREOF, the Parties have executed this Contract Extension Agreement as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Extension Agreement being executed simultaneously herewith. 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 (General Specifications), Appendix C (FEMA Terms and Conditions) and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Election Systems & Software, LLC.
Signature: [Signature]
Printed Name: THOMAS O'BRIEN
Title: CEO
Federal ID: EIN: 47-0617567
NYS Vendor ID: 1000009376
Date: 4-12-21

NYS Office of General Services
Signature: Kylesha N. Davis
Printed Name: Kylesha Davis
Title: Assistant Director
Date: April 23, 2021

NYS Board of Elections
Signature: [Signature]
Name: THOMAS CONNOLLY
Title: DIRECTOR OF ELECTION OPERATIONS

[Signature] M. BRENDAN LOVINSKY, DEP DIR ELECTIONS OPS

NOTICE: This Extension becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.

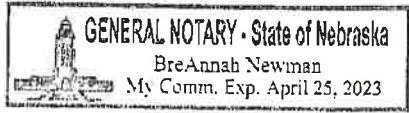
State of Nebraska,
County of Douglas) ss.:

On the 12 day of April in the year 2021 before me, the undersigned, personally appeared

Thomas O'Brien, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Nebraska.

BreAnnab Newman, Legal

Signature and office of individual taking acknowledgment.



**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
CONTRACT EXTENSION AGREEMENT WITH
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THIS AGREEMENT, (hereinafter referred to as the "Agreement" or the "Contract Extension Agreement") effective on the date of OGS signature, by and between the People of the State of New York, acting by and through the Office of General Services (hereinafter "OGS" or the "State"), with offices at the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12242, and Election Systems & Software, LLC, (hereinafter referred to as the "Contractor"), with an office at 11208 John Galt Blvd. Omaha, NE 68137. The State and the Contractor are individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Contractor was awarded a contract (hereinafter referred to as the "Contract") with the State of New York, which is effective from February 1, 2014 until January 31, 2019; and

WHEREAS, the Contract contains the option for the Parties to renew the Contract, upon the approval of OGS and the New York State Board of Elections (hereinafter referred to as the "SBOE"), upon expiration of the original term for an additional one-year term and Section 70 of Appendix B of the Contract allows for an additional one-year extension of the Contract by the Commissioner of General Services (hereinafter referred to as the "Commissioner") in conjunction with SBOE; and

WHEREAS, in accordance with the terms of the Contract as stated in the preceding clause, the Parties extended the term of the Contract until January 31, 2021 (hereinafter referred to as the "Termination Date"); and

WHEREAS, Pursuant to the Short Term Extension provision of the Contract, the Parties and SBOE agree, to extend the term of the Contract for a period of up to 3 months or until a replacement contract becomes effective; and

WHEREAS, in accordance with the terms of the Contract as stated in the preceding clause, the Parties wish to extend the term of the Contract until April 30, 2021 or until a new contract is awarded, whichever occurs first, and modify certain amendments provisions of the Contract as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties do hereby agree as follows:

1. TERM

In accordance with the terms of the Contract, the contract is extended until April 30, 2021, or until a new contract is awarded, whichever occurs first.

2. APPENDIX A

A. Appendix A, Standard Clauses for New York State Contracts, dated December 2012, attached to the Contract, is hereby deleted in its entirety and replaced with the attached Appendix A – Standard Clauses for New York State Contracts, dated October 2019.

3. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN

The section of the Contract entitled "Business Participation Opportunities for New York State Certified Minority- And Women owned Business Enterprises (MWBE)" is hereby deleted in its entirety and replaced with the following:

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities

for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law

Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds,

suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and all subcontractors.

3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the

Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.

2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to

certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.

4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.

6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

4. The section referred to as "Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses" is hereby deleted in its entirety and replaced with the following:

Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on

the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

5. SEVERABILITY

In the event that any one or more of the provisions of this Contract Extension Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Contract Extension Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

6. Except as herein modified in this Contract Extension Agreement, all other terms of the Contract not changed by this Agreement shall remain in full force and effect as set forth in the Contract. In the event of a conflict between the terms of this Agreement and the Contract, the terms of this Agreement shall control. In the event of a conflict between Appendix A and the Contract or this Agreement, the terms of Appendix A shall control.

Remainder of the Page is Left Intentionally Blank

IN WITNESS WHEREOF, the Parties have executed this Contract Extension Agreement as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Extension Agreement being executed simultaneously herewith. 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 (General Specifications), Appendix C (FEMA Terms and Conditions) and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Election Systems & Software, LLC.
Signature: [Signature]
Printed Name: RICHARD JABLONSKI
Title: VP of FINANCE
Federal ID: 47-0617567
NYS Vendor ID: 1000009376
Date: 11/23/2020

NYS Office of General Services
Signature: [Signature]
Printed Name: Terri Allen
Title: Assistant Director
Date: Procurement Services
1/28/2021

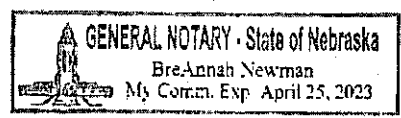
NOTICE: This Extension becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.

State of Nebraska,
County of
Douglas) ss.:

On the 23 day of November in the year 2020 before me, the undersigned, personally appeared

Richard Jablonski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Nebraska.

BreAnnah Newman
BreAnnah Newman, Paralegal
Signature and office of individual taking acknowledgment.

