

REQUEST FOR PROPOSALS

NOTICE IS HEREBY GIVEN; that the Undersigned, on behalf of the Essex County Board of Supervisors, will accept sealed proposals at the Office of the Purchasing Agent until 2:00 P.M. on May 16, 2014 for the Lease and/or Purchase of Copiers/Multifunction Devices.

Specifications are available by contacting the Office of the Purchasing Agent, Linda M. Wolf, CPA, Government Center, 7551 Court St., Elizabethtown, New York 12932 or by calling 518-873-3332. Specifications are also available on the website at: www.co.essex.ny.us.

All proposals submitted in response to this notice shall be marked "SEALED PROPOSAL – LEASE AND/OR PURCHASE OF COPIERS/MULTIFUNCTION DEVICES" clearly on the outside of the envelope.

In addition to the proposal, the proposer shall submit executed non-collusion bid certificates signed by the proposer or one of its officers as required by the General Municipal Law Sec. 103d. The proposer shall also submit an executed certificate of compliance with the Iran Divestment Act signed by the proposer or one of its officers as required by the General Municipal Law Sec. 103g.

The successful proposer will be notified promptly by letter and must be prepared to enter into a contract to furnish the materials or services.

Essex County reserves the right to reject any and all proposals not considered to be in the best interest of Essex County, and to waive any technical or formal defect in the proposals which is considered by Essex County to be merely irregular, immaterial, or unsubstantial.

PLEASE TAKE FURTHER NOTICE that Essex County affirmatively states that in regard to any contract entered into pursuant to this notice, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or Vietnam Era veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit bids in response hereto.

Dated: April 21, 2014

Linda M. Wolf, CPA
Purchasing Agent
Essex County Government Center
Elizabethtown, New York 12932
(518) 873-3332

COUNTY OF ESSEX

*Request for Proposal
For
ESSEX COUNTY*

Lease and/or purchase of copiers/multifunction devices

RFP

Issue Date:

April 21, 2014

Due Date:

May 16, 2014

2:00 PM

Respond to:

*Essex County Purchasing
7551 Court Street
Elizabethtown, New York 12932*

Attention:

*Linda Wolf, CPA
Purchasing Agent*

1. GENERAL INSTRUCTIONS TO RESPONDING VENDORS

1. Read all documents contained in this proposal specification package.
2. Responding vendors are responsible for submitting their proposal to the exact location indicated in the specifications prior to the time indicated. No proposals will be accepted after the designated time and will be returned to the vendor unopened. **NOTE:** This includes any changes listed on the latest addendum issued, if any. Delay in the mail delivery is **not** an exception to the deadline for receipt of proposals.
3. Responding vendors are responsible for reporting, in writing, any errors found in the Request for Proposals (RFP) documentation and/or specifications to County of Essex Purchasing Department, 7551 Court Street, P.O. Box 217, Elizabethtown, NY 12932, or e-mail at lwolf@co.essex.ny.us @co.essex.ny.us or fax (518) 873-3339. Failure to report errors constitutes acceptance as written.
4. Questions about, or clarifications to, the technical specifications or general RFP items must also be made in writing to Essex County Purchasing Department, physical address or email address above, prior to May 6 at 12PM.
5. Responding vendors shall indicate on the outside of their sealed response to the RFP the following information:
 - A. Title of Proposal
 - B. Date & Time Proposal is Due
 - C. Company Name

Each proposal must be submitted under separate cover and will be considered on its own merits.

Any vendor submitting pricing, products or services for more than a single equipment product line must do so as a separate RFP response to be considered for award.

Responding vendors must submit one **original unbound** proposal package(s) with original signatures and two complete and bound **copies** of their proposal package. Although not required, an electronic version (.pdf or .doc) of the RFP response provided on a CD would be helpful.

6. The following forms must be submitted with the RFP response package:
 - A. Non-Collusive Affidavit, signed and dated
 - B. Certificate of Compliance with Iran Divestment Act
 - C. Anti-Discrimination Clause, signed and dated
 - D. Proposal Sign-Off Sheet, filled out in its entirety
 - E. Any other information required in the proposal identified in Section 5, Proposal Content & Requirements
7. Failure to submit any required information or forms may result in the rejection of the proposal as non-responsive. Furthermore, the County reserves the right to require the vendor to supply any additional information it deems necessary to determine the

successful vendor and further to waive any minor informalities it deems to be in its best interest.

8. In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all responses submitted should comply with the following guidelines:
 - A. All copies should be printed double sided
 - B. Unnecessary samples, attachments or documents not specifically asked for should not be submitted.
9. All proposals submitted to Essex County become the property of Essex County and are subject to Public Information Policy. Any confidential information, such as a company's financial status, if required by the specifications, shall be submitted in a separate sealed envelope with the word "CONFIDENTIAL" on the outside.
10. The apparent silence of the specifications as to any details or the omission from it of a detailed description concerning any point shall be interpreted as meaning that only the best commercial practices are to prevail and that only materials and workmanship of first quality are to be used, specified or accepted.

2. GENERAL PROCUREMENT INFORMATION

Method of Award:

The contract, if awarded, will be to the vendor(s) who in part or in whole best meets all terms of the specifications and project requirements as identified through the method of award criteria of Section 3.4 of this RFP. The County guarantees no minimum or maximum contracts as a result of award of this proposal. Essex County reserves the right to allow all municipal and not-for-profit organizations authorized under the General Municipal Laws of the State of New York, to purchase any goods and/or services awarded as a result of this proposal in accordance with the latest amendments to New York State General Municipal Laws 100 through 104. However, it is understood that the extension of such contracts are at the discretion of the vendor(s), and the vendor(s) is only bound to any contract between the vendor(s) and Essex County.

Environmentally Preferable Products:

Environmentally preferable products are those that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

Responding vendor(s) able to supply products containing recycled and environmentally preferable materials that meet the specifications and performance requirements are encouraged to offer them in bids and proposals.

Contract Negotiations:

The contract negotiations of the selected vendor(s) are anticipated to begin within forty-five (45) calendar days of opening date of RFP responses. No responding vendor(s) may withdraw their proposal within thirty (30) days after the proposals are due, however, proposals may be withdrawn at any time prior to proposal due date

and opening. Notice of award will be sent to all successful responding vendor(s) by US mail or e-mail notification. Unsuccessful responding vendor(s) shall also be notified. Essex County reserves the right to enter into contract negotiations with an unlimited number of preferred vendor(s) resulting from the outcome of the RFP evaluation process.

Contract(s):

A contract(s) will be required by the County for the implementation of the project defined by this RFP. The vendor(s) shall sign a Essex County contract. Essex County may choose not to sign any company's standard service agreement, contract, or any other form of agreement. Essex County reserves the right to extract certain language from a company's service, software, or maintenance agreement and incorporate it into a Essex County contract if mutually agreeable. Essex County reserves the right to enter into agreements with multiple vendors in the best interest of the county.

Financing, Leasing or Purchase of Material, Software, Equipment or Services:

When any proposal includes the lease and/or purchase of material, computer software and/or equipment, the vendor(s) shall submit pricing information according to the requirements of Section 4 of this RFP. The price offered shall include all delivery, installation, finance, and any other charges that may be associated with said purchase or lease. The County shall only contract and coordinate with the vendor(s) actually submitting the RFP response and supplying the material, computer software, service, or equipment described in the specifications. Any financial or other arrangements made between the vendor(s) and any other third party as a part of this RFP response are strictly between those parties, and the County shall not be included or required to participate in them in any way. Furthermore, the County shall only make payments directly to the successful vendor(s) awarded a contract as a result of a vendor(s) valid RFP response and issued a purchase order or authorization to proceed. The County shall not make partial or pre-payments of any kind unless stipulated in the specifications by the County.

Failure to Perform:

Should the equipment, computer software, services and/or products fail to perform to the County's expectations the vendor(s) shall, at its own expense, and the County's option, correct, repair or replace said item(s).

Termination Clause:

The County reserves the right to terminate any contract resulting from this RFP response with ten (10) calendar days' written notice to the vendor(s). The County agrees to show cause and allow the vendor(s) the opportunity to rectify the problems. However, if in the sole opinion of the County the vendor(s) has not resolved the problem to the satisfaction of the County in a timely manner, said contract(s) shall be canceled.

Non-Appropriation Clause:

In accordance with New York State General Municipal Law, the County will not be liable for any purchases or contracts for goods or services for which funding is not available. As a result, the vendor(s) agrees to hold the County harmless for any contracts let for which funding either does not currently exist or for which funding has been removed prior to the issuance of a purchase order. Issuance of a purchase order indicates that the County currently has and has set aside adequate funds to procure the goods or services indicated in the purchase order or the

contract. Should it become necessary for the County to cancel a project or purchase after a contract(s) or agreement(s) have been issued, the County will only be liable for, and the vendor agrees to only assess those financial damages that it can prove to have incurred as a result of the cancellation.

Tax on Materials, Equipment, Software and Services:

In regard to any taxes applicable to this project, please acquire a copy of form ST-120.1 from the New York State Department of Taxation and Finance and follow accordingly. Essex County is tax exempt. Tax exempt certificates, if required, will be forwarded upon request.

Deviations:

Deviations to the specifications or requirements are to be so noted and fully explained. Clearly identify and define all deviations from any RFP specifications and requirements within relevant sections of the RFP response. Essex County reserves the right to accept any or all deviations if it proves to be in the best interest of the County.

3. INTRODUCTION

The purpose of this document is to provide interested parties with information to enable them to prepare and submit a Request for Proposals (RFP) response for the lease and/or purchase of copiers/multifunction devices (MFD) with the ability to be connected to the Essex County data network at various facilities. Essex County as represented by its Department of Information Technology intends to use the results of this process to award a contract(s) for the lease and/or purchase of MFDs including the associated maintenance and support of equipment with a service start date no later than July 1, 2014.

Essex County is seeking a combination of a Lease and/or Purchase and Service Contract for MFDs for the various departments of Essex County. The intent is to offer the departments a choice of at least (4) MFDs with an option to purchase on an as need basis or lease the device(s) best suited for departmental needs. The department will choose the MFD device based on the volume and equipment functionality needed to perform the duties of the department. The current replacement needs of the county within the next year are as follows:

Site Name	Address	Current Model	Current Configuration	AMV
Probation	7551 Court Street, Elizabethtown, NY	Kyocera KM 3035 2004	ADF, Fax, Duplexing, Black , 30 PPM	40,000 \$500
Treasurer	7551 Court Street, Elizabethtown, NY	Canon SKV64580 2006	ADF, Scan, Duplexing, Stapling, legal, letter and storage, Black, 35 PPM	50,000 \$343.50
County Clerk	7559 Court Street, Elizabethtown, NY	Kyocera Mita KM 4035 2005	ADF, Black, duplex, staple, 40 PPM	7,000 @.012 per copy
DSS Services	7551 Court Street, Elizabethtown, NY	Ricoh MP171	ADF, Top and Side Feed, Duplexing, Fax, Scan, zoom, sorter, stapler, 2-3 paper drawers, paper port software	70,000 \$870.00

County Manager/Purchasing	7551 Court Street, Elizabethtown, NY	Kyocera KM 5035	ADF, Black, scan, duplex, staple, 50PPM	100,000 .0125 per copy
DSS Administration	7551 Court Street, Elizabethtown, NY	Kyocera KM4050 2008	ADF, Scan, Fax, duplex, Sorter, Hole punch, Black, 40 PPM, paper port software	100,000 \$690.00

3.1 Key Events and Dates

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
Required Deadlines:		E.S.T.
Project RFP Release Date	4/21/2014	
Closing Date for Pre-Submittal Inquiries	5/12/2014	12:00
County Response to Inquiries		
Submittal of Proposal	5/16/2014	2:00
Time Estimates/Goals:		
Proposal Evaluation	6/1/2014	
Interviews/Demos (to be determined)		
Contract Negotiation & Award	6/15/2014	
Service Start Date	7/1/2014	

3.2 Contact Information

All questions concerning the content and RFP response requirements must be received in writing no later than 12:00 p.m. EST, May 6, 2014. Questions and/or requests may be submitted via e-mail only. At lwolf@co.essex.ny.us. Answers, or additional information resulting from pre-submittal inquiries, will be provided in a written, consolidated response no later than 2:00 p.m. EST, May 12 and posted at:

www.co.essex.ny.us

Linda Wolf, CPA
Essex County Purchasing Department
7551 Court Street, Elizabethtown, NY 12932
(518) 873-3332
(518) 873-3339 fax
lwolf@co.essex.ny.us

3.3 Term of contract

The term of contract if leased will be for either thirty-six (36) months or forty-eight (48) months with an option for up to two (2) one (1) year extensions, at the option of Essex County.

The purchase price is to remain firm for the period of one year from the date of award with the option to renew for two additional one year periods.

3.4 Method of Award

An evaluation process will be implemented to allow for a fair review of all acceptable proposals. An evaluation team will be defined to include members of the Information Technology Department and any other designated County staff. The evaluation team will serve to recommend an award of contract(s) to the Essex County Board of Supervisors which shall be based on the best interests of Essex County.

Mandatory Requirements

All proposals received by the deadline will be evaluated. Each proposal shall be reviewed for completeness and conformance to the mandatory technical and administrative submittal requirements of the RFP. The evaluation team has the option of requesting vendors to submit missing information or provide clarification of those sections or requirements deemed incomplete. Essex County reserves the right to reject any and all proposals or parts thereof. If a proposal does not meet the mandatory requirements, the proposal may be disqualified and a cost evaluation may not be performed.

Cost Data

After a proposal has satisfactorily met all the mandatory technical and administrative requirements of the RFP, the select members of the evaluation team will review the cost data supplied by the vendor. The evaluation team reserves the right to request that the vendor provide additional or revised cost data and/or payment plan options to meet the qualifications of this RFP.

Vendor Interviews

Selected vendor(s) may be asked to provide a formal presentation and demonstration of the proposed solution and other relevant information. The location of this presentation will be at an Essex County facility, although off-site visits to evaluate equipment and software will be considered. A demonstration of any existing or prototype software may be requested as a component of the presentation. The vendor(s) should be prepared to explain, and if possible, demonstrate how MFDs and associated software would be implemented to meet any unique requirements of Essex County.

