State of New York Executive Department
Office of General Services – Procurement Services
Corning Tower - 38thFloor
Empire State Plaza
Albany, NY 12242

INVITATION FOR BIDS

IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)

BID OPENING **DATE**: **August 18, 2015** **TIME**: 11:00 AM ET	**TITLE**: **Group 40523 – BUSES, TRANSIT (Adult Passenger) (Statewide)** Classification Codes: 25
INVITATION FOR BIDS NUMBER: **22945**	**SPECIFICATION REFERENCE:** As Incorporated in the Invitation For Bids
CONTRACT PERIOD: Three (3) years, plus up to two (2) years renewal options	
DESIGNATED CONTACTS:	
PRIMARY CONTACT: Matthew Jones E-mail address: **SST_auto@ogs.ny.gov**	SECONDARY CONTACT: Wendy Reitzel E-mail address: **SST_auto@ogs.ny.gov**

The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:
Procurement Lobbying: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

Bidder's Federal Tax Identification Number: *(Do Not Use Social Security Number)*	**NYS Vendor Identification Number:** *(See "New York State Vendor File Registration" clause)*
If applicable, place an "**x**" in the appropriate box (***check all that apply***): ☐Small Business _____ #Employees ☐Minority Owned Business ☐Women Owned Business	
Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Street City State Zip County	
If applicable, place an "**x**" in the appropriate box (***check all that apply***): ☐ Manufactured Within New York State ☐ Manufactured Outside New York State	
If you are not bidding, place an "x" in the box and return this page only. ☐ WE ARE UNABLE TO BID AT THIS TIME BECAUSE_____.	
Bidder's Signature: Title:	Printed or Typed Name: Date:
Phone : ( ) - ext ( ) Fax : ( ) - ext ( )	Toll Free Phone : ( ) - ext ( ) Toll Free Fax : ( ) - ext ( )
Contact E-mail Address for this IFB:	
P.R. # 22945-T LIT ☐ MEMO ☐ LET ☐ OTHER☐ MISSING PAGES	

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }
: **Sworn Statement:**
COUNTY OF }

On the _____ day of _____ in the year 20_____ , before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at

Town of_____

County of _____, State of_____; and further that:

[Check One]

(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

(☐ **If a corporation):** _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ **If a partnership):** _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ **If a limited liability company):** _he is a duly authorized member of _____ _____, LLC, the limited liability company described in said instrument; that, _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____

Signature of Notary Public

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APPENDICES

APPENDIX A – *Standard Clauses for New York State Contracts (January 2014)*

APPENDIX B – *General Specifications (May 2015)*

APPENDIX C – *Federal Government Required Clauses (FTA)*

ATTACHMENTS

ATTACHMENT 1: *Specifications and Price Pages*

ATTACHMENT 2: *Bid Documents (Electronic)*

A. *Bid Submittal Checklist*

B. *General Questions*

ATTACHMENT 3: *Bid Documents (Paper)*

A. New York State Required Certifications

B. Intentionally Omitted

C. Manufacturer's Certificate

D. Federal Transit Administration Certifications

ATTACHMENT 4: *Insurance Requirements*

ATTACHMENT 5: *Inquiries Form*

ATTACHMENT 6: *Report of Contract Usage*

ATTACHMENT 7: *Contract Modification Procedure*

SECTION I: INTRODUCTION AND GENERAL INFORMATION

I.1 OVERVIEW

This Invitation for Bids (IFB) is issued by the New York State (NYS) Office of General Services (OGS), Procurement Services. This IFB does not constitute an offer. OGS may, at its sole discretion, award Contracts as a result of this solicitation. The commodity Contracts awarded as a result of this IFB for Transit Buses, shall be one centralized Contract for each Lot. The centralized Contracts awarded as a result of this solicitation are for use by Authorized Users as defined in Appendix B §2 *Definitions,* which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See also Section II.17 *Non-State Agencies Participation in Centralized Contracts*.

This IFB contains a total of thirteen (13) Lots, which are specified in Table 1 below in Section 1.2 *Scope*, and described in further detail in Attachment 1: *Specifications and Price Pages.* A Bidder is <u>not</u> required to bid on every Lot; A Bidder may bid on as few or as many Lots as desired.

Awards shall be made by Lot in accordance with Section IV *Method of Award*. Multiple bidders may receive awards. In the event that a Bidder receives awards for multiple Lots under this IFB, a single Contract shall be executed covering all Lots awarded.

References to the State and its Agencies or Non-State Agencies as Authorized Users under this solicitation and the ensuing Contract(s) encompass and include all such entities within the definition of “Authorized User” set forth in Appendix B §2 *Definitions*.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. Bidders are strongly encouraged to read the language of this IFB thoroughly and to precisely follow the instructions included in the IFB and all Attachments. Bidders are advised that failure to comply with the specific provisions of Section III.1.3 *Bid Pricing Submittal*, or Section V.2 *Bid Format and Content*, shall result in either a disqualification with respect to specific Lot(s) or the entire bid. Bidders are further advised that pursuant to IFB Section V.9, Paragraph D, *New York State Procurement Rights*, the State reserves the right to “Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB.”

I.2 SCOPE

The purpose of this IFB and the resultant Contracts is to provide Authorized Users with a means of acquiring new FTA Adult Passenger Transit Buses, and associated Optional Equipment. This IFB contains a total of thirteen (13) Lots, which are specified in Table 1 below and described in further detail in Attachment 1: *Specifications and Price Pages.*

The resultant award is to cover the outright purchase of new, current production Transit Buses. A 'new' Transit Bus is one that the equitable or legal title to which has never been transferred by a manufacturer, distributor or Dealer to an ultimate purchaser. Under no circumstances may "demos" or "used" Transit Buses be sold under the Contract(s) resulting from this IFB without prior approval of Procurement Services and NYS DOT, Public Transportation Bureau. Leasing of a Transit Bus is not permitted under this IFB or resultant Contract(s).

See Section III.1 *Price* and Section III.2 *Transit Bus Requirements* for additional requirements for the Transit Buses to be provided under the resultant Contracts.

Table 1: List of Lots and Number of Awardees

Lot	Lot Description	Minimum Capacity [Ambulatory (A) plus Wheelchairs (WC)]	Number of Awardees
A	Low Floor Vehicle <10,000 lb.	4 Passenger [3A/1WC]	One (1) Statewide
B	High Headroom Wagon <10,000 lb.	7 Passenger [6A/1WC]	One (1) Statewide
C	Single Rear Wheel Cutaway	7 Passenger [6A/1WC]	One (1) Statewide
D	Dual Rear Wheel Cutaway <22 ft.	9 Passenger [8A/1WC]	One (1) Statewide
E	Dual Rear Wheel Cutaway <22 ft.	11 Passenger [10A/1WC]	One (1) Statewide
F	Low Floor Cutaway	17 Passenger [15A/2WC]	One (1) Statewide
G	Dual Rear Wheel Cutaway >22 ft.	16 Passenger [14A/2WC]	One (1) Statewide
H	Dual Rear Wheel Cutaway >22ft. (Alternate Fuels)	16 Passenger [14A/2WC]	One (1) Statewide
I	Medium Duty Cutaway	20 Passenger [18A/2WC]	One (1) Statewide
J	Conventional Style	24 Passenger [22A/2WC]	One (1) Statewide
K	Conventional Style	28 Passenger [26A/2WC]	One (1) Statewide
L	Low Floor (Front Engine)	25 Passenger [23A/2WC]	One (1) Statewide
M	Low Floor (Rear Engine)	35 Passenger [33A/2WC]	One (1) Statewide

I.3 KEY EVENTS/DATES

EVENT	DATE	TIME
IFB release	June 23, 2015	
Closing date for vendor inquiries	July 8, 2015	5:00 PM ET
Pre-bid conference registration due	July 8, 2015	5:00 PM ET
Discretionary pre-bid Conference	July 14, 2015	10:00 AM ET
Closing Date for post pre-bid conference vendor inquiries	July 15, 2015	5:00 PM ET
OGS responses to vendor inquiries (estimated)	July 29, 2015	5:00 PM ET
Discretionary intent to bid deadline	August 7, 2015	5:00 PM ET
Submission of bid and bid opening	August 18, 2015	11:00 AM ET
Tentative awardee notification (estimated)	October 29, 2015	
Contract term begin (estimated)	December 15, 2015	

I.4 INQUIRIES / DESIGNATED CONTACTS

All inquiries concerning this IFB shall be addressed to the following Procurement Services Designated Contact(s):

PRIMARY CONTACT	SECONDARY CONTACT
Matthew Jones	Wendy Reitzel
NYS Office of General Services	NYS Office of General Services
Procurement Services	Procurement Services
Corning Tower - 38th Floor	Corning Tower - 38th Floor
Empire State Plaza	Empire State Plaza
Albany, New York 12242	Albany, New York 12242
E-Mail: **SST_auto@ogs.ny.gov**	E-Mail: **SST_auto@ogs.ny.gov**

Submit all questions in writing using Attachment 5: *Inquiries Form*, citing the applicable IFB document name and document section. Email the completed Attachment 5: *Inquiries Form* to SST_auto@ogs.ny.gov by the "Closing Date for Vendor Inquiries" indicated in Section I.3 *Key Events/Date*s for consideration prior to the pre-bid conference. A vendor may also submit additional questions by the "Closing Date for post pre-bid conference vendor inquiries" indicated in Section I.3 *Key Events/Date*s. A Bidder is strongly encouraged to submit questions at the earliest convenience.

