



Procurement Policy

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PROCUREMENT CODE OF CONDUCT

Board Members and Employees of the Development Authority of the North Country, in implementing the "Procurement Policy" contained herein (the "Policy"), shall follow the Development Authority's Ethics Policy which will provide general principles of appropriate business conduct in connection with the Development Authority's use, awarding, monitoring and reporting of procurement contracts.

Development Authority of the North Country employees and board members are responsible for managing relationships with vendors in a fair and consistent manner and must avoid situations which present or appear to present a conflict of interest. The following excerpts were taken from the Public Officers Law and the Authority's Ethics Policy, and should guide Authority actions in the procurement process.

1. Gifts Over \$75. You may not receive any gift (including money, food, travel, tickets) worth \$75 or more in circumstances where the public could reasonably think it is meant to influence or reward you for your official action. If the donor does business with your agency, you probably cannot take a gift of \$75 or more.
2. Gifts Under \$75. You may not receive a gift of any amount if it is in substantial conflict with your public duties; for example, a gift of more than nominal value from someone whose public business comes before you.
3. Conflicts of Interest. You may not have any interest, or engage in any business or transaction or professional activity, or incur any obligation of any nature which is in substantial conflict with the proper discharge of your public duties.
4. Confidential Information. You may not disclose confidential State information or use it for your personal interests.
5. Violation of Trust. You must not raise public suspicion that you are acting in violation of your public trust.
6. Dealing With Yourself or Your Company. You may not engage in any transaction as an agent for the State with any business entity in which you have a financial interest that might tend to conflict with the proper discharge of your official duties. Instead, you should recuse yourself and ask someone else to do the State task.

Employees should reveal any relationships with current or potential vendors and exclude themselves from any review or recommendations regarding such procurement.

All procurement resolutions brought before the Development Authority Board of Directors must contain specific language which certifies that there are no known conflicts of interest. If an interest is known, it must be disclosed to the Board before award of the contract.

Any violation of the Procurement Policy may result in disciplinary action as appropriate, up to and including termination and/or criminal prosecution.

Every Development Authority employee involved in the award or administration of contracts shall be given a copy of this Procurement Policy, will be in-serviced on the policy and will be required to sign a statement that they are familiar with, and will abide by, this policy.

SECTION 1: OVERVIEW, PURPOSE, APPLICABILITY AND DEFINITIONS

1.0 Overview

The Development Authority of the North Country (DANC) routinely expends funds to purchase goods and services including, but not limited to, supplies, support equipment, professional services, etc.

The basic procurement objective is to secure the best goods and/or services at the lowest available price, consistent with quality requirements and delivery needs. The practice of competitive bidding, whether formal or informal, not only tends to assure reasonable prices, but guards against improper practices.

All DANC staff involved in procurement activities must familiarize themselves with DANC procurement policy, and other pertinent documentation.

1.1 Purpose

This Procurement Policy sets forth the requirements that DANC must adhere to in the solicitation, award and administration of its third party contracts for goods and services. These requirements are in conformance with common Federal and New York State statutes and Federal Executive orders and their implementing regulations.

This Policy is meant to:

- a. formalize practices which insure that DANC interests are protected,
- b. assure that all Federal and State procurement laws and regulations are followed, and
- c. communicate policies, give guidance to purchasing personnel, personnel assigned to the purchasing function, and others with delegated purchasing authority.

This Policy has been duly adopted by resolution of DANC Board of Directors and detail DANC operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. Interpretation and clarification of this policy shall be the responsibility of the Executive Director. Interpretation and clarifications shall be directed to staff by written memoranda, and shall become appendices to this policy. This Policy shall be reviewed and approved by DANC Board of Directors on an annual basis.

1.2 Applicability

The DANC Procurement Policy applies to all commodity, service, and professional service contracts procured by DANC.

The DANC Procurement Policy does not apply to loan draw requests. When a contract is in place, or a Board resolution has been passed, or a loan document is in place, the procurement process does not apply. The Executive Director is given the authority by the Board to enter into contracts and the Executive Director then has the authority to delegate the loan draw requests (initiate check requests and approve check requests) to management (i.e., the Director of Project Development).

The DANC Procurement Policy does not apply to the Route 3 Sewer funds since they are not monies of the Development Authority and are managed through a contractual agreement.

This policy is intended for the guidance of officers and employees of DANC only, and nothing contained herein is intended or shall be construed to confer upon any person, firm, or corporation, any right, claim or benefit under, or by reason of, any requirement or provision hereof. Nothing contained in this Policy shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of this Policy.

Where applicable Federal, State or local laws, ordinances, codes, rules or regulations contain requirements that are in conflict with, or that impose greater obligations upon DANC than this Policy, those requirements shall take precedence over those contained herein.

DANC shall not be precluded from adopting additional requirements for particular contracts relating to the matters covered by this policy.

1.3 Definitions

When used in this policy:

Advertisement - The publication of a Notice of Procurement Opportunity in any of the following forums, as are appropriate: newspapers of general circulation in Jefferson County and/or any other member county within the DANC service area; regional, state, and national trade journals and magazines; newsletters; published on the DANC website and New York State Economic Development Department and/or DBE/MBE/WBE Disadvantaged Business Enterprise publication; the posting of a Notice of Procurement Opportunity on DANC's property at a location accessible to the public; the dissemination of a Notice of Procurement Opportunity to three (3) or more potential bidders or suppliers either by written, telephonic or electronic transmission, and any or all methods of advertisement as are herein defined that are necessary or desirable to promote competition under this policy.

Approved Equal - An item or service which has been approved by the procuring agency as equal to the brand name item originally specified.

Best Value - Is the selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

Brand Name - A name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer.

Change Order - Is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change.

Commodities - Standard articles of commerce in the form of material goods, supplies, products or similar items. Commodities do not include technology.

Construction - Construction means Public Works construction, alteration, or repair of buildings and structures, or other improvements of real property.

Contractor - Any person, partnership, private corporation or association: selling materials, equipment or supplies, or leasing property or equipment to DANC. Constructing, reconstructing, rehabilitating or repairing buildings or other improvements for or on behalf of DANC. Rendering or providing services to DANC pursuant to a contract.

Contracts or Procurement Contracts - A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. Contracts would include bilateral instruments, awards and notices of awards; job orders or task assignment letters issued under basic ordering agreements; letter contracts, orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

The parties to a contract must possess the legal capacity to enter into the contract, and they must assent to the terms of the contract.

Contract Administrator - Contract Administrator is the Development Authority of the North Country employee that is responsible for overseeing the contract services to be performed.

Cost Reimbursement (CR) Type Contract - A general compensation arrangement which requires the Authority to pay the contractor a fixed fee plus all allowable actual costs (as established by predetermined cost principles and rates) provided such costs and fees do not exceed the final negotiated contract price, as incurred by the contractor in performing the “agreed to” scope of work. This type of contract is appropriate for qualifications-based procurements and negotiated procurements based on a Scope of Services rather than detailed specifications.

Design-Bid-Build - The project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.

Design-Build - A system of contracting under which one entity performs both architectural/engineering and construction under one contract.

Design Specifications - Specifications based on the design of a product or service. Typical design specifications may include dimensions, materials used, commonly and competitively available components, and non-proprietary methods of manufacturing.

Disadvantaged Business Enterprise (DBE) - A small business concern which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals (individual that has been certified as such by the State of New York).

Division Manager - Individual who has responsibility for the overall conduct of a particular procurement. This individual is responsible for ensuring compliance with the DANC Policy and governmental regulations in the procurement under his/her purview.

Emergency Procurement - The procurement of goods and services under circumstances where a delay in procurement may result in danger to employees or the public, damage to DANC facilities or equipment, or an impediment, delay or danger to the business operations of DANC.

Firm Fixed Price Type Contract (FFP) - A general compensation arrangement which places the risk of performance for a lump sum on the contractor, regardless of the actual costs incurred by the contractor. The only allowable adjustments to the lump sum contract price are those arising from authorized changes in scope of services or changes in specifications. This type of contract is appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications where there are no substantial uncertainties relating to cost, performance, or schedule. This type of contract may only be used in sealed bidding procurements.

Formal Bidding - Bidding involving public advertising and sealed bids, and is required for procurements of goods and services in an amount of \$30,000 or more, except as otherwise provided herein.

General Services - Those services provided by an individual or business which are not considered professional or construction.

Independent Cost Estimates - Such estimates may be obtained from published competitive prices, results of previous competitive procurements, including some type of price escalation percentage, or price quotes from manufacturers.

Informal Bidding - Bidding without public advertising but within formal procedures, which may include, without limitation, written, telephonic or electronic bidding.

Invitation for Bids (IFB) - DANC request for sealed bids setting forth the detailed specifications for the work to be performed.

Large Purchase - Procurements over \$30,001. Bidding involving public advertising and sealed bids, and is required for procurements of goods and services in an amount of \$30,001 or more, except as otherwise provided herein.

Maintenance Bond - An instrument of security furnished by the contractor and his/her surety for the maintenance of the work after completion, in accordance with the contract documents.

Medium Purchase - The acquisition of goods or services under a written agreement or purchase order resulting in a cost to DANC of more than \$7,501 but less than \$30,000 per year. Purchases from \$7,501 - \$30,000 requires a minimum of three verbal quotations or three written quotations, which can be requested and received via fax or regular/electronic mail, and signature from a Division Manager and the appropriate Senior Manager.

Minority Business Enterprise (MBE) - Any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly owned business, at least fifty-one percent (51%) of the capital stock of which is owned by citizens or permanent resident aliens who are minority persons, and such ownership interest is real, substantial and continuing. The minority ownership must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field.

New York State Contract Reporter - A publication of procurement opportunities printed for the New York State Economic Development Bureau pursuant to the New York State Economic Development Law.

Offer - A promise to provide goods or services according to specified terms and conditions in exchange for material compensation.

OGS Bid Contracts - Purchase prices established for various items which have been competitively bid by the New York State Office of General Services (OGS) and which may be used by DANC to make procurements for goods/services.

Organizational Conflict of Interest - Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to DANC, a contractor's objectivity in performing the contract work is or might be otherwise impaired, or a contractor has an unfair competitive advantage.

Performance Bond - An instrument of security furnished by the contractor and his surety for the performance of the work in accordance with the contract documents.

Performance Specifications - Specifications based on the function and performance of a product or service under specified conditions, preferably conditions that can be reproduced for testing purposes. Performance specifications may include useful life, reliability in terms of average intervals between failure, and capacity.

Procurement - The acquisition by the Authority of products, services, or public works by purchase process and policy as outlined in this manual, except:

- The purchase of periodicals, reference materials or professional research tools.
- The payment of fees or tuition associated with continuing education courses, training courses, conferences, seminars, and symposiums.
- Expenditures governed by the DANC Travel and Miscellaneous Expense Policy.
- The purchase of advertising space or advertising time in any medium.
- Expenditures associated with internal or public meetings.

Professional Services - Professional Services means work performed under a contract with the Development Authority of the North Country related to the administration of Authority-owned systems and facilities (i.e. engineering, network, administration, computer programming, etc.). Professional services do not include work that by definition is considered “construction”.

Professional Services Contract - Any written agreement to provide a service, including but not limited to legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, marketing, advertising, architectural, engineering, surveying or other personal services of a consulting, professional or technical nature, for a fee, commission or other compensation, by a person or persons who are not providing such services as officers or employees of a State agency or public corporation.

Professional Services Contractor - Any person, firm or corporation performing a Professional Services Contract for DANC.

Proper Invoice - A written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods or services delivered or rendered in such form and supported by such other substantiating documentation as DANC may reasonably require.

Receipt of an Invoice - The date on which a proper invoice is actually received in the designated payment office, or the date on which DANC receives the purchased goods or services covered by the proper invoice, whichever is later.

Responsible - A potential contractor is considered responsible if it can demonstrate that it has the ability to perform successfully under the terms of the proposed contract, taking into account the bidder’s technical and financial capability. Responsibility refers to the ability of the contractor to deliver the requested items/services.

Responsive - A bid which complies, in all material respects, with the terms of the solicitation and is completed, executed, and submitted in accordance with the instructions set forth in the solicitation. Responsiveness refers to the integrity of the submitted bids and the bid process.

Sealed Bidding - A competitive procurement method under which a contract is awarded to the lowest price, responsive bid, offered by a responsible bidder.

Senior Manager - Executive Director and Deputy Executive Director. The Executive Director shall directly supervise SWMF General Manager, Director of Project Development, and Deputy Executive Director. The Deputy Executive Director shall directly supervise the Water/Wastewater General Manager, OATN General Manager, Comptroller and Compliance Officer.

Services - A professional, consulting, technical, or other service, including but not limited to, legal, testing, accounting, bookkeeping, secretarial, management consulting, audit, investment banking, planning, training, statistical research, insurance, advertising, public relations, architectural, engineering, appraisal, janitorial, surveying, housekeeping, and waste disposal, performed for a fee, commission or other compensation.

Single Bid - Two or more competitive bids are solicited and only one bid is received. A single bid may cause a Sole Source procurement.

Single Source Procurement - A single source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by an agency, but is not necessarily the lowest price offer, but the Authority selects one vendor over the others for reasons such as expertise or previous experience with similar contracts.

Small Purchase - Purchases under \$7,500. Purchases below this threshold may be made without obtaining competitive quotations if DANC determines that the price is reasonable. There will be no splitting of procurements to avoid competition. For this type of purchase, the signature of the Division Manager or their designee is required.

Sole Source Procurement - A sole source procurement is one in which only one vendor can supply the commodities, technology and/or perform the services required by an agency; or no other goods or services will satisfy DANC requirements; or prior State, Federal or Board approval has been granted.

Solicitation - A purchasing entities request for bids, including a telephone request for price quotations, an invitation for bids, or a request for proposals.

Surety Bond - Refers to an agreement between a DANC contractor or supplier and a surety bond writer that guarantees a contract obligation with DANC property. Typically, DANC requires bonds that cover 100% of the value of a contract. If a contractor defaults on a contract or faces financial difficulties, the surety bond underwriter will owe DANC the full amount of the contract.

Time and Material (T&M) Type Contract - A general compensation arrangement which provides for a fixed rate, including overhead and profit, and material plus handling charges. This type of contract is permitted only:

1. After a determination that no other compensation arrangement is suitable.
2. All labor and equipment rates (including overhead and profit) are predetermined and set forth in the contract.

Women-Owned Business Enterprise (WBE) - Any business enterprise which is at least fifty one percent (51%) owned by, or in the case of a publicly owned business, at least fifty one percent (51%) of the capital stock of which is owned by citizens or permanent resident aliens who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing. Women business owners must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field.

SECTION 2: GENERAL PROCUREMENT POLICY

2.0 Board Resolutions and Audit

It is the Authority's desire to consolidate and/or concurrently make procurements across all Authority functions where possible. Senior Management will coordinate procurements and designate Contract Administrators appropriate to achieve this purpose.

On an annual basis, the Division Managers will identify recurring operating budget purchases from common vendors that individually or cumulatively exceed \$30,001. In the fourth quarter of each fiscal year a bid will be issued for those items purchased, and approval for the purchase of those items will be part of the annual Board budget resolution.

On an annual basis, the Board of Directors will adopt capital budget resolutions for each Division, as appropriate, and the Executive Director will be authorized to carry out the purposes of such resolutions.

On an annual basis, the Division Managers will compile a list of professional services contracts currently in effect. In the fourth quarter of each fiscal year, a resolution reauthorizing all professional services agreements extending beyond the end of the fiscal year will be presented to the Board as part of the annual budget process, these agreements are considered Single Source procurements. Professional services contracts include but are not limited to legal, audit, engineering, insurance, public relations, and technology management services.

All other procurements, not included in the above circumstances, shall require specific Board approval if in excess of \$30,001.

At various times throughout the year, the Comptroller will meet with Division Managers to review purchases over \$7,501 that on a cumulative basis may exceed \$30,001 for a single vendor. For cumulative expenditures that are near the \$30,001 maximum, the Division Managers will use good judgment to determine if a formal bid is required, and, if so, will issue a bid as soon as practical.

At various time throughout the year, the Compliance Officer will randomly audit the procurement files of the various Divisions, to test for compliance with the Procurement Policy.

2.1 Ensuring Most Efficient and Economic Purchase

All Purchase Requisitions, if applicable, shall be reviewed by an Authorized Signatory (See Attached list by Division) to avoid purchase of unnecessary or duplicative items. A Purchase Order, if applicable, is then generated and reviewed by an Authorized Signatory. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

2.2 Intergovernmental Procurement Agreements

To foster greater economy and efficiency, DANC may enter into State and local intergovernmental agreements for the procurement or use of common goods and services. Justification of efficiency will be documented.

2.3 Written Record of Procurement History

A properly documented procurement file should be a complete record of procurement actions and should fully support the successful contractor's bid price. It provides a complete background as a basis for informed decisions at each step in the acquisition process. A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries. If the procurement action is the result of a contract amendment or exercise of an option, sufficient data should be included to fully support the basis for the price and procurement action.