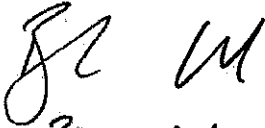


NYS Board of Elections

Signature: 

Printed Name: THOMAS CONNOLLY

Title: DIR. OF ELECTION OPERATIONS



BRENDAN LOVULLO

DEP. DIR. OF ELECTION OPERATIONS

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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 \$25,000, 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 § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 (2 NYCRR § 105.4).

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

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

19. 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.



**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
CONTRACT EXTENSION AGREEMENT
WITH
Election Systems & Software, LLC
Award 22659 Contract No. PC66394**

THIS AGREEMENT, (hereinafter referred to as the "Agreement" or the "Contract Extension Agreement") effective on the date of OGS signature, by and between the People of the State of New York, acting by and through the Office of General Services' Procurement Services (formerly known as New York State Procurement ("NYSPro")), located at the 38th Floor, Corning Tower, Empire State Plaza, Albany, NY 12242 (hereinafter referred to as "OGS"), and Election Systems & Software, LLC., (hereinafter referred to as the "Contractor"), with an office at 11208 John Galt Blvd., Omaha, NE 68137. The foregoing are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Contractor was awarded a contract (hereinafter referred to as the "Contract") with the State of New York, which is effective from February 1, 2014 until January 31, 2019; and

WHEREAS, the Contract contains the option for the Parties to renew the Contract, upon the approval of NYSPro and the New York State Board of Elections (hereinafter referred to as the "SBOE"), upon expiration of the original term for an additional one-year term and Section 70 of Appendix B of the Contract allows for an additional one-year extension of the Contract by the Commissioner of General Services (hereinafter referred to as the "Commissioner") in conjunction with SBOE, upon the approval of the Contractor; and

WHEREAS, in accordance with the terms of the Contract as stated in the preceding clause, the Parties wish to extend the term of the Contract until January 31, 2021 or until a new contract is awarded, whichever occurs first, and modify certain amendments provisions of the Contract as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties do hereby agree as follows:

1. TERM

In accordance with the terms of the Contract, this Contract Extension Agreement shall commence upon signing by OGS and will be in effect until January 31, 2021, or until a new contract is awarded, whichever occurs first.

2. APPENDIX A

Appendix A, dated December 2012, Standard Clauses for New York State Contracts, attached hereto, and is expressly made a part of this Contract Extension Agreement.

3. APPENDIX B

Appendix B, dated July 2006, General Specifications, is attached hereto, and is expressly made a part of this Contract Extension Agreement.

4. OFFICIAL USE ONLY/NO PERSONAL USE

The following section referred to as "Official Use Only/No Personal Use" is added to this Contract Extension Agreement:

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

5. The following section referred to as "Contractor Responsibility" is added to this Contract Extension Agreement:

CONTRACTOR RESPONSIBILITY

The Contractor shall at all times during the term of this Agreement remain responsible. The Contractor agrees, if requested by the Commissioner or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

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

6. The section of the Contract entitled "Business Participation Opportunities for New York State Certified Minority- And Women owned Business Enterprises (MWBE)" is hereby deleted and replaced with the following:

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 - 1. The Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into the Contract and this Agreement, the Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is the Contractor’s equal employment opportunity policy. In addition, the Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 – Staffing Plan
To ensure compliance with this section, the Contractor agrees to submit, or has previously submitted, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
 - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
 - 2. Separate forms shall be completed by the Contractor and all subcontractors.

3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

A. For purposes of the Contract, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to the Contractor. The Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on the Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following execution of this Agreement, the Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for the Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of the Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

7. The following section referred to as "Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses" is added to this Contract Extension Agreement:

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of the economic activity such businesses offer in New York State, the Contractor is strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of the Contract, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to the Contractor. Nevertheless, the Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

The Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: http://ogs.ny.gov/Core/SDVOBA.asp?sm_au_=#iVVjF227tLf4JJH

8. Section 70 of Appendix B attached to the Contract and this Agreement entitled "Contract Term-Renewal is hereby deleted and replaced with the following:

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. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

9. SEVERABILITY

In the event that any one or more of the provisions of this Contract Extension Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Contract Extension Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

10. All other terms of the Contract not changed by this Agreement shall remain in full force and effect as set forth in the Contract. In the event of a conflict between the terms of this Agreement and the Contract, the terms of this Agreement shall control. In the event of a conflict between Appendix A and the Contract or this Agreement, the terms of Appendix A shall control.

Remainder of the Page is Left Intentionally Blank

IN WITNESS WHEREOF, the Parties hereto have executed this Contract Extension Agreement as of the day and year written below. 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.

Election Systems & Software, LLC
Signature: [Signature]
Printed Name: Richard J. Jablonski
Title: VP of Finance
Federal ID: 47-0617567
NYS Vendor ID: 1000009376
Date: 5/16/2018

NYS Office of General Services
Signature: [Signature]
Printed Name: Terri Allen
Title: Assistant Director
Date: 5/31/18 Procurement Services

NOTICE: This Extension becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.

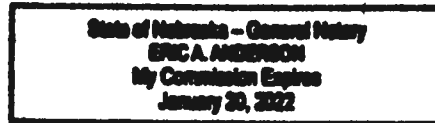
State of Nebraska

County of Douglas) ss.:

On the 6th day of February in the year 2018 before me, the undersigned, personally appeared Richard J. Jablonski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Nebraska.

