



STATE OF NEW YORK
UNIFIED COURT SYSTEM
OFFICE OF COURT ADMINISTRATION
DIVISION OF ADMINISTRATIVE SERVICES
CONTRACT & PROCUREMENT ADMINISTRATION UNIT
42 KARNER ROAD
ALBANY, NEW YORK 12205
(518) 869-4732

JONATHAN LIPPMAN
Chief Administrative Judge

LAURA WEIGLEY ROSS
Assistant Deputy Chief Administrator

ANN T. PFAU
Deputy Chief Administrative Judge

***** NOTICE OF AWARD *****

ESTIMATED QUANTITY TERM CONTRACT

NOTE: COURTS AND OFFICES OF THE UNIFIED COURT SYSTEM PLACING ORDERS MUST INDICATE THE "AWARD NO." ON ALL PURCHASE AND PAYMENT DOCUMENTS.

ITEM: CD-ROM REPRODUCTION OF RECORD
ON APPEAL IN CAPITAL CASES

RFP: OCA/CPA-299

CONTRACT PERIOD: **SEPTEMBER 01, 2004 - AUGUST 31, 2009** (WITH OPTION TO ONCE EXTEND FOR UP TO 180 DAYS.

CONTRACTOR:

COUNSEL PRESS, LLC.
520 EIGHTH AVE. - 8TH FLOOR
NEW YORK, NY 10018

AWARD NO. **PA-03615**

FED. ID #: 84 -1344533

CONTACTS: MR. DAVID WEEDEN (212) 685-9800
MR. JEFFREY PARKHURST (303) 998-2404

FAX: (212) 447-1621

PRICING: PER ATTACHED **EXHIBIT A.** ALL PRICES NOTED THEREON ARE NET F.O.B. DESTINATION AND INCLUDE COMPLETE, INSIDE DELIVERY TO THE EXACT LOCATION(S) NOTED ON THE PURCHASE ORDER(S)

PRICING IS APPLICABLE THROUGHOUT NEW YORK STATE
NOTWITHSTANDING GEOGRAPHIC ORIGIN OF APPEAL.

INCORPORATED DOCUMENTS:

THE FOLLOWING DOCUMENTS ARE FULLY INCORPORATED IN, AND/OR ATTACHED TO, THIS NOTICE OF AWARD. FURTHER, IN THE EVENT OF ANY CONFLICT IN TERMS BETWEEN THE DOCUMENTS WHICH COMPRISE THIS NOTICE OF AWARD, THE BELOW-LISTED ORDER OF PRECEDENCE SHALL PREVAIL:

1. THE RULES OF THE NYS COURT OF APPEALS IN CAPITAL CASES EFF. 11:19:97 WITH REVISIONS 07:21:99, 03:29:00, 02:05:03
WWW.COURTS.STATE.NY.US/CTAPPS/510RULES.HTM
2. EXHIBIT B - NYS COURT OF APPEALS SPECIFICATIONS FOR CD-ROM COMPANION RECORDS, BRIEFS AND APPENDICES
(ATTACHED)
3. NEW YORK STATE UNIFIED COURT SYSTEM APPENDIX A (JUL. '03) STANDARD CLAUSES FOR ALL CONTRACTS (ATTACHED).
4. NEW YORK STATE UNIFIED COURT SYSTEM NOTICE OF AWARD.
5. EXHIBIT A (DATED AUGUST 06, 2004) CONSISTING OF PRICING SCHEDULE AND PRODUCTION AGREEMENT AND CONFIDENTIALITY TERMS.