DANC shall maintain records detailing the history of all procurements. The records shall include, some or all, of the following:

Documentation Checklist for Procurement File:

- Purchase Requisition
- Purchase Order
- A memorandum explaining the rationale for the method of Procurement
- Independent cost estimates
- Selection of contract type
- Copy of the solicitation package, all addenda, and all amendments
- Copies of published notices of proposed contract action
- Names, addresses, phone numbers, and electronic mail (e mail) addresses of contractors or vendors solicited.
- Names, addresses, phone numbers, and electronic mail (e mail) addresses of contractors or vendors requesting a copy of the Invitation for Bids
- Bid Tabulation Sheet/Bid Procurement Checklist
- Bidders' packages
- The evaluations of proposals and selections of firms for negotiations and awards
- The evaluations of submitted bids
- A summary record of negotiations, if appropriate
- Determination of responsiveness or non-responsiveness of each bid, offer, or quotation
- Reasons for contractor selection or rejection
- The costs negotiated by the parties and the determination that the price is fair and reasonable
- A cost or price analysis, as appropriate, justifying the determination that the price is reasonable
- Determination of whether the goods or service may be procured under the OGS NYS Commodity Index, and, if so, the price
- The basis for the contract price
- DBE/MBE/WBE Consideration

- Certified Bid Tabulation
- Copies of notices to unsuccessful bidders
- Notice of Award to successful bidder
- A copy of the Notice to Proceed
- An original, executed contract, with Required Forms attached
- Records of any protest
- Bid, Performance, Payment or other bond documents, and notices to sureties
- Required insurance or bond documents, if any
- Adopted Board resolution authorizing the award/contract, if applicable
- All correspondence and data in support of relevant contractual actions
- Contract close-out documentation
- ST-220 Contractor Certification
- Copies of Insurance Certificates

The Procurement File for Small Purchases, less than \$30,000, shall include the following documentation:

- Purchase Requisition
- Copies of any quotes received via fax, mail or telephone
- Statement that successful bidder's price is reasonable
- Purchase Order
- Description of method used in determining that the successful bidder's price is fair and reasonable
- Sole source or Single Source justification, if applicable

2.4 Use of Time and Material Type Contracts

In the course of normal operations, DANC shall use time and material type contracts only after determination that no other type of contract is suitable. In the event of an emergency at any of the Authority's utility operations, time and material contracts are appropriate to restore services and protect against potential damage to Authority assets and the environment. Authority staff shall closely monitor contractors operating on time and material contracts.

2.5 Settlement of Contract Issues/Disputes

In accordance with good administrative practice and sound business judgment, DANC will be responsible for the settlement of all contractual and administrative issues arising out of procurements.

2.6 Contract Period of Performance

The length of any contract (supply, service, leases of real property, revenue and construction, etc.) should be based on sound business judgment. DANC will be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract length that creates an out of scope change will require a sole source justification.

2.7 Independent Cost Estimates

DANC may perform an independent cost estimate for procurements, if appropriate, including contract modifications, before receiving bids or proposals. An independent cost estimate is an estimate of the proper price level or the value of the supplies or services to be purchased. This estimate can be used in determining the reasonableness of the actual price offered. In some cases, obtaining cost estimates may be difficult or may lie outside the competence of DANC personnel. In the case of construction projects, a design firm may already be under contract and may perform this service.

Equipment estimates can often be prepared from published price lists or from past competitive procurements updated with inflation factors. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.

Professional services often range widely in both price and quality. It may be worth obtaining a professional cost estimate by a firm not interested in the final procurement. In the case of facility design services, industry standard to estimate design as a percent of construction is available.

2.8 Contract Cost and Price Analysis

A cost or price analysis is a determination that the cost or price offered by a contractor is reasonable, given current market conditions. The purpose of cost or price analysis is to ensure that DANC does not pay unreasonably high prices. A cost or price analysis may be performed, in connection with procurements, if appropriate, including contract modifications. The method and degree of analysis is dependent on facts surrounding the particular procurement situation. Prices that are unreasonably low can also be detrimental to good procurement if they prove to be an indication that the bidder has made a mistake or misunderstood the work to be performed.

2.8.1 Cost Analysis

A cost analysis may be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications to change orders, where appropriate.

2.8.2 Price Analysis

A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price. DANC will determine which of the following price analysis techniques is appropriate for procurement:

- a. comparison of proposed prices received in response to the solicitation,
- b. comparison with competitive published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements, when available, and
- c. comparison of proposed prices with the cost estimates performed prior to the solicitation.

2.9 Procurements with State Funds

In all cases where procurements are made by DANC with State funds and are conditioned upon, or subject to, laws or regulations for purchasing, DANC shall observe such laws and/or regulations. This shall apply to all matters, including bidding, advertising for bids, reviewing bids, awarding contracts, monitoring awarded contracts and reporting awarded contracts.

2.10 Full and Open Competition

All procurement transactions, without regard to dollar value, will be conducted in a manner that provides maximum open and free competition. The following may be considered to be restrictive of competition:

- a. Placing unreasonable requirements on firms for them to qualify to do business,
- b. The specification of only a “brand name” product without listing its salient characteristics and not allowing “an equal” product to be offered,
- c. Non-competitive practices between firms or affiliated companies,
- d. Non-competitive awards to any person or firm on retainer contracts,
- e. Organizational conflicts of interest; an organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice; a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage,
- f. Any arbitrary action in the procurement process,
- g. Unnecessary experience and bonding requirements,
- h. Sole source negotiation without proper justification.

2.11 Standardization

The Authority may determine that standardization of certain equipment is necessary due to technical or physical characteristics, or other compelling reasons. The Board shall annually approve any standardized items. Standardization of equipment precludes use of approved alternatives or variation from specification.

2.12 Geographic Preferences

The Development Authority of the North Country was established to promote economic development in the region. To that extent, the Authority will, where practical given the scope of a project, encourage contract awards to companies located within the Authority’s service area, and within the State of New York. The Authority will not use this criterion to limit competition in the bidding of contracts; rather, to support existing local businesses, where practical, in the award of the bids.

2.13 Requests for Deviations from Specifications

Specifications for goods and/or services shall be written clearly and concisely to minimize ambiguity and to ensure that DANC receives the goods and/or services that are ideally suited for its needs. Where appropriate, provisions should be made in the specifications to allow bidders to seek deviations from the specifications. The purchaser and user should consider all such requests and approve those requests that enhance flexibility in bidding without sacrificing the quality or integrity of the goods and/or services being procured.

All requests for deviations that are submitted, accompanied by DANC responses, shall be shared with all potential bidders. Such documentation shall be provided to all bidders prior to bid opening.

The following clause is recommended for use in all specifications for goods:

“The specifications released herewith represent the _____ which DANC feels are ideally suited for its operations; however, DANC will consider requests for deviations and requests for ‘approved equals’ to the specifications. DANC will accept such requests in writing up until_____.”

All requested deviations from these specifications will be responded to, in writing, in one of the following manners:

- a. Approved as an equal
- b. Rejected

DANC will respond in writing to all requests no later than five calendar days prior to bid opening. All requests, and DANC responses thereto, will be furnished to all prospective bidders and become addenda to these specifications.

2.14 Written Addenda

DANC reserves the right to issue clarifying information regarding the content of a procurement document should the Authority, in its sole judgment, determine it is necessary to do so.

If a request for interpretations, approved equals or clarification of specifications are submitted to the Division Manger in writing regarding an IFB or RFP document, the Division Manger shall proceed in accordance with one or more of the following actions:

- a. Requests for interpretations, approved equals, clarification of specifications shall be made only in writing. Such requests must be received by DANC no later than fifteen (15) days prior to the date scheduled bid opening. No such request received by DANC less than fifteen days prior to the date scheduled for bid opening will be considered without the prior written authorization of DANC Executive Director or his authorized representative.

- b. Any request for an approval equal or protest of the specifications must be submitted on a copy of the form, if provided, fully supported with, if applicable, technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specifications requirement.
- c. DANC's reply to such request(s) will be in the form of an Addenda and, where possible, postmarked ten (10) days prior to the scheduled bid opening. Such addenda, if issued, will be mailed to each prospective proposing contractor and shall become part of the contract. All proposing contractors shall be bound by such addenda whether or not received by them. Addenda will be on file in the offices of the DANC Division Managers.

2.15 Written Protest Procedures

DANC shall include written protest procedures in its solicitations to handle and resolve disputes relating to their procurements. The Authority's Division Manager shall disclose information regarding all protests. All protest decisions must be in writing.

2.16 Options

An option is a unilateral right in a contract by which, for a specified time, DANC may elect to purchase additional equipment, supplies, or services called for by the original contract, or may elect to extend the term of the original contract. If DANC elects to use options, the following requirements apply:

2.16.1 Evaluation of Options

The option quantities or periods contained in the contractor's bid must be evaluated to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

2.16.2 Exercise of Options

The exercise of an option must be in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised. The option price must be determined to be fair and reasonable, and a written justification of this determination must be included in the procurement file.

2.17 Minority and Women Owned Business Enterprises

For procurements under \$7,500, Division Managers shall have the discretion, and are encouraged, to recommend awarding contracts to M/WBE firms that are within 10 percent of the lowest price established for the good or service, per Section 3 of this policy. The discretionary award to an M/WBE firm does not permit the Division Manager to exceed the award limits established in Section 3 of this policy. Discretionary awards of M/WBE contracts will require approval by a senior manager.

For contracts between \$7,501 and \$100,000, the Authority shall consult the M/WBE list maintained by the New York State Empire State Development, and shall actively solicit qualified firms from that list.

For procurements \$100,001 and greater, the Authority shall include in its invitation for bid documents a goal for M/WBE utilization as a requirement of the successful bidder. The goal shall initially be six percent of the contract value. The goal shall be established annually by the Board of Directors.

The Authority Compliance Officer will, on a quarterly basis, compile a list of M/WBE contracts currently in effect.

2.18 Payments

2.18.1 Advance Payments

DANC contracts shall not contain advance payment provisions, nor shall DANC participate in advance payments to a contractor, prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from the Executive Director.

2.18.2 Progress Payments

Progress payments may be utilized, provided the following requirements are followed:

- a. Progress payments are made only to the contractor for costs incurred (as opposed to percent of completion) in the performance of the contract.
- b. When progress payments are used, DANC must obtain adequate security (materials, work in progress, and finished goods) for which progress payments are made. Adequate security for progress payments may include taking title, irrevocable letter of credit or equivalent means to protect DANC's interests in the progress payments.
- c. Percent of completion payments may be used by DANC in its professional services and large construction contracts.

2.18.3 Final Payment

Final payment is made to the contractor when it has satisfied all the deliverable requirements called for by all provisions of the contract, including submission of all required documentation. Final payment signifies that the performance obligations of both parties to the contract have been satisfied. Before making a final payment, the Division Manager, or designee, shall obtain a signed release, as well as a lien release, from the contractor releasing the Authority from any further claims by the contractor. The Division Manager, or designee, shall also obtain a signed receiving and inspection report from the Division Manager certifying that all deliverable items have been received, inspected, and accepted as being in conformance with the contract specifications.

2.19 Emergency Procurements

From time to time, emergency situations may arise which require that a procurement be made without following normal purchasing procedures. Emergency situations should be restricted to those times when delay in completing the procurement could result in jeopardy to persons or property. In addition, the situation leading to the emergency should be one that could not be normally anticipated. If an emergency situation occurs, it must be documented and this documentation must be attached to the purchase order or placed in the procurement file. The procurement must be approved by the Executive Director, Deputy Executive Director or Comptroller.

Emergency procurements shall, to the extent that time permits, follow regular procurement guidelines concerning the solicitation of quotes and the approval of the procurements. A written memorandum justifying the emergency nature of the procurement shall be maintained in the procurement file.

2.20 Professional Services Contracts

The following policy applies to the procurement of consulting or professional services such as legal, audit, accounting, management consulting, investment banking, architectural, engineering, surveying, abstracting, title insurance, insurance consulting, land acquisition, data processing services, equipment maintenance, custody and safekeeping services, trustee banking services, printing, MBE/WBE/DBE enterprise consultants, testing, test borings, construction management, telecommunication services, scheduling.

2.20.1 Responsibility

The Executive Director of DANC and/or his designee shall have the responsibility for overseeing the awarding and monitoring of Professional Services Contracts. Professional Services Contractors shall be utilized by DANC for those areas in which the Board determines such services may not be reasonably provided by the staff of DANC or by the officers or employees of another state agency or public corporation. Board approved Professional Services Contractors will be considered Single Source procurements.

2.20.2 Requirements Regarding the Selection of Professional Services Contractors

To the maximum extent feasible, the selection of Professional Services Contractors shall be on a competitive basis, except that the Board may waive competition by resolution if it is in the best interest of DANC for the Board to do so. The determination to waive competition in a particular case may be based upon any of the following criteria, but is in no way limited thereto:

- a. Specialized or unique skills, expertise, knowledge, qualification or experience are available from one source only,
- b. Specialized facilities or equipment are available from only one source,
- c. A contractor has geographical proximity to DANC and such proximity is a material consideration in the award of a contract,

- d. There is a lack of responsible competition, in the sole opinion of DANC, among contractors capable of performing the desired services,
- e. Selecting a contractor on a competitive basis would discourage innovative methods or technologies because, by way of example and not of limitation, a contractor has proprietary data, trade secret information or the like,
- f. Selection without competition is otherwise necessary to the operations of DANC.

Any Professional Services Contracts involving services to be rendered over a period in excess of one year shall require (1) the approval of the DANC Board by resolution, and (2) an annual reauthorization of the contract by the Board.

The procedures for competitive negotiation outlined in these guidelines shall be followed in the selection of Professional Service Contractors.

The Commissioner of the Department of Economic Development has developed a list of jurisdictions that impose sanctions or otherwise restrict the ability of New York State companies when they compete for contracts on an equal basis within those jurisdictions. The current list includes the following: Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Section 2879(5)(d) of the Public Authorities Law requires all public authorities to deny business from these jurisdictions with discriminatory policies against New York State contracts and placement on any bidders list if two conditions are met:

- The potential vendor's principal place of business is in a jurisdiction that discriminates against New York State businesses, and
- The goods and services being offered are substantially manufactured, produced or performed anywhere outside New York State.

There is no dollar threshold associated with these statutes. Sanctions may be waived by the Public Authority if it is determined in writing to be "in the best interests of the state" to do so. Prior to issuing such a waiver for procurements from these jurisdictions, the entities are encouraged to contact Empire State Development's Procurement Assistance Unit.

2.20.3 Professional Services Contracts with Former Officers or Employees of DANC

Professional Services Contracts may be awarded to former officers or employees of DANC within two years of their termination as an officer or employee of DANC under the following conditions:

- a. Clear evidence exists that such a contract is in the best interest of, and is fair to, DANC, and complies with Section 2879 of the New York Public Authorities Law, and
- b. The DANC Board adopts a resolution authorizing such a contract.

2.20.4 Annual Report

Within ninety (90) days of the end of its fiscal year, DANC shall prepare and the Board shall approve a report on Professional Services Contracts, which shall include:

- a. A copy of the DANC Procurement Policy,
- b. An annual report on procurement contracts as required by section 2879 (7) of the Public Authorities Law,
- c. An annual report on procurement contracts as required by section 2879 (6) of the Public Authorities Law.

Such a report may be a part of any other annual report that DANC is required to make. The annual report shall be filed with the New York State Division of Budget, with copies filed with the New York State Department of Audit and Control, the New York State Senate Finance Committee, the New York State Assembly Ways and Means Committee and the Department of Economic Development.

2.20.5 Public Access

DANC shall make available to the public copies of its annual Public Authorities Law reports upon reasonable request thereof and in compliance with the DANC Freedom of Information Law procedures.

2.21 Construction Contracts and Bond Requirements

Every construction contract should include a “Changes” clause giving DANC the unilateral right to order changes in the contract work during the course of performance, and the contractor the duty to proceed with the work as changed upon receipt of the change order, assuming that the change is within the scope of the contract. The “Changes” clause must contain language deferring the pricing of the changes work until some later time, while obligating the contractor to proceed with the work and resolve the issue of compensation later. Failure to reach an agreement on compensation would be a dispute to be processed according to the procedures of the Disputes clause of the contract.

2.21.1 Bid and Performance Bonds

To insure the adequate and expeditious provision of goods, equipment and/or services procured by DANC, bid or performance bonds may be required where appropriate, or as stipulated by state or Federal law. Final payment, however, will be withheld from a vendor until the Division Manager requesting the procurement certifies as to the successful and total completion of the goods, equipment and/or services procured.

2.21.2 Bid Guarantee

All construction (Public Work) contracts equal to or in excess of \$100,000 shall require bid security equal to five percent (5%) of the bid price. The Bid Guarantee shall consist of a firm commitment that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time period specified. Bid guarantee may be in the form of a bid bond, certified check or other guaranteed negotiable instrument, or letter of credit in a form acceptable to DANC.