Interviews are proposed to occur during the time period indicated in Section 3.1 - Key Events and Dates. The exact date and time of each interview will be coordinated between the vendor(s) and Essex County project leader. The County will provide a defined interview format that must be followed by all vendor(s). If the vendor(s) is not available to participate in an on-site interview within a designated time frame, the County reserves the right to eliminate the vendor(s) from further consideration. Essex County shall not be liable for any costs incurred by any vendor(s) associated with the interview process.

Contract Negotiations

The successful vendor will be required to sign an Essex County Contract. Specific work assignments, final project scope and schedules, and the definition of project deliverables may be further specified during contract negotiations based on information submitted within the RFP response, or presented during the interview process. Essex County reserves the right to extract or incorporate certain language from any proposed vendor agreement, or incorporate such language into an Essex County contract as mutually agreeable to both parties. Essex County reserves the right to enter into contract negotiations with an unlimited number of preferred vendor(s) resulting from the outcome of the RFP evaluation process. The entire RFP response, or specifically defined sections of a vendor's RFP response, will be incorporated as a component of all final contract(s).

Evaluation Criteria

The County will evaluate all complete RFP responses based on, but not limited to, the following criteria categories. The preliminary evaluation criteria are outlined in this section and may be subject to change. The final vendor selection will also be based on conditions that best represent the interests of Essex County government and taxpayers, and provides a solution that optimizes project requirements including cost of acquisition, integration, operation, and future maintenance.

Quality of Response

- Level of adherence and completeness of the proposal to the format specified
- Overall quality of response
- Preliminary timeframes provided for the completion of this project
- Demonstration of a clear understanding of the project's objectives
- The quality and depth of the vendor's plan, including a defined level of County staff roles and participation during the project implementation

Cost

- Review and comparison of cost responses associated with vendor provided services, software, and MFD hardware and technology estimates
- Review and comparison of ongoing annual costs based on the terms of the submitted maintenance and support agreements

MFD Management Software

- Proposed application that meets or exceeds requirements for the management of networked Copier/MFDs
- Ease of implementation, integration, and adaptability and use of proposed solution.

Flexibility/Integration

- Ability of proposed solution to meet the operational needs of multiple departments within a NYS County government agency
- Knowledge and ability of Essex County IT staff to provide support for hardware, software, and printer driver configurations on various PC operating system platforms
- Ability of Essex County IT staff to support the configuration, integration, and reporting tasks to meet the future needs of end users and departments
- Ease of integration with existing Essex County infrastructure.
- Ability to provide direct scanning and indexing with MFD units allowing for the integration of enterprise-based Electronic Document Management Systems. Scanning of multiple pages into a single PDF is required.
- Significant weight will be given to the overall flexibility of the scanning solution.

Project Implementation

- Demonstrated structure and format clearly defined for implementation and training of services and equipment
- Demonstrated ability for focused support immediately following "go-live" date

Level of Experience and Technical Support

- Demonstrated ability, within the past two years, to have successfully completed the installation of at least three similar projects comparable to that being requested by Essex County

- Experience and technical expertise of the vendor staff assigned to implement and provide long term technical support for the Essex County MFD project

Customer References

- Essex County considers references from existing customers based on implementation experience, software functionality and maintenance, and technical support to be an important aspect of a final award decision. Please provide names of other municipalities that you have conducted business with. Customer references will be contacted by Essex County and may include site visits by Essex County to customer reference locations.

4. REQUIREMENTS AND SPECIFICATIONS

The following Section provides categories of minimal requirements that must be included in any MFD solution provided by responding vendors. Failure to address any submittal requirements in the RFP response may lead to the disqualification of the vendor during the review process.

The selected Vendor will have responsibility for the project management, installation, training, implementation and startup support of the completed system(s), with minimal interference to current departmental operating environments.

4.1 TECHNICAL SPECIFICATIONS: The following specifications are not concrete requirements but should be used as a guide. We expect all machines to be network connected and include scanning, copying and printing in addition to the specifications below. Overall performance in relation to price will be significantly weighted in the award process.

<u>Category</u>	<u>Minimum Speed</u> <i>Copies Per Minute</i>	<u>Features</u>
A	25-30 CPM	RADF Console, Stand or Cabinet Finisher Reduction and Enlargement 50-200% Maximum Original size: 11 x 17 Maximum Copy size: 11 x 17
B	35-40 CPM	RADF 50 Sheet Duplex (1:2, 2:2, 2:1) Console, Stand or Cabinet Finisher Stapler Reduction and Enlargement 25-400% Maximum Original size: 11 x 17 Maximum Copy size: 11 x 17
C	40-45 CPM	RADF 100 Sheet Duplex (1:2, 2:2, 2:1) Console, Stand or Cabinet Finisher Stapler 2 and 3 hole punch Reduction and Enlargement 25-400% Maximum Original size: 11 x 17 Maximum Copy size: 11 x 17

D

45-50 CPM

RADF
100 Sheet Duplex (1:2, 2:2, 2:1)
Console, Stand or Cabinet
Finisher
Stapler
2 and 3 hole punch
Reduction and Enlargement 25-400%
Maximum Original size: 11 x 17
Maximum Copy size: 11 x 17

Please provide detailed pricing on all optional paper input/output and finishing products for each copier model included in this response. The finishers should include options for collating, three hole punch, stapling and booklets.

The purchase option pricing should include the discount off of the manufacturer's suggested retail price and also the current firm fixed price with a term.

The proposed solution should include a user, pin or smart card implementation for management, reporting and private printing. Please differentiate what solutions are standard and which are optional in your response.

Proposers will include in their response complete descriptive literature of equipment that shows specifications of equipment offered. Literature may be submitted in the form of brochures. The details should include information on electrical and space requirements and provide the dimensions of the MFD's with and without optional features.

The OCR options (not a current requirement of the county but we would like future pricing to consider for future consideration)

- 4.2 ACCESSORIES: All optional accessories must be manufactured or authorized by the Original Equipment Manufacturer; proof of authorization must be furnished if requested. Accessories for purchased machines can be acquired at the costs listed in the contract anytime. Accessories for leased machines must be acquired within the first six months of the contract ordering period, or the customer will be billed for the entire lease cost of each accessory to ensure the contractor receives compensation for the accessory cost. Any accessory may be added to or subtracted from the machine at time of procurement or added any time thereafter. For all subtracted accessories, credits must be given at the price stated on the final Contract.
- 4.3 AUTO DOCUMENT FEEDER CPM: All auto document feeders must feed at a minimum of 60% of rated machine speed.
- 4.4 AVAILABILITY OF MACHINES: All machines proposed for the Contract must be available for delivery on the first day of the Contract period.
- 4.5 PRODUCT AVAILABILITY/NEW AND DISCONTINUED PRODUCTS: Vendor agrees that there will be no cancellation of products used without an equal and acceptable replacement approved by Director of IT during the term of the agreement. Contractors must communicate manufacturer's discontinuation of any products in writing within five (5) business days. In such instances, Contractors must identify and implement alternative options that will maintain or

reduce costs associated with the replacements. Contractors must offer suggested replacements of discontinued products at least 30 days prior to substitution, including replacement part number, description and final price.

- 4.6 **NEW EQUIPMENT:** Only new equipment shall be furnished under the Contract. Machines listed as “Factory Produced New Model Equipment” are not considered to be “new”.
- 4.7 **NETWORK CONNECTED MACHINES:** Local area network connected machine must include all necessary hardware & software to be connected to the Essex County network.
- 4.8 **MANAGEMENT AND REPORTING:** County accessible MFD management solution must include Active Directory Integration, device specific and overview information, supplies, ordering, usage, uptime and any other pertinent information. MFD management software solution must also provide detailed reports that includes copy and print activity and associated costs by user, by account, for each MFD. Standard and custom reporting should exist as a component of the MFD management software and have the ability to create invoices for the internal distribution of any future County charge backs. MFDs should have the ability to create unique active directory user, department and project based codes. In addition various county departments provide prepaid fee based county record(s) copy services. If not included as standard, please provide optional pricing allowing MFDs to keep a running balance of current copy credits on account.
- 4.9 **PRINT DRIVERS:** MFD print drivers must allow for the ability to configure duplex printing as the default and support Windows 32 and 64 bit operating systems and be deployable by a Windows 2008R2 print server with full MFD device functionality available from the deployed driver, including scan, fax, print and email functionality. If Air Print capability is not standard please provide optional pricing.
- 4.10 **ENERGY STAR COMPLIANT MACHINES:** It is REQUIRED that all machines come with the Energy Star label as certified by the EPA. Each device must be set up with the most environmentally responsible defaults and energy star savings features. Any cost savings methods for using the copier/MFD must be set up upon install. The Vendor must return upon request and resolve issues if these features continue to set back to an unacceptable level.
- 4.11 **PERFORMANCE GUARANTEE:** Essex County requires a minimum UPTIME GUARANTEE on the machines included in the Contract of at least 95% each month. For the purpose of calculating uptime a baseline of 173 business hours per month will be utilized in the 95% calculation. Downtime is calculated from the time the County places the call, and ends when the machine is up and running, and is based on the machine being inoperative, the copies/pages made are unusable, or, a major feature is not usable (i.e. document feeder, auto duplexing, finisher). Essex County is the sole judge of what is considered downtime. If a machine exceeds 5% failure 2 consecutive months or on an annual basis the county reserves the right to require a replacement machine. If, within 90 days after installation, the replacement machine also fails to live up to the 95% performance guarantee, the Contract may be cancelled for that machine, and the Vendor will be required to remove their machine. If a purchased machine does not meet this 95% Uptime requirement during a month, the Vendor may be asked

to give a credit to Essex County against the maintenance invoice for the machine in question (see example below). Example: If a machine is operational 80% of the time during a given month, then the downtime credit will be 20% of the monthly invoice cost. If the up time is 95% or greater, then no credit is required.

4.12 DIGITAL COLOR SCANNING AND FAXING: A click charge by the Vendor is not allowed for PC Scanning or Network Scanning, or digital faxing of documents for those machines so equipped. All MFDs must have a minimum 300 DPI color scanning resolution availability in TIF, PDF and PDF/A formats including multiple page scans to a PDF. Solution should also be able to provide ability to configure standardized scanning templates for common end-user scanning processes. Digital faxing solution must provide ability to receive email notifications as digital faxes are received.

4.13 SOFTWARE: Vendor must provide an IT administrative management software which allows for remote access to all MFDs connected to the County's network. All connected machines must come fully equipped with all necessary software. As long as a connected machine is on a continuous maintenance Contract, all future software upgrades for fixes and minor enhancements must be furnished to Essex County and installed free of charge. Also, all future software upgrades must be furnished and installed free of charge to any MFD that is acquired as a stand alone copier and then connected at a later date. Software upgrades that add functionality may be added at a negotiated cost only with the permission of Essex County. Software must be provided to Essex County that is compatible with current and future operating system software even if that software is revised or replaced during the Contract period.

Response should include standard and/or optional print management application(s) to monitor and report details regarding work group and PC connected local printer usage.

4.14 START UP SUPPLIES: All copiers must come with installed operating supplies, which will include a one month supply of toner, developer, fuser oil and dispersant and a full load of staples or wire spool for machines that require a finisher or stapler sorter.

4.15 TRAINING AND TECHNICAL ASSISTANCE: Vendor must have staff able to provide technical assistance and training to Essex County Departments at any location, including problem solving, machine operation, etc. Vendor must have ready access to manufacturers' technical resources for problems that are beyond the ability of the Vendor's sales service staff. An operator training program must be provided by the Vendor. Following installation, a primary operator and back-up operator must be trained for each location. This training must be done on-site. This cost must be included in the quoted unit costs. Additional training sessions may be required by Essex County. Vendor must furnish technical assistance in the operation and maintenance of machines on request. Such assistance shall be available within 24 hours and without additional cost. Vendor must furnish descriptive literature of all their awarded model(s). Descriptive literature must be sent within 24 hours after a request is made.

4.16 ELECTRONIC DOCUMENT MANAGEMENT INTEGRATION: Vendor should include pricing on any necessary software solution or connectors for Microsoft SharePoint and common document management products. Vendor should

differentiate between standard and optional connectors.

4.17 RESPONSE TIME (GENERAL COMMUNICATIONS): The Vendor will respond to all sales and general communications not later than the next business day.

4.18 REMEDIAL AND PREVENTATIVE MAINTENANCE: Coverage offered in each instance, is to be a full service maintenance contract including but not limited to all toner, developer, fuser, oil, drums, staples, repair parts, labor and preventative maintenance service. Vendor is not required to provide paper. Vendor is responsible to remove and dispose of used supplies containers. Vendor must provide manufacturers' notices of discontinuing the production of any model furnished hereunder. The equipment will require preventative maintenance and repairs.

The contractor shall provide preventative and remedial maintenance service during County's normal business hours 8:00 AM through 5:00 PM except on county holidays to keep the equipment in good working order.

Preventative maintenance will be performed on an as needed basis as determined by the county and/or determined by copier diagnostics and "call-home" features.

An adequate inventory of spare parts must be kept by the proposer to be available for repairs necessary to keep the copiers operating. All maintenance will be performed by fully factor trained technicians.

The successful bidder shall only use OEM replacement parts and authorized supplies in the equipment proposed.

Please specify in your proposal, the rate for fees and charges of maintenance service should it be requested outside normal business hours to service equipment. Please also include options for "VIP" service for select machines. The county has high profile copiers that occasionally operate after business hours and are critical to business operations at that time (for example, the Clerk of the Legislature's office has a firm timeline in which to publish agenda reports and need expedited service in case of issues with the copier to meet their deadline). The ability to have pre-arranged "stand-by" service during these times should it be needed is highly desired. Stand-by service is defined as on-site response within 30 minutes.

4.19 RESPONSE TIME (SERVICE CALLS): The Vendor's staff must notify the End User contact of the expected arrival time of the technician within one hour of the trouble call. The Vendor must respond to all service calls by having a service technician on-site within four (4) working hours from the time the End User's problem call was placed. Upon arrival of the technician, the equipment will be restored to full operating service by either repair or replacement within four (4) working hours at no additional cost to the County. All travel costs will be included in the service calls.

4.20 REPAIR CREDIT: Failure to respond as required will cause the County to take a service credit and withhold that amount from invoices owed the vendor. The service credit shall be \$50.00 per hour for each hour after the 4th hour.

The county will require a per copy credit for all copies made during the course of repair testing and maintenance. The credit must appear as a separate line item on the invoices.