AMENDMENTS:

WHILE CERTAIN ELEMENTS REGARDING THE CD-ROM REPRODUCTION OF THE RECORD ON APPEAL ARE KNOWN FACTORS, OTHER ELEMENTS MAY NOT BE KNOWN, OR DEFINED AT PRESENT. SHOULD THERE BE ADDITIONAL ELEMENTS REQUIRED PURSUANT TO THE RULES OF THE COURT OF APPEALS IN CAPITAL CASES, OR OTHER SPECIFICATIONS AS MAY BE DIRECTED OR EFFECTED BY THE COURT, AND SUCH ADDITIONAL REQUIREMENTS OR CHANGES AFFECT THE OBLIGATIONS OF THE CONTRACTOR, THIS AGREEMENT MAY BE AMENDED TO INCORPORATE SUCH ADDITIONAL RULES OR SPECIFICATIONS. SHOULD SUCH AMENDMENT(S) RESULT IN AN INCREASED COST FACTOR, PRICING FOR

SAME SHALL BE AS AGREED UPON BETWEEN THE OFFICE OF COURT ADMINISTRATION AND COUNSEL PRESS, LLC AND SUBJECT TO THE APPROVAL OF THE NYS OFFICE OF THE STATE COMPTROLLER.

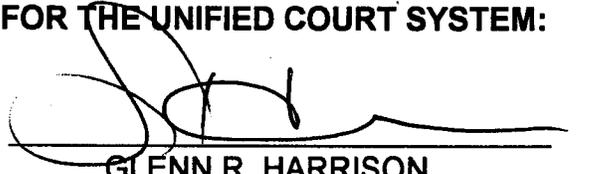
THIS AGREEMENT SHALL EXIST SOLELY BETWEEN THE PARTIES NAMED HEREIN AND MAY ONLY BE MODIFIED OR AMENDED BY SAME. NO OTHER PARTY SHALL HAVE THE STANDING OR AUTHORITY TO AFFECT SUCH MODIFICATION(S) OR AMENDMENT(S).

INQUIRIES: ALL INQUIRIES REGARDING THIS AWARD SHOULD BE DIRECTED TO:

MR. GLENN R. HARRISON
CONTRACTS & PROCUREMENT ADMINISTRATOR
NEW YORK STATE OFFICE OF COURT ADMINISTRATION
42 KARNER ROAD
ALBANY, NY 12205 (518) 869-4732

GHARRISO@COURTS.STATE.NY.US

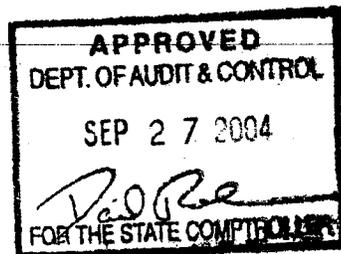
FOR THE UNIFIED COURT SYSTEM:



GLENN R. HARRISON
CONTRACTS & PROCUREMENT ADMINISTRATOR

DATED: 08/30/04

AWARD299.DOC





COUNSEL PRESS

PRODUCTION AGREEMENT and CONFIDENTIALITY TERMS

THIS PRODUCTION AGREEMENT ("Agreement") is entered into this 30th day of August, 2004 by and between **Counsel Press LLC**, a New York State corporation having its offices at 520 Eighth Avenue, New York, NY 10018 ("Counsel Press LLC"), and the **New York State Unified Court System**, Office of Court Administration, 25 Beaver Street, New York, New York 10004 (the "Client").

BACKGROUND

Counsel Press LLC is in the business of providing appellate services to interested parties concerning the creation and submission of certain court documents, briefs, exhibits, and transcripts provided by courts, attorneys, and court reporting firms (the "Business"). Specifically, these services include digitizing, hyperlinking, organizing, publishing electronically, and making available these documents to the court and interested parties. Client wishes to enter into a contract for services use Counsel Press LLC's electronic publishing services (CP E BRIEF) on several cases before the Court of Appeals of the State of New York. To facilitate this relationship, Counsel Press LLC and Client desire to enter into this Agreement.

AGREEMENT

1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:
2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:
 - 2.1. "Confidential Information" shall mean any information, whether written or verbal, which has been, or will be, furnished or disclosed by Client, or its employees, consultants or agents, to Counsel Press LLC in connection with the performance of the Services, including any transcripts, exhibits, stenographic notes or court documents, whether in digital, scanned, hard copy or any other form.
 - 2.2. "Related Parties" shall mean Counsel Press LLC and its directors, officers, employees, agents or representatives, including without limitation any Service Providers; to the extent such entities or persons receive Confidential Information.
 - 2.3. "Counsel Press LLC" is defined as the current Corporation operating under that name, or any subsequent Corporation that is created to perform the same work with the same technology.
 - 2.4. "Service Providers" shall mean any parties, which provide business-related services to Counsel Press LLC.