The bid security of the successful bidder will be retained until execution of the contract. Bid security of the unsuccessful bidders will be returned upon execution of the contract with the successful bidder, but in no event in excess of sixty (60) calendar days after the bid date.

In the event of neglect or refusal on the part of the successful bidder to execute the contract and furnish the performance security and evidence of insurances within ten (10) days after written notification of the award of the contract, the entire bid security shall be forfeited to and retained by DANC as liquidated damages for such neglect or refusal.

2.21.3 Performance Bond

All construction (Public Work) contracts in excess of \$100,000 shall require a performance bond or certified check or other guaranteed negotiable instrument or letter of credit for one hundred percent (100%) of the contract price in a form acceptable to DANC guaranteeing the contractor's faithful performance of all terms under such contract.

Performance security is not mandated for product contracts.

In instances where a performance bond is offered, the bond shall be in the amount of the contract and issued by a duly incorporated entity authorized to guarantee the faithful performance of contracts and to do business in the State of New York as a surety.

2.21.4 Letter of Credit

A letter of credit used as bid or performance security must:

- a. be an irrevocable letter of credit issued by a bank or financial institution of B rating or better,
- b. be signed by an authorized representative of the issuing institution,
- c. name DANC as the beneficiary, and
- d. be in a form otherwise acceptable to DANC.

The letter of credit must state that an amount representing at least ten percent (10%) of the bid price is available to be drawn on, unconditionally, by DANC under the expressed terms and conditions. These terms and conditions, including the location at which DANC can draw the funds, an effective date and an expiration date, should be clearly stated in the letter of credit.

2.21.5 Labor and Material Payment Bonds

All construction (Public Work) contracts, regardless of amount, shall require labor and material payment bonds. Payment bonds are executed in connection with contracts to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Minimum payment bond amounts required from contractors will equal 100% of the contract price. The Payment Bond may be reduced as subcontractors provide proof of payments.

2.21.6 Maintenance Bonds

All construction (Public Work) contracts, in excess of \$30,001 shall require, at a minimum, a one year maintenance bond, which period shall commence as of the date of final acceptance. The maintenance bond shall be in the full amount of the Contract.

2.21.7 Waiver

Performance, security, labor and material payment, and maintenance bonds may be waived by the Executive Director or his designee, prior to the bid date, in accordance with State Finance Law Section 137(1), provided that the aggregate amount of the Contract is under \$30,000 and that DANC retains twenty percent (20%) from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the Executive Director or his designee may authorize, pending the payment of the final estimate, the release of up to seventy-five percent (75%) of the retained percentage.

2.22 Insurance

The following establishes the basic requirements for insurance for work that is performed under Contract with DANC in any area of its operation and the administration of those requirements.

Table I – Minimum Contract Insurance Requirements

Type of Contract	Minimum Insurance Requirement
Construction Contracts > \$30,001	Standard Insurance
Construction Contracts < \$30,000; and other Non-Construction Contracts	Standard Insurance with reduced umbrella liability coverage of \$1,000,000
Professional Services	Workers Compensation & Employers Liability – Statutory; and other as required

The Contract Administrator is responsible for recommending the type and amount of insurance that will be required for any given contract. The Division Manager, or designee, will review the recommendation and make final decisions with respect to the insurance requirements for all contracts related to their facilities. The Contract Administrator will be responsible for reviewing copies of insurance certificates with contract specifications prior to signing any contract service agreement. Copies of these certificates must be retained on file with other related contract documentation such as agreement for services, invoices, etc.

Insurance requirements for contracts and service agreements entered into by the Development Authority of the North Country are based on several factors including the type of contract/service agreement; the size of the agreement in terms of cost; and the potential risk factors associated with the type of contract or service that is being performed.

2.22.1 Construction Contracts larger than \$30,001

For all **Construction Contracts** larger than \$30,001 the contractors will be required to comply with the Insurance Requirements specified in Section 752.03 of the Development Authority of the North Country's General Terms and Conditions for Construction Contracts. These General Terms and Conditions for Construction Contracts can be found in a separate file in the Share Drive under the DANC Policies and Manuals folder. A brief summary of the standard general conditions for insurance requirements follows:

Standard Insurance Specification

- Commercial General Liability Insurance
 - a. \$1,000,000 Occurrence
 - b. Bodily Injury & Property Damage \$2,000,000 Aggregate
- Automobile Liability
 - a. Bodily Injury & Property Damage \$1,000,000 Combined Single Limit
- Umbrella Liability
 - a. \$4,000,000 Occurrence
 - b. \$4,000,000 Aggregate
- Workers Compensation & Employers Liability – Statutory
- Waiver of Subrogation
- Must name DANC as additional insured on each policy
- Property (builders risk) insurance required, if applicable, shall be determined by the General Manager or Legal Counsel.

2.22.2 Construction Contracts less than \$30,000

For all construction contracts less than \$30,000, and all technical service contracts, the contracts will be reviewed for potential risks, and insurance requirements will be specified by the Division Manager. No contract will be issued below the minimum insurance requirements specified in Table I above. Risk factors that shall be considered but are not limited to: 1) size of project; 2) duration of project; 3) safety risks associated with the type of work to be performed (i.e., confined space entry, overhead crane work, work at heights above 6 feet, work on electrical systems/services, heavy equipment operations, etc.). A brief summary of the reduced umbrella liability insurance requirements follows:

Reduced Liability Insurance Specification

- Commercial General Liability Insurance
 - a. \$1,000,000 Occurrence
 - b. Bodily Injury & Property Damage \$2,000,000 Aggregate

- Automobile
 - a. Bodily Injury & Property Damage \$1,000,000 Combined Single Limit
- **Umbrella Liability**
 - a. **\$1,000,000 Occurrence**
 - b. **\$1,000,000 Aggregate**
- Workers Compensation & Employer Liability – Statutory
- Waiver of subrogation
- Must name DANC as additional insured on each policy
- Property (builders risk) insurance required, if applicable.

DANC reserves the right to amend any of the requirements of insurance protection it may deem necessary.

2.22.3 Contracts for Professional Services

Contracts for Professional Services (i.e. computer/software administration, maid service, engineering, etc.) shall require proof of workers compensation and liability and such coverage listed in Table I above as the Division Manager shall require considering the risk factors associated with the project.

2.23 Prompt Payment Procedures

In accordance with Section 2880 of the New York Public Authorities Law, DANC has developed the following rules and regulations detailing its prompt payment policy:

2.23.1 Requesting a Payment

The contractor may submit an invoice for goods and/or services only after properly completing an appropriately executed Purchase Order and providing the goods and/services contracted for.

A proper invoice submitted by the contractor shall be required to initiate any payment, except where the contract provides that the contractor will be paid at predetermined intervals.

2.23.2 Merchandise/Invoice Received Date (MIR)

- a. Normal vendor payments – generally the date the agency receives goods or services or a proper invoice, whichever is later.
- b. Contract payments with specified payment dates – contracts that require prepayments on a specified day, usually the first of the month, such as leases or contracts with not-for-profits.

The MIR dates are established as 30 days before the required payment date or the date the invoice requesting payment is received, whichever is later. The actual payment date on these transactions should be 5 to 7 days before the required payment date in the contract to allow for mail time; and the liability date should be the beginning date of service to allow the system to process the payment. The MIR date is the date that best represents the beginning of the payment cycle.

Adjustments to the MIR date:

- If the vendor delivers an invoice to a location other than the payment office designated by the agency, the MIR date then becomes the date the designated payment office receives the invoice.
- The goods or services are defective, or the invoice is defective, or there are suspected improprieties of any kind. The MIR date is increased by the number of days it takes to correct the defect or impropriety.
- When an inspection period or audit is specifically required by statute or contract provision, the MIR date is increased by the number of calendar days allowed for the inspection or audit.
- When an invoice must be examined by the Federal Government prior to payment.
- When the applicable appropriation has yet to be enacted.
- Legislation or a contract provides that payment will be made on a predetermined date without having to submit an invoice.
- OSC determines that there is a reasonable cause to believe that the payment may not properly be due in whole or in part.
- If OSC approval is required for a contract or contract amendment.

2.23.3 Schedule for Making a Payment

DANC will make payment on the properly submitted invoice within thirty (30) days of receipt of a complete and proper invoice, excluding legal holidays.

Interest will be paid when prompt payment is not made. Eligible payments are those: from joint custody funds only (those in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance), and to any person, partnership, corporation, public utility or association that sells goods or services or leases equipment or property to the State.

DANC shall have fifteen (15) calendar days after receipt of an invoice at its designated payment office to notify the contractor of:

- a. Defects in the delivered goods or services,

- b. Defects in the invoice, or
- c. Suspected improprieties of any kind, and the existence of such defects or improprieties shall prevent the commencement of the time period for computing interest.

In the event DANC fails to notify a contractor of such defects within fifteen (15) calendar days of receiving the invoice, the number of days allowed for payment of a properly corrected invoice will be reduced by the number of days between the fifteenth day and the day that notification of said defect was actually transmitted to the contractor. If DANC, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which the contract payment must be made in order for DANC not to become liable for interest payments shall be calculated from the date of receipt of an invoice.

2.23.4 Inapplicability

These procedures shall not apply to payments due and owing by DANC:

- a. From sole-custody funds (those outside the State Treasury such as petty cash, agency commissary, patients or inmates funds).
- b. To Federal, State, and local government entities, and government-related entities (e.g., authorities, Correctional Industries, Centralized Services, school districts, municipal hospitals).
- c. To State employees performing services in their public employment capacity (e.g., public employee travel).
- d. To contractors of third party payment agreement (e.g., the MMIS fiscal agent).
- e. For purchases of property under New York's Eminent Domain Procedure Law.
- f. Payments withheld in total or part, due to a lien, attachment or other legal process.

2.23.5 Designated Payment Office

The Designated Payment Office is the office or site where the agency instructs the vendor to mail or deliver their invoice.

- Each company must identify a Designated Payment Office to which a proper invoice is to be sent by the contractor in the contract or purchase order.
- All companies must record on every invoice the date the invoice was received in the Designated Payment Office.

2.24 Liquidated Damages

Liquidated damages assessment in applicable DANC contracts shall be at a specific rate per day for each day of overrun and this daily rate must be specified in the specific contract.

2.25 Administration of the Procurement Process

The Development Authority of the North Country does not utilize contractors to administer its' Procurement Policy. All procurement is done with employed staff members. In the future, should the Development Authority determine that contractors would, in some cases, administer some or all of a procurement, the Development Authority would develop compensating controls to ensure the policy was adhered to.

2.26 Limited Competition

Should the results of a bid or quote produce limited responses, the Development Authority will solicit feedback from the vendors who do not bid or quote, providing that only one bid is obtained from a solicitation. A phone call or an email, fax or letter would be made or sent to the vendor asking why they did not bid or quote. That documentation is filed in the procurement file. Depending on the outcome, the responses, or no response would be noted, and would also be filed in the procurement file. The Division Manager makes the determination, based upon the responses, whether to award to the one bidder or re-bid entirely. The determination would also be documented and filed in the Procurement file.

SECTION 3: DETAILED PROCUREMENT POLICY

3.0 Informal Procurement Procedures/Small & Medium Purchases

Informal procurement procedures are appropriate and applicable to those relatively simple and informal procurements of goods and/or services costing, in the aggregate, less than \$30,000. Following is a summary of DANC small and medium procurement procedures:

3.0.1 Procurement by Small Purchases: <\$7,500

Procurements of goods and/or services costing less than \$7,500 do not require competitive quotations. To the extent possible, small purchase authority is delegated to DANC employees, with Division Manager discretion, who will actually be using the supplies or services being purchased and should be authorized by the Division Manager or designee.

3.0.2 Procurement by Medium Purchase: >\$7,501 and < \$30,000

Medium purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, and other property that cost more than \$7,501 but do not cost more than \$30,000. These procurements require a minimum of three verbal or three written quotations and a signature from a Division Manager and the appropriate Senior Manager. Procurements must be considered individually as well as cumulatively. Purchases from a single vendor that exceed \$30,001 in a fiscal year cannot be procured in an informal manner, and must be procured using formal bidding.

At various times throughout the year, the Comptroller will create a report of year-to-date purchases that accumulate over \$7,501. Based upon the report and other information available, the Comptroller has the ability to waive the \$30,001 limit if the imposition of the cumulative amount causes inefficiency or other hardships in the current year. Those instances where the limit is waived in the current year will be formally bid in the subsequent year, if appropriate.

Documentation of quotations shall accompany the requisition or be present in the procurement file.

For all procurements of goods and/or services costing at least \$7,501 but less than \$30,000, the following procedures must be followed:

1. DANC may utilize the NYS Office of General Services schedules for the procurement of particular goods and services. The NYS Office of General Services contract prices are deemed competitive prices. If it is determined that the OGS bid contract price is not the lowest available, then the regular bidding process provided in the policy shall be used, and a contract awarded to the lowest responsive and responsible bidder.
2. The requesting employee/supervisor, where appropriate, shall develop written specifications for use in the solicitation of quotations. The nature and extent of items and/or services requested should be limited to only that deemed necessary to meet the needs of the user company.

3. The requesting employee/supervisor shall prepare and submit a purchase requisition to the Division Manager for review and distribution through the approval process. The Purchase Requisition will include appropriate documentation.
4. All Purchase Requisitions must have a signature of authorization.
5. Those individuals who are authorized shall review the Purchase Requisition to determine the funding source for the procurement and the evidence of availability of funds.
6. If three or more quotes cannot reasonably be obtained due to an insufficient number of suppliers capable of meeting the specifications, including timely delivery, the Division Manager shall document such facts in the procurement file.
7. The Site Supervisor/Division Manager shall obtain written confirmation of the successful vendor's quote, containing the terms and conditions of sale, which requirement may be satisfied by the successful vendor's invoice.
8. The most common contractual instrument used to accomplish a small purchase is a Purchase Order (PO). Once the successful vendor is chosen, the Site Supervisor or Administrative Assistant shall prepare a purchase order and send the purchase order information to the vendor. A copy of the PO is also forwarded to the Division Manager to be kept with the Procurement File, if applicable.
9. Once the goods/services are received, the Site Supervisor or Administrative Assistant closes out the PO in the software system and the invoice is batched and approved for payment.

3.1 Formal Procurement Procedures/Large Purchases/Invitation for Bid (IFB)

3.1.1 Procurement by Large Purchase: > \$30,001.

All procurements of \$30,001 or more require the selection of contractors on a formal, competitive basis, unless otherwise indicated in this policy, and must be advertised in the New York State Contract Reporter. Advertisements may also be placed in local newspapers or trade publications as deemed appropriate by the Division Manager.

DANC may utilize the NYS Office of General Services schedules for the procurement of particular goods and services. The NYS Office of General Services contract prices are deemed competitive prices. If it is determined that the OGS Bid Contract price is not the lowest available, then the regular bidding process provided in this policy shall be used, and a contract awarded to the lowest responsive and responsible bidder.

Procurements in this category fall into one of two types: Invitation for Bids (IFB) or Request for Proposals (RFP). Contracts for all formal procurements must contain termination for cause and termination for convenience provisions as well as breach of contract provisions and remedies for breach of contract.

3.1.2 Sealed Bid/Invitation for Bids Method of Procurement (IFB)

This method of procurement is the preferred method for acquisitions with an annual cost totaling \$30,001 or more when one or more of the following factors is present:

- A complete, realistic, and exact specification or purchase description is available,
- Two or more responsible bidders are willing and able to compete effectively for the business,
- The procurement lends itself to a firm, fixed price contract, and the selection of the successful bidder can be made principally on the basis of lowest price or best value, when the best value determination can be made on price alone, among responsive bids and responsible bidders,
- No discussion with bidders is needed either before or after bid submission.

3.1.3 Sealed Bid Procedures

To protect both the bidder and DANC, the IFB shall specify that the bids shall be sealed.

Sealed bids shall be publicly solicited and a firm, fixed price contract (lump sum or unit price) shall be awarded to the bidder whose bid is (1) lowest in price and (2) conforms with all the material terms and conditions of the bid specifications, including a successful responsible bidder and responsive bid determination.

The following procedures must be followed in this type of procurement:

a. Request to Initiate Procurement

The individual requesting the procurement shall prepare a request for authorization to initiate the procurement and submit it to the Division Manager for review and approval. This form shall include a written statement containing, at a minimum, a description of the services required, the reason(s) such services are required, and the required or estimated schedule or duration of the services.

b. Determination of Funding Source

The Division Manager shall review the request for authorization to initiate a procurement with the appropriate individual to determine the funding source for the procurement. The funding source GL account number shall be indicated on the purchase requisition.

c. Bid Development

3.1.4 General Requirements.

The Division Manager may review bid documents and specifications used in former bids for the requested item/service as a starting point for developing the current solicitation. The Division Manager may incorporate relevant information from previous bids or other company bids to meet the needs of the current bid.