All repair technicians dispatched to repair the county MFDs shall be fully aware of the conditions contained herein. Each qualified technician shall also be trained in Customer Service and Customer Relations.

4.21 DELIVERY, INSTALLATION, REMOVAL, SECURITY AND DISPOSAL:

- 4.1.1 Vendor must acknowledge receipt of order and must deliver, setup, and install machines within two (2) calendar weeks after receipt of a Purchase Order, unless different schedules are specified by the County. Failure to provide deliveries in a timely manner may result in cancellation of the order and/or cancellation of the Contract. The Vendor is required to fully install all hardware and software for all LAN connected digital machines at no additional cost.
- 4.1.2 Copiers must include inside final destination delivery. Machines must be installed within 24 hours of delivery, unless otherwise agreed to by the Vendor and Authorized User.
- 4.1.3 Vendors are required to remove all leased machines no later than 2-calendar weeks after the lease Contract is completed, or by whatever schedule is agreed to between the Vendor and Essex County. Vendor will not remove machines at end of lease without a 30-day written notification to Essex County.
- 4.1.4 Essex County will have the option, when the lease period ends, to continue the lease with a mutually agreed upon defined period of time and lower monthly rate. The period of time can be month-to-month, if desired. The Vendor must provide a written proposal outlining the agreed upon lower rate and defined time period for at least an additional two year period beyond the initial Contract period.
- 4.1.5 Whether it is leased or Essex County owned equipment, Vendor must provide written verification that the writable media (including hard drives, etc.) has been wiped to DOD 7 PASS specification prior to removal of writable media from the county's premises. Essex County will be available to assist the Vendor with securing any writable media once data destruction has become completed the contractor shall provide written certification of same to Essex County. Certificate shall be signed and dated by the vendor employee performing the data destruction. If it is technologically impossible to wipe the writable media or the county requests to secure the writable media the Vendor must remove the writable media prior to removing the equipment and leave it with the county IT Department. When the existing writable media is removed and replaced, the vendor cannot charge any additional fees outside of the maintenance contract for the value of a replacement media.
- 4.1.6 The costs contained within the Contract include shipping, delivery, setup, installation, training, testing, removal and disposal for all equipment. Emergency/rush delivery requiring special shipping and handling will be at

Essex County expense (with prior written approval only). Rush delivery that occurs as a result of the Vendor's error must be free of charge.

4.22 EQUIPMENT RELOCATION: The Vendor will provide relocation services for equipment moves. For agency self-moves, no removal or installation charges will be billed. Vendor must provide a per hour rate for equipment moves. No other fees shall apply. The Vendor is responsible for repairs that may be required following any relocation performed by the vendor.

4.23 INVOICING: All purchase orders will be made out to the Contractor for the equipment and not to a third party leasing company. This means all billing will be done by and sent to Essex County by the Vendor and all payments by Essex County will be made to the Vendor.

Vendors must submit an invoice on a monthly basis for actual copies/pages made, by the 15th of the month for the previous month. The Vendor is required to issue to Essex County only one (1) monthly invoice, which will include information for both the monthly lease payment and for the monthly per copy/page maintenance cost. Report detailing usage by machine must be included in the consolidated invoicing or emailed prior to us receiving the invoice. Essex County may require annual or quarterly billing rather than monthly billing. Invoices shall itemize those elements of cost required and stipulated by the requisitioning Authorized User.

Note: Essex County may make different invoicing arrangements as long as both the Essex County and Vendor are in agreement.

Vendors who wish to invoice by electronic means may do so only with the permission of Essex County. Essex County is under no obligation to accept electronic invoicing.

4.24 LEASE MACHINE DOWNGRADES: When the volume of a lease machine is more than 25% below the minimum allowances for any MFD for two consecutive months, the leased machine may be returned to the Vendor, and the lease Contract for the new machine would start as a new lease Contract from the time the new machine is ordered with no penalties or charges for canceling the previous lease. A maximum of four (4) downgrades per year for the duration of the Contract will be allowed.

4.25 LEASE MACHINE UPGRADES: When the volume of a lease machine increases by more than thirty percent per month over the maximum volume for that MFD, for a minimum of two consecutive months (both months being 30% over the maximum volume, not 30% over the prior month), the leased machine may be returned to the Vendor under the following conditions: If machine performance is unacceptable or if the machine is not capable of handling the higher volume, a machine from a higher volume level may then be leased. Essex County is the sole judge of what is unacceptable performance. The lease Contract for the new machine would start as a new lease Contract from the time the new machine is ordered with no penalties or charges from canceling the previous lease. A maximum of four (4) upgrades per year for the duration of the Contract will be allowed.

Additionally, the Vendor must allow Authorized Users to adjust the chosen minimum allowance in a given band at least once every six months.

- 4.26 LEASE TERMS: The term of contract will be for thirty-six (36) or forty-eight (48) months with an option for up to two (2) one (1) year extensions, at the option of Essex County.
- 4.27 LOANER MACHINES: If a machine is down for more than ONE working day, the Vendor must furnish a "loaner" like-for-like replacement, until the machine is repaired. (Like-for-like replacement = a machine in perfect working condition that has the same approximate features and speed.)
- 4.28 MACHINE EVALUATION PERIOD: Essex County agencies will evaluate the performance of newly installed machines within 90 calendar days after installation. If there are no problems with the newly installed machine, Essex County is required to pay for the machine within the terms of the Contract. However, if Essex County is experiencing problems with the machine, Essex County need not pay for the machine until the problems have been resolved. If machine performance is unacceptable or if the machine is not capable of handling the copy/print volume specified, the Vendor must either provide a new replacement machine at no added cost or cancel the purchase agreement for that location. If the new replacement machine has unacceptable performance or is not capable of handling the volume, Essex County may return the machine and cancel the Purchase Order. Essex County is the sole judge of what is acceptable machine performance.
- 4.29 METER READINGS: Any usage related data required for the billing process will need to be collected by the vendor electronically and detailed reporting of that data per device will need to be provided to the county electronically.
- 4.30 OPERATING MANUAL: One (1) operating manual will be furnished for each individual piece of equipment ordered by Essex County. Manuals may be provided in a digital format. However, the Vendor is required to furnish the manual as a hard copy if requested. The cost for all manuals is included in the equipment cost. Manual updates or revisions published by the Vendor must be provided free of charge.
- 4.31 OUTRIGHT PURCHASE AND LEASE (FIRM PRICING): The purchase cost, monthly lease cost, accessories cost, and maintenance cost must remain firm except for price decreases, for the entire Contract ordering period. The per copy/page cost for maintenance includes all supplies but not limited to toner, developer, maintenance kits, toner waste containers, fuser oil, staples, staple wire, dispersant and any other consumable supply item necessary for the operation of the machine except paper. Per copy page cost for maintenance is referenced in this RFP, but other recommended solutions will be considered. For purposes of comparison please provide maintenance pricing separately; refer to 4.18
- 4.32 OVERALL CUSTOMER SATISFACTION: At the request of Essex County, a survey of end-users will be conducted by the supplier to determine the level of customer service satisfaction experienced with the supplier. Both the raw and analyzed survey results must be provided to Essex County. The following includes some of, but not limited to, the areas to be measured on the survey: responsiveness, communication, courtesy, competence, effectiveness, and overall satisfaction.

4.33 PAYMENT TERMS: Standard payment terms for Essex County is net 30 days from product delivery or invoice receipt, whichever is later.

4.34 POST-ORDER CUSTOMER SERVICE: The Vendor must provide all of the designated Essex County locations a single, local point of contact (and a backup) to handle questions and resolve problems that arise. At least one Customer Service Representative must be available Monday through Friday (excluding Essex County designated legal holidays and furlough days) from 8:00 AM to 5:00 PM Central Time. All service representatives should have online access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, technical support and general product information. Representatives must be available by phone, fax, or e-mail (local or toll free preferred).

4.35 PRICE DECREASES: Essex County may negotiate with the successful vendor for better terms and conditions during the contract for one or more machines or products offered within the Contract.

4.36 QUALITY ASSURANCE AND WARRANTY: Unless otherwise specifically stated in the specifications, the equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the Vendor. Warranty shall start upon Installation. Essex County reserves the right to require replacement for poor performance of an existing machine anytime during the Contract period.

The Vendor guarantees products provided under this agreement to be free from defects in materials and workmanship, given normal use and care, over the period of the Manufacturer's warranty. The Vendor should agree to repair and/or immediately replace, without charge (including freight both ways), to Authorized Users, any product or media that proves to be defective or fails within the warranty period as specified.

4.37 RETURN OF PRODUCT: Any equipment delivered in poor condition, in excess of the amount authorized by the requisition form or not included on the requisition form or purchase order, may, at the discretion of Essex County, be returned to the Vendor at the Vendor's expense within 30 days. Credit for returned goods must be made immediately once Vendor receives returned goods. If any product is returned to a Vendor for failure of performance, the Vendor must, at Essex County discretion, refund all amounts paid to the Vendor for such product or replace the product, and the following must apply: within twenty (20) days of written notification by Essex County, the Vendor must make arrangements for the return of the product, the Vendor must bear all shipping and insurance costs, and the Vendor will be liable for damages to the product, unless caused by fault or negligence of Essex County that occur during the return process.

4.38 STUDY ASSISTANCE: The Vendor may be periodically required to conduct studies to help end users align copiers with user needs. Essex County will not be charged for these services.

4.39 CONSUMABLES/SUPPLIES: Supplies for copiers/MFDs must be furnished to the locations designated by the Essex County on a regular basis and must include all shipping and handling as part of the maintenance cost. The county's preference is to have supplies delivered on a "just in time" basis without county intervention through a fully automated methodology. If this is not included as standard or is not provided by vendor please include alternate solution. Failure to

promptly deliver supplies may be grounds for cancellation of the Contract. The vendor must provide return shipping labels to return the supplies, including toner etc. Must be returned to the vendor via shipping or vendor pick up.

5. PROPOSAL CONTENT AND REQUIREMENTS

To be considered a qualified vendor for the Essex County Copier/MFD project, vendors must:

- 1) Adhere to the proposal content and format as described in this Section;
- 2) Adequately respond to minimal requirements and specifications of this RFP;
- 3) Submit one (1) original **unbound** and two (2) complete bound copies of your proposal to:

County of Essex Purchasing Department
Attn: Linda Wolf, Purchasing Agent
7551 Court Street, P.O. Box 217
Elizabethtown, NY 12932

All proposals must be received by 2:00 p.m. (EST) on May 16, 2014

The Purchasing Department will not accept digital files delivered as electronic mail attachments, or faxed versions of responses to the RFP.

Essex County reserves the right to reject any or all proposals and to negotiate with any vendor submitting a response to this RFP.

RFP Response Outline and Content

To facilitate the County's review and selection process vendors are requested to incorporate numbered sections in each response copy. The following is the RFP response outline and content requirements to be followed by all vendors.

Report Cover

Cover Letter

Must be signed by an officer of your company who has the authority to perform negotiations with Essex County in the event you become a candidate finalist, or you are selected as the finalist.

Table of Contents

This section must reflect the contents of the numbered sections.

1. Executive Overview

This is a comprehensive overview focused on the needs and proposed solution specific to the Essex County Copier/MFD project.

2. Project Implementation Plan

Include a work plan that delineates and defines the various project phases, components, and anticipated deliverables. This response Section should also include a description of the vendor's proposed approach to project management and a preliminary schedule.

3. Equipment and Management Software

Introduce your proposed Copier/MFD equipment platform and management software. At a minimum, this section should discuss the following items:

- Detailed specifications of all hardware and Copier/MFD devices
- The operating system and database formats of all software necessary to support the solution and hardware
- Provide an overview of the proposed system integration into the Essex County network and IT management of remote devices and printer drivers
- Provide a simple network diagram to illustrate your proposed system configuration

4. Response to Requirements

A response indicating the ability of vendor(s) to meet the requirements listed in Section 4, Requirements and Specifications and must be included. It is recommended that a response is provided for all of the items included in Section 4. All responses must identify and provide a description of any Requirements and Specifications which are not available.

5. Vendor Profile

A complete vendor profile must be submitted presenting topics relevant to the selection process. This profile is not limited to, but must include:

- General company profile information.
- Location of corporate office plus the number and location of support offices. Indicate support locations that are particularly relevant to the project.
- Identification of individuals to be assigned to project including job title, statement of qualifications and proposed role in the implementation of the Essex County Copier/MFD project.

6. Vendor References/Similar Projects

A list of current references must be included with contact information. The list should include at least three references of relevant projects similar in scope to the Essex County project, preferably located within the State of New York.

For each reference please include the following information:

- Organization
- Primary Contact Name and Contact Information
- Project and Solution Description
- Contract Start/End Dates
- Current Level of Vendor Support

7. Software License and Annual Maintenance and Support Agreement

Must include a copy of any applicable Software License Agreement. Must include a copy of the Annual Maintenance and Support Agreement and costs.

8. Proposed Sub-Contractual Work

Include in this Section any work proposed to be sub-contracted during the course of the project. Please include general information describing the sub-contractor, their capabilities, and level of involvement in the project.

9. Addendum

Include in this Section any additional information, or options, that may not have been specified or addressed in other parts of this RFP which you would like to present outside of the prescribed format and requirements.

10. Essex County Copier/MFD Project Pricing

Vendors must include a complete inventory and expenses for all devices, options, support services and software based on the RFP requirements and specifications. Pricing for your proposed system solution must include:

- Project Management
- Travel Expenses
- Training
- Software Installation and Configuration to meet RFP Requirements
- Software License(s) costs if applicable
- Annual Software Support and Maintenance Agreement costs if applicable
- Vendor provided model, specification and price schedule sheets for each proposed Copier/MFD unit including itemized optional features based on the initial lease with an option for up to two (2) one (1) year extensions
- Any other charges that would be billed to a Essex County to implement the Copier/MFD project

Essex County may award a contract, based on initial offers received without discussion of such offers. A Vendor's initial offer should, therefore, be based on the most favorable terms available. Essex County may, however, have discussion with those Vendors that it deems in its discretion to fall within a competitive range. It may also request revised pricing and equipment offers from such Vendors, and make an award and/or conduct negotiations thereafter.