OGS reserves the right to also consider questions received after the official question and answer period has ended. To the extent that OGS elects to respond to questions submitted after the official question and answer period has ended, OGS shall distribute responses in the same manner as questions submitted by the "Closing Date for post pre-bid conference vendor inquiries" indicated in Section I.3 *Key Events/Dates.*

You must register with the New York State Contract Reporter at https://www.nyscr.ny.gov in order to receive notifications about this solicitation. Navigate to the "I want to find contracts to bid on" page to register for your free account. Answers to all questions of a substantive nature shall be provided to all registered vendors in the form of a question and answer document which shall be posted and released through the New York State Contract Reporter site.

I.5 PRE-BID CONFERENCE

Attendance at the pre-bid conference is not mandatory. A Bidder that elects to attend must register for the pre-bid conference by sending an email to that effect to SST_auto@ogs.ny.gov and should do so on or before the "Pre-bid conference registration due" date indicated in Section I.3 *Key Events/Dates*. The email should indicate the Bidder's legal business name, which Lot(s) the Bidder intends to bid, and the name and title of the pre-bid conference attendees. Each interested Bidder is limited to three (3) representatives at the pre-bid conference at the Empire State Plaza.

The pre-bid conference shall be held at the time and date indicated in Section I.3 *Key Events/Date*s. Vendors may attend in person at Empire State Plaza, Albany, New York, or via conference call. The room location and conference call number shall be provided to registered vendors prior to the conference. On-site registration, while not preferred, shall be permitted.

The purpose of the pre-bid conference is to review bid submittal procedures and to discuss vendor questions related to the terms and conditions of the IFB. Questions shall be permitted and may be answered verbally at the pre-bid conference. However, answers may be deferred and included in the written OGS response to vendor inquiries, which shall include answers to all submitted questions, and be posted on the OGS website in accordance with Section I.4 *Inquiries / Designated Contacts*. A vendor may submit additional questions by the "Closing Date for post pre-bid conference vendor inquiries" indicated in Section I.3 *Key Events/Date*s. Only those answers provided by OGS in writing are effective and binding.

I.6 INTENT TO BID

A Bidder is requested to indicate its intent to bid by emailing notification to this effect to SST_auto@ogs.ny.gov on or before the "Discretionary intent to bid deadline" indicated in Section I.3 *Key Events/Dates*, indicating the Bidder's

legal business name and which Lot(s) the Bidder intends to bid. Submission of an Intent to Bid is discretionary, not mandatory, and as such is not binding in any way.

I.7 QUALIFICATION OF BIDDER

A Bidder is advised that the State's intent in having the requirements listed below (i.e., Sections I.7.1 through I.7.4) is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. A Bidder shall have the burden of demonstrating to Procurement Services' satisfaction that it can in fact perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work.

I.7.1 BIDDER TYPE AND OEM CERTIFICATION

Bids shall be accepted only from an OEM or their authorized Dealers on Product that can be serviced within New York State. Any Dealer submitting a bid is required to provide a Manufacturer's Certificate (See Attachment 3: *Bid Documents (Paper),* Section C: *Manufacturer's Certificate*) certifying that it is an authorized Dealer of the manufacturer of the relevant Transit Bus, and that the manufacturer has agreed to supply the Dealer with all quantities of Transit Buses required by the Dealer in fulfillment of its obligations under any resultant Contract with the State.

I.7.2 FINANCIAL STABILITY

In order to determine that a Bidder is a Responsible Bidder, Procurement Services shall conduct a Vendor Responsibility review. If the Bidder's financial stability is found to be a potential issue, Procurement Services shall request documentation of financial stability. If requested, Bidder must document its ability to service a contract with sales volume similar to the scope of this bid. In addition to sales history, current financial statements may be requested and must be provided within the timeframe specified by Procurement Services in the written request.

I.7.3 INSURANCE

A Bidder must provide proof of insurance coverage requirements as described in Attachment 2: *Insurance Requirements* upon tentative award. If awarded a Contract, Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term if requested by Procurement Services.

I.7.4 OTHER QUALIFICATIONS

OGS reserves the right to request any additional information regarding a Bidder's abilities, qualifications and procedures as it deems necessary to ensure safe and satisfactory work under a Contract. This includes but is not limited to the following:

A. Evidence of a business establishment with the capacity to process and ship the volume of orders required by Authorized Users on a statewide basis;

B. References that demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the applicable Lot(s);

C. Documentation to demonstrate a Bidder's ability to meet the delivery requirements set forth in Section III.5 *Delivery*; and

D. OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

I.8 ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of all contracts awarded under this solicitation, based on historical and anticipated needs, is approximately $16,500,000.00 annually. The individual value of each Contract is indeterminate. Evaluation quantities in Attachment 1: *Specifications and Price Pages* are

the State's best estimate on future purchases based upon historical and anticipated future needs. The quantities are for evaluation purposes and are not guaranteed purchases under the contract.

See Appendix B §29 *Estimated/Specific Quantity Contracts* and §26 *Participation in Centralized Contracts*.

Numerous factors could cause the actual volume of Product purchased under the Contract to vary substantially. Such factors include, but are not limited to, the following:

- Such Contracts shall be nonexclusive Contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand shall continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and shall depend upon actual Authorized User demand, and actual quantities ordered during the contract period;
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Services' experience, depending on the price of a particular Product, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially from the estimates provided in this IFB.

I.9 DEFINITIONS

Terms used in the Contract that have a capitalized first letter shall be defined in accordance with Appendix B §2 *Definitions*, which is hereby incorporated by reference, and with the definitions listed below.

"Aftermarket Component(s)" shall mean any accessory, equipment, or feature that is manufactured by an OEM other than the Chassis or Body OEM, and is not included in the OEM Product Line, and that may be installed on the Transit Bus by the Contractor, or third-party.

"Authorized User(s)" as defined in Appendix B §2 *Definitions*.

"Base Item" shall refer to a Transit Bus and its corresponding specifications, excluding Optional Equipment, as set forth in a Lot in Attachment 1: *Specifications and Price Pages*.

"Base Item Unit Price" is the per unit NYS Contract Price for the Transit Bus described in the Base Item Specifications and includes any OEM fees, all customs duties and charges, all vehicle preparation and clean-up charges, NYS DMV and DOT inspection, installation charges, delivery and all other incidentals normally included with providing a Transit Bus, but excludes Optional Equipment.

"Bidder" shall refer to any business entity who submits a response to this IFB. At the time that the Bidder executes a contract with the State for their services a Bidder shall become a "Contractor." See also "Contractor."

"Body(ies)" shall refer to the portion of the Transit Bus that carries the passengers, and is an incomplete Transit Bus that requires the addition of a Chassis to perform its intended functions.

"Build-Out Date" shall mean the last calendar date that a Model shall be manufactured for a particular Model Year.

"Build Sheet" shall refer to the document which lists, for the Base Item for the Transit Bus bid, at a minimum,

(1) The Make, Model and Model Code of the Chassis and Body; and

(2) An itemized list of all standard equipment, Options and Aftermarket Components included in the Chassis and Body.

"Business Day(s)" shall mean Monday through Friday, from 8am ET to 5pm ET, exclusive of federal or NYS holidays.

"CFR" shall mean Code of Federal Regulations, the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States.

"Chassis" shall refer to the portion of a Transit Bus that includes the frame, wheels, driver seat and machinery (e.g., engine, transmission, driveshaft, differential, and suspension), and is an incomplete Transit Bus that requires the addition of a Body to perform its intended functions.

"Chronic Failure" shall refer to a component of a Transit Bus that repeatedly fails or becomes inoperable and has to be replaced more than once within the OEM rated life expectancy of the component.

"**Contract"** as defined in Appendix B §2 *Definitions*.

"Contract Pricelist" shall refer to the pricelist which identifies the Make(s), Model(s), Model Code(s), Base Item Unit Price(s), Optional Equipment Unit Prices, and configuration of the Base Item and associated Optional Equipment, which have been approved by Procurement Services for inclusion in the Contract.

"Contractor" as defined in Appendix B §2 *Definitions*.

"Dealer(s)" shall refer to a distribution source for an OEM authorized and designated by said OEM, subject to approval by New York State, which may include the OEM or an alternate entity.

"Evaluation Price" shall refer to a dollar amount calculated in this IFB to evaluate cost. This number is for evaluation purposes only. It is not a guaranteed purchase under the contract.

"Evaluation Quantity" shall refer to a quantity used in this IFB for evaluation. This number is based on historic sales and anticipated future needs, and is for evaluation purposes only. It is not a guaranteed purchase under the resultant Contract(s).

"Executive Agency(ies)" shall mean all State departments, offices or institutions but, for the purposes of this IFB, excludes the State University of New York and excludes City University of New York. Furthermore, such term shall not include the legislature, the judiciary, public benefit corporation, public authority, or local government entity.

"Federal Motor Vehicle Safety Standards (FMVSS)" shall mean the U.S. federal regulations specifying design, construction, performance, and durability requirements for motor vehicles and regulated safety-related components, systems, and design features.

"Final Order Due Date" shall mean the last calendar date that an Authorized User may issue a Purchase Order to the Contractor for a Transit Bus, in order to have the Transit Bus built before Model Year Build-Out Date.