The Division Manager may review and update current bid with regard to all recently promulgated regulations.

The Invitation for Bids (IFB) shall provide prospective bidders with all the information necessary to develop a responsive bid. The IFB shall inform bidders of the specific steps in the bid process, the scope of commodities, services, hardware, or software to be provided, the method of award, and the terms and conditions of the contract. A copy of the IFB shall be included in the procurement file.

Specifications defining the items or services sought shall be outlined, in detail, by the requesting company. These specifications/product descriptions must be complete, adequate and realistic.

Specifications must describe the product, and include reliability and quality assurance requirements, where appropriate. Criteria for inspecting, testing, and accepting the product shall also be included in DANC specifications, where appropriate.

DANC may request specifications for information regarding a product or service from qualified vendors, but must exercise great care to ensure that the final specification is generic.

Bid specifications must clearly define the scope of work or clearly describe the desired item.

Specifications shall encourage full and open competition, and must not rule out one or more vendors or favor a particular vendor. Therefore, use of brand names in specifications is allowed solely for the purpose of providing a standard for quality of performance. When requesting a "brand name or equal," DANC shall carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

a. Minimum elements of Bid Package.

The Bid Package shall include the following minimum elements:

Part 1: Invitation for Bids, including bid opening date, time and location

Part 2: Detailed specifications, including an estimated quantity to be purchased

Part 3: Bid Forms
Bid Checklist
Price Bid Form
Non Collusion/Ineligible Bidders Certification
DBE Certification, if applicable
Approved Equals, if applicable
Executive Order 127
NYS ST-220

Part 4: Instruction to bidders/Bidders Qualifications

Part 5: Standard Terms & Conditions

Part 6: Insurance Requirements

Part 7: Vendor Agreement

Part 8: Safety Requirements

b. Bidder's Qualifications.

The Bidder's Qualifications section of an IFB defines the minimum acceptable qualifications for a bidder to be considered acceptable for an award. In addition to a determination of the bidder's responsibility when drafting this section, DANC shall consider which qualifications should be specified to ensure the bidder:

- is technically qualified to perform the proposed work,
- has, or can secure, adequate financial resources to perform the proposed work or deliver the proposed goods,
- is able to comply with the delivery or performance schedule, taking into account all existing business commitments,
- has a satisfactory record of past performance,
- if selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts.

Qualifications may include the length of time a firm has been in business, the expertise and experience of staff, and the bidder's experience with projects of similar scope and size, and previous experience, as it relates to the needs of each DANC division (i.e., Solid Waste Management, Water/Wastewater, OATN or Project Development). Appropriate business references shall also be required.

To ensure uniformity, all IFB's must include a Bid Form on which bidders insert bid prices in a uniform format. This form shall provide bidders the ability to record all relevant costs in an organized manner.

c. The Method of Award.

The Method of Award must be:

1. Determined in advance of releasing the IFB,
2. Specified in the IFB,
3. Followed in awarding the contract, and
4. Documented in the procurement file. Awards can be made by item, by lot, by grand total bid for all items, by district or zone, if DANC is bidding for multi-locations delivery, or a combination of these methods.

To protect both the bidder and DANC, the IFB shall specify that the bids shall be sealed.

d. Communication.

It is often necessary to communicate with potential contractors prior to receipt of bids or proposals. These communications usually involve the need to clarify DANC requirements or are requests to modify specifications. It is important that all communications be documented in writing and, when appropriate, distributed to other bidders. Bid and proposal documents should state that verbal communications are non-binding.

e. Additional Quantities.

The Division Manager shall anticipate the possibility of additional quantity requirements when preparing bid specifications and, if necessary, will include option provisions for additional quantities in the bid document and the contract.

1) Distribution

Advertisements requesting bids shall be placed in at least one newspaper of general circulation in Jefferson County, the New York State Contract Reporter, and other publications as deemed advisable to promote the opportunity for competitive bidding. Other efforts may include, but are not limited to:

- notifications in local news publications, trade journals and magazines, and national publications;
- mailings to industry associations;
- notifications to known bidders on DANC's bid lists;
- mailing lists maintained by OGS and other State Agencies; and
- contact with the Department of Economic Development to determine known DBE/MBE/WBE bidders.

Potential bidders shall be advised as to the date, time and place of the bid opening in any bid advertisements. It is advisable when publishing in a local newspaper to publish the advertisement for a minimum of one day. In national trade magazines, one publication is considered to be sufficient. DANC advertises in the Watertown Daily Times, (fulfilling local advertisement requirements) and the New York State Contract Reporter. Notice of the IFB shall also be placed on the DANC website.

As a general rule, bidding time (time from bid release to bid opening) will be not less than fifteen (15) calendar days when procuring standard commercial goods and/or services and not less than thirty (30) calendar days when procuring other than standard goods and/or services. Bidding time may be limited to fifteen (15) days for non-standard goods and/or services upon prior written authorization of the Executive Director of DANC.

2) Pre Bid Conference

DANC shall provide all information to all prospective bidders for any procurement which is formally bid. When deemed appropriate, the Division Manager and technical support staff shall conduct a pre-bid conference with prospective bidders regarding applicable bidding procedures, forms, terms and conditions, goals, requirements, and other relevant information. Attendance at such pre-bid conferences shall be determined on an event-to-event basis. A written record of questions posed and answered at pre-bid conferences shall be distributed to all prospective bidders.

3) DBE/MBE/WBE Bid Notice Distribution

Advertisements will be distributed to applicable DBE/MBE/WBE certified firms.

4) Accept Bids

All bids received under formal bidding procedures shall remain sealed until the bid opening time and date specified in the Invitation for Bids and the advertisements. Immediately upon receipt, bids must be date stamped and the time must be written on the package. The package must be initialed by the DANC employee taking receipt of the package.

Within five minutes prior to bid opening, a survey should be performed of the mail area and reception area to determine if any additional bids have arrived. No bids shall be accepted after the due date and time. Bids received after the due date and time shall be returned unopened to the vendor with a cover letter of explanation, a copy of which shall be maintained in the Procurement File.

Vendor bids contain confidential information which is protected under the law and may not be released prior to opening. It is therefore essential to keep vendor bids under secure, locked conditions.

Prior to bid award, vendor bid information is excluded from the Freedom of Information Act requirements.

5) Conduct Bid Opening

The Division Manager, or designee, shall determine when the time set for bid opening has arrived and will so declare to those present.

The Division Manager, or designee, shall make the following announcement prior to opening any bids:

“We are here to open bids for _____. I will not answer any questions at this bid opening. Vendors may submit questions in writing, and I will respond in writing. Nothing said at this meeting shall change any information contained in the written Invitation for Bid document.”

The bid opening shall be open to all bidders, as well as the general public. Bids shall be publicly opened and read at the date, time and place specified in the Invitation for Bids. Only bids registered up to the time indicated in the IFB shall be opened. Any bid received after the date and time specified shall be returned unopened to the vendor with a cover letter of explanation, by the Division Manager.

At least two representatives of DANC shall be present during bid opening.

Specific information other than the announcement of the bid price and name of the bidder shall not be given to prospective bidders at the bid opening. The Division Manager, or designee, will inform all present that any such request must be submitted in writing and will be responded to in like form.

Upon request, DANC general counsel shall provide an attorney for a bid opening to assure compliance with the bid opening procedures and provide advice as needed. Other DANC personnel may attend upon request of the Division Manager, or designee.

During the opening of each bid, an indicator shall be placed in the Received column of the Procurement Documentation Information section of the Bid Tabulation/Bid Procurement Checklist as each required document is found to be included in the bid submission. Remaining sections of this form are utilized in the post award review of each bid.

All bids received on time will be opened and the bid information will be read aloud to all present and recorded as part of the bid file. Specific information other than announcement of the bid price and name of the bidder will not be given to prospective bidders at bid opening.

No determination as to the validity of any bid, the qualification of any bidders or the compliance of any bid package with the provisions of the bid documents will be made at the bid opening.

When specified in bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which is the lowest bid. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

The Division Manager, or designee, shall compile a list of all DANC personnel, bidders, and their representatives present at the bid opening. This list shall be placed in the Procurement file.

6) Review Bids for Conformity and Responsiveness

Immediately after the bid opening, the Division Manager, or designee, shall review all submitted bids to determine which bid packages are complete and responsive to the bid requirements as set forth in the official Invitation for Bids document.

Contractors must be considered responsible to receive an award, regardless of the procurement method used to select the contractors. The Procurement File shall include a written outline of the specified basis for a determination of contractor responsibility.

Evaluating Responsiveness and Responsibility.

Factors which should be considered by the Authority in evaluating responsiveness should include the following:

- Has all required information been provided?
- Does the bid contain mistakes?
- Has the bidder failed to commit to a firm price?
- Are there unacceptable qualifications or conditions tied to the bid?
- Has the bid been prepared in accordance with the bidding instructions?
- Are unacceptable provisions included in the bid?
- Has the bidder altered or limited any of the contract or solicitation provisions?
- Has the bidder offered non-conforming products or services?
- Has the bidder failed to acknowledge amendments to the IFB issued by the Authority?

To be considered responsible, consideration must be given to all the following requirements:

- Financial resources adequate to perform the contract, or the ability to obtain them.
- Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and government business commitments.
- A satisfactory performance record with DANC or references.
- A satisfactory record of integrity and business ethics (talk with references).
- The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them.
- Compliance with applicable licensing and tax laws and regulations.
- The necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
- Compliance with Affirmative Action and Disadvantage Business Program requirements.
- Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

Note that the foregoing list is not exhaustive. Minor deviations which are immaterial and do not effect quantity or delivery may be waived by the Authority if such waiver does not prejudice or affect the relative standing of the bidders.

In evaluating the responsibility of an apparent low bidder or proposed subcontractor, the Authority may consider, among other factors, whether the subject's record with the Authority or other public owners includes or demonstrates:

- Lack of adequate expertise, prior experience with comparable projects, or financial resources necessary to perform the work outlined in the contract in a timely, competent, and acceptable manner. Evidence of such factors may include failure to submit satisfactory evidence of insurance, surety bonds, or financial responsibility, or a history of terminations for cause.
- Engagement in criminal conduct in connection with any other government contracts or the conduct of business activity that involves such crimes as extortion, racketeering, bribery, fraud, bid-rigging and embezzlement.
- Grave disregard for the safety of employees, State personnel, or members of the public. Consideration will be given to whether employees who will be assigned to work on the project are properly trained and whether the equipment to be used is safe and functioning properly.
- Willful noncompliance with the State's Labor Laws regarding prevailing wage and supplement payment requirement, including consideration of any pending violations.
- Disregard for other State Labor Laws, including child labor, proper and timely wage payments and unemployment insurance laws.
- Violations of the State Workers' Compensation Law, including failure to provide proof of proper workers' compensation or disability coverage.
- The failure to abide by State and federal statutes and regulations regarding efforts to solicit and utilize disadvantaged, minority and women-owned business enterprises as potential subcontractors.
- The submission of a bid which is so much lower than the Authority's confidential engineer's estimate that it appears unlikely that the contractor will be able to complete the project satisfactorily at the price bid.
- The presentation of false or misleading statements or any other issue that raises serious questions about the responsibility of the bidder or proposed subcontractor.

DANC must award to the lowest bidder whose bid is responsive and who is determined to be a responsible bidder. Not only must the submitted bid be responsive to the bid selection, the vendor must also exhibit that he/she is responsible.

DANC shall award the contract in accordance with the Method of Award set forth in the IFB.

DANC may award all items bid, or award some and not others, provided that the Method of Award description allows for award by item or lot. The Authority may elect not to award a contract. The Authority may award a contract to a bidder, even if only one bid is submitted.

If only a single bid is received, staff may prepare a cost and/or price analysis to determine if the bid is fair and reasonable.

Previous to awarding any procurement, the New York State List of Debarred Contractors and the US General Comptroller's List of Debarred Contractors must be reviewed to assure that the apparent successful vendor is not included on that list. This listing can be found at <http://www.epls.gov/>.

The Division Manager, or designee, shall complete the Bid Tabulation/Bid Procurement Checklist and place in the Procurement File.

When a bid is rejected because the prospective contractor is found to be not responsible, the Division Manager, or designee, shall sign and place in the file a Determination of Non-Responsibility form that states the basis for this determination. Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports, shall also be included in the contract file.

7) Rejection of Low Bid

Any and all bids may be rejected if there is a sound documented business reason.

In all cases where a low bid is being rejected, or is being recommended for rejection, whether the procurement is being solicited through formal or informal bidding procedures, the Division Manager, or designee, shall submit a memorandum to the Executive Director, copied to all parties concerned, stating the reasons for such rejection and summarizing the bids received. Reasons may include, without limitation, the failure to meet DBE goals or to show a good faith effort regarding the same, or that the proposed goods and/or services are not in conformance with the bid specifications. A copy of the recommended vendor's quote and the rejected vendor's quote shall be attached to the memorandum.

8) Award Bid

DANC must award to the lowest bidder whose bid is responsive and who is determined to be a responsible bidder. Not only must the submitted bid be responsive to the bid selection, the vendor must also exhibit that he/she is responsible.

DANC shall award the contract in accordance with the Method of Award set forth in the IFB.

DANC may award all items bid, or award some and not others, provided that the Method of Award description allows for award by item or lot. The Authority may elect not to award a contract. The Authority may award a contract to a bidder, even if only one bid is submitted.

If only a single bid is received, staff may prepare a cost and/or price analysis to determine if the bid is fair and reasonable.

Previous to awarding any procurement, the New York State List of Debarred Contractors and the US General Comptroller's List of Debarred Contractors must be reviewed to assure that the apparent successful vendor is not included on that list.

After all pre-award approvals have been obtained, a firm, fixed price contract award will be made to the lowest responsive bid from a responsible bidder. The Division Manager, or designee, shall prepare a "Notice of Award" letter for the Executive Director's signature. This letter shall notify the bidder that it has been determined as the lowest bidder and shall request submission of any post-award documentation required by the bidding documents or by legal counsel.

Bonds and insurance certificates received from the bidder will be reviewed to assure that the contents comply with the requirements of the bid documents. To make this assurance, it may be useful to seek the review of the DANC insurance consultant and legal counsel, if appropriate. Once the bonds and insurance certificates are approved, the contract documents are sent to the successful vendor.

9) Prepare Certified Bid Tabulation

The Division Manager, or designee, shall prepare a Certified Bid Tabulation, listing all the vendors who participated in the bid and the prices they submitted. The bids are ranked from lowest to highest, based on the stated Method of Award.

The selection process shall begin with the lowest bid and continues upward until a responsive bid/responsible bidder is determined. If the award is not being made to the lowest price or best value offer among responsive and responsible bidders, DANC shall document in the Procurement File the reason(s) for rejection of each bid. In all cases, the award must be made in accordance with the Method of Award outlined in the IFB.

Upon request, copies of the bid tabulation may be faxed to those vendors who submitted bids and could not attend the bid opening.

A copy of the Certified Bid Tabulation must be placed in the Procurement File.

10) Prepare Resolution for Board of Directors

All procurements in excess of \$30,001, not otherwise approved by annual budget resolutions, must be approved by the DANC Board of Directors. The Executive Director, or designee, shall prepare a resolution for approval by the Board of Directors authorizing the Executive Director to enter into a contract with the apparent successful vendor.

A copy of the adopted resolution shall be included in the Procurement File.

11) Notice to Proceed

The Division Manager, or designee, will issue a “Notice to Proceed” to the successful bidder when the appropriate Certificates of Insurance and/or bonds have been received by DANC from the vendor. Such Certificates of Insurance and/or bonds must be placed in the Procurement File. The “Notice to Proceed” makes reference to all the terms and conditions in the bid documents which now represent the subject contract. The “Notice to Proceed executes the contract.

12) Notification of Unsuccessful Bidders

The Division Manager, or designee, shall notify unsuccessful bidders promptly in writing. Upon request, an unsuccessful bidder shall be provided a debriefing as to why his/her bid was unsuccessful; this debriefing shall occur as soon as possible after selection of the successful bidder.

13) Contract Execution

A Purchase Order shall be issued for each contract awarded (with the exception of those procurements exempt from the PO process) at the request of the Division Manager, or designee, against which all charges for the contracted item shall be made for the term of such contract. However, if the contract award does not commit DANC to a fixed price amount but, rather is a function of the number of units to be acquired, the amount of the Purchase Order is to be based upon the best estimate of costs to be incurred, as determined by the end user in consultation with the Division Manager, or designee.

3.2 Formal Procurement Procedures/Large Purchases/Request for Proposals (RFP)

3.2.1 General Information.

Competitive negotiation is generally used when conditions are not appropriate for the use of sealed bids. As costs become less important in relation to other factors driving the procurement, competitive negotiation becomes a more appropriate procurement tool. In competitive negotiation, proposals are requested from a number of sources.

Negotiations are normally conducted with more than one of the sources submitting offers. Either a fixed price or cost reimbursable type contract is awarded in this type of procurement.