[Signature]
Signature and office of individual taking acknowledgment.

NYS Board of Elections
Signature: [Signature]
Printed Name: Todd Valentine
Title: co-executive Director



[Signature]
Robert A. BRETT
Co-Executive Director
May 16, 2018

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

December 2012

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

July 2006

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. **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.

c. **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 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.

d. **Contractor's Bid**

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 Order 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 State Office of General Services. It is expected that there will be an 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 which shall be preapproved by Commissioner and the NYS Board of Elections. It is expected that there will be an 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. With respect to Lot II machines purchased prior to December 31, 2008, risk of loss is deemed to have passed on September 9, 2008. 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. With respect to Lot II machines purchased prior to December 31, 2008, risk of loss is deemed to have passed on September 9, 2008. 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, including, but not limited to, Article 11-A of the New York State Finance Law. 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 shall be in accordance with the following Payment Schedule: 60% at the completion of acceptance testing and acceptance at the central location, 20% at delivery to the Authorized User after the completion of acceptance testing, provided certification has been granted by the New York State Board of Elections and 20% after the first general election following certification. In the event that a Lot I voting system, that has been certified, is not used in a general election in 2009, but has been delivered and accepted by the Authorized User 10% will be paid on December 31, 2009 and the remaining 10% will be paid after the first use in a general election in 2010. 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, as defined herein.

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 Notwithstanding anything to the contrary herein, with respect to Lot II machines purchased prior to December 31, 2008, the warranty period begins on September 9, 2008. 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

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

New York State Contract #

OGS 22659 Voting Systems

Contractor Reference #

~~4000009376~~ PC 66399

[INSERT: CONTRACTOR NAME] Election Systems & Software, LLC

DESIGNATED STATE CONTACTS: New York State Procurement – Office of General Services

Lori L. Bahan Contract Management Specialist I Phone: (518) 486-7313 E-mail: PS_AA_Voting@ogs.ny.gov	Neilene Rabideau Contract Management Specialist I Phone: (518) 473-6518 Email: PS_AA_Voting@ogs.ny.gov
Joseph Hodder Team Leader Phone: (518) 474-3668 E-mail: PS_AA_Voting@ogs.ny.gov	Michele Reale Associate Attorney Phone: (518) 474-5607 E-mail: PS_AA_Voting@ogs.ny.gov

DESIGNATED STATE CONTACTS: New York State Board of Elections

Anna Svizzero Director of Election Operations Phone: (518) 473-5086 E-mail: anna.svizzero@elections.ny.gov	Joseph Burns Deputy Director of Election Operations Phone: (518) 473-5086 E-mail: joseph.burns@elections.ny.gov
Robert Warren Certification Project Manager Phone: (518) 473-5086 E-mail: robert.warren@elections.ny.gov	John Ferri Voting Equipment Specialist II Phone: (518) 473-5086 E-mail: john.ferri@elections.ny.gov

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

Election Systems & Software, LLC (hereinafter "Contractor"), with its principal place of business at:
 11208 John Galt Blvd.; Omaha, NE 68137

CALENDAR OF EVENTS:

The list below outlines the schedule for important action dates. If OGS and the New York State Board of Elections (SBOE) 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 July 1, 2013
- Letter of Intent On or Before July 12, 2013 at 5:00pm ET
- Receipt of Questions July 28, 2013 at 5:00pm ET
- Receipt of Proposals August 6, 2013 at 11:00 am ET**

LETTER OF INTENT TO BID

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

The Letter of Intent to Bid may be e-mailed. Letters must be received on or before **July 12, 2013 at 5:00pm ET** by:

Designated Contact:

Lori L. Bahan	Neilene Rabideau
Contract Management Specialist I	Contract Management Specialist I
New York State Office of General Services	New York State Office of General Services
NYS Procurement (NYSPro)	NYS Procurement (NYSPro)
38th Floor, Corning Tower	38th Floor, Corning Tower
Empire State Plaza	Empire State Plaza
Albany, NY 12242	Albany, NY 12242
Email: PS_AA_Voting@ogs.ny.gov	Email: PS_AA_Voting@ogs.ny.gov

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.

(Continued)

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 written notice, advertisement or solicitation of a request for proposal, invitation for bids or solicitation of proposals or any other method for soliciting a response from offerers intending to result in a procurement contract with a governmental entity 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.ny.gov/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 December 2012, 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 and do not return to OGS as part of the Bid submission.**

Note: On March 30, 2012, Chapter 55 of the Laws of 2012 was signed into law by Governor Cuomo, amending State Finance Law section 112 to create an exception for contracts established as a centralized contract through OGS, and purchase orders or other procurement transactions issued under such centralized contracts, from the Office of the State Comptroller pre-approval and filing requirements. This amendment is not currently reflected in Appendix A. The statutory provisions govern over the contractual language.

APPENDIX B:

Appendix B, Office of General Services General Specifications, dated July 2006, as modified herein, 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.**

(Continued)

NEW YORK STATE VENDOR FILE REGISTRATION:

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

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

If the Bidder is not currently registered in the Vendor File, complete the enclosed OSC Substitute W-9 Form and submit it with your bid. In addition, if authorized resellers are to be used, an OSC Substitute W-9 form should be completed by each of the designated authorized resellers and submitted to the Office of General Services. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award and their authorized resellers. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website: http://www.osc.state.ny.us/vendor_management/

**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 For-Profit Business Entity Questionnaire (hereinafter "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 prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due 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 awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

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NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE: (Cont'd.)