"Grand Total For Lot" shall refer to the Evaluation Quantity multiplied by the Base Item Unit Price, plus the Total Optional Equipment Evaluation Price**.** The Grand Total For Lot is the dollar amount calculated in this IFB to evaluate a Lot.

"Invitation for Bids (IFB)" shall refer to this document, and its appendices and attachments.

"Lot" shall refer to a grouping of Base Items as set forth in Attachment 1: *Specifications and Price Pages*.

"M/WBE" shall refer to a business certified with Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

"Make" shall refer to the OEM company name of a Chassis (e.g. Ford, General Motors, International, Freightliner) or Body (e.g. Coach and Equipment, Eldorado, Glaval) Model.

"May" denotes the permissive in a clause or specification of this IFB or a resulting contract. "May" does not mean "required." Also see "Shall" and "Must."

"Model" shall refer to a particular brand of Chassis (e.g., E450, 4500, HC, M2) or Body (e.g., Allstar, GCII, Terra Transit) sold by an OEM.

"Model Code" shall refer to the OEM code used to identify a particular subset of a Model.

"Model Year" shall mean the year used to designate a discrete Chassis or Body Model, irrespective of the calendar year in which the Chassis or Body was actually produced, provided that the production period does not exceed 24 months.

"Must" denotes the imperative in a clause or specification of this IFB or a resulting contract. "Must" is synonymous with "required." Also see "Shall" and "May."

"N/A" is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

"NYS" shall mean New York State.

"NYS Contract Price(s)" shall mean the dollar amount charged to the Authorized User for a Base Item or Optional Equipment, inclusive of all Contractor costs associated with providing the Transit Bus to the Authorized User (e.g., all OEM fees, customs duties and charges, all vehicle preparation and clean-up charges, NYS DMV and DOT inspection, installation charges, delivery and all other incidentals normally included with providing a Transit Bus).

"NYS DOT" shall mean the New York State Department of Transportation.

"NYS Vendor ID" shall refer to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

"OEM" shall refer to the Original Equipment Manufacturer.

"OEM Data Book" shall refer to the nationally published or internal document(s) issued by the OEM which lists, among other things, an Option Code and description for the OEM's Product Line.

"OGS" shall mean the New York State Office of General Services.

"Options" shall refer to an accessory, equipment, or feature that can be added to, or deleted from, a Transit Bus, and is available from the Chassis or Body OEM.

"Option Code" shall refer to an alpha-numerical code (also known as Feature Code) used by an OEM to identify a particular feature or Option included with, or available for, a Chassis or Body.

"Optional Equipment" shall mean additional equipment specified for a Base Item in a Lot, which must be available from the Bidder and under the resultant Contract.

"Optional Equipment Unit Price" is the per unit NYS Contract Price for the Optional Equipment described in the Optional Equipment Specifications, and includes any OEM fees, all customs duties and charges, all preparation and clean-up charges, installation charges, delivery and all other incidentals normally included with providing the Optional Equipment.

"Procurement Services" formerly known as Procurement Services Group (PSG) and New York State Procurement (NYSPro) shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

"Product Line" shall mean a group of related products manufactured by a single company, or offered by a company in their usual course of business.

"Shall" denotes the imperative in a clause or specification of this IFB or a resulting contract. "Shall" is synonymous with "required." Also see "Must" and "May."

"Small Business" as defined in New York State Finance Law Section 160(8).

"State Agency(ies)" shall refer to all New York State departments, offices or institutions, including Executive Agencies.

"STURAA Test Report" shall mean a full or partial STURAA test report, as required by and in compliance with the Surface Transportation and Uniform Relocation Assistance Act, for a Transit Bus from the Penn State/Thomas D. Larson Pennsylvania Transportation Institute, the Altoona Bus Research and Testing Center that certifies that the Transit Bus(es) offered:

1. Meet the minimum years and miles stated on Attachment 1: *Specifications and Price Pages; and*
2. Meet the requirements of 49 CFR Part 665 *Bus Testing Program.*

"Total Optional Equipment Evaluation Price" shall refer to the sum of the Optional Equipment Evaluation Prices included in Column I of Part 4: *Optional Equipment Specifications and Prices*, for a Lot. The Total Optional Equipment Evaluation Price is the dollar amount calculated in this IFB to evaluate the cost of the Optional Equipment.

"Transit Bus(es)" shall mean a rubber-tired automotive vehicle used for the provision of public transportation service. All Base Items, and related Optional Equipment included in this solicitation are collectively referred to as Transit Buses.

SECTION II: GENERAL TERMS AND CONDITIONS

This section sets forth the general terms and conditions that shall be incorporated into the resulting Contract.

II.1 APPENDIX A

Appendix A, *Standard Clauses For New York State Contracts*, dated January 2014, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein.

II.2 APPENDIX B

Appendix B, *Office of General Services General Specifications*, dated May 2015, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein and shall govern any situations not covered by this bid document or Appendix A.

II.3 APPENDIX B MODIFICATIONS

The following Appendix B clauses are hereby modified for the purposes of this solicitation:

A. Section 21, *Tie Bids*, is deleted and replaced with the following language:

21. <u>TIE BIDS</u> In the event two offers for a Lot are found to be substantially equivalent, the lowest Base Item Unit Price shall be the basis for determining the award recipient for the Lot. If two or more Bidders submit substantially equivalent bids for a Lot as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

B. Section 60, *Indemnification*, is deleted and replaced with the following:

60. <u>INDEMNIFICATION</u> Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

C. Section 32, *Product Delivery*, is deleted and replaced in its entirety by Section III.5 of this IFB, *Delivery*.

II.4 APPENDIX C

Appendix C, *Federal Government Required Clauses (FTA)*, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein.

II.5 CONFLICT OF TERMS

Conflicts among the documents in the IFB shall be resolved in the following order of precedence:

A. Appendix A: *Standard Clauses for New York State Contracts*;
B. Appendix C: *Federal Government Required Clauses (FTA);*
C. This Invitation For Bids;
D. Appendix B: *Office of General Services General Specifications*; and
E. Other Attachments as deemed necessary.

II.6 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/Bidder during the procurement process. An Offerer/ Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

II.7 MERCURY ADDED CONSUMER PRODUCTS

Contractor agrees that it shall not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

II.8 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state

agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at http://ogs.ny.gov/EO/4/Default.asp. The Executive Order No. 4 specification for lubricating oil, high detergent, adopted in February 2009, for example, specifies that where lubricating oil with post-consumer material content is available at a competitive cost and meets the entity's form, function and utility requirements, all affected state entities shall, to the maximum extent practicable, purchase lubricating oil that meets or exceeds a minimum percentage of post-consumer material content by weight of 55 percent. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

II.9 NEW YORK STATE VENDOR FILE REGISTRATION

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

If Bidder is already registered in the Vendor File, Bidder must enter its ten-digit Vendor ID on the first page of the solicitation. Authorized resellers already registered should list the ten-digit Vendor ID along with authorized reseller information.

If the Bidder is not currently registered in the Vendor File, Bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of your Bid. Please send this document to the Designated Contact in the solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) should be completed by each designated authorized reseller and submitted to OGS. The OGS shall initiate the vendor registration process for all Bidders and their authorized resellers. Once the process is initiated, registrants shall receive an email identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

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

II.10 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

A. OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract shall be contingent upon the State's determination that the Bidder is responsible and that the State shall be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

   OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at http://www.osc.state.ny.us/portal/contactbuss.htm. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

B. The Bidder agrees that if it is awarded a Contract the following shall apply:

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

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

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

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

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

II.11 TAX LAW §5-A

Section 5-a of the Tax Law requires certain contractors awarded State Contracts for commodities, services and technology valued at more than $100,000 to certify to the NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State is in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with NYS Department of Taxation and Finance (DTF). Note: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) Business Days of request (if the forms and not completed and returned with Bid submission). Failure to make either of these

filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website at: http://www.tax.ny.gov/.

II.12 INTENTIONALLY OMITTED

II.13 USE OF RECYCLED OR REMANUFACTURED MATERIALS

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

II.14 PURCHASE ORDERS AND INVOICING

All Purchase Orders and invoices/vouchers shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order with the manufacturer and that the manufacturer has accepted the order and assigned an order number and anticipated build and delivery dates.

II.14.1 PURCHASE ORDERS

Purchase orders are to include the following information:

A. Contract number;
B. Contractor business name;
C. Lot designation of the Transit Bus;
D. Make, Model and Model Code of the Transit Bus;
E. Optional Equipment, if applicable;
F. Liquidated damages, if any;
G. Calculation of NYS Contract Price; and
H. Specific designation of special price(s) which may be better than the NYS Contract Price.

II.14.2 INVOICES

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Invoices shall include, at a minimum, the following information:

A. Contract number;
B. NYS Vendor ID;
C. Purchase Order number;
D. Lot designation of the Transit Bus;
E. Make, Model and Model Code of the Transit Bus;
F. Optional Equipment, if applicable;
G. Calculation of NYS Net Contract Price;
H. Breakdown of liquidated damages, if any (see VI.3 *Liquidated Damages*);

II.14.3 BUILD SHEET

The Contractor shall, upon request by the Authorized User, provide a copy of the Build Sheet for Transit Buses to be provided under the Contract.