3. **Authorization.** This Agreement is between Counsel Press LLC and Client and no other organization. Signatures of both parties shall bind the organizations to the terms of this Agreement. It shall serve as authorization for Counsel Press LLC to prepare hyperlinked electronic record on appeal services to Client in accordance with the procedures and timeframes as outlined in the Proposal: OCA/CPA-299 for term 08/30/04 – 8/31/09 (attached as an exhibit) which is referenced hereto and incorporated.
4. **Principles.** All Work shall be performed in accordance with sound and generally accepted professional practices and industry standards by professional, managerial and administrative personnel fully qualified in the respective professional disciplines required.
 - 4.1. Neither party shall be responsible for delay nor failure in performance resulting from causes beyond their reasonable control.
5. **Service Providers.** Notwithstanding Section 2. of NYS/UCS Appendix A and Paragraph 16 below, Counsel Press LLC may utilize the services of subcontractors or service providers to provide certain specialized technical expertise as the project progresses. These services will be provided directly to Counsel Press LLC who is responsible to the Client.
 - 5.1. Subcontractors will be subject to the same Confidentiality conditions as Counsel Press LLC and will sign a non-disclosure statement binding them to that language.
6. **Right to Distribute.** Client hereby represents and warrants that it has any and all rights and/or permissions necessary to transmit the Confidential information to Counsel Press LLC, to authorize Counsel Press LLC to transmit the Confidential Information to Service Providers, and to authorize Counsel Press LLC and its Service Providers to make necessary copies of the Confidential Information and to perform the Services.
7. **No Disclosure or Use of Confidential Information.** Counsel Press LLC shall keep in strictest confidence and trust all Confidential Information and shall not disclose any Confidential Information to any other entity or person other than Related Parties and Service Providers. Counsel Press LLC shall not use any Confidential Information for its own benefit or for the benefit of another without the express written consent of Client. Counsel Press LLC shall take all reasonable safeguards to prevent disclosure of the Confidential Information and shall not permit any Related Party or any Service Provider to photocopy, transcribe or otherwise reproduce any of the Confidential Information, except as required to perform the Services or with the express written consent of Client.
 - 7.1. Counsel Press LLC shall disclose the Confidential Information to Related Parties and to Service Providers on a "need to know" basis only. Counsel Press LLC shall inform all Related Parties and Service Providers who have access to the Confidential Information that such Confidential Information is confidential and shall require each Service Provider to execute a confidentiality agreement which contains restrictions similar to those set forth in Section 5.1.
 - 7.2. The obligations of Counsel Press LLC stated in the preceding paragraphs of this Agreement shall not apply to Confidential Information which is generally known or available to the public, or which may later become generally known or available to the public, except where such knowledge or availability is the result of an unauthorized disclosure by Counsel Press LLC or a Related Party.
 - 7.3. To the extent that Client becomes party to any agreement or protective order that includes such proprietary or confidential information, Counsel Press LLC agrees to be bound by the terms of said agreement or protective order from the date that a written copy of said agreement or protective order is received by Counsel Press LLC.