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

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

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.

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.ny.gov/chemical/8853.html>.

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IRAN DIVESTMENT ACT

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/reg/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

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

POLICY STATEMENT

The New York State Office of General Services (OGS), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("the Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting verses the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program.

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this contract; or (ii) employment outside New York State.

Further, pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY-AND WOMEN OWNED BUSINESS ENTERPRISES (MWBE)

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the contract does not offer any opportunities for participation by MWBEs.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

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

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

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

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

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
NYS Procurement (NYSPro)
Corning Tower - 37th Floor
Empire State Plaza
Albany, New York 12242
E-Mail: PS_AA_Voting@ogs.ny.gov

PRIMARY CONTACT

Neilene Rabideau
NYS Office of General Services
NYS Procurement (NYSPro)
Corning Tower - 37th Floor
Empire State Plaza
Albany, New York 12242
E-Mail: PS_AA_Voting@ogs.ny.gov

SECONDARY CONTACT

Joseph Hodder
NYS Office of General Services
NYS Procurement (NYSPro)
Corning Tower - 37th Floor
Empire State Plaza
Albany, New York 12242
E-Mail: PS_AA_Voting@ogs.ny.gov

SECONDARY CONTACT

Michele Reale
NYS Office of General Services
Legal Services
Corning Tower - 41st Floor
Empire State Plaza
Albany, New York 12242
E-Mail: PS_AA_Voting@ogs.ny.gov

All questions should be submitted in writing no later than July 28, 2013 at 5:00 pm Eastern Time, 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:

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. All heavy duty diesel vehicles must have BART by December 31, 2012. The Law also 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 SBOE 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 in 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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**GROUP 22300 - VOTING SYSTEMS, BALLOT MARKING OR OTHER
VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH
DISABILITIES AND RELATED SERVICES AND ACCESSORIES**

METHOD OF AWARD:

Awards shall be made on a Statewide basis to responsive and responsible bidders of voting machines. Due to the varied nature of these products, award will be made to more than one vendor. 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 OGS in consultation with SBOE. "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 reasonable pricing for this contract in compliance with this Section.

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.

The machines listed below are already deemed certified and therefore, can be sold by the Contractor following award of a contract by OGS without going through the SBOE certification process.

ES & S Precinct-based voting system.

The voting machines that this provision applies to are:

ES & S Precinct-based voting system:

DS 200 v 2.9.0.0	DS 200 Scanner Board v 2.24.2.0	AutoMark v 1.8.3.0
VAT Previewer v 1.8.3.0	EMS/EVS Suite v 5.0.0.2	
Event Log Service v.1.5.2.0	Removable Media v 1.4.2.0	DS 200 Power Management v 1.2.8.0

ES & S central count system:

DS 850 v. 2.4.0.1

DOMINION Precinct-based voting system:

EMS Suite 4.9.17 ImageCast scanner 4.9.10 ImageCast scanner v 4.9.10/BMD 4.9.6

DOMINION central count voting system:

(ICC) v.4.9.

All other machines that a Contractor requests be added to the contract, or contracts awarded to Bidders who do not currently hold contracts for voting systems, must go through the following certification process:

The Bidder 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 Commission's 2005 Voluntary Voting Systems Guidelines http://www.eac.gov/testing_and_certification/voluntary_voting_system_guidelines.aspx to the extent that they are consistent with State law. OGS will then negotiate and award contracts, or add machines to a contract for such systems. However, the Contractor is not yet authorized to actually sell Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services to Authorized Users until the SBOE certifies the Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services for use in New York State. NOTE: Any negotiations shall be made in writing with the Designated Contacts from OGS and SBOE. Vendors shall be responsible for payment of the cost of the certification process, as determined by the SBOE. Prospective Contractors should be aware that there is an application fee of \$5,000, unless such requirement is waived by the SBOE, and testing costs are estimated to be in excess of \$1,000,000.00 unless such requirement is waived by the SBOE. Upon completion of the certification process, OGS, in conjunction with the SBOE, will approve the certified systems for purchase under the contract.

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

(Continued)

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.

Bidders must be capable of processing and shipping large numbers of orders to various destinations within New York State.

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 from the date of purchase 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 boards of elections ("CBOE")s.

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 and accessories can be produced per day in the normal course of business.

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

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 OGS & SBOE, 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.

(Continued)

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 when such notice is made. If after such on-site support/assistance, the failure still has not been resolved, upon notice of the CBOE, new, replacement equipment must be delivered to the CBOE, 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 shall such on-site support/assistance be provided more than twenty-four (24) hours after request is made by CBOE exceed the time set for the prior Critical Period, as defined in Schedule B. In the event that the Contractor discovers a problem, notice should be provided to the SBOE and the CBOE and SBOE shall be advised of the resolution of the problem.

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 of when notice is made, and if after such on-site support, the failure has not been resolved, the Authorized User shall advise the Contractor of the continuing failure and new replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice by the Authorized User.

iv. In periods other than as set forth above (hereinafter the "Non-Critical Periods"), except during the conduct of quarterly maintenance processes, phone support shall be made available by the Contractor, on each business day (Monday – Friday), 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 when such notice is made by the Authorized User, and if the failure remains unresolved, Contractor must provide replacement within 30 calendar days of when such notice is made by the Authorized User, or by day 1 of the next ensuing Critical Period (as defined in Schedule B)) prior to an election, whichever is sooner.