BID DOCUMENT CHECKLIST

Bid Title: RFP Copiers

Items required (X) Items submitted with bid

**↓ A. FAILURE TO SUBMIT ANY OF THESE DOCUMENTS MAY BE CAUSE
CAUSE FOR REJECTION OF BID.**

- Bid guarantee (bid bond or certified/cashier's check)
- Certificate from a surety company (Insurance requirement)
- List of designated subcontractors
- Acknowledgment of receipt of addenda or revisions (if issued)
- Affirmative Action questionnaire
- Catalog/price list
- Product samples
- References
- Certified financial statement
- Certification of available equipment
- Signature Page – Bid proposal form
- Other: Technical Specifications and Descriptive Literature
- Certificate of Non-Collusion (notarized)
- Statement of Understanding Procurement Lobbyist restrictions
- Vendor Responsibility Form
- Certification of Compliance with the Iran Divestment Act

THE UNDERSIGNED BIDDER HEREWITH SUBMITS THE ABOVE REQUIRED DOCUMENTS.

PRINT NAME OF BIDDER: _____

SIGNED BY: _____

PRINT NAME AND TITLE: _____

DATE: _____

THIS CHECKLIST SHOULD BE RETURNED WITH ALL DOCUMENTS.

References

Company: _____

Contact Person: _____

Phone # _____

Email: _____

Company: _____

Contact Person: _____

Phone # _____

Email: _____

Company: _____

Contact Person: _____

Phone # _____

Email: _____

**ESSEX COUNTY PURCHASING DEPARTMENT
7551 COURT STREET
ELIZABETHTOWN, NY 12932
518-873-3332/FAX 518-873-3339**

GENERAL CONDITIONS

PROPOSALS

1. All proposals shall be contained in sealed envelopes addressed to the Purchasing Agent of Essex County, 7551 Court Street, Elizabethtown, NY 12932.

2. Bidder must submit with proposal detailed specifications, circulars and all necessary data on items he/she proposes to furnish. This information must show clearly that the items offered meet all detailed specifications herein. The Purchasing Agent and/or the Board of Supervisors reserves the right to reject any bid if its compliance with the specifications is not clearly evident. If an item offered differs from the provisions contained in these specifications such differences must be explained in detail and the proposal will receive careful consideration if such deviations do not depart from the intent of these specifications and are in the best interests of the County of Essex. In the event satisfactory proposals are not received, the Purchasing Agent reserves the right to consider alternative proposals containing deviations from county specifications. Proposers shall explain in detail where such alternatives deviate from the terms of the specifications as issued.

3. Project will be awarded as will best promote the public interest, taking into consideration the reliability of the proposer, price, the quality of the materials, equipment, or supplies to be furnished, their conformity with the specifications, the purposes for which required, and the terms of delivery, completion and training.

4. Should any material or equipment delivered fail to meet the specifications, the County of Essex may, at their discretion require the vendor to replace the same with material or equipment which does meet the specifications and, at the vendor's expense, to remove the rejected material or equipment from wherever delivered or stored and in the event that such proper replacement and removal is not made by the vendor within 10 days, to cancel the order and terminate the contract, in which event the county will assume no responsibility for any expense or loss to the vendor because of such cancellation or termination.

5. If the successful bidder fails to deliver within the time specified, or within a reasonable time as interpreted by the County, or fails to make replacement of rejected articles, when so requested, immediately or as directed by the County, the County may purchase from other sources to take the place of the item rejected or not delivered. On all such purchases the successful bidder agrees to reimburse the County promptly for excess costs occasioned by such purchases. Should the cost be less, the successful bidder shall have no claim to the difference. Such purchases will be deducted from the contract consideration.

6. A contract may be cancelled at the successful proposer's expense upon non-performance or poor performance of the contract on ten calendar day's written notice.

7. Any and all awards resulting from the accepted proposal shall be for the complete project. Proposer may not rescind contract because of error or inability to supply through anticipated sources.

8. All deliveries shall be accompanied by delivery tickets or packing slips. Ticket shall contain the following information for each item delivered:

Contract Number and/or Purchase Order Number
Name of Article
Item Number (if applicable) Quantity
Name of the Successful proposer/contractor

9. The successful proposer/contractor guarantees:

(a) Items furnished do not contain defective material or workmanship and will repair or replace any damages or marring occasioned in transit.

(b) To furnish adequate protection from damage for all work and repair damages of any kind for which contractor's workers are responsible, to the building or equipment, to his own work, or to the work of others.

(c) That the items delivered are standard, new, latest model of regular stock product or as required by the specifications; also that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice. Every unit delivered is guaranteed by the successful proposer/contractor against faulty material and workmanship for a period of at least one year from date of delivery. If during this period such faults develop, the successful proposer/contractor agrees to replace the unit or the part affected without cost to the County. Any merchandise provided under the contract which is or becomes defective during the guarantee period shall be replaced by the successful

proposer/contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment. The successful proposer/contractor shall make any such replacement immediately upon receiving notice from the County.

10. The successful proposer/contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by war, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the successful contractor.

11. All vendors must comply with provisions of the Toxic Waste Right To Know Law and provide the County with any and all information as required by law.

12. All regularly manufactured stock electrical items must bear the label of the Underwriters' Laboratories, Inc.

13. All supplies, equipment, vehicles and materials must meet the provisions of the New York State Public Employee Safety and Health Act of 1980.

14. Proposer must complete all forms that are a part of this request for proposals attached hereto and submit them with the proposal.

15. No verbal interpretation of the intent of any of the specifications or other Contract Documents will be made before opening of proposals. Requests for written interpretations prior to opening must be presented, in writing, to the Purchasing Agent, 7551 Court Street, Elizabethtown, NY 12932, and to be given consideration must be received by the Purchasing Agent at least seven (7) days prior to the date set for the opening.

16. Any written interpretation, and any additional information or instruction will, if issued, be in the form of a written Addendum or Addenda sent to all holders of RFP Documents at the addresses furnished therefore, at least five (5) days prior to the date of the opening.

17. Failure of any proposer to receive any Addenda shall not relieve such proposer from any obligation set forth in the Addenda. All Addenda so issued shall become a part of the RFP.

18. Prior to the time and date of opening, the identity of proposers and the number of the proposals received may be kept confidential, being disclosed only to public officials when such disclosure is considered necessary for the proper conduct of the submittal process. If no proposals are received or if only one proposal is received within a reasonable time period, the County shall have the option to conclude that competition can be enhanced through revision of the specifications, postponement of the opening date, or in some other way.

19. A pre-proposal meeting may be held at the option of the Purchasing Agent.

20. The provisions of Section 220 of the State's Labor Law are deemed a part of every proposal with the same force and effect as if set forth at length.

Non-Bidders Response
Essex County - Copier RFP

RFP # _____

VENDOR NAME: _____

The County of Essex is interested in ascertaining reasons for prospective vendor's failure to respond to invitation to submit a proposal. If your firm is not/or has not responded to this RFP, please indicate the reason(s) why by checking any appropriate item(s) below and returning this form to the Clerk of the Legislature, County Office Building, 160 Genesee Street, 6th Floor, Auburn, New York 13021.

We are/did not respond to this RFP for the following reason(s):

- _____ Could not meet Scope of Service;
- _____ Scope of Service not clearly understood or applicable (too vague, too rigid, etc.);
- _____ Our services do not meet specifications;
- _____ Specifications not clearly understood or applicable (too vague, too rigid, etc.);
- _____ Project not suited to firm;
- _____ Insufficient time allowed for preparation of proposal;
- _____ Incorrect address used;

Correct address

is: _____

Other reason(s):

We continually strive to improve our process. Thank you for taking the time to complete our survey.

Vendor Certification

Essex County – Copier RFP

As of January 1, 2005, the Office of the State Comptroller is requiring that governmental agencies award contracts only to vendors that have been certified as “responsible.” Vendor responsibility means that a vendor has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. It is a contracting agency’s responsibility, under Section 163 (9) of the State Finance Law (SFL), to evaluate and make a determination of the responsibility of a prospective contractor. A responsibility determination, wherein the contracting agency determines that it has reasonable assurances that a vendor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting a contracting agency and the State (as well as the County) against failed contracts.

The following factors are to be considered in making a responsibility determination:

1. Legal Authority to do business in New York State
2. Integrity
3. Capacity – both organizational and financial
4. Previous performance

Please complete the enclosed Vendor Responsibility Questionnaire. The completed Questionnaire shall be returned with your bid submission in order for your bid to be ruled responsive.

Additional information concerning vendor responsibility, including electronic versions of forms, may be found at the Office of the State Comptroller’s (OSC) website:

<http://www.osc.state.ny.us/vendrep>

Overview on Executive Order #127 May be Accessed:

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

Statement of Understanding Procurement Lobbyist restrictions

In addition to attaching a copy of relevant rules and regulations and guidelines and procedures, a Governmental Entity must include a summary in its proposals, bid documents or specifications for all Procurement Contracts. Such language should be incorporated into the relevant documents.

Pursuant to State Finance Law #139-j and 139-k, this solicitation [or use identifier that is pertinent such as "Invitation for Bid" or "Request for Proposal" etc.] includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers [or use identifier that is pertinent such as "Invitation for Bid" or "Request for Proposal" etc.] through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller ("restricted period") [conform for pertinent government entity] to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law #139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this solicitation [or conform to whatever location is used to identify designated staff]. Governmental Entity employees [conform for pertinent government entity] are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found [conform for how will provide copies of the rules, regulations, guidelines or procedures].

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law #139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by State Finance Law #139-j (3) and #139-j (6)(b).	
By: _____	Date: _____
Name: _____	
Title: _____	
Contractor Name: _____	
Contractor Address: _____	

MUST RETURN WITH BID

EXHIBIT C

INSURANCE REQUIREMENTS - SERVICE PROVIDERS

I. The Contractor shall procure and maintain during the entire term of the contract the following required insurance:

- **Commercial General Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate.
- **Excess/Umbrella Liability Insurance**
\$1,000,000 per occurrence / \$2,000,000 aggregate.
- **Workers' Compensation**
Statutory Workers' Compensation and Employers' Liability Insurance for all employees, *except that in the event the Contractor has no employees and is exempt by law from having such insurance coverage the Contractor may provide an exemption statement.*

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees (except as to workers' compensation insurance coverage) to either effectuate:

- (a) the naming of the County as an "additional insured as funding source for contract services" on the contractor's insurance policies, or
- (b) the inclusion of a contractual liability endorsement covering the Contractor's contract with the County.

III. The policy/policies of insurance furnished by the Contractor shall:

- be from an A.M. Best rated "A" New York State licensed insurer; and
- contain a 30-day notice of cancellation

IV. The Contractor agrees to indemnify the County for any applicable deductibles.

V. Contractor acknowledges that failure to obtain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County. Prior to commencement of work or use of facilities, the Contractor shall provide to the County proof that such requirements have been met by furnishing certificate(s) of such insurance, and the declarations pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

VI. All certificates of insurance will provide 30 days notice to the county of cancellation or non-renewal.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

VIII. All policies will also contain no exclusions with respect to Section 240 and 241 of the NYS Labor Law.

IX. The County shall be listed as an additional insured on a primary and non-contributory basis.

APPENDIX D - STANDARD CLAUSES FOR ESSEX COUNTY CONTRACTS

1. Independent Contractor Status

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the County shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the County; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

2. Contractor To Comply With Laws/Regulations

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

3. Licenses, Permits, Etc.

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

4. Termination

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the County:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

5. Defense & Indemnification

The Contractor shall defend, indemnify and hold harmless the County to the fullest extent allowed by law, and notwithstanding any insurance requirements, from and against any and all liability, losses, claims, actions, demands, damages, expenses, suits, judgments, orders, causes of action and claims, including but not limited to attorney's fees and all other costs of defense, by reason of any liability whatsoever imposed by law or otherwise upon the County for damages to person, property or of any other kind in nature, including but not limited to those for bodily injury, property damage, death arising out of or in connection with its officers, employees, agents, contractors, sub-contractors, guests or invitees negligence or

its/their performance or failure to perform this agreement.

6. **Discrimination Prohibited**

The services to be furnished and rendered under this agreement by the Contractor shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule or regulation.

7. **Non-Discrimination In Employment**

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. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. **Damage/Injury To Persons & Property**

The Contractor shall promptly advise the County of all damages to property of the County or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

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") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

The County 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 County official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing

contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

10. **Claims For Payment**

All invoices or claims for which payment is sought from the County must be submitted in accordance with the following:

- (a) each claim for payment must include
 - (1) an invoice detailing the claim,
 - (2) copies of all documentation supporting the claim,
 - (3) a properly completed County standard voucher, which includes
 - (i) the County contract number under which payment is being claimed, **AND**
 - (ii) 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 will prevent and preclude payment by the County; except that where the payee does not have such number or numbers, the payee, on the invoice or County voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the County no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the County shall not be liable for payment thereof, unless it is submitted to the County within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the County's payment obligation, and failure to comply with any or all of said requirements shall entitle the County to deny payment.
- (e) As a further condition of payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge, and each Final Payment shall be accompanied by a Contractor and Sub-Contractor Final Payment, Waiver and Release form. As well as a Contractor Affidavit relative to Final Payment. Copies of these forms are attached and made a part hereof.

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the County.

12. **Executory Clause**

The County shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and available for this contract.

13. **Public Work & Building Service Contract Requirements**

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:

- (a) neither the 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; and
- (b) the 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.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the County uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the County and acknowledges that the County has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the County's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the County has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the County;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the County;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the County in advance of bringing in and/or using such substances in or upon County property and suggest to the County appropriate measures to be observed by the County, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the County shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the County, and any attempts to assign the contract without the County's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor

warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on Contractor's behalf.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, 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, 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 County Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **County's Rights of Set-Off**

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

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the County.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the County. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the County.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or

meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

- (a) **Definitions.** The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.
- (1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.
 - (2) "Covered Entity" shall mean Essex County (the "County"), its departments, agencies, officers and employees.
 - (3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
 - (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
 - (5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the County.
 - (6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.
 - (7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- (b) **Obligations and Activities of Contractor.**
Contractor agrees to:
- (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
 - (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
 - (3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;
 - (4) report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;
 - (5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;
 - (6) provide access, at the request of the County, and in the time and manner designated by the County or the Secretary, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR §164.524;
 - (7) make any amendment(s) to Protected Health Information in a Designated Record

Set that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an Individual, and in the time and manner designated by the County or the Secretary;

(8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the County available to the County, and/or to the Secretary, in a time and manner designated by the County or by the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule;

(9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;

(10) provide to the County or an Individual, in time and manner designated by the County or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

(1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County; or

(2) provided that such use or disclosures are required by law; or

(3) Contractor

(A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,

(B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and

(C) such third persons agree in writing to notify the County as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or

(4) provide Data Aggregation services to the County as permitted by 42 CFR §164.504(e)(2)(i)(B); or

(5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) County To Inform Contractor of Privacy Practices and Restrictions.