- 7.4. Counsel Press LLC will maintain confidentiality at all times. If ordered to produce documents by a court, Counsel Press LLC will notify Client of such Order, providing them the opportunity to challenge the Order. If Client elects to challenge the Order, Client will provide representation at their expense or reimburse Counsel Press LLC for any legal expenses incurred in resulting legal action.
8. Term of Agreement. Unless expressly terminated by agreement in writing between the parties hereto, the term of this Agreement shall continue for a period of five (5) years starting from 08/30/04.
9. Return of Confidential Information. Counsel Press LLC shall return to Client or destroy (in accordance with Client's instructions), and shall cause the Related Parties and Service Providers to return or destroy, the Confidential Information either (i) two months after the final Record on Appeal has been delivered to the Client or (ii) upon receipt of a written notice from Client requesting return or destruction of the Confidential Information on a different schedule; provided, however, that Counsel Press LLC may retain a master digital copy of the finished product created from the Confidential Information for purposes of producing additional copies as may be requested by Client or any court.
10. Fees and Disbursements.
- 10.1. Fees. The Client will be responsible for facilitating compensation to Counsel Press LLC for all reimbursable work provided during this engagement. Payments under the contract will be made according to the terms herein without regard to Third Party reimbursement
- 10.2. Each project invoice will be created according to the pricing schedule contained within the document entitled, New York State OCA Contract Pricing Document – OCA/CPA-299 for term 08/30/04 – 8/31/09.
11. Termination
- 11.1. The term of our engagement would begin upon signature of this Agreement and proceed until the project is complete. Either party may terminate this Agreement in whole or in part by providing fifteen (15) days written notice to the other party.
- 11.1.1. In the event of termination by the Client, Counsel Press LLC shall stop all work on the terminated portion on the effective date of the termination. Client shall pay all amounts previously invoiced and outstanding, any subcontract termination charges and all charges for work performed for but not yet delivered to the Client as of the effective date of termination
- 11.1.2. In the event of termination by Counsel Press LLC, Counsel Press is obligated to complete the work under contract for any and all ongoing projects ('ongoing' defined as a project for which a purchase order has been postmarked by the Client)
- 11.2. The Client further agrees that Counsel Press LLC shall be under no obligation to undertake or continue services on any matter if Client shall fail to make any payment to Counsel Press LLC when due. Upon termination, Counsel Press LLC will make all files available to the Client, provided payments are up-to-date.
12. No License or Other Rights. Nothing in this Agreement is intended to or shall grant to Counsel Press LLC, any Related Party or any Service Provider any license or other right of any nature to the use of any of the Confidential Information, except as necessary or desirable in order to perform the Services.

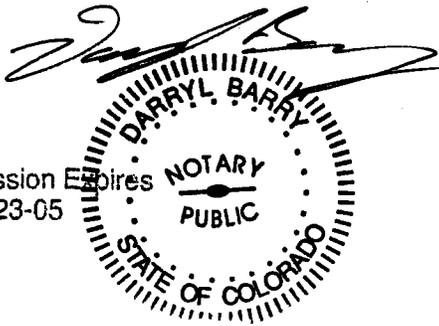
13. Remedies. Counsel Press LLC acknowledges and agrees that Client would be irreparably harmed if any of the Confidential Information were to be disclosed to third parties, or if any use were to be made of the Confidential Information other than that specified in this Agreement, and agrees that Client shall have the right to seek and obtain injunctive relief upon any violation or threatened violation of the terms of this Agreement, in addition to all other rights and remedies available to Client at law or in equity.
14. Entire Agreement. This Agreement, including the NYS/UCS Notice of Award and all appendices and exhibits incorporated hereto, contains the entire agreement among the parties hereto with respect to the matters set forth herein, and supersedes and replaces all prior agreements and understandings, whether oral or written with respect to such subject matter.
15. Amendments. No amendment or waiver of any term of this Agreement shall be effective unless such amendment or waiver is in writing and is signed by each of the parties hereto and approved by the NYS Attorney General and NYS Comptroller, if necessary.
16. Assignment. Neither party may assign or delegate this Agreement, or any rights, duties or obligations hereunder, without the prior written approval of the other; provided, however, that either party may assign and delegate its rights, duties or obligations to any affiliate or incidental to a transfer of all or substantially all of its business. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective representatives, successors and assigns. Counsel Press LLC shall promptly notify client in writing of any such assignment and delegation of rights, duties and obligations.
17. Attorneys' Fees. If any party shall commence any action or proceeding against the other in order to enforce the provisions of this Agreement, or to recover damages as the result of the alleged breach of any of the provisions of this Agreement, the prevailing party therein shall be entitled to recover all reasonable costs incurred in connection therewith against the party commencing such action or the party who has breached this Agreement, as the case may be, including reasonable attorneys' fees.
18. Contact Information.
 - 18.1. Counsel Press LLC should address any and all correspondence concerning this Agreement and any project undertaken under these terms to: Holly Nelson Lutz, Assistant Deputy Counsel, Capital Case Coordinator, State of New York Unified Court System, 4 Empire State Plaza, Suite 2001, Albany, New York, 12223.
 - 18.2. Client should address any and all correspondence concerning this Agreement and any project undertaken under these terms to: David Weeden, Vice President, Counsel Press LLC, 520 Eighth Ave, 8th Floor, New York, New York, 10018.
19. Declaration. If any provision(s) of this Agreement are declared to be invalid, such provisions shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect
20. Limitation of Remedies.
 - 20.1. In no event shall either party or any of its directors, officers, agents, employees or advisors be liable in contract or in tort (including, without limitation, strict liability and negligence) or for any warranty or upon any other legal or equitable ground for any loss of use, profit or revenue, or for any loss or expense, or any direct, indirect consequential, incidental, special, punitive, exemplary or other damages incurred or