Cover/Substitute Performance In the event a Contractor's material breach is not cured within the applicable notice and cure period, the Commissioner, in conjunction with the SBOE, and/or any Authorized User may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner and the SBOE, and/or any Authorized User, 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 SBOE, and/or any Authorized User, may acquire acceptable replacement Product and Services of equal or greater quality.

Such purchases may, in the discretion of the Commissioner and the SBOE, and/or any Authorized User, 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 SBOE. 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 their 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.

(Continued)

CANCELLATION FOR CONVENIENCE (Cont'd.):

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. In addition, any sums required to be expended by the Authorized User in order to carry out their statutory election responsibilities as a result of the Contractor's failure to timely deliver 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 SBOE reserve the right to determine the disposition of any rebates, settlements, restitution or liquidated damages

INSURANCE REQUIREMENTS:

A Bidder must commit to providing all necessary proof of insurance with its proposal. Upon tentative award, Bidder shall be required to provide all required insurance. If awarded a contract, Contractor must provide proof of current insurance throughout the contract term if requested by an Authorized User or OGS NYSPRO. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-", Class "VII". If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services ("OGS") and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

- A. **Conditions Applicable to Insurance.** All policies of insurance required by this Contract must meet the following requirements:
1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified below.
 2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by OGS, policies must be written on an occurrence basis.
 3. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance, and all required endorsements, in a form satisfactory to OGS, before commencing any work under this Contract. Certificates shall reference the Contract Number. Certificates shall be mailed to the Office of General Services, NYSPRO, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice, except for non-payment, as to which notice shall be provided as required by law, to OGS. The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificate(s) of Insurance, and amendatory endorsements.

(Continued)

INSURANCE REQUIREMENTS (Cont'd.):

Certificates of Insurance shall:

- Be in the form approved by OGS.
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
- Specify the Additional Insured and Named Insured as required herein.
- Refer to this Contract by number and any other attachments on the face of the certificate, and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, endorsements and other attachments) will be accepted.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities.

5. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract.

6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this contract the insurance requirements of this document, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OGS.

Acceptance and/or approval by OGS does not, and shall not, be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall name The People of the State of New York, its officers, agents, and employees as additional insured hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

B. Insurance Requirements: The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

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

Policy shall include bodily injury, property damage and broad form contractual liability coverage:

- General Aggregate \$2,000,000
- Products - Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

(Continued)

INSURANCE REQUIREMENTS (Cont'd.):

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

3. Technology Professional Liability: The Contractor shall maintain Technology Professional Liability (Errors and Omissions) insurance with a limit of not less than \$2,000,000.00 for damages arising from computer-related services including, but not limited to, the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information, direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties. This coverage is made on a claims-made policy form, so the Contractor shall purchase, at its sole expense, an Extended Discovery Clause for up to three (3) years after the work is completed if the coverage is cancelled or not renewed.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

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 that 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.

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, 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:

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.ny.gov); (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, or

C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office; or

D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Contractor's Group Self-Insurance Administrator.

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

Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law, 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:

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.ny.gov); (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, NYSPRO, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

SHORT TERM EXTENSION:

In the event a 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.

PERIODIC RECRUITMENT:

The State reserves the right to add contractors for award during the term of the contract when such additions are determined to be in the State's best interest. At such times, New York State Procurement will formally announce when the bid is reissued and vendors shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements.

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. Bidders 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.

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DISCOUNTS (Cont'd):

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 for the list of system proprietary and non-proprietary consumables, extended warranties, service, and other such items as may be considered by county boards for purchase, with the exception of programming, as county boards are prohibited from contracting with a vendor for programming services through the bid format offered. However, Bidders and Contractors may negotiate better pricing with OGS, the SBOE and Authorized Users at any time. Bid categories are as follows:

Categories:

1. Voting Systems, Ballot Marking or Other Voting Devices Accessible to Individual with Disabilities and Accessories
2. Software and Applicable Licensing Fees
3. Maintenance
4. Support
5. Training
6. Supplies
7. Consumables
8. Vendor programming for system enhancements.

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 and approved by the State, 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. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product 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, 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 in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

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PAYMENTS (Cont'd):

Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

For the following voting systems, payment shall be made in accordance with the following Payment Schedule: 80% upon acceptance by the CBOE and 20% upon use in a successful election.

ES & S Precinct-based voting system:

DS 200 v 2.9.0.0 DS 200 Scanner Board v 2.24.2.0 AutoMark v 1.8.3.0
VAT Previewer v 1.8.3.0 EMS/EVS Suite v 5.0.0.2
Event Log Service v.1.5.2.0 Removable Media v 1.4.2.0 DS 200 Power Management v 1.2.8.0

ES & S Central count system:

DS 850 v. 2.4.0.1

PAYMENTS (Cont'd):

DOMINION Precinct-based voting system:

EMS Suite 4.9.17 ImageCast scanner 4.9.10 ImageCast BMD 4.9.6

DOMINION Precinct-based voting system:

(ICC) v.4.9.14

For all other voting systems, the payment schedule is as follows: 70% of the Initial Pollsite Voting System order shall be paid upon acceptance by the CBOE, 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. **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.
- c. **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 Sample Statement of Work, Sample Maintenance and Support Submission and Sample Training Submission 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.
- d. **Contractor's Bid.**

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CONFLICT OF TERMS (cont'd):

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 include the 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 Contract, 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 SBOE' 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 a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner, the SBOE and the Authorized User, 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 SBOE's discretion, the Contract.