II.15 CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the Transit Bus has been delivered and accepted in accordance with Section III.5 *Delivery*. Payment shall be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section II.14 *Purchase Orders and Invoicing*, including description of the Transit Bus as well as Vendor ID. See also Appendix B §48 *Contract Invoicing*.

Catalogue of Federal Domestic Assistance (CFDA) grants to be used in the Contract include, but are not limited to, 20.513 *Enhanced Mobility of Seniors and Individuals with Disabilities*, 20.509 *Formula Grants for Rural Areas*, and 20.516 *Job Access And Reverse Commute Program*. Details about federal grant programs can currently be found at https://www.cfda.gov/?s=program&tab=list&mode=list.

II.16 "OGS OR LESS" GUIDELINES APPLY

Purchases of the products included in this Contract are subject to the "OGS or Less" provisions of New York State Finance Law § 163(3)(a)(v). This means that State agencies can purchase products from sources other than the Contractor provided that such products are substantially similar in form, function or utility to the products herein and are:

1. Lower in price

   -And/Or-

2. Available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

State agencies are reminded that they must provide the Contractor an opportunity to match the non-contract savings at least two Business Days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit.

II.17 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in centralized contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B §26 *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of Section III.1 *Price* shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to

purchase from New York State Contracts may also be directed to Procurement Services Customer Services at 518-474-6717.

II.18 EXTENSION OF USE

Any Contract resulting from this Bid solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between NYS DOT and the Contractor following the procedure under Section II.19 *Extension of Use Commitment* below. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

In the past, the following states or jurisdictions from within the following states, have participated in purchasing from NYS Transit Bus contracts: Alaska, Vermont, New Jersey, Maryland, Michigan and Wisconsin. These states and others, especially those that are contiguous to New York State, may participate in purchasing from the Contract Award upon approval by New York State (the lead contracting State).

II.19 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section II.18 *Extension of Use*) which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document, with the written approval of NYS DOT, Public Transportation Bureau. The Authorized User must submit a request for Contract use to NYS DOT at the address below and include the Contractor name, Contract number, Lot and quantity of Transit Buses.

New York State Department of Transportation
Public Transportation Bureau
50 Wolf Road, POD 54
Albany, NY 12232
Email address: ptb.5310@dot.ny.gov

Any unilateral limitations/restrictions imposed by the Contractor on eligible Authorized Users shall be grounds for rejection of the Bid or cancellation of the Contract.

II.20 CONTRACT PERIOD AND RENEWALS

The Contract(s) shall commence after all necessary approvals by both parties, and shall become effective upon mailing of the final Contract Award Notice by OGS (see Appendix B §24 *Contract Creation/Execution*). All Transit Bus Contracts awarded under solicitation 22945 shall terminate simultaneously three (3) years from the date of OGS approval of the first contract awarded. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. The Contract renewal may be exercised on a month to month basis such as an additional three month, six month, twelve month, or 24 month period.

II.20.1 SHORT TERM EXTENSION

In the event that a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the Contractor with the same terms and conditions as the original Contract. With the concurrence of the Contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should a replacement contract be issued in the interim.

II.21 POOR PERFORMANCE

Authorized Users should notify Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of the contracts resulting from this solicitation. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services Tel: 518-474-6717

Procurement Services
Customer Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

Fax: 518-474-2437
Email: customer.services@ogs.ny.gov

II.22 CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B §11 *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance. See also Section III.2.7 *Advertising*.

II.23 OVERLAPPING CONTRACT ITEMS

Products/services available in the resulting Contract may also be available from other New York State contracts. Authorized Users shall be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

II.24 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

NEW YORK STATE LAW

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority- and Women-Owned Business Enterprises: Evidence from New York" (the "Disparity Study"). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

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

B. **Good Faith Efforts**

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

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

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

(3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

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

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

(6) Other information deemed relevant to the request.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

II.25 REPORT OF CONTRACT USAGE

The Contractor shall furnish a report of all Product provided under the Contract during each quarterly period, no later than fifteen (15) days following the close of the quarterly period. Quarterly periods shall end on March 31st, June 30th, September 30th and December 31st. If the Contract period begins or ends in a fractional portion of a reporting period only the actual Contract sales for this fractional period should be reported in that quarterly report. Purchases by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. A template for such report is included In Attachment 6: *Report of Contract Usage*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.

II.26 JOINT VENTURE OR PARTNERSHIP BIDS

Should the Bidder elect to undertake Contract performance with a joint venture partner, the Bidder acknowledges that one entity shall be named the Contractor and all other members of the joint venture would likely be deemed to be subcontractors and the Contractor may be liable for claims made against an uninsured Joint Venture partner. Bidder shall require all such Joint venture partners, prior to commencement of an agreement between Bidder and the Joint venture partner, to secure and keep in force during the term of any Contract resulting from this IFB, the insurance requirements of this document on the Joint venture partner, as applicable.

In the sole discretion of the Commissioner, any bid may be rejected on the basis that such bid may unfairly affect competition or may not be able to fulfill the requirements of the Contract.

II.27 CENTRALIZED CONTRACT MODIFICATIONS

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor, shall be processed in accordance with Attachment 7: *Contract Modification Procedure*. The Contractor shall submit all requests in the form and format contained in Attachment 7: *Contract Modification Procedure*.

   The form contained within Attachment 7: *Contract Modification Procedure* is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B §27 *Modification of Contract Terms*.

II.28 PERFORMANCE AND BID BONDS

There are no bonds required for the Contract resulting from this solicitation. In accordance with Appendix B §44 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the initial term, or any renewal term, for the resulting Contract.

II.29 WEB ACCESSABILITY

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing shall be conducted by OGS and the results of such testing must be satisfactory to OGS before web-based information and applications shall be considered a qualified deliverable under the contract or procurement.

II.30 NEW YORK STATE STATEWIDE FINANCIAL SYSTEM

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with centralized contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: http://www.sfs.ny.gov and http://www.osc.state.ny.us/agencies/guide/MyWebHelp/

II.31 ADDITIONAL REQUIREMENTS

For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

The State shall not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

SECTION III: SPECIAL TERMS & CONDITIONS

This section sets forth additional terms and conditions that shall be incorporated into the resultant Contract.

III.1 PRICE

Pricing for Transit Buses to be provided under the Contract shall be subject to the terms and conditions in this Section (i.e., III.1.1 through III.1.5).

III.1.1 BASE ITEM UNIT PRICE

The Base Item Unit Price shall include any OEM fees, all customs duties and charges, all vehicle preparation and clean-up charges, NYS DMV and DOT inspection, installation charges, delivery and all other incidentals normally included with providing a Transit Bus under the Contract. Pursuant to Appendix B §34, *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.

III.1.2 OPTIONAL EQUIPMENT UNIT PRICE

The Optional Equipment Unit Price shall include any OEM fees, all customs duties and charges, all preparation and clean-up charges, installation charges, delivery and all other incidentals normally included with providing the Optional Equipment under the Contract.

Contractor must offer Optional Equipment sold under the Contract at the Optional Equipment Unit Price that was bid. The Optional Equipment Unit Price is based on adding to or deleting the Optional Equipment from the Base Item and the applicable Base Item Unit Price.

III.1.3 BID PRICING SUBMITTAL

If submitting a bid for a Lot, Bidder is required to select "Yes" for that Lot on the Bid Summary worksheet and complete all applicable yellow-shaded cells as instructed on the applicable Base Item worksheet for that Lot in Attachment 1: *Specifications and Price Pages*. **Failure to provide this information as instructed for a Base Item shall render the bid non-responsive for that individual Base Item and shall result in the disqualification of the bid for the applicable Lot.** The following also applies to bid pricing:

A. Base Item Unit Price: Bidder shall enter a Base Item Unit Price for the Base Item bid for a Lot. **Failure to provide pricing information for a Base Item shall render the bid non-responsive for that Base Item and shall result in the disqualification of the bid for the applicable Lot.**

B. Optional Equipment Unit Price: Bidder shall enter an Optional Equipment Unit Price for each of the Optional Equipment listed for a Lot. The Optional Equipment Unit Price entered by the Bidder is based on adding to or deleting the Optional Equipment from the Base Item and the applicable Base Item Unit Price. If adding or deleting the Optional Equipment results in a credit, Bidder shall enter a negative number for the Optional Equipment Unit Price. All Optional Equipment listed for a Lot shall be available from the Bidder. **Failure to provide pricing information for one or more Optional Equipment listed for a Lot shall render the bid non-responsive for that individual Optional Equipment and shall result in the disqualification of the bid for the applicable Lot.**

C. For all dollar amounts that a Bidder may enter, a Bidder may enter as many decimal places as desired and the formulas included in Attachment 1: *Specifications and Price Pages* shall calculate based on the full number entered. However the number displayed in the cells shall be rounded to no more than two (2) decimal places (e.g., $6.246 shall be rounded to $6.25 and $7.232 shall be rounded to $7.23).

D. The bid submitted by the successful Bidder shall be incorporated into any resulting Contract and the Bidder shall be required to provide the awarded Base Item(s) and associated Optional Equipment at the prices quoted in its bid.