The County agrees to notify the Contractor of any

(1) limitation(s) in its notice of privacy practices of the County in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;

- (2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or
- (3) restriction to the use or disclosure of Protected Health Information that the County has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by County.

The County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon determination by the County that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the County's knowledge of a material breach of this paragraph by Contractor, the County shall:

- (1) either:
 - (A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the County, or
 - (B) immediately terminate this Agreement if cure is not possible; and
- (2) report the violation to the Secretary.

(i) Miscellaneous.

- (1) Regulatory References. A reference in this Agreement to a section in the Privacy

Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.

(4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

25. **Severability**

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. **Entire Agreement**

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

27. **For Medicaid/Federal Health Care Related Work**

Excluded/Debarred Party Clause

The Vendor/Contractor represents and warrants that it, nor its employees or contractors, are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program.

In the event Vendor/Contractor, or one of its employees or contractors, is excluded from participation, or becomes otherwise ineligible to participate in any such program during the Term, Vendor/Contractor will notify Essex County in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to the Vendor/Contractor, Essex County reserves the right to immediately cease contracting with the Vendor/Contractor.

If Vendor/Contractor is an Employment Agency, the Vendor/Contractor represents and warrants that its employees and contractors are not excluded from participation in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or debarred from participation in any federal or other program.

The Vendor/Contractor further represents and warrants it will, at a minimum, check monthly all of its employees and subcontractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system),
- The United States Department of Health and Human Services's Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list,
- The New York State Department of Health's Office of the Medicaid Inspector General's list of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered the Vendor/Contractor will notify Essex County in

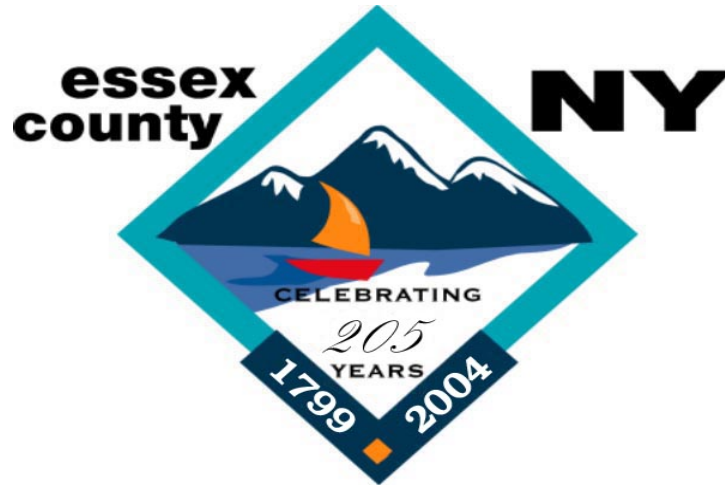
writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to the Vendor/Contractor, Essex County reserves the right to immediately cease contracting with the Vendor/Contractor.

28. **Cooperative Purchasing (Piggybacking)**

Pursuant to General Municipal Law §103 and County Law §408-a, any political subdivision or fire company (as both are defined in Section 100 of the GML) or district authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies may make said purchases under this existing contract (Piggybacking) provided, and on condition that this present contract was **LET TO THE LOWEST RESPONSIBLE BIDDER**. Therefore all terms and condition under this contract are extended to other political subdivisions and governmental entities.

Purchases under this contract by any other political sub-division other than Essex County shall be pursuant to the terms and conditions of Resolution No. 207 of 2013 dated July 1, 2013.

APPENDIX E



ESSEX COUNTY

Office of the Purchasing Agent

7551 Court Street, P.O. Box 217

Elizabethtown, NY 12932

518-873-3330/Fax 518-873-3339

GENERAL SPECIFICATIONS FOR PROCUREMENT CONTRACTS

Adopted May 20, 1999.

TABLE OF CONTENTS

PART I

Page

General Provisions

1.	Applicability	5
2.	Governing Law	5
3.	Appendix A / Insurance	5
4.	Ethics Compliance	5
5.	Conflict of Clauses.....	5
6.	Definition.	5

Bid Submission

7.	Bid Language & Currency.....	8
8.	Bid Opening	8
9.	Bid Submission	8
10.	Facsimile Submissions.....	8
11.	Authentication of Facsimile Bids.....	9
12.	Late Bids.	9
13.	Bid Contents	9
14.	Extraneous Terms	10
15.	Confidential/Trade Secret Materials	10
16.	Prevailing Wage Rates	10
17.	Taxes	12
18.	Expenses Prior to Award	12
19.	Advertising Bid Results	12
20.	Product References.....	12
21.	Recycled/Recovered Materials	12
22.	Products Manufactured in Public Institutions	13
23.	Pricing	13
24.	Drawings	13
25.	Site Inspection	14
26.	Samples	14
27.	Addenda/Interpretation	15

Bid Evaluation

28.	Bid Evaluation	15
29.	Conditional Bid	15
30.	Clarification/Revisions	16
31.	Prompt Payment Discounts	16
32.	Equivalent or Identical Bids	16
33.	Performance Qualifications	16
34.	Disqualification for Past Performance	16
35.	Quantity Changes Prior to Award	16
36.	Release of Bid Evaluation Materials	16
37.	Time Frame for Offers	16

Terms & Conditions

38.	Contract Creation/Execution	17
39.	Compliance With Laws, Etc.	17

40.	Modification of Terms	17
41.	Scope Changes	17
42.	Estimated Quantity Contracts	17
43.	Best Pricing Offer	18
44.	Purchase Orders	18
45.	Product Delivery	18
46.	Saturday & Holiday Deliveries	19
47.	Shipping/Receipt of Product	19
48.	Title & Risk of Loss	19
49.	Re-Weighing Product	19
50.	Product Substitution.....	20
51.	Rejected Product	20
52.	Installation	20
53.	Repaired or Replaced Product/Components	20
54.	On-Site Storage	20
55.	Employees/Subcontractors/Agents	20
56.	Assignment/Subcontractors	20
57.	Performance/Bid Bond	21
58.	Stop/Suspension of Work	21
59.	Cancellation	21
60.	Force Majeure	21
61.	Contract Billings	22
62.	Default – Authorized User	22
63.	Interest on Late Payments	22
64.	Remedies for Breach	23
65.	Assignment of Claim	23
66.	Toxic Substances	24
67.	Independent Contractor	24
68.	Security/Confidential	24
69.	Cooperation With Third Parties	24
70.	Contract Terms – Extension	24
71.	Warranties/Guarantees	24

PART II
Software/Technology
General Provisions

72.	Applicability	26
73.	Definitions – Part II	26

Terms & Conditions

74.	Software License Grant	27
75.	Enterprise License Option for Software	29
76.	Product Acceptance	31
77.	Audit of Licensed Product Usage	31
78.	Ownership/Title to Custom Products or Programming	32
79.	Proof of License	33
80.	Product Version	33
81.	Migration to Centralized Contract	33
82.	Notice of Product Discontinuance	33
83.	Reinstatement of Maintenance	33

84.	No Hard-stop/Passive License Monitoring	33
85.	Additional Warranties/Guarantees	34
86.	Indemnification	34
87.	Source Code Escrow for Licensed Products	34

PART I
General Provisions

1. APPLICABILITY The terms and conditions set forth herein are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Office of the Essex County Purchasing Agent where incorporated by reference in its Bid Documents. The provisions herein shall govern such procurement or contract unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. GOVERNING LAW The laws of the State of New York shall govern and apply to the procurement, any resulting contract and for determinations in a court of competent jurisdiction in New York of any and all disputes, litigation or interpretations arising from or connected with the procurement or contract, except where expressly superseded in a specific contract letting or where the Federal supremacy clause requires otherwise. These specifications are modeled after and upon the specifications developed and used by the New York State Office of General Services for procurements by New York State.

3. APPENDIX A / INSURANCE The mandatory terms for all Essex County contracts are expressly incorporated herein and in all bid documents and/or resulting contracts, such terms being set forth in Appendix A (*Standard Clauses for Essex County Contracts*). Insurance requirements are also attached and incorporated herein.

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

5. CONFLICT OF CLAUSES Conflicts between procurement or contract documents shall be resolved in the following order of precedence:

(a) **Appendix A** (*Standard Clauses for Essex County Contracts*)

(b) **Contract/Clarification Documents** Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractors Bid or Mini-bid.

(c) **Bid Documents** - Bid Specifications prepared by Essex County

(d) **Contractors Bid or Proposal**

6. DEFINITIONS

Terms used in this document shall have the following meanings:

AGENCY OR AGENCIES Essex County, New York, acting by or through one or more departments, boards, commissions, offices or institutions of Essex County.

ANCILLARY PRODUCT: Product which is purchased or licensed on a restricted use basis in conjunction with the principal manufacturers Product being acquired (e.g. may be used only in combination, or by educational institutions for research use).

AUTHORIZED USER(S) Agencies, or any other entity authorized by Essex County to participate in Essex County procurement contracts (including but not limited to political subdivisions, public authorities, school districts and public benefit corporations), provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation. The term "Authorized User" shall include "Licensees."

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated contract term.

BIDDER Any individual or other legal entity, (including but not limited to partnership, firm or corporation) which submits a bid in response to a Bid Solicitation. The term Bidder shall also include "offeror" and/or "contractor".

BID DOCUMENTS Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. Appendix A (*Standard Clauses for NYS Contracts*), Appendix B, (*General Specifications*). Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

BID SOLICITATION The notice or advertisement of an intent to purchase a specified Product by or on behalf of Authorized User(s).

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

CONTRACT The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

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

CONTRACTOR Any successful Bidder(s) to whom a contract has been awarded by the Purchasing Agent. The term "Contractor" includes Licensors.

COUNTY Essex County, New York.

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

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

GROUP A classification of Product (commodities, services or technology).

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

LATE BID For purposes of bid openings held and conducted by the Essex County Purchasing Agent, a bid not received in such place as may be designated on the Bid Specifications or in the Office of the Essex County Purchasing Agent, at or before the date and time established in the Bid Specifications for the bid opening.

LETTER OF ACCEPTANCE A letter to the successful Bidder(s) indicating acceptance of its bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a contract but is not an order for Product, and Contractor should not take any action with respect to actual contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes ancillary products, error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

LICENSEE The County, or one or more Agencies or Authorized Users who acquire Product from Contractor by execution of a license in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) on whose behalf the license was executed who took receipt of the Product, and who shall be solely responsible for performance and liabilities incurred.

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

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

NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

PROCUREMENT RECORD Documentation by the Essex County Purchasing Agent of the decisions made and approach taken during the procurement process.

PRODUCT A deliverable under any Bid or Contract which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

PURCHASE ORDER The County's fiscal form or format which is used when making a purchase.

REQUEST FOR PROPOSALS (RFP) A type of Bid Document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value", as defined by the County's Procurement Policy and New York Law.

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

RESPONSIBLE BIDDER A Bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Purchasing Agent.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Purchasing Agent.

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

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

Bid Submission

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

8. BID OPENING Bids may, as applicable, be opened publicly. The Purchasing Agent reserves the right at anytime to postpone or cancel a scheduled bid opening.

9. BID SUBMISSION The submission of a bid will be construed to mean that the bidder is fully informed as to the extent and character of the supplies, material, or equipment required and a representation that the bidder can furnish the supplies, materials, or equipment satisfactorily in complete compliance with the specifications.

All bids shall comply with the following:

(a) Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the Bid Specifications prior to the stated bid opening date/time.

(b) A bid return envelope, if provided with the Bid Specifications, should be used with the bid sealed inside. If the bid response does not fit into the envelope, the bid envelope should be taped onto the outside of the sealed box or package with the bid inside. If using a commercial delivery company which requires use of their shipping package or envelope, Bidders sealed bid, labeled as detailed below, should be placed within the shippers sealed envelope to ensure that the bid is not prematurely opened. All bids must have a label on the outside of the package or shipping container outlining the following information:

“BID ENCLOSED” (bold print, all capitals)
IFB or RFP Number
Bid Submission date and time

In the event that a Bidder fails to provide such information on the return bid envelope or shipping material, the County reserves the right to open the shipping package or envelope to determine the proper bid number or Product group, and the date and time of bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the bid or the procurement. Notwithstanding the County’s right to open a bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

10. FACSIMILE SUBMISSIONS Unless specifically authorized by the terms of the Bid Specifications,

facsimile bids ARE PROHIBITED AND SHALL NOT BE ACCEPTED. Where the bid specifications are silent as to the submission of bids by facsimile, no fax bids shall be permitted or accepted. Where specifically authorized, the following rules and conditions apply:

- (a) FAX number(s) indicated in the Bid Specifications must be used.
- (b) Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Purchasing Agent bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidders access to such equipment at any specific time.
- (c) Bidders are solely responsible for submission and receipt of the entire facsimile bid by the Essex County Purchasing Agent prior to bid opening and must include on the first page of the transmission the total number of pages transmitted in the bid, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Purchasing Agent.
- (d) Facsimile bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

11. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, when, as and if specifically authorized, including an executed signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

12. LATE BIDS Any bid received at the specified location after the time specified will be considered a late bid. A late bid shall not be considered for award unless acceptance of the late bid is in the best interests of Essex County and either (a) no timely bids meeting the requirements of the Bid Documents are received, or (b) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of Essex County, shall not excuse late bid submissions. Otherwise, all late bids will not be considered and will be returned unopened to the bidder. The bidder assumes the risk of any delay in the mail or in the handling of the mail by employees of the County. Whether sent by mail or by means of personal delivery, the bidder assumes responsibility for having his bid deposited on time at the place specified.