ESTIMATED QUANTITIES:

The total estimated value of this contracted is \$75,000,000.00 for the term of the contract. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish quarterly reports containing total sales for both state agency and authorized non-state agency contract purchases no later than forty-five (45) days after the close of each calendar quarter.

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://www.nylovesmwbe.ny.gov/cf/search.cfm>.

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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:

Item/ SubItem Number	Product Catalog Number	or Product/ Service Description	Total Quantity Shipped to State Agencies	Total Quantity Shipped to		Total Sales \$ State Agencies	Total Sales \$ Authorized Non-State Agencies \$
				Authorized	Non-State Agencies		
				Grand Total Sales State and Non-State Agencies		\$	\$

The report is to be submitted electronically in Microsoft Excel 2007 or lower format to the Office of General Services, New York State Procurement (NYSPro), 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 OF 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” or pricing based on an approved GSA-based price Schedule. “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 post-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.” When Contract pricing is based on GSA prices, the revised prices or prices of new Products must reflect current GSA prices adjusted as necessary for any additional discounts.
- 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 post-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.”

All adds are subject to prior approval of the SBOE which shall be obtained by OGS.

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PERFORMANCE BOND:

Upon award, the Contractor has fifteen (15) business days to forward a Performance Bond in the amount of 0.5% of the total estimated value of the Contract, \$75,000,000.00, to OGS. 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 SBOE 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.

USE OF RECYCLED OR REMANUFACTURED MATERIALS:

New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this bid solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, OGS General Specifications.

(Continued)

GUARANTEE:

The Contractor guarantees that the equipment, all required accessories, associated products and all parts regularly used with the type of equipment offered are either:

New - Standard new equipment, latest model of regular stock equipment, in production at the time of the bid opening. New assembled equipment is factory produced, has been assembled for the first time, and may contain new and/or recycled components that have been fully inspected, tested and fully meet product performance and reliability specifications. Equipment must be newly serialized and the purchaser must be the first end user of the product.

or

Used - Standard equipment, which is assembled and fully inspected, tested and certified as meeting all applicable product performance and reliability specifications. All equipment must be upgraded with the current, certified version of all applicable software.

or

Remanufactured at the time of the bid opening as defined in the "Additional Guarantee for Remanufactured Equipment" clause below.

Every new or used unit delivered must be warranted for five (5) years from the date of acceptance of the Products by an Authorized User. During the warranty period, the purchaser will incur no charges for maintenance.

The Contractor will bear all material and labor costs for repair of equipment defects and failures occurring during the warranty period from date of acceptance of the Products by an Authorized User. Service/maintenance during the warranty period will be no less than service requirements under a maintenance agreement. If the machine does not perform to the satisfaction of the Authorized User during the warranty period, the Contractor will, upon approval of the New York State Procurement and the New York State Board of Elections, replace the Product with a like model. The replacement machine will have a new/remanufactured machine warranty identical to the original machine (not less than five (5) years from the date of acceptance of the Product by an Authorized User).

Contractor will also guarantee that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Where accessories (options) are to be supplied, they must be compatible with the rest of the equipment.

ADDITIONAL GUARANTEE FOR REMANUFACTURED EQUIPMENT:

The Contractor guarantees that the equipment offered has been completely remanufactured and is in "like new" condition. Remanufactured equipment shall have been subjected to the following processes:

1. Disassembly to predetermined standards established by the manufacturer;
2. Cleaning;
3. Inspection and testing to new machine test standards;
4. Replacement of defective and/or worn components;
5. Installation of all retrofits designated by the manufacturer as field mandatory as of the date of machine installation.

The warranty on remanufactured equipment must be for five (5) years from the date of acceptance of the Products by an Authorized User and remanufactured equipment must be eligible for the same full service maintenance terms and conditions as newly manufactured equipment.

(Continued)

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 Star guidelines for energy efficiency. The State may discontinue use of and/or delete from contract selected products as mandated by any NYS energy legislation that is enacted during the term of this contract. The Contractor shall have no recourse with the State for such discontinuance/deletion.

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 for 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 New York State OGS and the SBOE. 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.

DEBRIEFING:

A bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, OGS shall, upon request, provide a debriefing to any unsuccessful bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such bidder was not selected for a contract award. The post-award debriefing should be requested in writing within 30 days of posting of the contract award on the OGS website.

DETAILED SPECIFICATIONS

VOTING SYSTEMS, BALLOT MARKING OR OTHER VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES AND RELATED SERVICES AND ACCESSORIES:

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

(Continued)

DETAILED SPECIFICATIONS (Cont'd):

INSTRUCTION OF PERSONNEL:

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

- The maximum number of participants per training session.
- The duration of training based on Contractor-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, ballot marking or other devices accessible to individuals with disabilities shall, prior to delivery, provide training for Authorized User personnel in the following areas:

- Unpacking, assembling and acceptance testing of the equipment;
- Proper use of the equipment, including maintenance, storage and transportation procedures;
- Procedures to be used to accomplish ballot face layout and ballot programming; and
- Procedures to be followed by inspectors at polling places.