This method of procurement is the preferred method for acquisitions when one or more of the following factors are present:

- The desired goods or services cannot be precisely defined, described or standardized.
- The desired end product is conceptual in nature.
- A cost reimbursement type contract is contemplated.
- Discussions concerning the technical aspects and price negotiation are intended.

- Bidders are to be given the opportunity to revise the price or technical aspects of their proposal.
- Price alone cannot be the determinative factor in award. Quality, qualifications, performance data, or other contractual factors are to be considered in selecting the most advantageous offering.
- Artistic or aesthetic values supersede price as primary selection criteria.

The following are Competitive Negotiation Procedures:

1) Request to Initiate Procurement

The individual requesting the procurement shall prepare a memo and submit it to the Division Manager for review and approval. This memo shall include a statement containing, at a minimum, a description of the services required, the reason(s) such services are required, and the required or estimated schedule or duration of the services.

2) Determination of Funding Source

Same as under 3.1.2 - Sealed Bid/Invitation for bids Method of Procurement.

3) Investigate new Technologies

The Division Manager, or designee, may review former RFP documents and specifications, and may incorporate relevant information.

The Division Manager, or designee, may review RFP documents and specifications from previous procurements of the desired item/service as a starting point for developing the current solicitation.

The Division Manager, or designee, may perform research and incorporate relevant information to meet the needs of the current bid.

The Division Manager, or designee, may review and update the current RFP with regard to all recently promulgated regulations.

4) Prepare RFP

Requests for Proposals shall set forth generic specifications or requirements that define the goods or services sought, but may not, knowingly, favor a particular bidder, product, or service offering.

3.2.2 General Requirements

Specifications, or a Scope of Work, shall be outlined by the end user department, with the advice and assistance of the department or division requesting the procurement and, when necessary, any and all supporting departments.

Specifications are critical in communicating to the vendors the services requested. In an effort to provide vendors with a clear understanding of their role and responsibilities, DANC shall provide as much specificity as possible in describing the scope of work, thereby reducing vendor risk and providing an opportunity for the proposal of the best solution at the least cost.

DANC may request specifications for information regarding a product or service provided by a vendor, but will exercise great care to ensure that the final product or service specification is generic.

For procurements of technology, if a vendor has sole responsibility for preparing and furnishing specifications for a technology proposal which is to be competitively procured, that vendor is prohibited from subsequently bidding on the procurement either as a prime vendor or as a subcontractor.

Similarly, a vendor may not be awarded a contract to evaluate offers for products or services which would include evaluation of the vendor's own products or services. These prohibitions shall be discussed with potential vendors as early as possible in the procurement process and prior to issuing an RFP.

The above prohibitions shall not apply if:

- The vendor is the sole source or single source of the product or service.
- More than one vendor has been involved in preparing the specifications for a procurement proposal.
- The vendor has furnished specifications or information regarding a product or service it provides at the request of the agency, but the vendor has not been directly requested to write specifications for the product or service or for the agency technology proposal.

1) Minimum elements of Bid Package.

The RFP shall include the following minimum elements:

- Request for Proposal, including date of any pre-proposal conference, proposal due date, time, and location for delivery.
- Detailed Specifications or Scope of Work.
- Vendor qualifications.
- General Conditions, including contract term.
- Identification of evaluation factors, and their relative importance.
- Identification of Evaluation Methodology and Method of Award.
- Outline of Financial/Cost Proposal Requirements.
- Any relevant Federal or State required contract clauses.
- Appropriate required forms.

2) Vendor Qualifications.

The Vendor Qualifications section defines the minimum acceptable qualifications a vendor must have to be considered acceptable for an award. In addition to a determination of the vendor's responsibility when drafting this section, DANC shall consider which qualifications should be specified to ensure the bidder:

- is technically qualified to perform the proposed work;
- has, or can secure, adequate financial resources to perform the proposed work or deliver the proposed goods;
- is able to comply with the delivery or performance schedule, taking into account all existing business commitments;
- has a satisfactory record of past performance;
- if selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts.

Qualifications may include the length of time a firm has been in business, the expertise and experience of staff and the bidder's experience with projects of similar scope and size. Appropriate business references shall also be required.

DANC shall publish invariable and mandatory contract terms and conditions in the RFP. These conditions assist the bidders in assessing the risk associated with the required contract terms and the extent to which the contract terms are compatible with the bidders' policies.

3) Method of Award.

Given the unique character of proposal evaluation methods, the DANC Procurement Policy does not set forth strict evaluation procedures or all inclusive processes and methods. Typically, evaluations comprise a comparative analysis of the technical proposals, a separate comparative analysis of the cost proposals, and a method for combining the results of the technical and financial proposal evaluations to arrive at the selection of the proposal judged most advantageously to the Authority.

The objective of the evaluation process is to develop and apply evaluation criteria to ensure that:

- proposals are evaluated objectively, and
- DANC selects the vendor proposing the "best value" solution.

The Evaluation Instrument/Methodology and Method of Award must be:

- determined in advance of releasing the RFP,
- specified and described in the RFP,
- followed in evaluating the submitted proposals and awarding the contract, and
- documented in the Procurement File.

The overall evaluation criteria must not be altered after opening the proposals, with the exception of minor changes and only if the modifications are justified and evidence presented to ensure that the changes would not materially benefit or disadvantage any bidder.

4) Financial Proposal Requirements.

DANC shall provide instructions in all its RFP's for developing cost proposals. The objective of this component of the vendor's proposal is to ensure that both DANC and the vendor understand the financial terms and conditions associated with the services to be provided.

DANC shall structure the requirements to ensure that financial terms and conditions are defined for purposes of both cost proposal evaluation and terms and conditions of the contract, if awarded.

With respect to the latter, DANC shall require that fees be defined for services over the life of the contract term. For example, to the extent that DANC desires to cap fee increases over time, the bases for the cap shall be defined in the cost requirements (e.g., annual inflation capped by the consumer price index).

DANC shall require, if applicable, the following information from vendors in their cost proposals:

3.2.3 Outline Cost Proposal Approach

- Distinguish one-time fees (e.g., development) from on-going fees (e.g., operations) and specify appropriate assumptions (e.g., annual volumes).
- Define and Describe Reimbursement Approach; examples include:
 - Fixed fee for deliverables
 - Daily rate for defined categories of staff services
 - Price per unit, possible sliding scale based on volume increments
 - Maximum price
- Describing Pricing Strategies for Future Services (development, goods, and operations)
- Describe Potential Fee Increases, including adjustments for inflation, etc., over life of contract (CPIU, or cost based justification)
- Describe Strategies for Providing Savings to DANC
- Financial Proposal shall be inclusive of all fees
- Means of Compensation
- Define billing structure and frequency

3.2.4 Standards and Penalties

DANC shall consider approaches to be used during the life of the contract to monitor vendor performance. To the extent that DANC plans to monitor performance against standards, DANC shall include the standards in the RFP, along with any plans for enforcing the standards (e.g., financial penalties).

Standards shall be structured to be easily quantified and objectively measurable. For example:

- Standards may be set for timeliness, quality, and performance;
- Sanctions for not meeting these standards may include:
 - Reduction in fees,
 - Liquidation damages,
 - Cost recovery (e.g., interest).

3.2.5 Executive Director Review and Approval

Prior to public advertisement, the Division Manager, or designee, shall circulate the Request for Proposal (RFP) to the following persons for written approval:

- Executive Director
- DANC Legal Counsel (when appropriate)

1) Distribution

An advertisement requesting proposals shall be placed in at least one newspaper of general circulation in Jefferson County, the New York State Contract Reporter, and other publications as deemed advisable to promote the opportunity for competitive bidding. Other efforts may include, but are not limited to:

- Notifications in local news publications, trade journals and magazines, and national publications;
- Mailings to industry associations
- Notifications to known bidders on DANC bid lists;
- Mailing lists maintained by OGS and other State agencies;
- Contact with the Department of Economic Development to determine known M/WBE bidders.

Notice of the RFP shall also be placed on DANCs' website.

The due date and time, and delivery location for proposals shall be included in any advertisements.

It is advisable when publishing in a local newspaper to publish the advertisement for a minimum of one (1) day. In national trade magazines, one publication is considered to be sufficient. DANC advertises in the Watertown Daily Times (fulfilling local advertisement requirements) and the New York State Contract Reporter.

As a general rule, bidding time (time from RFP release to due date) will be not less than thirty (30) calendar days.

2) Pre-Proposal Conference

DANC shall provide all information to all prospective bidders for any procurement which is formally bid. When deemed appropriate, the Division Manager, or designee, and technical support staff will conduct a pre-proposal conference with prospective proposals regarding applicable proposal procedures, forms, terms and conditions, goals, requirements, and other relevant information.

Attendance at such conferences shall be determined on an event-by-event basis. A written record of questions posed and answered at pre-proposal conferences shall be distributed to all prospective bidders.

Events may arise which require DANC to modify RFP requirements prior to submission of proposals. In such cases, DANC shall require written acknowledgement from each bidder that the modifications have been received.

3) DBE/MBE/WBE RFP Notice Distribution

Advertisement will be distributed to DBE/MBE/WBE certified firms, where applicable.

4) Accept Proposals

It is often necessary to communicate with potential contractors prior to receipt of proposals. These communications usually involve the need to clarify the DANC requirements or are requests to modify specifications. It is important that all communications be documented in writing and, when appropriate, distributed to other bidders. Proposal documents should state that verbal communications are non-binding.

All proposals received under formal procedures shall remain sealed until the proposal due date and time specified in the Request for Proposals and the advertisements.

Immediately upon receipt, proposals must be date stamped and the time must be written on the package. The package must be initialed by the DANC employee taking receipt of the package.

Within five minutes prior to proposal due date and time, a survey should be performed of the mail area and reception area to determine if any additional proposals have arrived. No proposals shall be accepted after the due date and time. Proposals received after the due date and time shall be returned unopened to the vendor with a cover letter of explanation, a copy of which shall be maintained in the Procurement File.

Proposals contain confidential information that is protected under the law and may not be released prior to opening. It is therefore essential to keep proposals under secure, locked conditions. Prior to bid award, proposals are excluded from the Freedom of Information Act.

5) Open Proposals.

The Division Manager, or designee, shall determine when the due date and time set for proposals has arrived.

The RFP shall be opened at the time and date specified in the Request for Proposals. Only proposals registered up to the time indicated in the RFP shall be opened. Proposals received after the filing date must be returned to the bidders unopened.

6) Modifying, Adding or Deleting Requirements After Proposal Submission

DANC may modify, add or delete requirements provided that the basis for the change is justified and the discretionary authority to make such changes is set forth in the RFP. The RFP need not be reissued, although vendors submitting proposals must be notified, in writing, of the modification, additions and/or deletions.

7) Review Proposals for Conformity and Vendor Responsibility

Same as under 3.1.2 – Sealed Bid/Invitation for bids Method of Procurement

8) Prepare Certified Proposal Tabulation

(a) A Certified Proposal Tabulation shall be prepared, listing all the vendors who submitted proposals, and the prices they quoted. Upon request, copies of the bid tabulation may be faxed to those vendors who submitted proposals.

(b) A copy of the Certified Proposal Tabulation shall be placed in the Procurement File.

9) Proposal Evaluation

Depending on the scope and breadth of the procurement, DANC may organize an evaluation team to meet the unique nature of the procurement.

The Division Manager, or designee, shall distribute the proposals to the appropriate staff members or evaluation team for review, with a Proposal Review Spreadsheet. The Division Manager, or designee, shall schedule a proposal review meeting for the Evaluation Team, and include this date with the distribution memorandum.

Technical proposals shall be evaluated by measuring the extent to which the proposal and the bidder can attain the objectives of the solicitation as set forth in the RFP and fulfill the requirements outlined in the RFP. Criteria used in evaluating proposals may include, but not be limited to:

- Proposal work plan and methodology.
- Experience of vendor in providing similar services and/or goods.
- Management capability of vendor.

- Vendor’s overall past performance.
- Extent to which the proposal is responsive to RFP requirements.
- Qualifications and experience of vendor’s proposed staff.
- Conformance with the schedule of work set forth in the RFP.
- Numerically based quantitative approaches (e.g., Criterion A is four times more important than Criterion B, which is two times more important than Criterion C).
- Overall cost and/or distribution of cost over the scope of work may be considered (distribution of cost across tasks).
- Qualitative approaches (e.g., Criterion A is more important than Criterion B, which is more important than Criterion C).

DANC may award all or parts of the proposed scope of services provided that such agency discretion is set forth in the RFP. The agency may elect not to award a contract. DANC may award a contract to a bidder if only one proposal is submitted.

10) Rejection of Proposals

Any and all proposals may be rejected if there is a sound documented business reason.

A memorandum stating rejection reasons for the unsuccessful bidders and summarizing the proposals received, a copy of the recommended vendor’s quote and the rejected vendor’s quotes shall be attached to the memorandum.

11) Negotiation

- a. The Evaluation Team shall identify the proposals that are technically compliant with the RFP.
- b. The Evaluation Team shall individually review and evaluate all technically compliant proposals, and develop scores for each proposal.
- c. The full Evaluation Team will then convene to review and discuss the individual evaluations and to combine the individual scores to arrive at a composite technical score for each firm.
- d. Once the overall ranking of the technical proposals is determined, firms with an unacceptably low technical score will be eliminated from further consideration. The remaining proposals are within the “competitive range” (those proposals that can potentially be awarded the contract).

- e. After the composite technical score for each firm has been established, the cost proposal will be opened and additional points will be added to the technical score, based on the price bid. The maximum score for price will be assigned to the firm offering the lowest total all inclusive maximum price. Appropriate fractional scores will be assigned to other bidders.
- f. DANC may select one (1) or more firms with which to negotiate after preliminary evaluation of the proposals or, if negotiations are not necessary, the Evaluation Team may select the firm with the highest composite score.
- g. Invariable required contract conditions should be set forth as such in the RFP to facilitate negotiations.
- h. For strategic advantage, DANC may negotiate any controversial contract terms prior to the notice of award.
- i. Best and final offers (BAFO's) may be requested of all bidders determined to be in the "competitive range" (technically compliant with the RFP).
- j. The Authority must evaluate the BAFO's and award either a Firm Fixed Price-type or a Cost Reimbursement-type contract to the vendor whose BAFO is most advantageous to the Authority.
- k. Previous to awarding any procurement, the New York State and United States Lists of Debarred Contractors shall be reviewed to assure that the apparent successful vendor is not included on that list.
- l. The award shall be made to the firm(s) whose proposal(s) will be the most advantageous to DANC, with price, qualification and other factors considered, using the evaluation criteria set forth in the RFP as the basis for DANC decision.
- m. The Division Manager, or designee, shall review the successful vendor's price or cost quote to determine if the cost/price is reasonable. The Division Manager, or designee, may also obtain support information from the Site Supervisor requesting the procurement and evaluating the proposals.

12) Prepare Resolution for Board of Directors

All procurements in excess of \$30,001, not otherwise approved by the annual budget resolution, must be approved by the DANC Board of Directors. The Executive Director, or designee, shall prepare a resolution for approval by the Board of Directors authorizing the Executive Director to enter into a contract with the apparent successful vendor.

A copy of the adopted resolution shall be included in the Procurement File.

13) Notice of Award

After all pre-award approvals have been obtained, a contract award will be made to the successful vendor. The Division Manager, or designee, shall prepare a "Notice of Award" letter for the Executive Director's signature. This letter shall notify the contractor that it is the successful vendor and shall request submission of any post-award documentation required by the RFP documents or by legal counsel (e.g., insurance certificates, bonds, etc).

14) Notice to Proceed

Bonds and insurance certificates received from the contractor shall be reviewed to assure that the contents comply with DANC requirements. To make this assurance, it is useful to seek the assistance of DANC's insurance consultant and legal counsel, where appropriate. Such Certificates of Insurance and/or bonds must be placed in the Procurement File.

The Division Manager, or designee, will issue a "Notice to Proceed" to the successful vendor. The "Notice to Proceed" makes reference to all the terms and conditions in the bid documents which now represent the subject contract. The "Notice to Proceed" executes the contract.

15) Notify Unsuccessful Vendors

The Division Manager, or designee, shall notify unsuccessful vendors promptly in writing. Upon request, an unsuccessful vendor shall be provided a debriefing as to why his/her proposal was unsuccessful; this debriefing shall occur as soon as possible after selection of the successful vendor, and must be limited solely to the evaluation results as they apply to the requesting vendor's proposal.

3.3 Procurement by Non-Competitive Negotiation **(Sole Source/Single Source/Emergency)**

A Sole Source procurement is one in which only one vendor can supply the commodities, technology and/or perform the services required by an agency. Procurement by this method must be documented in the Procurement Record by an explanation of: (i) the unique nature of the requirement; (ii) the basis upon which it was determined that there is only one known vendor able to meet the need, i.e., the steps taken to identify potential competitors; and (iii) the basis upon which the agency determined the cost to be reasonable, i.e., a "fair market price" that could be anticipated had normal competitive conditions existed, and how that conclusion was reached. (Examples of such a determination may include a comparison to product catalogs, published price lists, retail market surveys, records of previous similar purchases, consulting other purchasing officials, or using professional experience). All such documentation is required in order to review the proposed contract.