13. BID CONTENTS Bids must be complete and legible. All bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified in the Bid Specifications. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Purchasing Agent or may be grounds for rejection of the bid. Changes, corrections and/or use of white-out in the bid or Bidders response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their bids before submission, as amendments to bids or requests for withdrawal of bids received by the Purchasing Agent after the time specified for the bid opening, may not be considered. All lines must have an indication of bidders response whether it be "o", "N/A" or a dollar figure. All lines must be filled in to indicate bidder acknowledgment of the request. Bids that do not have all applicable lines filled in on bid sheet may be disqualified as a non-responsive bid. The Purchasing Agent shall not assume there is "no charge" when lines are left empty.

Bidders must submit with bid detailed specifications, circulars, warranties and all necessary data on items he proposes to furnish. This information must show clearly that the item offered meets all detailed specifications herein. The Purchasing Agent reserves the right to reject any bid if its compliance with the specifications is not clearly evident. If item offered differs from the provisions contained in these specifications such differences must be explained in detail, and bid will receive careful consideration if such deviations do not depart from the intent of these specifications and are to the best interests of Essex County as interpreted by the Purchasing Agent of Essex County.

It is the responsibility of the bidder to offer a product that meets the specifications of the manufacturer model as listed.

All stock electrical items must be listed and approved by Underwriters' Laboratories, Inc.

14. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection of the bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) which are attached or referenced with the submission shall not be considered part of the bid, but shall be deemed included for informational or promotional purposes only.

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

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

No extraneous term(s), whether or not deemed "material," shall be incorporated into a contract unless the Purchasing Agent expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

15. CONFIDENTIAL / TRADE SECRET MATERIALS Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the *Freedom of Information Law* must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

16. PREVAILING WAGE RATES - Public Works and Building Services Contracts If any portion of work being bid is subject to the prevailing wage rate provisions of Labor Law, the following shall apply:

(a) "Public Works" and "Building Services" – Definitions

i. Public Works *Labor Law* Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the contract. The wage and hours provision applies to any work performed by contractor or subcontractors.

ii. Building Services *Labor Law* Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.

(b) Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are attached to this solicitation. Bidders must submit bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, Bidders may not submit bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. **Bids which fail to comply with this requirement will be disqualified.**

(c) Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the contract term that apply to the classes of individuals supplied by the contractor on any projects which result from this contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the contract term as required by law.

(d) Public Posting & Certified Payroll Records In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and sub-contractors on public works projects must submit monthly payroll transcripts to Essex County which has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For mini-bid solicitations, the payroll records must be submitted to the entity preparing the agency mini-bid project specification. For "agency specific" bids, the payroll records should be submitted to the entity issuing the purchase order. For all other Essex County procurement contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and Essex County, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor so long as: 1) the contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. **This provision does not apply to building services contracts.**

iv. Records Retention Contractors and subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

(e) Days Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law) No laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such

restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the Essex County Purchasing Agent for the preservation of the contract site or for the protection of the life and limb of the persons using the contract site.

17. TAXES

(a) Unless otherwise specified in the Bid Specifications or set forth in this clause, the quoted bid price includes all taxes applicable to the transaction.

(b) Purchases made by Essex County and certain non-County Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a County Agency or the invoice forwarded to authorize payment for such items will be sufficient evidence that the sale by the Contractor was made to the County, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-County Authorized Users must offer their own proof of exemption where required. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor. For tax free transactions under the Internal Revenue Code, the Essex County Registration Number is 14 6002889.

(c) Purchases by Authorized Users other than Essex County may be subject to such taxes, and in those instances the tax should be computed based on the bid price and added to the invoice submitted to such entity for payment.

18. EXPENSES PRIOR TO AWARD Essex County is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract award and/or issuance of an approved Purchase Order.

19. ADVERTISING BID RESULTS A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial advertising without the prior written approval of the Purchasing Agent. In addition to any other sanctions or remedies available to it in law or equity, the Purchasing Agent may suspend from bidding on its requirements or terminate a contract of any Bidder/Contractor who violates the terms of this clause.

20. PRODUCT REFERENCES

(a) **“Or Equal”** On all Bid Specifications the words “or equal” are understood to apply where a copyright brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Purchasing Agents decision as to acceptance of the Product as equal shall be final.

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

21. RECYCLED OR RECOVERED MATERIALS Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid

Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties & Guaranties” set forth below.

Refurbished or remanufactured components or items may only be accepted at the discretion of the Purchasing Agent, or upon the conditions set forth in the Bid Specifications.

Items with recycled, recovered, refurbished or remanufactured content must be identified in the bid or will be deemed new Product.

22. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products which are manufactured or produced in public institutions will be rejected.

23. PRICING

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

(b) Net Pricing Prices must be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject only to the cash discount. If the award is to be made on another basis, transportation and other charges must be prepaid by the Contractor and added to the invoice as a separate item, unless otherwise required in the Bid Specifications.

(c) “No Charge” Bid When bids are requested on a number of Products as a group or Lot, a Bidder desiring to bid “no charge” on a Product in the grouping or Lot must clearly indicate such. Otherwise, such bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Purchasing Agent.

If a price is written in numbers and alpha, the alpha will govern.

Prices shall be net FOB any point in Essex County, New York. Price quoted shall include all delivery costs. Prices shall be net, including transportation and delivery charges fully prepaid by the successful bidder to destination indicated in the proposal. If award is made on any other basis, transportation charges must be prepaid by the successful bidder and added to the invoice as a separate item. In any case, title shall not pass until items have been delivered and accepted by the County.

24. DRAWINGS

(a) Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Purchasing Agent, be considered a part of the bid and of any resulting contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

(b) Drawings Submitted During the Contract Term Where required by the Bid Specifications to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall be required to develop, maintain, deliver and update such drawings on an ongoing basis at no additional charge. Contractor shall be responsible for updating drawings and plans during the contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized

Users representative as required by the Bid Specifications. Where required, Contractor shall furnish to Authorized User in a timely manner the required drawings representing the then current, "as modified" condition of all product included in the scope of work.

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

25. SITE INSPECTION Where Bidder is required by the Bid Specifications to deliver or install Product, or to service installed product(s) or equipment, Bidder shall be given an opportunity and shall be required to inspect the site prior to submission of the Bid, including environmental or other conditions or pre-existing deficiencies in the installed product, equipment or environment, which may affect Bidders ability to deliver, install or otherwise provide the required product. All inquiries regarding such conditions may only be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed, and to have included the costs of repair in its bid. Bidder must provide a detailed explanation of work intended to be performed under this clause. Bidder shall be required to remedy any pre-existing deficiencies or conditions at the commencement of the contract term. Reimbursement for the cost of repairing the conditions or deficiencies shall be separately enumerated in the bid.

26. SAMPLES

(a) Standard Samples Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Purchasing Agent and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.

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

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

(c) Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractors default, the Purchasing Agent may procure a commodity substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

(d) Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by, or for, the Purchasing Agent) and approval thereof shall not relieve the Contractor from full compliance with all conditions and terms, performance related and otherwise, specified in the Bid Documents. If in the judgment of the Purchasing Agent the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Documents, the Purchasing Agent may reject the bid. If an award has been made, the Purchasing Agent may cancel the contract at the expense of the Contractor.

(e) Testing All samples are subject to tests in the manner and place designated by the Purchasing Agent, either prior to or after contract award. Unless otherwise stated in the Bid Specifications, Bidder Samples consumed or rendered useless by testing will not be returned to the Bidder.

27. ADDENDA / INTERPRETATION No verbal interpretation of the intent of any of the specifications or other Contract Documents will be made before receipt of bids. Requests for interpretations prior to receipt of bids must be presented, in writing, to the Purchasing Agent, 100 Court Street, P.O. Box 217, Elizabethtown, NY 12932, and to be given consideration must be received by the Purchasing Agent at least seven (7) days prior to the date set for the opening of bids.

Any interpretation, and any additional information or instruction will, if issued, be in the form of a written Addendum or Addenda sent to all holders of Contract Documents at the addresses furnished therefor, at least five (5) days prior to the date of the opening of bids.

Failure of any bidder to receive any Addenda shall not relieve such bidder from any obligation under this bid as submitted. All Addenda so issued shall become a part of the Contract Documents.

Bid Evaluation

28. BID EVALUATION The Purchasing Agent reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Purchasing Agent determines the best interests of the County will be served. The Purchasing Agent, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and contract award may be made in compliance with the Bidders conditional or revocable terms in the offer.

Where a bidder is requested to submit a bid on individual items and/or on a total sum or sums, the right is reserved to award bids on individual items or on total sums. The County reserves the right to award in whole or in part based on the lowest responsible bid.

The following three items will automatically render a bid unacceptable to Essex County:

- a. Failure to sign bid proposal page.
- b. Failure to include necessary bid deposit (as required).
- c. Failure to sign and submit non-collusive bidding certificate.

It shall be fully understood that any deviations from the inclusion of the above items will be grounds to see the bid as non-compliant and will not be considered for award.

The Purchasing Agent reserves the right to reject such bids, as in his opinion, are incomplete, conditional, obscure, or which contain irregularities of any kind including unbalanced bids. One in which the amount bid for one or more separate items is substantially out of line with the current market prices for the materials and/or work covered thereby.

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

30. CLARIFICATIONS / REVISIONS Prior to award, the Purchasing Agent reserves the right to seek clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the bid.

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

32. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent bids as to pricing or other factors, the decision of the Purchasing Agent to award a contract to one or more of such Bidders shall be final.

33. PERFORMANCE QUALIFICATIONS The Purchasing Agent reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Documents. Contractor shall at all times during the contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Purchasing Agent, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product bid. If the Purchasing Agent determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Purchasing Agent may reject such bid or terminate the contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Purchasing Agent to make an investigation either before or after award of a contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidders employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

35. QUANTITY CHANGES PRIOR TO AWARD The Purchasing Agent reserves the right, at any time prior to the award of a specific quantity contract, to alter in good faith the quantities listed in the Bid Specifications to conform with requirements. In the event such right is exercised, the lowest responsible Bidder meeting specifications will be advised of the revised requirements and afforded an opportunity to extend or reduce its bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its bid price may result in the rejection of its bid and the award of such contract to the lowest responsible Bidder who accepts the revised requirements.

36. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after contract award. Written requests should be directed to the Purchasing Agent.

37. TIME FRAME FOR OFFERS The Purchasing Agent reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a contract is awarded or the Bidder delivers to the Purchasing Agent written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Purchasing Agent, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except as may be otherwise provided by law or by the Purchasing Agent, upon receipt of all required approvals a Contract shall be deemed executed and created with the successful Bidder(s) upon the Purchasing Agent's mailing or electronic communication to the address on the bid of (a) a Letter of Acceptance and (b) a fully executed contract, or (c) a Purchase Order authorized by the Purchasing Agent.

39. COMPLIANCE WITH LAWS, ETC. The Bidder shall comply with all the provisions of the laws of the State of New York and of the United States of America which affect municipalities and municipal contracts, and any and all State and Federal rules and regulation, and of amendments and additions thereto, insofar as the same shall be applicable to any contract awarded hereunder with the same force and effect as if set forth at length herein. The Bidder's special attention is called to the following laws: *General Municipal Law* Section 1 03-d, *State Finance Law* Section 167-b prohibiting the purchase of tropical hardwood products, and the New York State Public Employee Safety & Health Act of 1980.

40. MODIFICATION OF TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Purchasing Agent and Contractor.

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

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

41. SCOPE CHANGES The Purchasing Agent reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The Purchasing Agent may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance.

With respect to any specific quantity stated in the contract, the Purchasing Agent 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 Purchasing Agent may purchase greater or lesser percentages of contract quantities should the Purchasing Agent and Contractor so agree.

42. ESTIMATED 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.

43. 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 shall be immediately reduced to the lower price.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Purchasing Agent, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User requiring the Product. Unless terminated or canceled pursuant to the authority vested in the Purchasing Agent, 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 set forth in the Contract for receipt of orders, or in the Contract Award Notification.

All Purchase Orders issued pursuant to contracts let by the Purchasing Agent must bear the appropriate contract number and, if necessary, required State approvals. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendors order form, confirmation or acknowledgment, and the contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

If, with respect to an agency specific contract, a Purchase Order is not received within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify the appropriate purchasing officer in Essex County. Failure to timely notify such officer may, in the discretion of the Purchasing Agent and without cost to the State, result in the canceling of such requirement by the Purchasing Agent with, at the Purchasing Agents discretion, a corresponding reduction in the contract quantity and price.

45. PRODUCT DELIVERY It shall be understood that with respect to contract deliveries, time is of the essence. Delivery must be made as ordered 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 Purchasing Agent 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 Purchasing Agent and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of the time for delivery must be requested in writing by the Contractor and approved in writing by the Purchasing Agent. Failure to meet such time schedule may be grounds for cancellation of the order or, in the Purchasing Agents discretion, the Contract.

The County must be notified twenty-four (24) hours in advance of delivery. The County reserves the right to deny acceptance of delivery if this notice is not given, at no cost to the County.

The successful bidder shall be responsible for delivery of items in good condition at point of destination, and shall file with the carrier all claims for breakage, imperfections, and other losses, which will be deducted from invoices. The Purchasing Agent will note for the benefit of successful bidder when packages are not received in good condition. Carton shall be labeled with purchase order or contract number, successful bidders name and general statement of contents. Failure to comply with this condition shall be considered sufficient reason for refusal to accept the goods.

Unless otherwise stated in the specifications, all items must be delivered into and placed at a point within the building as directed by the shipping instructions or the Purchasing Agent. The successful bidder will be required to furnish proof of delivery in every instance.

Unloading and placing of equipment and furniture is the responsibility of the successful bidder, and the County accepts no responsibility for unloading and placing of equipment. Any costs incurred due to the failure of the successful bidder to comply with this requirement will be charged to him. No help for unloading will be provided by the County, and suppliers should notify their truckers accordingly.

All deliveries shall be accompanied by delivery tickets or packing slips. Ticket shall contain the following information for each item delivered:

Contract Number and/or Purchase Order Number
Name of Article
Item Number (if applicable)
Quantity
Name of the Successful Bidder

46. SATURDAY & HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, 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 Authorized User shall govern.

47. 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 unless otherwise specified in the contract documents.

(b) Shipping Charges Contractor shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments. Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB Destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges are understood to not relieve the contractor from responsibility for safe and proper delivery notwithstanding the Authorized Users payment of transportation charges.

(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 Authorized User. Any losses resulting from the Contractors failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title and risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g. signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product 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 Purchasing Agent.