INSTRUCTION MATERIALS:

With ten (10) business days of the SBOE's certification of a voting system, ballot marking or other voting device accessible to individuals with disabilities and prior to the commencement of any training of Authorized Users, the Contractor(s) shall furnish to the SBOE five (5) complete sets of instruction materials (video, graphics, audio or text) for each product and component supplied to the Authorized Users. In addition, prior to the commencement of any training, the Contractor(s) shall furnish to the Authorized User a set of complete instruction materials, (video, graphics, audio or text) for each product and component supplied to the Authorized Users. 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, at no additional cost, to the SBOE and the Authorized Users in an electronic version to enable the SBOE and the Authorized Users to incorporate the training materials into their training procedures, manuals and outreach materials.

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

The vendor shall permit the SBOE and Authorized Users to duplicate these materials for wide distribution, including posting to their websites, for use in public education and training programs.

These instruction materials and any other documents provided to the SBOE or an Authorized User shall not bear confidential or proprietary labels of any sort.

SUBMISSION WITH BID:

The bidder shall submit with its bid, completed ballot configuration and ballot coding based upon the pre-qualification test data as defined in Exhibit 4.

(Continued)

SUBMISSION WITH BID (Cont'd):

The bidder shall acknowledge that the fees for the examination of a voting system, ballot marking or other voting device accessible to individuals with disabilities shall be charged to the bidder by the SBOE based upon the cost to the SBOE for examination and or any regression testing of such voting system, ballot marking or other voting device accessible to individuals with disabilities by an outside contractor, laboratory or other authorized examiner.

A bidder submitting a bid shall affirm that the submitted voting system, ballot marking or other voting device accessible to individuals with disabilities complies with all applicable requirements found herein, and is suitable for use by voters in New York State.

The bidder shall quote and provide a statewide, uniform price for each voting system, ballot marking or other voting device accessible to individuals with disabilities.

The submitted voting system, ballot marking or other voting device accessible to individuals with disabilities' 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 voting system, ballot marking or other voting device accessible to individuals with disabilities, or which may damage the voting system, ballot marking or other voting device accessible to individuals with disabilities, any hardware, or any computer system or other property of the SBOE or any CBOE, including but not limited to 'viruses', 'worms', 'time bombs', and 'drop dead' devices that may cause the voting system, ballot marking or other voting device accessible to individuals with disabilities to cease functioning properly at a future time.

Any submitted voting system, ballot marking or other voting device accessible to individuals with disabilities 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.

The bidder 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) which may be used in connection with testing or acquisition of voting systems and ballot marking or other voting devices accessible to individuals with disabilities.

SUBMISSION OF VOTING SYSTEMS, BALLOT MARKING OR OTHER DEVICES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES TO THE SBOE FOR CERTIFICATION:

Voting systems, ballot marking or other devices accessible to individuals with disabilities, must be certified for use by the SBOE prior to use. Each complete voting system, ballot marking or other voting device accessible to individuals with disabilities and all documentation prescribed herein, must be submitted to the SBOE for testing purposes no later than 11:00 a.m. Eastern Standard Time ten (10) business days after the bid opening. Deliveries must be completed as inside delivery and include the following:

- Each complete voting system, ballot marking or other voting device accessible to individuals with disabilities including all accessibility components;
- A certified or bank check in the amount of \$5,000.00 made payable to the SBOE to 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 voting system, ballot marking or other voting device accessible to individuals with disabilities 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 voting system, ballot marking or other voting device accessible to individuals with disabilities for all test ballot styles in alternative languages, including English, Spanish, Korean, Mandarin, and Cantonese; and
- An adequate supply of proprietary and non-proprietary consumables including: Bidder-recommended paper ballot stock sufficient to test the marking of 1,100 ballots. If ballots are to be pre-printed, the bidder shall provide 500 pre-printed test general election ballots and 200 pre-printed test primary election ballots. 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.

(Continued)

SUBMISSION OF VOTING SYSTEMS, BALLOT MARKING OR OTHER DEVICES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES TO THE SBOE FOR CERTIFICATION (Cont'd):

All bidders shall submit with their voting system, ballot marking or other voting device accessible to individuals with disabilities, information regarding past or pending court cases involving their voting system, ballot marking or other voting device accessible to individuals with disabilities or its major components and any evidence of fraud, faulty systems, or failure to correct past problems.

Bidders submitting a voting system, ballot marking or other voting device accessible to individuals with disabilities for certification must also provide additional systems as required by SBOE to be used by the SBOE for the purposes of conducting tests.

If the voting system, ballot marking or other voting device accessible to individuals with disabilities is certified for use by the SBOE, the specific voting system, ballot marking or other voting device accessible to individuals with disabilities and components examined by the SBOE shall become the property of the SBOE for as long as the voting system, ballot marking or other voting device accessible to individuals with disabilities or equipment is in use in the State or for such shorter period as the SBOE, in its sole discretion, shall so determine. Voting systems, ballot marking or other voting devices accessible to individuals with disabilities not certified by the SBOE shall be disposed of pursuant to the bidder's direction.

The Contractor shall provide service and normal maintenance of any voting systems, ballot marking or other voting devices accessible to individuals with disabilities and equipment retained by the SBOE after certification and shall supply to the SBOE, at no cost, any modification to the voting systems, ballot marking or other voting devices accessible to individuals with disabilities and equipment for upgrading of any feature during the period that said voting systems, ballot marking or other voting devices accessible to individuals with disabilities and equipment are offered for sale and use in the State.

