

James G. Natoli - Director of State Operations

Office for Technology

Technology Policy 98-3

Subject: Technology Acquisitions Review Procedures and Guidelines

Date: April 17, 1998

Introduction

Effective immediately, the following procedures and guidelines are to be used by all State agencies to ensure full implementation of the Governor's Year 2000 Compliance Directive, which requires all technology purchases to be Year 2000 compliant. This affects all purchases by State agencies for new software, systems, enhancements and equipment. The Office for Technology (OFT), in conjunction with the Office of General Services (OGS), has developed "New York State Year 2000 Warranty Guidelines".

Policy

All agencies must include the New York State Year 2000 Warranty Guidelines in procurements for software, systems, enhancements and equipment except where a Year 2000 Warranty has already been negotiated into a State centralized contract or "back-drop contract." To know if a Year 2000 Warranty has been incorporated into an existing State centralized contract or backdrop contract, agencies should contact OGS at (518) 474-3418 or check the [OGS web page](#), under procurement services prior to a procurement.

Procurement Documents

Agencies must follow the procedures below in order to comply with the Governor's Year 2000 Compliance directive. When preparing a Request for Proposal (RFP), an Invitation for Bid (IFB), or an OGS mini-bid, please observe the following: The RFP or IFB must contain the New York State Year 2000 Warranty Guidelines located on pages 5-6. For an OGS mini-bid, the New York State Year 2000 Warranty Guidelines must be included unless there is a Year 2000 Warranty already included as part of the backdrop contract. Agencies must include the following in their RFPs, IFBs, or mini-bids, where applicable:

- The damages for which the vendor would be held liable in the event of Year 2000 failure (e.g., product repair, data repair/correction, or other enumerated consequential or indirect damages.)
- If a warranty of interoperability is desired, the document should also contain a detailed specification of the products intended to work and operate as a system (including third party product or embedded systems).
- A disclosure statement concerning the product's Year 2000 solution (e.g., windowing pivot point, expansion, etc.) for the products furnished.
- Inform the vendors of the consequences (e.g., a mandatory specification which results in disqualification or lesser weight in evaluation criteria) of a vendor's indication of non-compliance.
- A specific warranty period to allow for testing.

Vendor Submissions/Evaluations

All bids, proposals or quotes from vendors must indicate compliance or non-compliance for each of the specified products or systems with the New York State Year 2000 Warranty located on page 6. All bids, proposals or quotes from vendors must indicate whether they pass through the third party manufacturer's Year 2000 Warranty for all third-party products. If a vendor indicates that they can not pass through the third party manufacturer's Year 2000 Warranty or there is no third party manufacturer's Year 2000 Warranty to pass through, then the vendor must indicate that they are not compliant to third party products. There may be instances where the vendor's statement of non-compliance with the New York State Year 2000 Warranty will not have a negative impact on the agency's business. In those situations, in order to comply with the Governor's directive, the agency must prepare a written statement explaining how the product will be used and why non-compliance with the Year 2000 Warranty is not an issue for the acquisition.

Contracts Needing Control Agencies' Approval

For contracts involving technology acquisitions over the threshold amount which must be forwarded to the Office of the Attorney General and the Office of the State Comptroller for review and approval, please observe the following:

- Submit the contract first to the Office of the Attorney General for review.

- For compliant products and services, the contract for such products and services shall include a Year 2000 Warranty and the vendor's statement of compliance, if provided.
- For non-compliant products and services, the contract for such products and services shall include the vendor's statement of non-compliance. Also, provide a written statement that non-compliance with the warranty will not have a negative impact on the agency's business, explaining how the product will be used.
- If there is an issue as to whether the agency's determination that non-compliance with the New York State Year 2000 Warranty will not have a negative impact on the agency's business, the Attorney General may, at his or her discretion, forward the contract and agency's statement to OFT for a technical review and assessment.
- OFT will review the contract and statement and offer the Attorney General and the agency a technical assessment concerning Year 2000 issues.
- Agency's statement and OFT's assessment will be made part of the procurement record.
- OFT's assessment will be reviewed by the Attorney General.
- If the contract is approved by the Attorney General, the Attorney General will forward the contract to the Office of the State Comptroller.

Purchase Orders and Contracts Not Needing Control Agencies' Approval

For all purchase orders for technology acquisitions and for contracts involving technology acquisitions which do not exceed the threshold amount requiring control agency approvals, please observe the following:

- For products and services that meet the New York State Year 2000 Warranty, the purchase order and/or contract for such products and services shall include the New York State Year 2000 Warranty and the vendor's statement of compliance, if provided.

- For products and services which do not meet the New York State Year 2000 Warranty, the agency must keep with the agency's records the vendor's statement of non-compliance and prepare a written statement that non-compliance with the warranty will not have a negative impact on the agency's business, explaining how the product will be used. If you have any questions regarding these guidelines, please contact the Office for Technology at (518) 473-5622.

NEW YORK STATE YEAR 2000 WARRANTY GUIDELINE

Definitions

For purposes of this warranty, the following definitions shall apply:

- "Product" shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.
- "Vendor's Product" shall include all Product delivered under this Agreement by vendor other than Third Party Products.
- "Third Party Product" shall include product manufactured or developed by a corporate entity independent from vendor and provided by vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

Warranty Disclosure

At the time of bid, Product order or Product quote, vendor is required to disclose in writing to Authorized User:

- For Vendor Product and for Products (including, but not limited to, vendor and/or Third Party Products and/or Authorized User's Installed Products) which

have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty set forth below; and

- For Third Party Product not specified as part of a system: compliance on the grounds that the vendor has passed-through the third party manufacturer Year 2000 Warranty or non-compliance because the vendor indicates that they can not pass through the third party manufacturer's Year 2000 Warranty or there is no third party manufacturer's Year 2000 Warranty to pass through.

NOTE

AN ABSENCE OR FAILURE TO FURNISH THE REQUIRED WRITTEN WARRANTY DISCLOSURE SHALL BE DEEMED A STATEMENT OF COMPLIANCE BY THE VENDOR OF THE PRODUCT(S) OR SYSTEM(S) IN QUESTION WITH THE YEAR 2000 WARRANTY STATEMENT SET FORTH BELOW.

Year 2000 Warranty

Year 2000 Warranty "compliance" shall be defined in accordance with the following warranty statement: Vendor warrants that Product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system. In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion. This warranty shall survive beyond termination or expiration of the Agreement. Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.