49. RE-WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the receiving entity. If shrinkage occurs which exceeds that normally allowable in the trade, the receiving

entity shall have the option to require delivery of the difference in quantity, or to reduce the payment accordingly.

50. PRODUCT SUBSTITUTION In the event a specified manufacturers Product listed in the Contractors Bid becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Force Majeure Clause below) a Product deemed by the Purchasing Agent to be the equal or better of the specified commodity or service must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Purchasing Agents approval may be cause for cancellation of contract.

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

52. 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 Authorized User(s) and with proper consideration for the rights of other contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PRODUCT / COMPONENTS Where the Contractor is required to repair, replace or substitute Product or components under the Contract, the repaired, replaced or substituted Product shall be subject to all terms and conditions for new Product set forth in the contract, including product warranties.

54. ON-SITE STORAGE Materials, equipment or supplies may be stored at the County/s or Authorized User's site at the Contractors sole risk and only with the approval of, as the case may be, the County or the Authorized User.

55. 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 greater, and must comply with all rules and requirements of the Contract. The Purchasing Agent 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 Authorized Users 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 Purchasing Agent reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

56. ASSIGNMENT / SUBCONTRACTORS The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract, other than the assignment of the right to receive moneys due, without the prior written consent of Essex County. Prior to an assignment of the right to receive moneys becoming effective, Contractor shall file a written notice of such assignment simultaneously with Essex County and participating Authorized User(s).

The Purchasing Agent 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 Labors list of companies with which New York State cannot do business; the Purchasing Agent 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 womens business enterprises (M/WBE) bidders for the subcontract.

57. PERFORMANCE / BID BOND Essex County 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, whenever the Purchasing Agent in his/her sole discretion deems such bond or security to be in Essex County's best interest. Where required, such bond or other security shall be in the form prescribed by the Purchasing Agent.

58. STOP / SUSPENSION OF WORK

(a) **Stop Work Order** The Purchasing Agent reserves the right to stop the work covered by this contract at any time that the successful Contractor becomes unable or incapable of performing the work or meeting any requirements or qualifications set forth in the contract. In the event of such stopping, the Purchasing Agent shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Contractor shall be liable for any such cost on account thereof.

(b) **Suspension of Work Order** The Purchasing Agent, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at anytime, in the best interests of the State or Issuing Entity. 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 County spending, declaration of emergency, or other such circumstances. Upon issuance of such suspension of work, the Contractor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Purchasing Agent issues a formal written notice authorizing a resumption of work.

59. CANCELLATION A contract may be canceled by the Purchasing Agent, and/or an Authorized User may cancel its participation, license or service order under the contract, at the Contractors expense upon non-performance, or upon a determination that Contractor is non-responsive, or non-responsible.

60. 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 Purchasing Agent, 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 Contractors 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 Purchasing Agent, 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 Purchasing Agent that the delay will significantly impair the value of the contract to the County or to Authorized Users, whereupon the Purchasing Agent may:

- (a) Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to County Agencies 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.

61. CONTRACT BILLINGS Contractor shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Agencies must contain all information required by the County Treasurer and/or Auditor. The County Treasurer shall render payment for Agency purchases, and such payment shall be made in accordance with ordinary County procedures and practices. Payment of contract purchases made by Authorized Users other than Agencies shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Purchasing Agent 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 bid and award documents.

62. DEFAULT - AUTHORIZED USER An Authorized Users breach shall not be deemed a breach of the centralized contract. In the event a participating Authorized User 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 both the Purchasing Agent and the Authorized Users purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by any Authorized User, by certified or registered mail, notify both the Purchasing Agent and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared. It is understood, however, that if the Contractors basis for declaring a breach is insufficient, the Contractors declaration of breach and failure to service an Authorized User shall constitute a breach of its contract and the County or Authorized User may thereafter utilize any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

- (a) **County Agencies** The payment of interest on certain payments due and owed by a County agency may be made in accordance with Section 3-a of the *General Municipal Law* at the rate of three percent (3%) per annum.
- (b) **By Non-County Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of the County. Neither expressly nor by any implication is the County responsible for payments on any purchases made by a Non-County Agency

Authorized User.

(c) By Contractor Should the Contractor be liable for any payments to the County hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the *State Finance Law* to the same extent as though the contract was with the State of New York rather than the County.

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

(a) Cover / Substitute Performance Upon the failure of the Contractor to properly perform within the time specified, failure to provide acceptable service, to make immediate replacement of rejected Product when so requested, or upon the revocation of the Contract by the Purchasing Agent for cause, or upon repudiation of the contract by the Contractor, the Purchasing Agent may, with or without formally bidding same:

i. Purchase from other sources to replace the Product rejected, revoked, not timely delivered or repudiated; or

ii. If after making reasonable attempts, under the circumstances then existing, to timely provide acceptable service or acquire replacement product of equal or comparable quality, the Purchasing Agent is unsuccessful, the Purchasing Agent may acquire acceptable service or replacement product of lesser or greater quality.

Such purchases may, in the discretion of the Purchasing Agent, be deducted from the contract quantity.

(b) Withhold Payment In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Purchasing Agent. 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 County and/or Authorized User 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 County or Authorized User in connection therewith, including reasonable attorneys fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the contract, the Purchasing Agent may authorize an ordering Authorized User to rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

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

65. ASSIGNMENT OF CLAIM Contractor hereby assigns to the County 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, *General Business Law* Section 340, *et seq.*

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

Before any chemical product 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.

67. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the County or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this contract, to maintain at Contractors expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including workers compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

68. SECURITY / CONFIDENTIALITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the County and any Authorized User(s) in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, 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 County or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the County or Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract for a period of five (5) years. Contractor further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

69. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party agents, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

70. CONTRACT TERM - EXTENSION In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Purchasing Agent may be extended by the Purchasing Agent for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES & GUARANTEES Contractor hereby warrants and guarantees:

- (a) To fully defend, indemnify and save harmless the County, Authorized Users and their respective officers, agents and employees from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees,

subcontractors, partners, or agents, in any performance under this contract including: i) personal injury, damage to real or personal tangible or intangible property, without limitation; ii) negligence, either active or passive, without limitation, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party intellectual proprietary rights, without limitation, provided that the County or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Bidders sole expense, and (c) 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 County or Authorized User may require Bidder/Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Purchasing Agent shall require.

(b) Contractor warrants full ownership, clear title free of all liens, or perpetual license rights to any Products transferred to Authorized User under this Contract, and Contractor shall be solely liable for any costs of acquisition associated therewith without limitation. Contractor warrants that Authorized User will have undisturbed, peaceful use of the Products, including, without limitation, software, object or source codes, custom programming or third party intellectual property rights incorporated or embedded therein, and training modules or Documentation. Contractor fully indemnifies the County and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

(c) 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.

(d) Unless recycled or recovered materials are available in accordance with the "Recycled & Recovered Materials" clause, Product offered shall be standard new equipment, current model 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 manufacturers recommendations and standard practice. Every Product, including any substituted or replacement unit delivered, must be guaranteed against faulty material and workmanship for a period of one year from and after the date the unit is accepted unless otherwise specified by the County or Authorized User. Notwithstanding the foregoing, when the manufacturers standard guarantee for Product or any component thereof exceeds one year, the longer guarantee period shall apply to such unit or component thereof delivered under this contract. Furthermore, the Contractor agrees to extend its warranty period with regard to any Product delivered by the cumulative periods of time, after notification, during which the Product requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers or employees. 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 goods during the warranty periods shall be borne solely by the Contractor, and the County or Authorized User shall in no event be liable or responsible therefore. This warranty shall survive any termination of the contract in accordance with the warranty term.

(e) Where the provision of services requires the replacement or repair of Product, any replaced or repaired component, part or Product shall be new and shall, if available, be replaced by the original manufacturers component, part or Product. All proposed substitutes for the original manufacturers installed Product must be approved by the Authorized User before installation. The Product or part shall be equal to or of better quality than the original Product being replaced. Any Product replaced by the Contractor under the contract shall be guaranteed for one (1) year from the date of replacement and replaced at no cost to the Authorized User if found defective during that time.

(f) Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Purchasing Agent that it meets or exceeds all requirements of the bid 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 Purchasing Agent. Failure to do so may constitute grounds for the County to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Purchasing Agent.

The Contractor further warrants and guarantees:

i. His/Her/Its products against defective material or workmanship and to repair or replace any damages or marring occasioned in transit.

ii. To furnish adequate protection from damage for all work and repair damages of any kind for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other successful bidders.

iii. To carry adequate insurance to protect the County from loss in case of accident, fire, theft, etc.

iv. That all deliveries will be equal to the accepted bid sample.

v. That the equipment delivered is standard, new, latest model of regular stock product or as required by the specifications; also that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice. Every unit delivered must be guaranteed against faulty material and workmanship for a period of at least one year from date of delivery. If during this period such faults develop, the successful bidder agrees to replace the unit or the part affected without cost to the County. Any merchandise provided under the contract which is or becomes defective during the guarantee period shall be replaced by the successful bidder free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment. The successful bidder shall make any such replacement immediately upon receiving notice from the County.

vi. That all manufacturers product warranties and guarantees shall be furnished to the County, and that the County's rights thereunder shall not be in any way impaired or limited.

GENERAL

72. APPLICABILITY In addition to the terms contained in **Part I (General - All Procurements)**, the terms contained in **Part II (Software & Technology Procurements)** apply to software and technology procurements.

73. DEFINITIONS - Part II

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

ENTERPRISE The business operations in the United States of a Licensee or Enterprise Participant, without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Licensee or Enterprise Participant. For the County of New York, "business operations" shall be defined as the business operations of all Agencies, as defined in Part I.

ENTERPRISE LICENSE A contract which grants Enterprise Participants unlimited license rights to access, use and/or execute Product within the Enterprise.

ENTERPRISE PARTICIPANTS One or more Licensees, as defined in Part I, participating in an Enterprise License.

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

LOGICAL PARTITION A subset of the processing power within a CEC which has been divided through hardware and/or software means (i.e. *Processor Resources/System Manager [PR/SM]*) so as to limit the total processing power which is accessible by an operating system image by individual users or individual software products.

OBJECT CODE The machine executable code that can be directly executed by a computers central processing unit(s).

PHYSICAL PARTITION A subset of the processing power within a CEC which has been derived through hardware means so as to limit the total processing power accessible by an operating system image by individual users or individual Products.

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

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

TERMS OF LICENSE The terms and conditions set forth in the Contract which are in effect and applicable to a Product order at the time of order placement, and only such additional terms as are consistent therewith or more advantageous to the Authorized User as are set forth on the individual Product order form executed and approved by both Authorized User and Contractor.

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

TERMS AND CONDITIONS

74. SOFTWARE LICENSE GRANT *Unless otherwise set forth in the Bid Specifications or Contract, where Product is acquired on a licensed based the following shall constitute the license grant:*

(a) **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product with other product within its business enterprise in the United States. Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish manufacturers proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

(b) **License Term** The license term shall commence upon the License Effective Date. Where the terms of license permit licensing on a non-perpetual basis, the license term stated in

the Contract shall be extended by the time periods allowed for testing and acceptance.

(c) Licensed Documentation Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product. If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractors expense: a) One (1) hard copy and One (1) Master Electronic Copy of the Documentation in diskette or CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License – 1 copy per License
- Concurrent Users – 8 copies per site
- Processing Capacity – 8 copies per site

(d) Product Use Product may be accessed, used, executed, reproduced, displayed, performed by Licensee to service all Authorized Users of the machine on which Product is installed, up to the capacity measured by the applicable licensing unit stated in the terms of license (i.e. payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation).

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

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

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (using, for example, but not limited to, JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the stated function or business activity.

(g) Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: 1) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; 2) reproducing a reasonable number of copies of the Product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 3) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed under paragraph (F) above. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

(h) Confidentiality Restrictions The Product is a trade secret and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of license. Licensee will not remove or destroy any proprietary markings of Contractor.

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

- a. Copy the Product;
- b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- c. Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Product or the Documentation, or use the Product or Documentation in any service bureau arrangement;
- d. Disclose the results of Product performance benchmarks to any third party who is not an Authorized User without prior notice to Contractor;
- e. Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

75. ENTERPRISE LICENSE OPTION FOR SOFTWARE Multiple Authorized Users may license any Product offered under the Contract on behalf of their collective business operations. An Enterprise License shall incorporate the terms set forth in this Part II and the pricing set forth in the Contract, and additionally the following terms:

(a) Enterprise – Defined Any Authorized User may be an Enterprise Participant. Enterprise Participants will be enumerated in the Enterprise License, including: i) contact name, ship to and main billing address of each Enterprise Participant, ii) street address of the included End User sites of each Enterprise Participant. The originally defined Enterprise may be modified at any time thereafter, including deletion or addition of Enterprise Participants, sites ownership to" locations, provided that Contractor is given written notice and that any additional capacity required by such addition is licensed in accordance with the Enterprise License terms.

(b) Product Use Product licensed under this Enterprise Option shall be licensed with the rights set forth in this Part II, without reference to a specific designated system or Licensee, up to the maximum licensed capacity. Product may be used and freely transferable anywhere

within the defined Enterprise, including higher or lower performance machines, and Enterprise Participants will not incur an increase in license, support or other charges provided that the aggregate utilization of the Product does not exceed the aggregate Enterprise Licensed capacity.

(c) Submission of Orders, Billing and Usage Reporting An Enterprise may be established for order placement and billing as either a “single” or “multiple” point of contact, at Licensees option. Where designated as a “single”, one Enterprise Participant shall be designated as the lead agency and central point for submission of Purchase Orders, usage reporting and billing. Where designated as “multiple” point of contact, each designated Enterprise Participant shall be responsible for submission of Purchase Orders, reporting and billing with regard to its use of Enterprise Licensed Product. For either single or multiple point of contact Enterprises, a) Contractor agrees to hold each Enterprise Participant solely responsible for payment and performance; and b) Contractor shall be responsible for furnishing an annual report to each designated point of contact summarizing overall Enterprise License activity for the preceding twelve months.

(d) Shipping / Delivery Contractor shall be responsible for delivery of Master Copies of Enterprise Licensed Product and documentation to Enterprise Participants. Within either “Single” or “Multiple” Enterprise Licenses, shipping and delivery of Master Copies of Product and Documentation shall be the responsibility of Contractor to each “ship to” location specified on the Purchase Order(s). Distribution and installation of Enterprise Licensed Product to End Users at a site shall be the responsibility of the Licensee.