suffered, in connection with this agreement, the licensed product, or the documentation.

20.2. Client's remedies resulting from a breach of this Agreement by Counsel Press LLC are limited to correction or replacement of the product or work in question or a refund of the purchase and or contract price to the extent of the work considered to be in breach.

21. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of laws of such State.

This Agreement has been executed as of the date first set forth above.



Counsel Press LLC

By: *Jeffrey Parkhurst*
Name: Jeffrey Parkhurst
Title: Director of E-Filing
Date: 08-16-04

Client

By: *Ronald P. Younkins*
Name: Ronald P. Younkins
Title: Chief of Operations
Date: 8/24/04



COUNSEL PRESS

Exhibit A
August 6, 2004

Confidentiality Notice - This document and contents is intended only for the use of the New York State Unified Court System and may contain information that is privileged, confidential, proprietary and exempt from disclosure under applicable law

New York State OCA Solicitation Document - OCA/CPA-299 for term 08/30/04 – 8/31/09. Electronic Filing of Record on Appeal

1. Contract Pricing

1.1. Basic Publishing Price – \$32,000 for record up to 40,000 pages

1.1.1. For Projects over 40,000 pages the following surcharges apply.

1.1.1.1. \$00.25 for each page over 40,000.

1.1.2. Price includes a completely hyperlinked TOC to the correct Trial Record page. Counsel Press will recreate the TOC electronically if it is not available.

1.1.3. Projects will also include customized bookmarks to organize documents into areas such as Table of Contents, Transcript List, Video Clips, Juror Questionnaires, etc, based on the individual characteristics of the project.

1.2. Trial Transcript handling issues

1.2.1. Option 1 – Transcripts exist only in Paper form.

1.2.1.1. Have paper transcripts translated via OCR conversion and 99.9% clean-up accuracy level. Price for this option is \$1.00 per thousand characters plus 15 % charge for oversight and review of OCR files.

1.2.2. Option 2 – Transcripts are provided by client in ASCII form.

1.2.2.1. If Client provides ASCII versions of the transcripts for direct importation, there are two possibilities.

1.2.2.1.1. Client is responsible for checking the accuracy of all the files, to make sure they are the correct version and it matches the paper copy in the trial record. Counsel Press will accept the ASCII file as correct and there will be no charge for uploading the files and no changes made in the files. If Counsel Press identifies differences between the files, then work will be completed under the terms contained in 1.2.2.1.2.

1.2.2.1.2. If Counsel Press is responsible for performing these matches to verify the files accuracy and completeness, rate will be \$150 per hour to verify the files. Counsel Press will verify that the pagination between the paper and electronic versions are a match. Prior to undertaking this more complete matching and edit process, Counsel Press agrees to contact the OCA Capital Case Coordinator and provide an estimate of time and cost to complete the project. Work will not proceed until written permission is obtained from Coordinator. Counsel Press can not guarantee that all textual errors will be caught during the review process.