Bidders shall submit recommendations for acceptance and maintenance testing to ensure that the software and/or firmware in voting systems, ballot marking or other voting devices accessible to individuals with disabilities purchased and used by CBOEs is identical to that which was certified by the SBOE.

CERTIFICATION:

The voting system, ballot marking or other device accessible to individuals with disabilities shall be examined by examiners or testing laboratories to be selected for such purpose by the SBOE. Each examiner or laboratory shall receive compensation and be reimbursed for expenses in connection with making an examination and report of a voting system, ballot marking or other device accessible to individuals with disabilities. Neither any member of the SBOE, nor any examiner or owner or employee of any testing laboratory shall have any pecuniary interest in any voting system, ballot marking or other device accessible to individuals with disabilities. Any voting system, ballot marking or other device accessible to individuals with disabilities that is not certified by the SBOE cannot be purchased or used in any election in New York State.

When any change is made in the operation or material of any feature or component of any voting system, ballot marking or other device accessible to individuals with disabilities which has been certified pursuant to the provisions of this section, such voting system, ballot marking or other device accessible to individuals with disabilities must be submitted for re-examination and re-certification as the SBOE deems necessary.

If at any time after any voting system, ballot marking or other device accessible to individuals with disabilities has been certified pursuant to the provisions of the Election Law, the SBOE has any reason to believe that such voting system, ballot marking or other device accessible to individuals with disabilities does not meet all applicable requirements, it shall forthwith cause such voting system, ballot marking or other device accessible to individuals with disabilities to be examined again in the manner prescribed herein. If the opinions in the report of such examinations do not state that the voting system, ballot marking or other device accessible to individuals with disabilities can safely and properly be used by voters at elections, the SBOE shall forthwith rescind its certification. After the date on which the certification of any voting system, ballot marking or other device accessible to individuals with disabilities is rescinded, those machines or devices cannot be used or purchased for use in this state. The SBOE may examine all voting systems, ballot marking or other devices accessible to individuals with disabilities of such type which were previously purchased, to determine if they may continue to be used in elections in this state.

(Continued)

CERTIFICATION(Cont'd):

Examination will have the following principal objectives:

- To demonstrate the ability of a voter to mark a ballot;
- To demonstrate the ability of the voting system, ballot marking or other device accessible to individuals with disabilities 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 voting system, ballot marking or other device accessible to individuals with disabilities allows the voter to correct same; if they choose;
- To demonstrate the ability of the voter to independently verify their ballot after the voting system, ballot marking or other device accessible to individuals with disabilities has marked the ballot;
- To demonstrate that the voting systems, ballot marking or other devices accessible to individuals with disabilities' hardware and software operate in a manner consistent with a voter's ability to mark a ballot;
- To demonstrate that the voting systems, ballot marking or other devices accessible to individuals with disabilities' vendor-provided security requirements and security provisions are identified for each system function and operating mode, and that all features function as described; and
- To independently identify any additional security procedures, tasks or features which the voting system, ballot marking or other device accessible to individuals with disabilities shall accommodate, and verify that such additional requirements are in place and function as required.

Whenever the SBOE is satisfied that a voting system, ballot marking or other device accessible to individuals with disabilities has been proven to meet or exceed these requirements and the bidder is able to provide documentation for the SBOE to establish that those requirements have been met, then the SBOE may, in its discretion, accept such documentation as satisfaction of the required tests.

Exhibit 4 contains samples of one (1) general election ballot, and three (3) primary ballots.

SOURCE CODE ESCROW FOR LICENSED PRODUCTS AND/OR SERVICES:

Bidders shall be required to comply with the source code escrow provisions of the NYS Election Law (Section 7-208) and Regulations (Section 6209.6(F)(10) and as set forth by the SBOE.

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.

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 materials shall include complete instructions for voter education; 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. This requirement is separate from and in addition to materials previously provided with the bid.

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INSTRUCTION MATERIALS (Cont'd):

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 materials 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: Sample Statement of Work, Sample Maintenance and Support Submission and Sample Training Submission;

EXHIBIT 4: 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 OGS and SBOE, 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

By: [Signature]
 Name: Thomas F. O'Brien
 Title: CFO

Contractor Firm Name: Election Systems & Software, LLC
 Federal Tax Identification #: 47-0617567

THE PEOPLE OF THE STATE OF NEW YORK

By: [Signature]
 Name: DONALD R. GREENE
 Title: Director

Office of General Services

FOR OGS USE ONLY	
OGS APPROVAL:	
Name:	<u>[Signature]</u>
Title:	<u>CPO or Designee, NYS Procurement</u>
Date:	<u>12/23/13</u>

CORPORATE ACKNOWLEDGMENT

STATE OF Nebraska }
 : ss.:
 COUNTY OF Douglas }

On the 5th day of August in the year 2013, before me personally came:
Thomas F. O'Brien, to me known, who, being by me duly sworn,
 did depose and say that he/she/they reside(s) in Omaha, NE; that he/she/they is (are)
Chief Financial Officer (the President or other officer or director or
 attorney in fact duly appointed) of Election Systems & Software, LLC, 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.

[Signature]
 Notary Public

GENERAL NOTARY - State of Nebraska
 TIMOTHY J. HALLETT
 My Comm. Exp. Jan. 15, 2018