III.1.4 CONTRACT PRICELIST

The Contract Pricelist shall be made available to Authorized Users and posted publically on the OGS website, and shall include at a minimum, the Make(s), Model(s), Model Code(s), estimated Delivery time (After Receipt of Order ("ARO")), Base Item Unit Price(s), Optional Equipment Unit Prices, and configuration of the Base Item and associated Optional Equipment, which have been approved by Procurement Services for inclusion in the Contract

Notwithstanding the foregoing, where an Authorized User does not have the capability to access Contract information electronically, it shall be the Contractor's responsibility, upon Authorized User request, to furnish, without charge, Contract Pricelists pursuant to the Contract, to Authorized Users who request them. Contract Pricelists may be furnished to Authorized Users in either hard-copy or electronic format. If available in both

formats, they shall be furnished in the format preferred by the requesting Authorized User. Upon request, the Contractor shall assist Authorized Users in the use of Contract Pricelists.

In order to receive approval for additions and deletions of Product from the Contract Pricelist, the Contractor must submit a completed Contract Modification Form (see Attachment 7: *Contract Modification Procedures)* and to the Procurement Services Contract administrator. If approved, Procurement Services shall notify the Contractor in writing and post the revised Contract Pricelist to the OGS website.

III.1.5 PRICE ADJUSTMENTS

Prices bid are to be firm for the entire Contract period and the extension periods, if any, except for the price changes as outlined below.

A. PPI Price Adjustment

Each September 15th, beginning with September 2016, the Base Item Unit Prices and Optional Equipment Unit Prices shall be updated in accordance with the Producer Price Index (PPI) indicated below in Paragraph 1 *PPI*. The Price Adjustment Factor shall be based on changes in the PPI, comparing the "latest finalized data" as computed and posted by the U.S. Department of Labor, Bureau of Labor Statistics, on the last full week of August with the "month/year" the bid opening was held. The Price Adjustment Factor shall be rounded to the nearest thousandth and shall be applied to the originally awarded Base Item Unit Prices and Optional Equipment Unit Prices to yield the adjusted prices effective for all Purchase Orders issued from September 1 and continuing through August 31 of the following calendar year. Each dollar amount may be increased from, decreased from, or remain the same as the previous values.

1. **PPI**

   Series ID: WPU141302
   Not Seasonally Adjusted
   Group: Transportation Equipment
   Item: Completed Vehicles on Purchased Chassis
   (Web access: http://data.bls.gov/labjava/outside.jsp?survey=wp)

2. **Formula to calculate Price Adjustment Factor**

   [Latest finalized PPI data] divided by [Month/Year PPI in which the bid opening was held]

3. **Examples**

   The examples below are strictly for illustration purposes, and may not reflect actual changes in the PPI and any allowable adjustments in price that might occur during the Contract term.

   a) Price Adjustment calculated on September 15, 2015 for the time period from September 1, 2015 to August 31, 2016: None. Contract prices are firm until September 2016.

   b) Price Adjustment calculated on September 15, 2016 for the time period from September 1, 2016 to August 31, 2017:

      - [Latest Finalized Data (141.0)] divided by [Month/Year PPI in which the bid opening was held (137.4)]
      - 141.0/137.4 = 1.0262008; rounded to nearest thousandth = 1.026
      - Price Adjustment Factor = 1.026
      - Each originally awarded Base Item Unit Price and Optional Equipment Unit Price awarded would be multiplied by 1.026 to calculate the NYS Contract Price for the time period from September 1, 2016 to August 31, 2017 (e.g., if the original awarded Base Item Unit Price was $50,000, the adjusted price would be $50,000.00 multiplied by 1.026, or $51,300.00)

   c) Price Adjustment calculated on September 15, 2017 for the time period from September 1, 2017 to August 31, 2018:

      - [Latest Finalized Data (134.0)] divided by [Month/Year PPI in which the bid opening was held (137.4)]
      - 134.0/137.4 = .9752547; rounded to nearest thousandth = .975

- Price Adjustment Factor = .975
- Each Base Item Unit Price and Optional Equipment Unit Price awarded would be multiplied by .975 to calculate the NYS Contract Price for the time period from September 1, 2017 to August 31, 2018 (e.g., if the original awarded Base Item Unit Price was $50,000, the adjusted price would be $50,000.00 multiplied by .975, or $48,750.00)

B. Lower Pricing

The State reserves the right to negotiate lower pricing, or to advertise for bids, whichever is in the State's best interest as determined by the Commissioner, in the event of a decrease in market price of any Product listed.

Price decreases to the Authorized User are permitted at any time, and do not need prior approval by Procurement Services.

C. Additional Price Adjustments for Consideration

Notwithstanding the allowable PPI Adjustment, an adjustment in price may be permitted during the contract period if a government mandated program (e.g., a new standard for emissions) takes effect OR if the OEM supplying the Contractor undergoes a complete change in platform. Contractor shall be required to provide adequate, suitable documentation to Procurement Services, who shall then determine if the requested price change is verifiable and reasonable. Such a price adjustment may be permitted for only a limited time since such an adjustment would eventually be reflected in the PPI Adjustment. OGS reserves the right to terminate the contract(s) if it deems the price adjustment pursuant to this paragraph is not in the best interests of the state.

D. Unworkable Price Structure

Should the price structure utilized by the parties become unworkable, detrimental or injurious to the State and/or Contractor or result in prices which are not truly reflective of current market conditions, and the price is deemed unreasonable or excessive by OGS, and no adjustment in price is mutually agreeable, OGS reserves the sole right upon ten (10) days written notice mailed to the Contractor to terminate the Contract. If the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on an unworkable price structure, it shall immediately notify the State of that fact in order that the State may take appropriate action. Such notification shall be in writing and shall be directed to Procurement Services. Such notification shall not relieve the Contractor of its responsibilities under the Contract.

The State reserves the right to implement changes in price based on unforeseen factors, (e.g., dramatic changes in Product and related supply availability, delivery, costs, etc.), that substantively affect the Contractor's business processes or that may impact Contract pricing. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources, and shall be accepted at the sole discretion of the State.

E. Limitation

Price adjustments are limited to changes as allowed for in this Section. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs to the Contractor, shall not be allowed during the Contract period.

III.2 TRANSIT BUS REQUIREMENTS

The terms and conditions in this Section (i.e., III.2 through III.2.8) shall be considered minimum Transit Bus requirements. Attachment 1: *Specifications and Price Pages*, includes supplemental required specifications for Transit Buses in each Lot. Transit Buses delivered to an Authorized User in a condition that would be considered unacceptance to a reasonable person may be rejected (see also Appendix B §38 *Rejected Product)*. Items which determine this acceptance level shall include, but not be limited to, the general appearance of the interior and exterior of the Transit Bus for completeness and quality of workmanship, lubrication and fluid levels, with any leaks corrected, mechanical operation of the Transit Bus and all electrical components operational. Equipment specified to be furnished and installed shall conform to the best quality standards known to that particular industry, both product and installation.

III.2.1 STANDARDS, CODES, RULES, AND REGULATIONS

Transit Buses shall be designed and assembled in accordance with all applicable industry standards, including, but not limited to, those listed below. The Transit Bus shall comply with all governmental regulations as they apply to the operation of the Transit Bus described in the Base Item Specifications and Optional Equipment Specifications including, but not limited to, those listed below. If applicable, the appropriate decals indicating compliance shall be affixed to the Transit Bus.

A. Transit Buses shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR), New York State Vehicle and Traffic Law (NYSVTL), and New York State Dept. of Motor Vehicles (NYSDMV).

B. Transit Buses shall comply with all current applicable Federal Motor Vehicle Safety Standards (FMVSS), Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic and Safety (NHTSA), Environmental Protection Agency (EPA), and Occupational Safety & Health Administration (OSHA) requirements.

C. Product shall comply with Federal Motor Vehicle Safety Standards (FMVSS) 220, FMVSS 221, and FMVSS 214 (excluding Lots C, D, E, G, H, I, J and K), Part 38 of the American's with Disabilities Act (ADA), and NYS DOT regulations outlined under NYCRR Chapter VI, Article 3, Part 720-721 or any amendments thereto, except as relating to school buses. Unless otherwise stated, wheelchair lift/ramp equipped buses shall be defined under NYCRR Part 720-721 regulations.

D. Transit Buses shall comply with the regulations of the Federal Government and New York State (NYCRR) governing the control of air pollution from new motor vehicles and new motor vehicle engines in effect on the date of manufacture. Please refer to New York Codes, Rules and Regulations (NYCRR), Title 6 *Environmental Conservation*, Part 218, *Emissions Standards for Motor Vehicles and Motor Vehicle Engines*.

E. Transit Buses shall be manufactured in accordance with any codes, standards and engineering practices as recommended by the following professional organizations:

American Institute of Steel Construction (AISC)
American National Standards Institute (ANSI)
American Society of Mechanical Engineers (ASME)
American Society for Testing and Materials (ASTM)
American Welding Society (AWS)
Battery Council International (BCI)
Compressed Air and Gas Institute (CAGI)
Industrial Fastener Institute (IFI)
International Standards Organization (ISO)
Joint Industrial Council (JIC)
National Fire Protection Association (NFPA)
National Truck and Equipment Association (NTEA)
Society of Automotive Engineers (SAE)
Society of Manufacturing Engineers (SME)
Tire and Rim Association (TRA)

III.2.2 STANDARD EQUIPMENT

All items of standard equipment which are provided by the OEM shall be furnished unless such items are expressly deleted or are specified to be other than standard, either in Attachment 1: *Specifications and Price Pages* or by the Authorized User. When Optional equipment is specified, all components listed in the OEM Data Book as being included with the Option shall be furnished.