1.2.3. Hyperlinking from transcripts is included in base publishing price under section 1.1 (this process is intended to provide a hyperlink from references in the transcript record to an exhibit or other document in the Table of Contents that are identified by Client).

1.2.3.1. Client is responsible for providing a highlighted version of the transcript record with an explanation of what page is to be linked to in the trial record.

1.2.3.2. All links must be provided at one time to Counsel Press for processing

2. A Sealed version of the project (defined as a version with Juror Questionnaires and other documents officially sealed by the court). Supplied once per project.
 - 2.1. \$ 1,500 for Sealed version of each Trial Record Review (one time charge per Client). This will be a parallel project with the Sealed information not available for viewing.
 - 2.2. CD's will be labeled with different language indicating the confidential nature of the contents.
3. The deliverable format used by Counsel Press can be uploaded to an internal network system controlled by the court and viewed by those granted access by the court network administrator.
4. Contract includes the cost and delivery of Special Colored CD's (fluorescent green) for Death Penalty appeals.

- 4.1. CD's and jewel cases will be labeled with the correct information as identified for each project.
5. Other Standard Pricing Options for HardCopy Record (non-ASCII)
 - 5.1. Scanning – scan as .tif and then ultra compress and OCR and save as PDF file – \$0.25 per page.
 - 5.1.1. Ultra-Compression will allow more .tiff images to appear on a CD, allowing more projects to be delivered on a single CD (which is the preferred delivery method)
 - 5.1.2. Optical Character Recognition (OCR) of the documents that comprise the Trial Record will allow the end users to perform full text searches on all the underlying documents, which will improve the utility of the end product. The OCR will be one pass non-clean OCR containing errors
 - 5.2. Ultra compress, OCR and save as PDF file (assumes that documents have already been scanned and are supplied in correct format) – \$0.10 per page.
 - 5.3. Basic price to include 30 copies of the project on CD, extra CD copies are \$ 8.00 each.
 - 5.4. If applicable, MPEG and Audio translations at rate of \$150 per hour.
 - 5.5. Travel Expenses will be reimbursed at current Unified Court System Non-Judicial rates.
 - 5.6. Disbursements - If reasonable, necessary and documented expenses exist, Counsel Press will invoice the Client at the completion of the publishing project per Section 10.2 of the Production Agreement.
 - 5.7. Price Adjustments
 - 5.7.1. Price Adjustments will be considered for the subsequent renewal periods of September 1, 2005 – August 31, 2006 and/or September 1, 2006 – August 31, 2007 and/or September 1, 2007 – August 31, 2008 and/or September 1, 2008 – August 31, 2009 based on necessary, reasonable and documented factors beyond contractor's control for materials and supplies; no increase(s) will be considered for labor factors. Such requests for increases shall be submitted in writing with supporting documentation to the OCA contract & procurement administrator Thirty (30) days prior to the start of any renewal period. Approval and/or denial of any requested increase shall be promptly communicated by OCA-CPA. No increases of any type will be considered with respect to any extension period; the prior initial term, or renewal term pricing shall prevail during such extension, if any.

6. Addition of briefs to Trial Record

6.1. Under the terms of this Agreement, the Court or the Office of Court Administration reserves the right to add the briefs to the Trial Record and require hyperlinks to source material, including but not limited to; the trial record, case citations, transcripts etc. Rates for this option shall be negotiated on a case-by case basis dependant upon the size and number of briefs and the required number of hyperlinks and bookmarks.

7. Operating Agreement Issues

7.1. To initialize a project, the District Administrative Judge's office with authority for a particular case in a County is required to provide Counsel Press with the following items:

7.1.1. A Purchase Order for each individual case, designating the Clients name thereon, with a copy of the Purchase Order to be sent to lead counsel for appellant (i.e., CDO, legal aide or other) and the Contracts and Procurement Administrator for OCA.

7.1.2. Upon completion of all work, Counsel Press will send each invoice directly to the District Administrative Judge's office. A copy of the Invoice will also be sent to lead counsel for appellant (i.e., CDO, legal aide or other) and be delivered to the Contracts and Procurement Administrator for OCA for information purposes.