A Single Source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by an agency, but the State agency selects one vendor over the others for reasons such as expertise or previous experience with similar contracts. Circumstances leading an agency to select this method of procurement may include, for example, an agency's need for a specific consultant firm where a number of firms are available to perform the work. In such a case, the agency can demonstrate a

rational basis for selecting a single vendor because of specific factors such as past experience with a particular issue, familiarity with specific agency operations, experience with similar projects at other agencies or at other levels of government, demonstrated expertise, or capacity and willingness to respond to the situation.

In a Single Source procurement, the agency must document in the Procurement Record: (i) the circumstances leading to the selection of the vendor, including the alternatives considered; (ii) its rationale for selecting the specific vendor; and (iii) the basis upon which it determined the cost was reasonable, as in the case of a Sole Source procurement, and how that conclusion was reached. All such documentation is required in order to review the proposed contract.

Emergency Situations

An Emergency is considered an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk. **An agency's failure to properly plan in advance which then results in a situation in which normal practices cannot be followed does not constitute an emergency.**

Where an emergency exists, an agency may let procurement contracts without complying with formal competitive bidding requirements. Under such conditions, a waiver of the competitive bidding requirements must be approved by the agency head or a designee.

Under such conditions, the agency shall document in the Procurement Record each transaction entered into as a result of the emergency situation, setting forth the nature of the emergency situation; the potential effect on the health, public safety, or the conservation of public resources; and a detailed description of the commodities, services and technology to be provided. The agency shall make all reasonable attempts to solicit at least three oral competitive bids and written confirmation of each solicitation shall be furnished within a reasonable time and maintained as an official record. Contracts entered into as a result of the emergency situation shall be for only the commodities, technology and/or services necessary to remedy or ameliorate the situation.

Section 4: PURCHASE CARD POLICY AND PROCEDURE

4.0 Policy and Procedure

The Development Authority of the North Country Purchase Card Program is designed to facilitate the purchase of selected goods and materials and increase efficiency in the processing of those purchases. As further qualified below, the Purchase Card can be used for purchases of non-restricted commodities from any merchant that accepts VISA as a form of payment.

OBJECTIVES –

- Provide users with an efficient means to address their ordering needs.
- Eliminate redundant and/or “no value added” processes.
- Improve the level of service provided to departmental users.
- Provide a simple, on-line means to record and distribute department purchases.

EMPLOYEES AUTHORIZED TO USE PURCHASE CARDS –

Some employees, who have been authorized to purchase goods or services on behalf of the Executive Director, will be authorized to use Purchase Cards.

Employees who are so authorized will be issued a JP Morgan Chase, Visa Purchasing Card. The card will identify the eligible employee, by name, and indicate that the card is issued by a Tax-Exempt NYS Government Agency. The cards do not identify the Development Authority of the North Country.

Use of the Purchase Card by employees other than the authorized cardholder is strictly prohibited. Violation of this practice may result in the revocation of the card and other disciplinary action as appropriate, up to and including termination and/or criminal prosecution.

All employees authorized to use Purchase Cards will be required to sign a receipt which details the conditions for use (attached).

No Purchase Cards will be issued to probationary employees.

TYPES OF VENDORS –

The Development Authority Purchase Card will be used primarily with Vendors who charge each purchase individually; i.e., Vendors from whom one-time and/or infrequent purchases are made. Vendors with whom the Authority does business on a regular basis will be asked to establish customer accounts with per order invoices, without use of Purchase Cards. It is the Authority’s intent to limit use of Purchase Cards to the greatest extent possible.

UTILIZING THE CARD FOR PURCHASE –

- An approved Requisition is required prior to purchase.
- Place the order for the required items.
- No split purchases will be allowed.
- Inform/Remind the vendor of the tax-exempt status of the Authority.
- Confirm the dollar amount of the order.
- Provide the vendor with the Purchase Card Account Number and Expiration Date if ordering by Telephone or Fax. Present the Purchase Card to the vendor if in person.
- Obtain an Order Number (if by Telephone or Fax) or take delivery of the items (if in person).
- Record the Purchase Card Transaction on the Daily Log Sheet.
- Requisition Form is attached to the log sheet.
- Log Sheet is entered in the Voucher and Adjustments screen in Solomon Accounts Payable.
- Voucher Batch for Log Sheet is approved in AP Batch Control Excel worksheet.
- Statement is reconciled to the purchase amount on the credit card statement.
- Reconciliation is approved by a Manager.
- Approved reconciliation is returned and attached to the statement.
- The statement with attached reconciliation is forwarded to purchasing.
- The PO is created to equal the statement amount and approved by Division Manager.
- Approved PO is returned and attached to reconciled statement.
- The Requisition Forms will still be attached to the Log Sheets and not filed with the statement/PO since the date of purchase may not be in the same month as the date billed by the credit card company.

DAILY LOG SHEET –

Each employee responsible for a Purchase Card will maintain a daily log of the purchases made (see attached). Purchase card transactions should be entered on the Daily Log Sheet as of the date the purchase is made.

MONTHLY PURCHASE CARD RECONCILIATION –

The appropriate Division Manager will designate an employee responsible for monthly reconciliation of the Credit Card statement to the Daily Log Sheet, which shall not be the cardholder (see attached Daily Log Sheet and Reconciliation Schedule).

MONTHLY PURCHASE CARD RECONCILIATION AUDIT –

The will complete a monthly audit of all Daily Log Sheets, Monthly Reconciliations and Credit Card Statements to ensure adherence to the Purchase Card Policy.

MANAGER APPROVAL –

The Daily Log Sheets, reconciliations, and relevant portions of the Purchase Card Statement will be authorized and approved (See attached Authorization/Approval Schedule).

ACCOUNTING INPUT –

The Daily Log Sheet and approved Purchase Card Reconciliation form will be utilized as accounting input data. All transactions will be entered to JP Morgan Chase. It is the responsibility of the cardholder to properly describe, code, and distribute the purchase to the appropriate line item. (See attached Vouchering Schedule).

VENDOR FILES –

Use of the Purchase Card does not affect the method of invoice filing.

RESTRICTED PURCHASES –

The Purchase Card **CANNOT** be used as payment for the following items:

- Alcoholic Beverages
- Cash Advances
- DEA Controlled and/or Illegal Substances
- Personal Expenses

USE OF THE PURCHASE CARD FOR SUCH PURPOSES WILL RESULT IN REVOKING OF PRIVILEGES AND MAY INCLUDE APPROPRIATE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION OF EMPLOYMENT AND CRIMINAL PROSECUTION.

All Purchase Cards have various restrictions as to the category of merchant. Certain types of merchants are unable to accept the card for payment. These restrictions are reviewed on an annual basis and may be amended from time to time with approval of the Comptroller.

MASTER ACCOUNT CHANGES –

The following are authorized to act on behalf of the Authority to modify the master account:

- Executive Director
- Comptroller
- Staff Accountant

All changes to the Master Account must be requested through one of these persons and approved by the Comptroller.

ANNUAL REVIEW –

The Purchase Card Policy and Procedure will be reviewed on an annual basis for accuracy and amended as appropriate by the Comptroller.

The Purchase Card Limits will be reviewed on an annual basis for accuracy and amended as appropriate by the Comptroller. (see attached Purchase Card Limit Schedule).

The number of Purchase Cards issued will be reviewed on an annual basis for accuracy and amended as appropriate by the Comptroller.

The Merchant Category Code (MCC) will be reviewed on an annual basis for accuracy and amended as appropriate by the Comptroller.

Development Authority of the North Country

Purchase Card Policy and Procedure

Certain employees of the Development Authority of the North Country are issued Purchase Cards in order to more efficiently carry out their assigned job duties. Use of the Purchase Card is subject to change upon the order of Authority management.

Use of Authority Purchase Cards is strictly limited to the Authority's Purchase Card Policy and Procedure. The undersigned acknowledges receipt of a copy of such policy. Further, the employee acknowledges that _____ (name of manager) has reviewed the Purchase Card Policy and Procedure in detail with the undersigned.

Violation of the Purchase Card Policy and Procedure may result in revocation of the card and other disciplinary action as appropriate, up to and including termination and/or criminal prosecution.

The undersigned acknowledges the above statements:

Employee

Manager

Date

Date

Transaction Limits:

Per Transaction: \$ _____

Per Day: \$ _____

Card Limit \$ _____

4.1 PURCHASE CARD RECONCILIATION

Cardholder: _____

Completed By: _____

Date: _____

Approved By: _____

Date: _____

Total Purchase per Statement: _____

Prior Period Charges Cleared: + _____

Adjusted Purchases per Statement: =====

Total of Daily Log Sheets: _____

Outstanding Charges (Below):

Other Corrections:

_____	_____	
_____	_____	
_____	=====	
_____	_____	
_____	_____	- _____

Adjusted Daily Log Sheets Total: =====

Unrecorded Charges Detail:

_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	_____

4.3 PURCHASE CARD LIMIT SCHEDULE

SEWER & WATER

<u>Employees</u>	<u>Purchase Card Limits</u>
Carrie Tuttle	\$10,000
Sharon Fitzpatrick	\$10,000
Dan Merrill	\$10,000
Greg Ingerson	\$5,000
Norman Jones	\$5,000
Steve Marshall	\$5,000
Neil O'Dell	\$5,000
Shawn Rowe	\$5,000
John McCauley	\$5,000
John Duvall	\$5,000

SOLID WASTE

<u>Employees</u>	<u>Purchase Card Limits</u>
Jan Oatman	\$25,000
Valerie Deon (after probationary period)	\$25,000
Ben Millard	\$15,000
Bill Seifried	\$5,000

OPEN ACCESS TELECOM NETWORK

<u>Employees</u>	<u>Purchase Card Limits</u>
Bob Durantini	\$15,000

ADMINISTRATION

	<u>Purchase Card Limits</u>
Mary Chereshnoski	\$15,000
JoAnne Yaddow	\$15,000

4.4 RECONCILIATION SCHEDULE

SEWER & WATER

Sharon Fitzpatrick will reconcile the following accounts:

Carrie Tuttle
Greg Ingerson
Norman Jones
Steve Marshall
Neil O'Dell
Shawn Rowe
John McCauley
John Duvall
Dan Merrill

Greg Ingerson will reconcile the following accounts:

Sharon Fitzpatrick

SOLID WASTE

Jan Oatman will reconcile the following accounts:

Bill Seifried
Valerie Deon (after probationary period)

Valerie Deon will reconcile the following accounts:

Jan Oatman
Ben Millard

OPEN ACCESS TELECOM NETWORK

Mary Chereshnoski will reconcile the following accounts:

Bob Durantini

ADMINISTRATION

Mary Chereshnoski will reconcile the following accounts:

JoAnne Yaddow

Dru Escudero will reconcile the following accounts:

Mary Chereshnoski

4.5 AUTHORIZATION/APPROVAL SCHEDULE

SEWER & WATER

Bryon Perry will approve the following Log Sheets & Reconciliations:

Carrie Tuttle
Sharon Fitzpatrick
Greg Ingerson
Norman Jones
Steve Marshall
Neil O'Dell
Shawn Rowe
John McCauley
John Duvall
Dan Merrill

SOLID WASTE

Bill Seifried will approve the following Log Sheets & Reconciliations:

Jan Oatman
Valerie Deon (after probationary period)
Ben Millard

Carl Farone will approve the following Log Sheets & Reconciliations:

Bill Seifried

OPEN ACCESS TELECOM NETWORK

Carl Farone will approve the following Log Sheets & Reconciliations:

Bob Durantini

ADMINISTRATION

Carl Farone will approve the following Log Sheets & Reconciliations:

Mary Chereshnoski
JoAnne Yaddow

4.6 VOUCHERING SCHEDULE

SEWER & WATER

Sharon Fitzpatrick will voucher/batch the following accounts:

Carrie Tuttle
Sharon Fitzpatrick
Greg Ingerson
Norman Jones
Steve Marshall
Neil O'Dell
Shawn Rowe
John McCauley
John Duvall
Dan Merrill

SOLID WASTE

Valerie Deon will voucher/batch the following accounts:

Valerie Deon (after probationary period)
Ben Millard

Jan Oatman will voucher/batch the following accounts:

Bill Seifried
Jan Oatman

OPEN ACCESS TELECOM NETWORK

Mary Chereshnoski will voucher/batch the following accounts:

Bob Durantini

ADMINISTRATION

Mary Chereshnoski will voucher/batch the following accounts:

Mary Chereshnoski

JoAnne Yaddow will voucher/batch the following accounts:

JoAnne Yaddow

SECTION 5: CONTRACT ADMINISTRATION

5.0 Contract Administrator Responsibilities

The Contract Administrator is responsible for ensuring that all contract documents are executed in accordance with Federal and State requirements and a copy of the contract documents are retained by the Development Authority for audit purposes.

The Contract Administrator is responsible for determining which documents are required for each contract and for ensuring that all documents are executed in accordance with Development Authority protocol.

5.1 Non-Collusion Certification

All contracts for services over \$15,000 require that the bidder complete a non-collusion certification. The Development Authority would like a non-collusion certification on all bids regardless of dollar amount when possible. A sample Non-Collusion Certification form is included as *Form 3*.

5.2 Executive Order 127

New York State Executive Order Number 127 (EO127) provides for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions. New York State Executive Order 127 Section II, Paragraph 7 requires that every procurement contract subject to its provisions contain a certification that all information provided to the soliciting agency or authority regarding EO 127 is complete, true and accurate. The Executive Order 127 Certification form is included as *Form 4*.

5.3 New York State Tax Certification Requirement

All contracts that are over \$30,001 require completion of a Contractor Certification Batch Sheet (*Attachment F*) and submittal of a completed ST-220 Contractor Certification form **if** the contractor has made more than \$300,000 in sales of tangible personal property or taxable services within New York State in the prior year, unless the services are required to address an emergency that could impact public health, safety and welfare.

The steps in completing the process are detailed below:

1. Request contractor to complete form ST-220. This form is available through the NYS Department of Taxation. If contractor believes that he is not required to submit the form, then he should be requested to provide written certification as to why he does not have to complete the form. The Authority will forward the certification to our attorney for review with the complete contract documents.
2. Once completed, review Page 1 to ensure that all header information is completed. Any missing information will result in the form being considered invalid.

3. Confirm the date, signature and title on Page 3 are completed. Incomplete documents will be returned.
4. Confirm that the schedule has been properly completed, if included in submittal.
5. Complete Contractor Certification Batch Sheet (CCBS). One certification is required for each contract by a separate vendor. If you are submitting one certification, then enter "1" on the number of certifications line and enter "1" on the batch number line.
6. Photocopy original certification and Contractor Certification Batch Sheet and submit both to the address on the CCBS form.
7. Retain original copies of the certification with contract documents.

5.4 Monitoring Contractor Progress

The DANC Contract Administrators shall establish frequent and direct communications with the Contractor. For complex projects and/or projects which require more extensive periods of time to complete, DANC may establish regular progress meetings with the Contractor; such meetings will assist in identifying and correcting problems as they arise.

If a cost reimbursement or progress payment form of contract is used, the Contract Administrator shall monitor progress to ensure that the maximum allowable contract amount is not exceeded and that funds are not paid to the contractor in an amount greater than either the percentage of work completed or actual costs incurred.

DANC may require two types of reports from contractors, both of which will be reviewed by the Contract Administrator:

- Cost Control
- Monthly progress report. This report should contain the status of the contractors work and any problems or delays perceived by the contractor to completing the project on schedule and/or within budget.

5.5 Terminating a Contract

- Termination for Convenience. Each contract shall contain a provision which provides for termination of the contract for the convenience of DANC, as determined in its sole discretion. In such event, the Contract Administrator shall notify Contractor, in the manner provided in the contract, of the date of termination, and, if different, the date by which all work under the contract shall cease. The contract shall be terminated on the date so noticed. Contractor shall be compensated under the terms of the agreement for work performed, and authorized materials provided prior to the date of termination.
- Termination for Non-Appropriation. Each annualized or renewable contract, and all contracts containing provisions for automatic renewal, shall contain a provision providing for termination in the event that funds, therefore, are not appropriated by the governing body of DANC for an ensuing fiscal year. Immediately upon the approval of an annual

budget by such governing body, which does not include an appropriation for a contract, the Contract Administrator shall immediately notify the Contractor in accordance with the contract terms, of the termination of said contract for non-appropriation, effective at the end of the fiscal year for which appropriations yet remain.

- Termination for Default/Cause. In the event that DANC determines that Contractor has breached the Contract, has substantially defaulted in the performance of any terms of the contract, or that there exists cause for termination due to the actions of the Contractor, legal counsel for DANC shall immediately be notified of the facts of the matter.