Example: If the standard Chassis comes with air conditioning, then it must be included with the Chassis provided to the Authorized User. Air conditioning cannot be deleted because it was not identified as required by the specifications.

III.2.3 MANUALS

Simultaneous with delivery, all Transit Buses shall be furnished with standard manuals (e.g. maintenance, parts and operational manuals) as would normally accompany such Transit Buses. Manuals may be provided printed and bound, on CD, or at an online website. If manuals are available in more than one format, which format the manuals are to be provided shall be at the discretion of the Authorized User. If paper manuals are provided, an Authorized User shall be able to opt not to receive extra copies of documentation when ordering multiple units. This arrangement should be agreed upon between the Contractor and the Authorized User prior to order. An Authorized User may also want to purchase additional sets of documentation, if needed. If the provision of additional sets of documentation is subject to a separate cost, the Contractor must so advise the Authorized User at the time of order. Contractor shall also ensure that the part numbers associated with this provision of additional sets of documentation are available to the Authorized User and included on the OEM or Contractor-Published Pricelist.

Further, where documentation is provided either in printed or electronic format, Authorized User shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under the resulting Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

III.2.4 COMPATIBLE EQUIVALENT

Whenever an item is specified either in Attachment 1: *Specifications and Price Pages* by trade name of an OEM, the term “compatible equivalent,” if not inserted therewith, shall be implied. Any reference to a particular OEM’s product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, Procurement Services shall consider bids for the referenced Product only. The term “compatible equivalent,” is defined as meaning any other Product which, in the sole opinion of Procurement Services, is equal in performance, quality and design in such a way that the Product is directly interchangeable with the referenced Product without modification.

A Bidder quoting on a Product other than the referenced Product shall:

A. Furnish complete identification in its bid of the Product it is offering by trade name, brand and/or model number;

B. Furnish descriptive literature and data with respect to the substitute Product it proposes to furnish; and

C. Indicate any known specification deviations from the referenced Product.

III.2.5 EQUIPMENT, PARTS AND ACCESSORIES

All equipment, parts and accessories provided under the resultant Contracts shall be in accordance with requirements, recommendations and options of the respective OEMs in addition to conforming to all Federal and State Regulations in effect at the time of delivery. Additionally:

A. All electronic systems shall be properly insulated so as to not cause any interference with the operation of the Transit Bus or the land mobile radio communications system, when properly installed in the Transit Bus;

B. Power systems must be compatible with the engine, transmission, axles, hydraulic system and power steering, etc., in order to meet the requirements specified herein;

C. Transit Buses shall meet the maximum gradeability of the manufacturer when loaded to maximum GVWR without exceeding the engine manufacturer's recommended maximum revolutions per minute ("RPM") based on maximum net torque;

D. The ratio of the rear axle and transmission shall be geared to maintain a road speed of approximately sixty-five (65) mph on a level road, when operating at maximum GVWR without exceeding the recommended engine RPM figure;

E. Brakes, axles, and suspension components shall meet or exceed the specified axle rating;

F. All welds to brackets shall be high quality and show no visible signs of porosity. All OEM and fabricated brackets and braces shall be finish ground smooth, all sharp corners or edges removed, prepped, primed and painted on all sides to match their surroundings;

G. Tire size and type shall be original equipment brand or as indicated in Attachment 1: *Specifications and Price Pages*. Tire inflation monitors shall be supplied as required by Federal Motor Vehicle Safety Standard (FMVSS) 138;

H. All fuel, oil, hydraulic, and air filters shall be serviceable without interference from other air & hydraulic system components. Filter and component placements shall be coordinated to ensure unimpeded servicing is available;

I. The Transit Bus shall not exceed the aggregate value of the GAWR. The GAWR of a front and rear axle assembly shall meet, or exceed, the lowest component rating thereof;

J. The Contractor shall ensure installed Body components shall not interfere with Chassis configurations and vice versa;

K. Specifications provided by the Authorized User (e.g., Cab to Axle and Wheel Base measurements) shall be adjusted appropriately for the intended application of the Transit Bus. See also Section III.3 *Pre-Production Meeting*.

L. The specified Gross Vehicle Weight Ratio (GVWR) for each Transit Bus shall be the OEM's original rating and no other rating for the GVWR shall be used. The GVWR and individual axle GAWR (Gross Axle Weight Rating) shall not be exceeded when loaded with the specified number of adult passengers, including the driver.

M. Rustproofing shall be provided as follows:

1. With the exception of OEM Chassis, the interior of doors, walls, pillars, windshield framing, headers, headlamp recesses, hood braces and all double panel areas shall be treated with a rustproof process material, which shall be listed on the Qualified Products List under Military Specification MIL-C-62218A. Holes drilled in doorposts, edges, sills, etc. for the application of corrosion-protection material shall be plugged with rubber, neoprene, plastic plugs, or approved equal.

2. The Body structural framing shall be suitably treated against corrosion prior to finish panel attachment. Special attention is required to welded areas. All sidewalls shall be protected with epoxy primer to protect structure from corrosion. All window line tube structure shall be protected with DuPont Corlar 2.1-ST Satin High Solids Epoxy Mastic, or Compatible Equivalent (which shall be determined by verification of inclusion on the Qualified Products List under Military Specification MIL-C-62218A), to protect tube structure from corrosion. Aluminized steel construction, in lieu of the stated corrosion prevention products, is acceptable to protect against corrosion.

3. All joints and connections of dissimilar metals shall be isolated to minimize the effects of galvanic corrosion.

4. Rustproof requirement as detailed above does not apply if OEM can certify all components listed above have been zinc coated, or equivalent, prior to finish coating application. Certification must be supplied with bid submission. Entire underside of the Transit Bus, including floor members and chassis fenders, shall receive a nonflammable rustproof undercoating at the time of manufacture. Rustproof undercoating shall be applied to a uniform thickness with no bare spots

N. Wiring shall be provided as follows:

1. All wiring shall conform to SAE J11128, SAE J1292, FMVSS, FMCSR, and NYCRR 720.6(D), and shall be properly sized to carry the required current without voltage drop or overheating. All wiring shall be color-coded and function-coded for easy identification. Wiring shall be adequately protected from damage and corrosion by water, solvents, road debris, grease, oil, fuel, abrasion or chafing. Wiring and cables subject to extreme heat shall be protected by heat shields. Loose or exposed wiring in driver or passenger areas is prohibited. Grounding wires shall not pass through any hinged door.
2. Wiring associated with non-OEM installation, passing through any Chassis or Body member, shall be encased in continuous non-flammable conduit. The main wiring harness shall be mounted in a wiring channel inside the Transit Bus. Wiring, harness and raceways shall be supported at a maximum of twenty-four (24) inch intervals by clamps routed separately from heater hoses or air-conditioning ducts (as possible).

P. Finish shall be provided as follows:

1. The Authorized User shall have its choice of the OEM's standard paint colors, and shall designate the selection on the Purchase Order. All surfaces, including bumpers, wheels and spares which are normally painted shall be factory painted with the specified color. All paint, primer, basecoats, clear coats or any other coating within the paint system shall be lead free;
2. Equipment supplied by other than the OEM shall have any rust spots and welding slag removed, be properly sanded, cleaned, prepped and primed per the paint manufacturer's recommendations. The Chassis shall be carefully smoothed, cleaned, primed and finished with top quality transportation enamel. The Body and auxiliary equipment shall be primed and finished with durable enamel.
3. All exterior and interior metal surfaces shall be properly primed with zinc chromate, phosphate or equal rust resistant primer prior to finish coating of acrylic enamel. Finish coat thickness shall provide uniform adhesion and color. Exterior metal joints and seams shall be properly caulked with rust inhibiting material. Fiberglass construction shall be minimum .015 high gloss gel coat (exterior).
4. A solid white color with a 6" wide solid painted colored stripe shall be offered to the Authorized User at no additional cost. A single color graphic vinyl striping design is acceptable in lieu of a painted stripe.
5. Motor vehicle identification shall be provided as required under Title 17 NYCRR Part 720.3(a), including display of operator name, operator number (if applicable) and lettering of capacity (including wheelchair stations, if applicable).

Q. The entire Transit Bus shall be water tested under the conditions set forth below for no less than ten (10) minutes in order to determine body leaks at window areas, door areas, roof panels, joints, seams, vent openings, etc. Contractor must provide certification of successful completion of a water test for all Transit Buses prior to delivery.

1. Water test shall consist of a series of nozzles (no less than 10 if stationary nozzles) which are strategically located around the perimeter of the vehicle being tested (or that can freely move around such perimeter) so as to spray water over the entire vehicle surface, with each nozzle capable of directing a force as indicated below;
2. Nozzles shall eject a volume of water no less than 1.5 gallons per minute under a pressure of no less than forty (40) pounds per square inch measured at the nozzle tip;
3. Transit Buses shall be no less than twenty-four (24) inches from nozzles;

Contractor shall take necessary corrective action, at no additional cost to the Authorized User, when leaks are found to exist on the tested Transit Bus, and conduct additional water test(s) to re-check for leaks following corrective actions. Evidence of water leakage following delivery shall be cause for rejection of the Transit Bus and withholding of payment until leaks are corrected.