7.2. Pursuant to procedures set forth by the OCA Capital Case Coordinator concerning the Scope of Work Requirements, Client agencies have certain responsibilities to supply Counsel Press with information on a timely basis in order for Counsel Press to comply with the terms of the contract. The Scope of Work Requirements will cover areas such as: hyperlink facilitation, document shipping requirements, project scheduling and provision of a Project Contact Person.

7.2.1. Invoices will be sent Net 30 for payment. Interest or late charges will be assessed according to New York State Law. "The payments of interest on certain amounts due and owing may be made in accordance with the criteria established by Chapter 153 of the Laws of 1984 (Article 11A of the New York State Finance Law) and the Comptroller's Bulletin no. A-91."

7.3. Counsel Press will deliver a signatory letter with each CD delivery to Capital Defender Office, Legal Aid or other Client designated party at project completion that requires a return signature via Fax at (212) 545-7538 acknowledging receipt of the CD's for the project. A copy of this document will be forwarded to the Contracts and Procurement Administrator for OCA for information purposes

7.4. Production and Turn Around Expectations

7.4.1. Upon receipt of the information in Sections 6.1, Counsel Press has the authority to begin working on a project and incurring reimbursable expenses.

7.4.2. Standard projects will take 3-4 weeks to complete from the receipt of all requested material from Client. (This requires the timely delivery of the Purchase Order and all documents to be included in the case, both hardcopy and ASCII files, where available).

7.4.2.1. Exceptionally large cases may require more production time and schedules will be developed in conjunction with Client.

7.4.2.2. Additionally, if transcript links are to be included in a project, a copy of the transcripts, with each expected hyperlink highlighted, must be provided. This can follow the delivery of the major project documents.

7.5. CD Copy Requirements & Distribution

7.5.1. The 30 copies of the sets of CD-ROMS provided for in the Contract will be designated as follows:

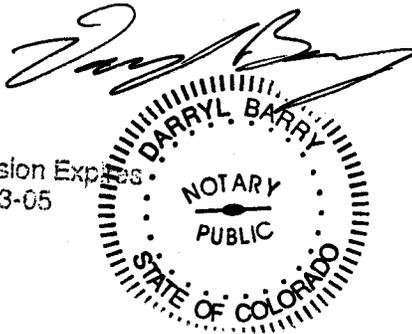
7.5.1.1. "Full Sets" – 16 copies including sealed material or jury questionnaires, intended for distribution solely to the Court of Appeals (10 copies), the counsel of record CDO (3 copies) and the local prosecuting agency (3 copies).

7.5.1.2. "Restricted, Sealed Sets" – 14 copies not including sealed material or juror questionnaires intended for distribution to the Capital Case Coordinator, NYS Attorney General's Office, Amicus or others as provided by Part 510.

7.5.2. Projects must be delivered by Counsel Press to Counsel for Appellant, seven days prior to the final filing date set by the Court.


Jeffrey Parkhurst
Director of E-Filing
Counsel Press LLC
888.274.3323
jparkhurst@Counsel.Press.com

My Commission Expires
05-23-05



**New York State Unified Court System
Appendix A
Standard Clauses for all Contracts**

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

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112.2 (Chapter 95- Laws of 2000) of the State Finance Law, if this contract exceeds \$15,000.00, or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.
4. **WORKER'S COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration, or repair of any public building or public work, or for the manufacture, sale, or distribution of materials, equipment, or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors, shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract, as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239, as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
7. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139- h of the State Finance Law, if this contract exceeds \$5,000.00, the Contractor agrees, as material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 UCS APP. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition or appeal (2 NYCRR 105.4).
9. **SET OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any reason including , without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.
11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.

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

(b) PRIVACY NOTIFICATION.

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of State Comptroller, AESOB, Albany, New York 12236.

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

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

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

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

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

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

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

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

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

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

18. **PURCHASES OF APPAREL.** In accordance with State Finance Law Section 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that:

(i) Such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hour laws and workplace safety laws; and

(ii) Vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized for this contract by the bidder.