In the manner provided by the Contract, the Contractor shall be immediately notified: (a) of the circumstances of the breach, (b) of any steps required to cure said breach, (c) of the time deadline for completion of said cure, and, (d) of any other notifications as may be required by the Contract terms. All notices to third parties providing security under the Contract shall be made in a timely manner as required by the terms of the Contract or the security documents. In the event that DANC determines the contract must be terminated for reasons of Contractor default or cause, and such termination is not readily obtainable with the consent of the Contractor, DANC shall proceed to protect its interests by appropriate available legal remedies. Referral to legal counsel for action shall be made by the Executive Director.

5.6 Contract Closeout

When the contracted services have been adequately performed and all invoices have been paid under the contract, the contract will be closed out. Site Managers should submit a completed Contract Closeout Memorandum to the Division Manager. The Division Manager will change the status of the contract to “closed”.

APPENDICES

AUTHORIZED SIGNATORY

ADMINISTRATION

Kevin J. Jordan (Up to \$7,500)
Carl E. Farone (Up to \$7,500)
James W. Wright (\$7,501 and above)

SOLID WASTE MANAGEMENT FACILITY

E. William Seifried (Up to \$7,500)
James W. Wright (\$7,501 and above)

OATN

Robert J. Durantini (Up to \$7,500)
Thomas R. Sauter (Up to \$30,000)
James W. Wright (\$30,001 and above)

WATER/SEWER

Bryon Perry (Up to \$7,500)
Thomas R. Sauter (Up to \$30,000)
James W. Wright (\$30,001 and above)

Administration (Effective 4/1/09)

PURCHASING APPROVALS

	<u>Up to \$7,500</u>	<u>\$7,501 and Above</u>
Purchase Requisitions (as an approving document)	Director of Project Development Comptroller	Executive Director
Purchase Orders (Regular) with approved Requisition	Director of Project Development Comptroller Executive Assistant Office Assistant	Director of Project Development Comptroller
Blanket Purchase Orders (approving document)	Director of Project Development Comptroller	Executive Director
Requisitions for Invoices covered under Blanket Purchase Orders	Director of Project Development Comptroller Executive Assistant Office Assistant	Director of Project Development Comptroller
Checklists	Director of Project Development Comptroller	Executive Director

Solid Waste Management Facility (Effective 4/1/09)

PURCHASING APPROVALS

	<u>Up to \$7,500</u>	<u>\$7,501 and Above</u>
Purchase Requisitions (as an approving document)	General Manager Maintenance Supervisor Operations Supervisor Environmental Coordinator	Deputy Executive Director
Purchase Orders (Regular) with approved Requisition	Executive Assistant Customer Service Coordinator	Executive Assistant Customer Service Coordinator
Blanket Purchase Orders (approving document)	General Manager Maintenance Supervisor Operations Supervisor Environmental Coordinator	Deputy Executive Director
Purchase Orders for Invoices covered under Blanket Purchase Orders	General Manager Maintenance Supervisor Operations Supervisor Environmental Coordinator Executive Assistant Customer Service Coordinator	General Manager Maintenance Supervisor Operations Supervisor Environmental Coordinator
Checklists	General Manager Maintenance Supervisor Operations Supervisor Environmental Coordinator	Deputy Executive Director

\$30,001 and Above – Executive Director to approve

Open Access Telecom Network (Effective 4/1/09)

PURCHASING APPROVALS

	<u>Up to \$7,500</u>	<u>\$7,501 to \$30,000</u>
Purchase Requisitions (as an approving document)	General Manager Deputy Executive Director Telecom Services Manager Telecom Transmission Engineer (T. Field)	Deputy Executive Director
Purchase Orders (Regular) with approved Requisition	General Manager Telecom Services Manager Comptroller Telecom Transmission Engineers (T. Field and M. Borte) Telecom Network Engineer Executive Assistant Office Assistant	General Manager Telecom Services Manager
Blanket Purchase Orders (approving document)	Deputy Executive Director General Manager Telecom Services Manager	Deputy Executive Director
Requisitions for Invoices covered under Blanket Purchase Orders	General Manager Telecom Services Manager Comptroller Executive Assistant Office Assistant	General Manager Telecom Services Manager Comptroller
Checklists	Deputy Executive Director	Deputy Executive Director

\$30,001 and Above – Executive Director to approve

Water/Wastewater Facilities (Effective 4/1/09)

PURCHASING APPROVALS

	<u>Up to \$7,500</u>	<u>\$7,501 to \$30,000</u>
Purchase Requisitions (as an approving document)	Deputy Executive Director General Manager	Deputy Executive Director
Purchase Orders (Regular) with approved Requisition	General Manager Engineer Lead Operator Office Manager	General Manager
Blanket Purchase Orders (approving document)	Deputy Executive Director General Manager	Deputy Executive Director
Purchase Orders for Invoices covered under Blanket Purchase Orders	General Manager Engineer Lead Operator Office Manager	General Manager
Checklists	Deputy Executive Director	Deputy Executive Director

\$30,001 and Above – Executive Director to approve

DOCUMENTATION CHECKLIST – Purchases \$7,501 to \$30,000

Vendor
 Name: _____
 Req. #: _____
 Date: _____
 Description: _____

Procurement Method:

	YES	N/A
1. OGS	<input type="checkbox"/>	<input type="checkbox"/>
2. Three Quotes Received	<input type="checkbox"/>	<input type="checkbox"/>
3. Single Source (Justification Attached)	<input type="checkbox"/>	<input type="checkbox"/>
4. Sole Source (Justification Attached)	<input type="checkbox"/>	<input type="checkbox"/>
5. Purchase Requisition	<input type="checkbox"/>	<input type="checkbox"/>
6. Copies of Quotes Received via Fax, Phone, Email	<input type="checkbox"/>	<input type="checkbox"/>
7. Purchase Order	<input type="checkbox"/>	<input type="checkbox"/>
8. Statement and/or Description of Method used to Determine Bidders Price is Fair and Reasonable	<input type="checkbox"/>	<input type="checkbox"/>

Prepared By: _____ Account Manager: _____

Signed:

 Division Manager

 Senior Manager

 Date

 Date

DOCUMENTATION CHECKLIST - Purchases \$30,001 and Over

Vendor Name: _____
 PO No. _____
 Date: _____
 Description: _____

		YES	N/A
1	OGS	<input type="checkbox"/>	<input type="checkbox"/>
2	Competitive Bidding	<input type="checkbox"/>	<input type="checkbox"/>
3	Single Source (Justification Attached)	<input type="checkbox"/>	<input type="checkbox"/>
4	Sole Source (Justification Attached)	<input type="checkbox"/>	<input type="checkbox"/>
5	Memo Explaining Rationale for Method of Procurement	<input type="checkbox"/>	<input type="checkbox"/>
6	Independent Cost Estimates	<input type="checkbox"/>	<input type="checkbox"/>
7	Copy of Solicitation Package, all addenda/amendments	<input type="checkbox"/>	<input type="checkbox"/>
8	Copies of Published Notices of Proposed Contract Action	<input type="checkbox"/>	<input type="checkbox"/>
9	Names, Addresses, Phone Numbers, and Email addresses of Vendors Solicited	<input type="checkbox"/>	<input type="checkbox"/>
10	Names, Addresses, Phone Numbers and Email Addresses of Vendors requesting Bid Information	<input type="checkbox"/>	<input type="checkbox"/>
11	Bidders' Packet	<input type="checkbox"/>	<input type="checkbox"/>
12	Certified Bid Tabulation Sheet/Bid Procurement Checklist	<input type="checkbox"/>	<input type="checkbox"/>
13	Evaluations of Submitted Bids; Determination of Responsiveness	<input type="checkbox"/>	<input type="checkbox"/>
14	Evaluations of Proposals and Selections of Firms for Negotiations and Awards	<input type="checkbox"/>	<input type="checkbox"/>
15	Summary Record of Negotiations(if Appropriate); Determination that Price is Fair and Reasonable	<input type="checkbox"/>	<input type="checkbox"/>

DOCUMENTATION CHECKLIST - Purchases \$30,001 and Over– Page 2

		YES	N/A
16	DBE/MBE/WBE Consideration	<input type="checkbox"/>	<input type="checkbox"/>
17	Reasons for Contractor Selection or Rejection	<input type="checkbox"/>	<input type="checkbox"/>
18	Copies of Notice to Unsuccessful Bidders	<input type="checkbox"/>	<input type="checkbox"/>
19	Records of Protest	<input type="checkbox"/>	<input type="checkbox"/>
20	Bid, Performance, Payment or Bond Documents and Notices of Sureties	<input type="checkbox"/>	<input type="checkbox"/>
21	Required Insurance Certificates or Bond Documents, if any	<input type="checkbox"/>	<input type="checkbox"/>
22	Adopted Board Resolution Authorizing the Award/Contract, if Applicable	<input type="checkbox"/>	<input type="checkbox"/>
23	Notice of Award to Successful Bidder	<input type="checkbox"/>	<input type="checkbox"/>
24	Purchase Requisition	<input type="checkbox"/>	<input type="checkbox"/>
25	Purchase Order and Copy of Notice to Proceed	<input type="checkbox"/>	<input type="checkbox"/>
26	Original, Executed Contract with Required Forms attached	<input type="checkbox"/>	<input type="checkbox"/>
27	Correspondence and Data in Support of Relevant Contractual Actions	<input type="checkbox"/>	<input type="checkbox"/>

Prepared By: _____

Account Manager: _____

Signed: _____

Division Manager

Senior Manager

Date

Date

FORM 1 – BIDDER’S CHECKLIST

- 1) Price Bid Form, Form 2
- 2) Non-Collusive Bidding Certificate, Form 3
- 3) Certification Pursuant to Executive Order 127, Form 4
- 4) Bid Security, Bid Bond at Form 5
- 5) Proof of Insurance, Form 6
- 6) Statement of Qualifications
- 7) Three current client references
- 8) Safety Requirements:
 - Certification of employee safety training
- 9) NYS Form ST-220. (Form can be downloaded from the following Internet address.
<http://www.agmkt.state.ny.us/rfps/VPS7.pdf>)

FORM 2 – PRICE BID FORM

TO THE DEVELOPMENT AUTHORITY OF THE NORTH COUNTRY (DANC):

The signer of this Bid declares that he or she is fully authorized to submit this bid and thereby bind the person, persons, company, parties or entity named in this Bid, and on whose behalf this Bid is submitted; that the Bid is in all respects accurate, complete and without known mistakes; and that he or she has carefully examined the annexed form of Contract and Contract Documents.

If written notice of the acceptance of this Bid is mailed, telefaxed or delivered to the undersigned within thirty (30) days after the date of review of the Bid, or any time thereafter before this Bid is withdrawn, the undersigned will, within five (5) days after the date of such mailing, telefaxing, or delivering of such notice, sign and execute the Contract and return it to the Development Authority of the North Country.

Pursuant to and in compliance with your Advertisement for Invitation for Bid and the IFB Information Packet relating thereto, the undersigned hereby offers to furnish all labor, materials, supplies, equipment, services and other things required, necessary or proper for, or incidental to the completion of the items identified in the solicitation for bids, and specifically the delivery of chemicals to the facilities listed in Table 1 for the unit prices specified below.

Company Name: _____

Address: _____

Federal Identification No: _____

Area Code/ Telephone No: _____

Area Code/Fax Number: _____

E-mail Address: _____

Web Site: _____

Authorized Signature: _____

Date: _____

Typewritten Name: _____

Title: _____

FORM 3 - NON-COLLUSIVE BIDDING CERTIFICATE

- (a) By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint Bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
 - 1. The prices in this Bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
 - 2. Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
 - 3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a Bid for the purpose of restricting competition.

- (b) A Bid shall not be considered for award nor shall any award be made where (a) 1., 2., and 3., above have not been complied with; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the Bid a signed statement which sets forth in detail the reasons therefore. Where (a) 1., 2., and 3., above have not been complied with the Bid shall not be considered for award nor shall any award to be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the Bid is made, or his designee determines that such disclosure was not made for the purpose of restricting competition.

- (c) The fact that a Bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being Bid, does not constitute, without more, a disclosure within the meaning of paragraph (a) of this certification.

- (d) Any Bid hereafter made to any political subdivision of the State or any public department, agency or official thereof by a corporate Bidder for work or services performed or to be performed or goods sold or to be sold, where competitive Bid is required by statute, rule, regulation, or local law, and where such Bid contains the certification referred to in subdivision one of the section, shall be deemed to have been authorized by the board of directors of the Bid, and such authorization shall be deemed to include the signing and submission of the Bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

Company Name: _____

By: _____

Title: _____

FORM 4 - CERTIFICATION PURSUANT TO EXECUTIVE ORDER NO. 127

The following persons or organizations are or will be retained, employed or designated on behalf of the Bidder to attempt to influence this procurement process, involving an interest in the Authority’s real property, with their financial interest noted:

(If no people are or will be retained, employed or designated on behalf of the Bidder as described above, then check this box and sign the form below.

Name, Address and Phone Number	Place of Principal Employment	Occupation	Financial Interest (Yes or No)
1)			
2)			
3)			
4)			
5)			
6)			

The Bidder shall notify the Authority, in advance, of additions to this list. The Bidder has not, within the past five (5) years, received a finding of non-responsibility by any State agency due to intentionally providing false or incomplete information with respect to Executive Order No. 127.

Certification - The Bidder certifies that all information provided under Executive Order No. 127 is complete, true and accurate.

Bidder Signature

BID TABULATION FORM

Bidder	Date Bid Received	Signature - Non-Collusive Statement	Exec Order 127	Bid Bond	Bid Worksheet	Price	DBE/MBE/WBE

STANDARD CLAUSES FOR ALL AUTHORITY CONTRACTS

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17. Prohibition on Purchase of Tropical Hardwoods
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19. Omnibus Procurement Act of 1992
20. Reciprocity and Sanctions Provisions
21. Clauses Required by Law

The parties to the attached contract or other agreement (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, vendor or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the Authority shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void. The Contractor may, however, assign its right to receive payment without the Authority's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. WORKERS' COMPENSATION BENEFITS. 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.
4. NON-DISCRIMINATION REQUIREMENTS. In accordance with 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, age, disability 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.
5. 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.
6. 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 warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on Contractor's behalf.

7. 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 Authority of the Authority within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

8. SET-OFF RIGHTS. The Authority shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Authority '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 Authority with regard to this contract, any other contract with the Authority, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority for any other reason including, without limitation, fee delinquencies or monetary penalties relative thereto. The Authority shall exercise its set-off rights in accordance with normal Authority 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.

9. 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 Authority, 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 Authority 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 Authority 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 Authority's right to discovery in any pending or future litigation.

10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

(b) PRIVACY NOTIFICATION.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Authority is mandatory. The principal purpose for which the information is collected is to enable the Authority 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 Authority 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 Authority in order 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 Authority's accounting system, and may be maintained in the New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$30,001.00, 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 Authority; or (ii) a written agreement in excess of \$100,000.00 whereby the Authority 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 Authority, as owner of a State assisted housing project, is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, 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 Authority 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 \$30,001.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The Authority 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 Authority shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

12. 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.

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

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

15. 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 sitting in Jefferson County.

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

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

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 Authority; 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 Authority.

18. 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.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St. -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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

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

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million: (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the Authority and/or 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

20. 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 October 20, 2000, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Montana, Wyoming, Louisiana and Hawaii and the Canadian provinces of Ontario and Quebec. Contact the NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

21. CLAUSES REQUIRED BY LAW. Legal Requirements. Clauses required by law to be inserted in this document shall be deemed to be incorporated here and the document shall be read and enforced as though they were included herein and if through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party, the contract shall forthwith be physically amended to make such insertion.

TERMS & CONDITIONS

1. **CONTRACT CREATION / EXECUTION** Except for contracts governed by Article 11-B of the *State Finance Law*, upon receipt of all required approvals a Contract shall be deemed executed and created upon the Authority's mailing or electronic communication to the address on the bid of: i) a Letter of Acceptance; ii) a fully executed Contract; or iii) a Purchase Order authorized by the Authority.
2. **MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract govern all transactions under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Authority and Contractor. Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to Product upon delivery (e.g., attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying or affixed to Product) or by incorporating such terms onto Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Acceptance of Product or processing of such documentation on forms furnished by the Contractor for approval or payment does not constitute acceptance of the proposed modification to terms and conditions.
3. **SCOPE CHANGES** The Authority reserves the right, unilaterally, to require, by written order, changes altering, adding to or deducting from the Contract specifications, such changes to be within the general scope of the Contract. The Authority 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.
4. **ESTIMATED / SPECIFIC QUANTITY CONTRACTS** - Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed. With respect to any specific quantity stated in the Contract, the Authority reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Authority may purchase greater or lesser percentages of Contract quantities should the Authority and Contractor so agree. Such agreement may include an equitable price adjustment.
5. **BEST PRICING OFFER** - During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract vehicle upon the same or similar terms and conditions as that of this Contract at a lower price, the price under this Contract, at the discretion of the Authority, shall be immediately reduced to the lower price.
6. **PURCHASE ORDERS** - Unless otherwise authorized in writing by the Authority, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authority. Unless terminated or canceled pursuant to the authority vested in the Authority, 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 Authority must bear the appropriate contract number and, if necessary, all required approvals. Unless otherwise specified, all Purchase Orders shall be deemed to incorporate the terms and conditions set forth in this Contract by reference. 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 Authority.