III.2.6 OPTIONAL EQUIPMENT

The Contractor must offer the Transit Bus as specified in the Base Item Specifications for the applicable Base Item in Attachment 1: *Specifications and Price Pages*. An Authorized User may choose one (1) or more of the Optional Equipment from the list of Optional Equipment associated with the Base Item. The Contractor shall be required to honor all such requests, provided that adding the requested combination of Optional Equipment results in a Transit Bus that meets the minimum specifications stated herein (see Section III.2 *Transit Bus Requirements*. See Section II.1.2 *Optional Equipment Unit Price* for pricing information relative to Optional Equipment. After contract award, a contractor may offer substitute Compatible Equipment Product in the event that the Optional Equipment becomes unavailable during the life of the Contract. Requests to substitute Optional Equipment shall be submitted to OGS on Attachment 7: *Contract Modification Procedure.*

III.2.7 ADVERTISING

No name, trade mark, decal or other identification, other than that of the OEM, shall be applied to the Transit Buses without prior approval by the Authorized User. Identification of the Contractor shall not be attached to the Transit Bus. Splash guards shall be plain (without lettering) unless done so in compliance with this solicitation's specification. In any instance of violation of these restrictions the cost to the State for removal of such advertising shall be deducted from Contractor's outstanding voucher.

III.2.8 NYS INSPECTIONS

Unless otherwise instructed by the Authorized User, all Transit Buses must be delivered with complete NYS Department of Motor Vehicles (DMV) and/or NYS DOT Inspections. In the event that a Transit Bus is delivered uninspected, $250 shall be deducted from the invoice by the Authorized User to cover the cost of the inspection and to compensate for time. The State reserves the right to cancel a Contract and/or take other action if Transit Buses are not properly inspected or if the DMV and/or NYS DOT inspection sticker is not properly affixed to a Transit Bus.

III.3 PRE-PRODUCTION MEETING

Contractors shall be required to consult with the Authorized User upon receipt of a Purchase Order in order to ensure complete and accurate understanding of the Transit Bus, and delivery requirements required by the Authorized User. The Contractor shall advise the Authorized User of all design changes, including component style or performance changes, which the applicable Base Item has undergone since Contract execution.

The Contractor shall coordinate and attend a pre-production meeting, if required by the Authorized User, at a location convenient to the Authorized User, to provide all necessary information prior to building any Transit Bus, or scheduling production. Only after the pre-production meeting, if required by Authorized User, and subsequent approval from the Authorized User, shall the Contractor begin the production.

III.4 PILOT MODEL INSPECTION

Prior to completion of all Transit Buses ordered, a complete pilot model inspection of one or more Transit Buses shall be provided by the Contractor if requested by the Authorized User. The terms and conditions of such inspection(s) shall be provided by the Authorized User, and should be agreed upon by the Contractor and Authorized User prior to scheduling production. This inspection shall take place inside a building and on a dry Transit Bus at the OEM's facility or Contractor's place of business, as agreed to by the Authorized User. The Authorized User shall be responsible for transportation, lodging and meals associated with the initial pilot model inspection. The Authorized User, at their discretion, may require that the Contractor cover the costs of subsequent pilot model inspections should the pilot model not pass the initial inspection.

III.5 DELIVERY

Contractors shall be required to deliver Vehicles anywhere within New York State boundaries, as designated by the Authorized User on the Purchase Order. The following terms and conditions (i.e., Section III.5 through III.5.6) apply to delivery:

A. The Contractor agrees to bear the risk of loss, injury, or destruction of the Transit Bus ordered, prior to receipt of the Transit Bus by the Authorized User.

B. Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. It shall be assumed by the parties that the Contractor received the Purchase Order on the third Business Day following the date of the Purchase Order, unless the Contractor provides credible evidence that the order was received on a later date. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from Procurement Services.

C. Contractor shall secure a signed receipt from the Authorized User certifying delivery of the Transit Bus and odometer reading. In the event deficiencies are later noted and a properly signed receipt cannot be found, Contractor shall be responsible for certifying delivery and odometer reading.

D. Pursuant to Appendix B §34 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.

E. An Authorized User may choose to stagger the delivery of Vehicles over a period of time, and to multiple delivery locations, as specified on the Purchase Order. For example, order forty (40) Vehicles with instructions to deliver four (4) Vehicles to each of ten (10) locations over a period of time.

F. Upon mutual agreement, delivery locations may be expanded per Section II.17 *Non-State Agencies Participation in Centralized Contracts*, Section II.17 *Extension of Use* and Section II.19 *Extension of Use Commitment*, incorporated herein.

III.5.1 PRE-DELIVERY INSPECTION

At the discretion of the Authorized User, the Contractor may be required to present a Transit Bus for pre-delivery inspection. The terms and conditions of such inspection(s) shall be provided by the Authorized User, and should be agreed upon by the Contractor and Authorized User prior to scheduling production. This inspection shall take place inside a building and on a dry Transit Bus at the OEM's facility or Contractor's place of business, as agreed to by the Authorized User. When so required, the Contractor shall make no delivery of a Transit Bus without written approval of the Authorized User.

The Contractor shall notify the Authorized User by that the Transit Bus is ready for inspection. Within five (5) Business Days of the Contractor's notification, the Authorized User shall send a team of qualified inspectors to the Contractor's facility, or another mutually agreed upon location convenient to the Authorized User, to accomplish the inspection of the Transit Bus before delivery. Upon the inspector's arrival at the facility, the Contractor shall assign a mechanic, a runner and a delivery bay to the inspector. It is the Contractor's responsibility to properly itemize, organize and segregate all Transit Buses. The above areas of responsibility must be accomplished in order to facilitate an expeditious and orderly inspection flow. This shall also allow discrepancies to be corrected while the inspector is located at the Contractor's facility.

Inspected Transit Buses which do not comply with these or other requirements shall be rejected (see also Appendix B §38 *Rejected Product*). All rejected Transit Buses shall be corrected at the expense of the Contractor, and the corrected Transit Buses shall be presented for re-inspection within ten (10) Business Days from notification of the rejection. The Authorized User may cancel the Purchase Order if the Contractor fails to correct any problem, without incurring any cost or fee.

III.5.2 CONDITION ON DELIVERY

Transit Buses must be delivered strictly in accordance with the Contract specifications and shall be "Ready for Use," and/or as requested by the Authorized User.

Each Transit Bus and its components shall be completely assembled, serviced and ready for use when delivered to the Authorized User. Service shall include not less than the following: lubrication (including all door hinges greased); wash; engine tune-up; wheel alignment and wheel balancing. Unless specified otherwise; any parts, components, equipment, controls, materials, features, performances, capacities, ratings or designs which are standard and/or necessary to form an efficient and complete working Transit Bus shall be furnished whether specifically required herein or not. Additionally, each Transit Bus, at no additional cost to the Authorized User, shall:

A. At point of acceptance, have an odometer reading that is consistent with the miles, in distance, to the anticipated odometer mileage incurred between the OEM factory, the Contractor's place of business and the point of delivery. *Note: In the event that a Transit Bus is delivered with an odometer reading that the Authorized User considers to be excessive, the Contractor shall be required to provide a reasonable explanation for the odometer reading. Transit Buses that are delivered with an odometer reading that is considered excessive without a reasonable explanation may be rejected. Chassis shall only be used for transport of other Chassis (e.g., as "mule" trucks), that are included in the Authorized User's delivery.*

B. Include the forms required to apply for a NYS title and license. All title papers shall be properly prepared and executed.

C. Be certified to meet or exceed requirements to obtain a NYS license. The GVWR shall be identified in the Transit Bus as the final complete certification label (minimum rating). The Gross Combined Weight Rating (GCWR) shall be identified by decal in the cab to indicate the approved weight, which can be towed, if applicable.

D. Include the proper forms to apply for a NYS registration. These forms shall include, but are not limited to:

   1. Required from Contractors in New York State: MSO (Manufacturer's Statement of Origin), MV50 Retail Certificate of Sale (except for trailers with an unladen weight under 1,000 lb.), and MV82 (Vehicle Registration/Title Application); or

   2. Required from Contractors outside New York State: Manufacturer's Certificate or Statement of Origin, and Odometer Disclosure Statement (This is not required if the Manufacturer's Certificate/Statement of Origin includes the odometer disclosure.)

E. Have a valid NYS Department of Motor Vehicles (DMV) and/or NYS DOT inspection sticker and a valid NYS emissions inspections sticker. All NYS inspection requirements are the sole responsibility of the Contractor.

F. Have the OEM's recommended pre-delivery service completed.

G. Have the Chassis OEM's model name and model number stated on a decal affixed to the inside of the driver's side door.

H. Be clean, lubricated, serviced, fuel gauge registering no less than one half recommended capacity, all adjustments completed, all mechanical and electrical motors and components fully functional and operational, and the vehicle shall be "road ready" for immediate use. If Diesel, the Diesel Exhaust Fluid (DEF) tank must be no less than three quarters capacity.

I. Have permanent antifreeze in each vehicle to protect it at a level of -34 °F. Only a low silicate type anti-freeze shall be used for vehicles having diesel engines.

J. Be free from all dealer signs/emblems. See Section III.2.7 *Advertising*.

K. Include a copy of the OEM warranty and service policy with all warranty vouchers, certificates and coupons. Delayed warranty forms are to be provided with the required motor vehicle paper work.

L. Have each Chassis and Body identified with a metal identification tag, or other standard OEM label, that provides the OEM's name, model number and individual serial number. Tags shall be affixed in an accessible and readable position on the item, and shall be installed in accordance with Federal requirements.