(e) Enterprise Operating Systems Unless otherwise specified by the parties, up to ten (10) hardware/operating system combinations for Product shall be included at no additional charge. The initial ten hardware/operating systems may be specified at any time within five (5) years of the Enterprise License effective date. Additional hardware/operating systems beyond the initial ten (10) may be specified at anytime by the Enterprise, however if additional copies of Product are required for hardware/operating systems beyond the initial ten, the cost for such systems will be as mutually agreed between the parties.

(f) Product Acceptance Each Enterprise Participant shall have a right of acceptance, as set forth above in this Part II, only for the first copy of Product for its site(s).

(g) Enterprise Fees Enterprise License Fees shall be set forth in the Contract. Notwithstanding the foregoing, the Product license fees for additional copies or units of capacity for Enterprise licensed Product shall not increase by more than six percent (6%) annually each year during the Enterprise License term. Contractor may offer additional discounts/incentives for Enterprise Participants as may be mutually agreed between the parties. Enterprise Participants shall be entitled to aggregate the volume of all Enterprise Participants for purposes of establishing any applicable discounts under the Contract, and Enterprise Licensed Volume shall be aggregated with volume of non-Enterprise Licensed Product otherwise purchased under the centralized Contract. Upon termination of the Enterprise, Enterprise Participants have the right to acquire additional capacity or users at the Enterprise License price for twelve months after the termination of the Enterprise License.

(h) Technical Support Unless otherwise mutually agreed, technical support is optional and may be elected individually by Product by each Enterprise Participant. Where an Enterprise Participant is under a current maintenance or technical support contract, such Enterprise Participant shall be entitled to credit any support paid covering any portion of the Enterprise License Term to the fees due under the Enterprise license.

Enterprise Participants shall have the right to partially or wholly de-support a subset of unused Enterprise licensed capacity upon written notice to Contractor at the end of any then -

current technical support term without penalty or charge. The capacity for a Program license which has been de-supported must remain inactive and may not be used within the Enterprise unless technical support for such capacity has been reinstated. In the event of de-support, Contractor reserves the right to reasonably determine compatibility of future releases or new programs prior to shipment.

(i) Merger of Two or More Enterprises Two or more Enterprises may be merged to form a larger Enterprise for the purpose of sharing and exchanging data at no additional license fee provided that participants give Contractor notice of such merger and that the combined capacity does not exceed the maximum capacity of the individual licenses.

(j) "Nested" Enterprises Individual Enterprise License participant(s) may license additional capacity or products for the specific use of a subset of the larger enterprise. Said participant(s) must certify in writing to Contractor that such use is only by the enumerated subset of participants.

(k) Default A default by any Enterprise Participant shall entitle the Contractor to the remedies against such participant under the Contract, but shall not be deemed a default by the remaining non-defaulting Enterprise Participants.

76. PRODUCT ACCEPTANCE Unless otherwise provided in the Bid Specifications, the County and/or Authorized User(s) shall have sixty (60) days from delivery to accept Product. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause would constitute acceptance by the County or Authorized User(s) as of the expiration of that period.

Unless otherwise provided in the Bid Specifications, The County or Authorized User shall have the option to run acceptance testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, The County or Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the County or Authorized User, and shall be made part of the Contractors standard documentation. The test data shall remain accessible to the County or Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within sixty (60) days from delivery, and the Contractor or Product is responsible for the delay, The County or Authorized User 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. The County or Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the County or Authorized User 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 The County or Authorized Users 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.

77. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, at its expense, use of licensed Product at any site where a copy of the Product resides provided that: i) Contractor gives Licensee or Enterprise Participants at least thirty (30) days advance notice, ii) such audit is conducted during such party's normal business hours iii) each Licensee or Enterprise Participant is entitled to designate a representative who shall be entitled to participant and simultaneously review all information obtained by the audit, and shall be entitled to copies of all reports, data or information obtained by the Contractor; and iv) if the audit shows that such party is not in

compliance such party shall be liable for the unlicensed capacity and shall be required to purchase the additional units or rights necessary to bring it into compliance.

78. OWNERSHIP / TITLE TO CUSTOM PRODUCTS OR PROGRAMMING Where contract deliverables include custom products or programming, title, rights and interests to such Product(s) shall be determined as follows:

(a) Definitions

Product For purposes of this section, the term “Product” shall have the meaning set forth in Part I of these *General Specifications*, which includes, but is not limited to: software applications or programming, programming tools, documentation (including user or training manuals), modules, interfaces, templates, and other elements such as utilities, subroutines, algorithms, formulas, source code, object code, reports, drawings, or data.

“Existing Product” is defined as any proprietary material(s) existing or developed independently and not at the expense of Licensee.

“Custom Product” is defined as any material(s), exclusive of Existing Product, created, prepared, written, compiled or developed by Contractor, or anyone acting on his behalf for The County or Authorized User pursuant to the Contract.

(b) Contractor or Third Party Manufacturers Title to Existing Product Title to Existing Product(s) does not transfer. With respect to such Existing Product(s), whether embedded in or operating in conjunction with Custom Product, Contractor warrants: a) all right, title and interest in Contractor Existing Product(s); or b) all license rights, title and interest in third party Existing Product(s), which include the right to grant to The County or Authorized User an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s). Contractor hereby grants a irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s) embedded in or transferred for use in conjunction with Custom Product(s). The Licensee agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted under this paragraph prior to distribution or use.

(c) Title to Custom Product Title to Custom Product(s), excluding Existing Product, shall be deemed the sole and exclusive property of the County or Authorized User, who shall have all right, title and interest (including ownership and copyrights). For the purposes of the federal copyright law, execution of this contract shall constitute an assignment of all right, title and interest in the Custom Product(s) by Contractor to the County or Authorized User. The County or Authorized User, in its sole discretion, reserves the right to sell Custom Product or to license them on an exclusive or non-exclusive basis to Contractor or other Third Parties. Contractor hereby agrees to take all necessary and appropriate steps to ensure that Custom Product is protected against unauthorized use, execution, reproduction, display, performance, or distribution by or through Contractor, its partners or agents. Notwithstanding this reservation of title, Contractor shall not be precluded from using the related or underlying general knowledge, skills and experience developed in the course of providing the Custom Product in the course of Contractor’s business.

(d) Acquisitions Funded By Tax Exempt Financing In addition to the foregoing rights under a, b and c, the sale or licensing of Custom Product or rights therein shall not occur until such Product or rights are or become useable, and shall be at fair market value which shall be determined at the time of sale or licensing. Any such transfer shall be pursuant to a separate written agreement. If the Contract deliverables are to be funded through tax exempt financing, the County or Authorized User may assign to a Trustee or other entity for security purposes County or Authorized Users ownership and license rights in Custom and Existing Products. Contractor will cooperate with the County or Authorized User to execute such other documents as may be appropriate to achieve the objectives of

this paragraph.

(e) Other Acquisitions (Not Funded by Tax Exempt Financing) In addition to the rights set forth above (paragraphs “a”, “b” and “c”), the County or Authorized User reserves the right to transfer any or all rights to Custom Materials on an exclusive or non-exclusive basis. Where such transfer (sale or licensing) is provided in the Bid Specifications, Contractor shall include a purchase price for such rights in its bid. Such price shall be offered as a deduction from Contractor’s overall Bid or Project Bid price, and shall be weighted as set forth in the bid evaluation criteria, if any. Such rights shall transfer to the successful Bidder/Contractor upon successful completion and acceptance by the County or Authorized User of all contract deliverables. Contractor will cooperate with the County or Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

79. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Product order either: a) the Product manufacturer’s certified License Confirmation Certificates in the name of each such Licensee; or b) a written confirmation from the Product manufacturer accepting Contractors Product invoice as proof of license. Bidder or Contractor shall submit a sample manufacturers certificate, or alternatively such written confirmation from the manufacturer, with the Bid or Contract. Such certificates must be in a form acceptable to the Licensee.

80. PRODUCT VERSION Product orders shall be deemed to reference Manufacturers most recently released model or version of the Product at time of delivery, unless an earlier model or version is specifically requested in writing by the County or Authorized User and Contractor is willing to provide such version.

81. MIGRATION TO CENTRALIZED CONTRACT The County or Authorized User 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 County or Authorized Users election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

82. NOTICE OF PRODUCT DISCONTINUANCE In the event that a Product manufacturer proposes to discontinue maintenance or support for Product, Contractor shall (1) notify the County and each Authorized User in writing of the intended discontinuance, and (2) continue to provide maintenance and support for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than eighteen (18) months from the date of notice, and (3) at The County or Authorized Users option, either a) provided that the County or Authorized User is under maintenance, provide the County or Authorized User with either a Product replacement with equivalent functionality at no additional charge, or b) provide County or Authorized User with the source code for Licensed Product at no additional charge to enable it to continue use and maintenance of the Product.

83. REINSTATEMENT OF MAINTENANCE The County or Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon written notice to Contractor. In the event that The County or Authorized User discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor at rates which would have been due under the contract for the period of time that such maintenance had lapsed, or for twelve months, whichever is less.

84. NO HARDSTOP / PASSIVE LICENSE MONITORING Contractor hereby represents, warrants and covenants that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs”, “time locks”, or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or

impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that The County or Authorized User shall not have an adequate remedy at law, including monetary damages, and that The County or Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which The County or Authorized User shall be entitled.

85. ADDITIONAL WARRANTIES / GUARANTEES Where Contractor or Product manufacturer offers additional or more advantageous warranties than set forth herein, Contractor shall offer or pass through any additional or more advantageous warranties to The County or Authorized Users. In addition to the ‘Warranties/Guarantees’ set forth in Part I, Contractor makes the following warranties.

(a) Product Performance Warranty Contractor represents and warrants that the Products delivered pursuant to this contract conform to the manufacturers specifications, performance standards, and documentation and that the documentation fully describes the proper procedure for using the Products in an efficient manner. Contractor does not warrant that software is error-free.

In the event that Contractor does not remedy a substantial breach of this warranty within the cure period, Licensee shall also have the right to terminate any payments due Contractor, with a refund of the any fees prospectively paid from the date of breach.

(b) Year 2000 Warranty For all procurements of Product, Contractor must furnish a warranty statement in accordance with the NYS Standard Year 2000 Warranty Compliance Statement set forth in Part I at the time of bid for agency specific contracts or product order for centralized contracts.

(c) Virus Warranty Contractor represents and warrants that Licensed Software contains no known viruses. Bidder is not responsible for viruses introduced at Licensees site. For purposes of this provision, “Virus” shall have the meaning set forth in Part II, “Definitions”.

A breach of any of the foregoing shall be deemed a material breach of the Contract or any License granted thereunder. The defaulting party shall be given written notice of a warranty breach under this section and shall have a thirty (30) day period to cure such breach.

86. INDEMINIFICATION THE WARRANTIES SET FORTH IN THESE GENERAL SPECIFICATIONS (PARTS I and II) 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.

Contractor shall defend, indemnify and save harmless the County and Authorized Users from suits, actions, claims, damages and costs arising under or connected to Contractors actions, and except where express loss liabilities set forth elsewhere in the Contract provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose Contractor liability on “without limitation”, the total liability of Contractor for such claim(s), regardless of the nature and basis for the claim, shall not exceed two (2) times the fees paid for the applicable Product. For any suit, action, claim, damages or costs arising under or are connected to personal injury or property damage, or breach of the title, patent and copyright warranties, Contractor shall be fully liable without limitation.

The County or Authorized User may retain such moneys from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted by or against the County or Authorized User, provided however, that Contractor shall not indemnify each such entity to the extent that any claim, loss or damages arising hereunder is caused by the negligence act or failure to act of said entity.

87. SOURCE CODE ESCROW FOR LICENSED PRODUCTS If source code or source code escrow is offered by either Contractor or Product manufacturer/developer to any other commercial customers, Contractor either: i) will provide Licensee with the Source Code for the Product; or ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the County, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the County, or iii) will certify to the County that the Product manufacturer/developer has named the County, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the County and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above. Contractor shall identify the escrow agent upon commencement of the contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The County may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) (the "Prohibited Entities List"). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).

Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The County reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

I, _____, being duly sworn, deposes and says that he/she is the _____ of the _____ Corporation and that neither the Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.

SIGNED

SWORN to before me this _____
day of _____, 20__

Notary Public

NON-COLLUSIVE BIDDING CERTIFICATION

1. By submission of this bid, the undersigned bidder and each person signing on behalf of such 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 the undersigned’s knowledge and belief:

(a) 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;

(b) 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

(c) 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.

2. The undersigned acknowledges and agrees that a bid shall not be considered for award nor shall any award be made where any of the 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 therefor. Where one or more of the above has/have not been complied with, the bid shall not be considered for award nor shall any award be made unless 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.

3. The undersigned also acknowledges and agrees that 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 1 above.

4. The undersigned further acknowledges and agrees that any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a bidder which is a corporation or a limited liability company for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in paragraph 1 of this certificate, shall be deemed to have been authorized by the board of directors of the bidder, 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 or limited liability company.

Name of Bidder: _____
(print full legal name)

Date Signed: _____

Signature: _____

Name of Person Signing Certificate: _____
(print full legal name of signer)

Bidder is (check one): an individual, a limited liability partnership, a limited liability company,
 other entity (specify): _____

CONTRACTOR'S ACKNOWLEDGEMENT

(If Corporation)

STATE OF NEW YORK) SS:
COUNTY OF ESSEX)

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

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If Individual)

STATE OF NEW YORK) SS:
COUNTY OF ESSEX)

On this _____ day of _____ 20____, before me personally came
_____ to me known, and known to me to be
the same person described in and who executed the within instrument and he duly acknowledged to
me that he executed the same for the purpose herein mentioned and, if operating under and trade
name, that the certificate required by the New York State Penal Law, Sections 440 and 440-b has been
filed with the County Clerk of Essex County.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If Co-Partnership)

STATE OF NEW YORK) SS:
COUNTY OF ESSEX)

On this _____ day of _____ 20____, before me personally came
_____ to me known, and known to me to be a member of the
firm of and the person described in, and who executed the within instrument in behalf of said firm for
the purposes herein mentioned and that the certificate required by the New York State Penal Law,
Sections 440 and 440-b has been filed with the County Clerk of Essex County.

Notary Public