The Purchase Order shall indicate the address for delivery of the Product. Authority shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. Contractor's order form shall, at a minimum, contain the product reference number, license type, price, and must separately itemize quantities for software, documentation, and services. The Authority reserves the right to require any other information from the Contractor which the Authority deems necessary in order to verify any Purchase Order placed under the Contract.

7. PRODUCT DELIVERY - Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise specified in the Bid Specifications, delivery shall be made within thirty calendar days after receipt of a purchase order by the Contractor. The decision of the Authority as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Authority or his designee, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of the time for delivery must be requested in writing by the Contractor and approved in writing by the Authority. Failure to meet such time schedule may, in the Authority's discretion, be grounds for cancellation of the order or the Contract.
8. WEEKEND AND HOLIDAY DELIVERIES - Unless otherwise specified in the Bid Specifications or by the Authority's designated representative, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product for daily consumption or where an emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authority shall govern.
9. SHIPPING / RECEIPT OF PRODUCT
 - a. Packaging Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases or other types of containers. The container shall become and remain the property of the receiving entity.
 - b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB destination to the delivery address specified on the Purchase Order. Even where the specifications permit Product to be purchased at a price FOB shipping point plus transportation charges, it is understood not to relieve the Contractor from responsibility for safe and proper delivery. Contractor shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments.
 - c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authority. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

10. RISK OF LOSS Notwithstanding the form of shipment, risk of loss shall not pass from the Contractor to the Authority until the Products have been received, inspected and accepted by the personnel authorized to accept delivery on behalf of the Authority. Acceptance shall occur within the acceptance period specified in this Appendix, or such other period of time mutually agreed to by Authority and Contractor. Mere acknowledgment by Authority 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. Any delivery of Product which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Authority.
11. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause below) a Product deemed by the Authority to be equal to or better than that specified must be substituted by the Contractor at no additional cost or expense to the Authority, subject to the Contractor's approval, which shall not unreasonably be withheld. Unless otherwise specified, any substitution of Product prior to the Authority's approval may be cause for cancellation of Contract.
12. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the receiving entity within ten calendar days of notification of rejection by Authority. Upon rejection notification, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authority shall have the right to dispose of the items as its own property. The Contractor shall promptly reimburse the Authority for any and all costs and expenses incurred in storage or effecting removal or disposition.
13. INSTALLATION Where installation is required, Bidder shall be responsible for placing and installing the equipment in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or replace the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site to its original condition. Work shall be performed so as to cause the least inconvenience to the Authority 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.
14. REPAIRED OR REPLACED PARTS / COMPONENTS Where the Contractor is required to repair, replace or substitute parts components under the Contract, the repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. Replaced or repaired components or parts shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new product standards may be permitted by the Authority. All proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authority before installation. The part or component shall be equal to or of better quality than the original part or component being replaced.
15. ON-SITE STORAGE Materials, equipment or supplies may be stored at the Authority's site at the Contractor's sole risk and only with the approval of the Authority.

16. EMPLOYEES / SUBCONTRACTORS / AGENTS All employees, subcontractors or agents performing work under the Contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Bid Specifications or the Bid, whichever is better, and must comply with all security and administrative requirements of the Authority. The Authority reserves the right to conduct a security background check or otherwise approve any employee or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with Authority'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 Authority reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

17. ASSIGNMENT / SUBCONTRACTORS Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract, other than the assignment of the right to receive money due, without the prior written consent of the Authority. Prior to an assignment of the right to receive money becoming effective, Contractor shall file a written notice of such assignment with the Authority.

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

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

19. SUSPENSION OF WORK The Authority, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authority. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on Authority spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any purchase orders, and shall comply with the suspension order. Activity may resume at such time as the Authority issues a formal written notice authorizing a resumption of work.

20. TERMINATION

- a. For Cause: The Contract or Purchase Order may be terminated by the Authority at the Contractor's expense where Contractor becomes unable or incapable of performing the work, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. In such event, the Authority may cause the work to be completed in any manner as it may deem advisable and pursue available legal or equitable remedies for breach.
- b. For Convenience: This Contract may be terminated at any time by the Authority for convenience upon sixty (60) days written notice without penalty or other early termination charges due. Such termination shall not affect the validity of Purchase Orders placed prior to termination. Such termination of the Contract shall not affect any project or Purchase Order which has been issued under the Contract prior to the date of such termination.

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

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

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

22. CONTRACT BILLINGS Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to the Authority in order to receive payment. Billings for Agencies must contain all information required by the Authority. The Authority shall render payment for Authority purchases, and such payment shall be made in accordance with ordinary Authority procedures and practices. Payment of Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authority.

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

23. DEFAULT – BY THE AUTHORITY In the event Authority fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to the Authority and the Authority’s contact official, suspend additional shipments of Product or provision of services to Authority until such time as reasonable arrangements have been made and assurances given by such Authority for current and future Contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by Authority, by certified or registered mail, notify both the Authority and the Authority’s contact official, of the specific facts, circumstances and grounds upon which a breach will be declared for the purpose of allowing the Authority to cure the claimed breach. 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 the Authority and the Authority’s contact official, shall constitute a breach of its Contract and the Authority may thereafter utilize any remedy available at law or equity.

24. INTEREST ON LATE PAYMENTS

- a. By Authority - The payment of interest on certain payments due and owed by a State agency may be made in accordance with Article 11-A of the *State Finance Law* and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation).
- b. By Contractor - Should the Contractor be liable for any payments to the Authority hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the *State Finance Law*.

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

- a. Cover / Substitute Performance In the event of Contractor's material breach, the Authority may, with or without formally bidding same:
- i. Purchase from other sources; or
 - ii. If, after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Authority is unsuccessful, the Authority may acquire acceptable replacement product or service of lesser or greater quality.

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

- b. Withholding of Payment(s) 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 Authority. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.
- c. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authority promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authority 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 Authority may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authority promptly by the Contractor or deducted by the Authority from payments due or to become due the Contractor on the same or another transaction.

- d. Deduction / Credit. Sums due as a result of these remedies may be deducted or offset by the Authority 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 Authority the amount of such claim or portion of the claim still outstanding, on demand. The Authority reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.
- e. Fee Refund. In the event that a Purchase Order is cancelled for breach, Authority shall be entitled to a refund of any fees paid by Authority for usage or services prospectively from the date of breach.

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

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

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

28. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, distributors, resellers, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authority, 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 Authority with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

29. SECURITY / CONFIDENTIALITY. Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authority in performance of the Contract.

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

30. COOPERATION WITH THIRD PARTIES. The Contractor shall be responsible for fully cooperating with any third party, including but not limited to subcontractors of the Authority, relating to delivery of product or coordination of services.
31. CONTRACT TERM – RENEWAL. In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Authority may be extended by the Authority for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.
32. WARRANTIES & GUARANTEES. Where Contractor or Product manufacturer/developer generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authority. Contractor hereby warrants and represents:
- a. Product Performance Products delivered pursuant to this Contract conform to the specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.
 - b. Title and Ownership Warranty Full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of Authority perpetual license rights to use the Product for the purposes of this Bid or individual Purchase Order. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authority for any loss, damages or actions arising from a breach of said warranty without limitation. Authority may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. Authority’s request or failure to request such documentation shall not relieve Contractor of liability under this warranty.
 - c. Contractor Compliance To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Authority that it meets or exceeds all requirements of the bid/ Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman’s compensation, and shall provide such proof as required by the Authority. Failure to do so may constitute grounds for the Authority to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Authority.
 - d. Product Warranty Unless recycled or recovered materials are available in accordance with the “Recycled or Recovered Materials” clause, Product offered shall be standard new equipment, current model 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 one (1) year 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 Authority. 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 or a third party manufacturer markets any components or deliverables 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.

Where Contractor or a third party manufacturer markets any components or deliverables with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authority and pass through the manufacturer’s standard commercial warranty to Authority 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 periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the Authority shall in no event be liable or responsible therefore.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authority 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 Licensed Software shall contain no known viruses. Contractor is not responsible for viruses introduced at Licensee’s site.
- g. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- h. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

THE WARRANTIES SET FORTH IN THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Misuse, accident, unsuitable physical or operating environment, modification or operation inconsistent with standard industry practice, or failure caused by a product for which Contractor is not responsible may void the warranties.

33. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authority and the Contractor, Authority shall have sixty (60) days from the date of delivery to accept Product, unless the Contractor is responsible for installation, in which case the sixty day period shall run from completion of installation. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause constitutes acceptance by the Authority as of the expiration of that period. The License Term shall be extended by the time periods allowed for testing and acceptance.

Unless otherwise provided by mutual agreement of the Authority and the Contractor, Authority shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authority 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 Authority, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authority after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authority shall have the option to cancel the order in whole or in part, or to extend the testing period for another sixty (60) day increment. Authority 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 Authority for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authority's agents or employees. Said costs shall be limited to fees paid to Contractor, if any or any liability for costs incurred at the direction or recommendation of Contractor.

34. OWNERSHIP / TITLE TO PROJECT DELIVERABLES

- a. Title to Deliverables Contractor acknowledges that it is commissioned by the Authority to perform services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, ownership and/or license rights shall pass to Authority upon acceptance. Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authority the sole and exclusive rights, title and interest in Custom Product(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 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 project definition/work order in the course of Contractor's business.
- b. Where a scope of work does not involve COPS or other third party financing, the Authority may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authority taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business 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 Authority. The Authority shall make the sole determination of the acceptability of any financing proposal. The Authority 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, the Authority may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authority all of Lessor's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authority's prior rights to such Existing Licensed Product shall be revived.
 - d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation (COPS)). The Authority's sale or other transfer of Custom Products which were acquired by the Authority using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(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 Authority which complies with the terms of this paragraph.
35. ADDITIONAL PRODUCT. Authority may obtain additional Product authorized under this Contract, (e.g., licensed capacity upgrades, new releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this Contract. The Authority's election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.
36. PRODUCT VERSION. Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authority and Contractor is willing to provide such version.
37. INDEMINIFICATION & LIMITATION OF LIABILITY
- a. Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.
 - b. Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the Authority, its officers, employees agents and representatives 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 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 Authority.
 - c. Contractor will indemnify, defend and hold the Authority harmless, ***without limitation***, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the Authority in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the Authority shall give the 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. Where a dispute or claim arises relative to a real or anticipated infringement, the Authority may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Authority shall require.

- d. The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authority's unauthorized modification or alteration of a Product; ii) Authority's use of the Product in combination with other products not furnished by Contractor; iii) Authority's use in other than the specified operating conditions and environment.
 - e. In addition to the foregoing, if the use of any item(s) or part(s) thereof 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 as the Authority's exclusive remedy to take action in the following order of precedence: (i) to procure for the Authority the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the Authority up to the dollar amount of the Project Award.
 - f. For all other claims against the Contractor under any individual Purchase Order where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability under a Purchase Order **for direct damages shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.
 - g. The Authority may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.
38. AUDIT. The Development Authority, or its duly authorized agent, shall have access to and copies of the Contractor's records, including any books, computer tapes, disks or programs, or material pertaining to work performed under the contract, at no cost to the Development Authority, to determine and verify the compliance with all contractual conditions. The Development Authority shall be granted access to such records at all reasonable times during the contract period and for three (3) years thereafter.
39. INSURANCE. Prior to the commencement of work, the Bidder shall procure and maintain throughout the life of the agreement insurance of the kinds and in the amounts specified herein. Bidder and each sub-Bidder shall cause the authorized representative of the Insurer to complete and execute the Certificate of Insurance form acceptable to Authority, which certifies the kinds and amounts of insurance being issued. The preferred form is the A.I.A. Document G705 Certificate of Insurance, or one containing all equivalent and required information. If requested by Authority, Successful Bidder shall furnish one (1) duplicate of the original policy covering each kind of insurance issued. No work shall commence until the Successful Bidder or sub-Bidder, as the case may be, has delivered the Certificate of Insurance as proof of the issuance of all required insurance policies.

- a. Each policy of insurance required by the Contract Documents shall be issued by an insurance company approved by the Authority, and shall be in form and content satisfactory to Authority and its attorney. Each insurance policy shall be issued by an Insurer having a Best rating of no lower than A by the most recent Best Key Rating Guide or Best Agent Guide and having a financial category of VI or higher, and authorized by the New York State Department of Insurance to do business in New York State as a licensed carrier or approved as a surplus lines carrier for the limits and coverages required.
- b. Each policy shall provide that: (1) coverage provided under such policies will not be cancelled or materially modified until at least thirty (30) days prior written notice has been provided to Authority and Bidder, (2) it shall be automatically renewed upon expiration and continued in force unless the Authority and Bidder are given at least thirty (30) days written notice to the contrary, and (3) the Authority shall be listed as an additional insured.
- c. All claims against the Bidder or sub-Bidders, alleged to arise from the performance of the work or conditions incidental thereto, must be investigated immediately by the insurer furnishing the applicable coverage. Bidder shall require the Insurer to furnish Authority with written reports following the investigation and the disposition of each claim or demand made. A status report shall be provided to Authority on all claims remaining more than two months outstanding.
- d. All liability insurance required by the Contract Documents shall be maintained in force during the term of this agreement and until the later of one year after the date of final acceptance or one year after the Bidder or any Sub-Bidder performs any work under the Contract Documents.
- e. Unless specified otherwise in the Contract Documents, the kinds and amounts of insurance required are as follows:
 - i. Workers' Compensation and Employer's Liability: Policy shall comply with the provisions of the NY State Workers Compensation Law. Amounts shall be as state and federal statute requires. Employer's Liability shall be not less than \$500,000.
 - ii. Non-Occupational Disability Benefits: Policy shall comply with the provisions of the NY State Disability Benefits Law.
 - iii. Comprehensive General Liability Insurance: providing coverage for the Bidder for legal liability and customarily covered expenses for bodily injury and property damage with respect to the Work under this Agreement, including but not limited to liability for bodily injury and property damage (a) arising out of operations performed for the Bidder by independent Bidders or arising out of acts or omissions of the Bidder in connection with his general supervision of such operations (Bidder's Protective Liability Insurance), (b) occurring after operations have been completed or abandoned (Completed Operations Insurance), (c) arising after physical possession of the products has been relinquished, out of the Bidder's products or reliance upon a representation or warranty with respect thereto (Products Liability Insurance), and (d) assumed under the Contract Documents (Contractual Liability Insurance). The policy shall be endorsed to delete from the Contractual Liability coverage any exclusion for actions on a contract for third-party beneficiary arising out of a project for a public authority. This policy shall include coverage for explosion, collapse and underground operations (XCU hazards). Any exclusion with respect to property under the care, custody and control of Bidder shall be eliminated.
 - iv. Comprehensive General Liability:
 - (1) Coverages shall include at least the following hazards:
 - a) Premises and Operations Coverage,
 - b) Independent Bidder's,
 - c) Completed Operation, including products,

- d) Broad Form Property Damage,
- e) Contractual Liability, covering indemnification assumed per Contract Documents,
- f) Explosion, Collapse, and Underground Operations,
- g) Personal Injury with Employment Exclusion deleted.

(2) Coverages shall not be less than the following amounts:

- a) General Aggregate \$2,000,000
- b) Products - Completed Operations Aggregate \$1,000,000
- c) Personal and Advertising Injury \$1,000,000
- d) Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- e) Excess or Umbrella Liability:
 - (i) General Aggregate \$4,000,000
 - (ii) Each Occurrence \$4,000,000

- v. Comprehensive Automobile Liability Insurance: Insurance shall provide coverage for Bidder and Authority for legal liability and customarily covered expenses for bodily injury and property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any automobiles (including hire and non-owned automobiles) customarily defined in such policies, in a combined single limit of not less than \$1,000,000 coverage.
- vi. OWNER's Protective Liability Insurance: Insurance shall provide coverage for the Authority as the named insured for legal liability (and customarily covered expenses) for bodily injury and property damage arising out of the operations under the Contract Documents performed for the Authority by the Bidder or any of his Sub-Bidders or out of acts or omissions of the Authority in connection with Authority's general supervision of such operations.

40. VENUES AND DISPUTES. The exclusive means of disposing of any dispute arising under a contract with the Development Authority, which is not resolved by agreement, shall be by a New York State Court of competent jurisdiction located within Jefferson County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, the bidder must proceed diligently with contract performance. The bidder waives any dispute or claim not made in writing and received by the Development Authority within thirty (30) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for sum certain and must be fully supported by all cost and pricing information.

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