M. Include a bill of materials or line-setting ticket. The bill of materials shall list by part number, capacity, size or otherwise, all major components of the Transit Bus (engine, frame, transmission, drive line, axles, alternator, storage battery, fuel tank, etc.). The bill of materials shall be at least as comprehensive as the OEM's line-set ticket.

N. If towed to the Authorized User for delivery, the towing device may not be attached in such a way that holes are drilled in the bumper of the Transit Bus being towed. Drilling of holes in the Transit Bus bumpers is not permitted. Any bumper damage caused by a towing device shall be replaced by the Contractor at no

charge to the Authorized User. If a Transit Bus is being towed by another vehicle, the Transit Bus being towed must have the drive shaft disconnected to eliminate unnecessary mileage.

III.5.3 POST DELIVERY INSPECTION

After Transit Buses have been delivered to the location as stated on the Purchase Order, a post-delivery inspection shall be performed by the Authorized User. The report written at the pre-delivery inspection shall be used to verify that any deficiencies have been corrected. If any deficiencies remain it is the responsibility of the Contractor to arrange to have the necessary corrective work completed within five (5) Business Days after receipt of written notification from the Authorized User and/or Procurement Services. If the Contractor cannot arrange to have the necessary work completed within such time period, and the Authorized User cannot agree to an extension of the time period, the Authorized User may either reject the Transit Bus (see Appendix B §38 *Rejected Product*), or choose to have the corrections made by an entity of the Authorized User's choosing and the Contractor shall be required to reimburse the Authorized User for this expense within thirty (30) calendar days of the request for reimbursement

III.5.4 SHIPPING DATES AND DELIVERY TIME

The following provisions for shipping dates and delivery time shall apply:

A. Delivery time shall be expressed in number of calendar days required to make delivery after receipt of a final Purchase Order (After Receipt of Order ("ARO")). All Transit Buses must be delivered within the number of days previously agreed upon by the Contractor and Authorized User, after receipt of the Purchase Order by the Contractor and/or at the pre-production meeting (see Section II.3 *Pre-Production Meeting*). Failure to deliver within the previously agreed upon time period shall result in payment of liquidated damages in accordance with Section III.5.6 *Liquidated Damages*.

B. Contractor shall provide written acknowledgement of orders within five (5) Business Days ARO.

C. Contractor shall provide ordering Authorized User with anticipated shipping date of the completed Transit Bus with written acknowledgement of the order. If the anticipated shipping date cannot be provided by the Contractor at the time of the acknowledgement of order, or at the pre-production meeting, then the Contractor shall provide the Authorized User with a reasonable explanation for not providing a date, and shall provide the anticipated shipping date at the time it becomes known to the Contractor.

D. Unless otherwise agreed-upon by the Authorized User, the Contractor shall furnish the Authorized User with written acknowledgement of the shipping date to the Authorized User at least fourteen (14) calendar days prior to shipment.

E. If shipment shall not be made within the delivery time, the Contractor is required to notify the Authorized User in writing within one (1) Business Day of when Contractor knows the shipment shall not be made within the delivery time. This notification must include a reasonable explanation, (e.g. the OEM has a delay in shipment to the Contractor), for the delay and the latest date the Transit Bus shall be shipped. Should the explanation for the delay be determined to be unreasonable by the Authorized User, appropriate contract default proceedings shall be initiated under Section III.5.6 *Liquidated Damages*. Failure to supply timely written notification of delay may be cause for default proceedings.

F. All correspondence on shipping dates and delivery time shall be directed to the ordering Authorized User's contact person.

III.5.5 DEFAULT ON DELIVERY

If during the Contract period an Authorized User has issued a Purchase Order for a Transit Bus, prior to the Final Order Due Date, and the Base Item or requested Optional Equipment awarded for that Lot becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B §47 *Savings/Force Majeure*), following the issuance of the Purchase Order, a substitute Base Item or Optional Equipment deemed by Procurement Services to be equivalent to the specifications for the Base Item or Optional Equipment in the resultant Contract(s), must be

supplied by Contractor if requested by the Authorized User. The price for substitute Base Items or Optional Equipment shall be equal to or less than the Base Item or Optional Equipment Unit Price in the Contract.

Alternatively, the Authorized User may, at their sole discretion, cancel the order and purchase the Transit Bus from other sources. In such event the Contractor shall reimburse the Authorized User for all excess costs over the Contract price for the Base Item or Optional Equipment that is unavailable or cannot be supplied for any reason (except as provided for in Appendix B §47 Savings/Force Majeure).

III.5.6 LIQUIDATED DAMAGES

In the event of a delay or default in the delivery timeframe previously agreed upon by the Contractor and the Authorized User, the Authorized User shall be entitled to and shall assess against the Contractor as liquidated damages and not by way of penalty, a sum calculated as follows:

> Two hundred and fifty dollars ($250) per seven (7) calendar day period, prorated for a period less than seven (7) calendar days, per Transit Bus, to compensate for delay, and other loses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time delivery was due as specified on the Purchase Order. A grace period of seven (7) calendar days commencing on and including the Purchase Order date for delivery shall be extended to the vendor prior to the assessment of such liquidated damages. Notice is hereby given to the vendor that, despite the extensions of the grace period herein specified, time shall be of the essence in regard to delivery of the Transit Bus

Liquidated damages, if assessed, shall be deducted from the Purchase Order price for each Transit Bus delivered against such Purchase Order.

III.6 GENERAL WARRANTY REQUIREMENTS

In addition to the Appendix B §58 *Warranties*, the following general warranty requirements shall apply to all Transit Buses provided under the Contract.

A. The Contractor shall warrant the Transit Bus against parts failure or malfunction due to design, construction or installation errors, defective workmanship, and missing or incorrect parts. Warranty service shall be available within New York State, and shall be honored by all the manufacturer's Dealers.

B. The Contractor shall be responsible for all transportation, pick-up and delivery cost to either the Contractor's location, or other Dealer location chosen by the Authorized User, of any Transit Bus with a warranty claim within ninety (90) days of the date the warranty period begins, for any Transit Buses procured under the Contract. After ninety (90) days, the Authorized User shall be responsible for all transportation, pick-up and delivery for any Transit Buses procured under the Contract requiring warranty service, unless otherwise agreed upon by the Contractor. Additional payment for delivery and/or pickup by the Contractor is at the discretion of the Contractor(s), and must be mutually agreed upon prior to service.

C. The warranty period for all coverage shall begin on the date the Transit Bus is accepted by the Authorized User or put in service, whichever occurs later. Delayed warranty forms are to be provided with the required motor vehicle paper work. Where Transit Buses develop Chronic Failures during the warranty period, Contractor shall extend the warranty period for an equal period of time following correction of such failures, as indicated in the original warranty.

D. The Contractor shall be responsible for all warranty claims related to the Transit Bus as provided by the Contractor at the time of delivery. All components supplied by the Contractor shall be included and covered by a basic warranty. OEM replacement parts are to be new, not remanufactured, unless the OEM has specified that a replacement part be remanufactured, or prior approval has been granted by the Authorized User. All warranties shall cover all labor and parts replacement during the warranty period. Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty. Parts replaced under this warranty shall be of OEM quality or higher. Service shall be at a level to maintain or meet the manufacturer's requirements to sustain the warranty. See Appendix B §58 *Warranties*. The Contractor shall furnish with each repaired vehicle an information sheet that indicates the type of warranty work performed, parts replaced, and number of labor hours involved.

E. The warranty requirements stated for each Base Item on Attachment 1: *Specifications and Price Pages* are considered minimum. If a minimum warranty requirement is not stated in Attachment 1: *Specifications and Price Pages*, then the contractor shall guarantee such equipment against defective materials and workmanship for a period of one (1) year from the in-service date, with no mileage limitation. If the manufacturer's standard warranty exceeds the warranty stated in Attachment 1: *Specifications and Price Pages*, or the minimum one (1) year warranty stated herein, then the manufacturer's standard warranty shall apply.

F. Whenever extended warranty packages are being offered by the OEM or the Contractor at "No Additional Charge," they shall be extended to all purchases made under Contract during the time period that they are offered to other entities.

G. All Transit Bus warranties, including extended warranties, shall be provided in written or electronic form to the Authorized User.

H. The contractor shall warranty all equipment furnished for a period of one (1) year from in service date as specified on the delayed warranty form, (with no mileage limitation), if such equipment is not included in the OEM's standard warranty. This guarantee shall include defective materials and workmanship.

III.6.1 WARRANTY REPAIR BY AUTHORIZED USERS

If certified by the Contractor an Authorized User may perform warranty repairs at Authorized User's facilities. Warranty repairs performed by the Authorized User shall be reimbursed at the Contractor's standard flat reimbursement rates. Rates shall be provided at the request of OGS or the Authorized User. Understanding that the State of New York shop must be "certified" to perform and be reimbursed for warranty repairs, the Contractor shall provide documentation that details the qualifications required in order for Authorized User maintenance repair facilities to become certified. If not currently available, the Contractor shall document the potential for this type of infrastructure to develop. The Authorized User shall be responsible for all costs associated with becoming certified.

III.7 POST-DELIVERY SERVICE

Post-delivery service at locations authorized by the Transit Bus and Optional Equipment OEMs must be available within New York State for Product provided under the Contract. Post-delivery service shall be performed in a modern, properly equipped service shop.

An Authorized User shall have the right to utilize any service location for post-delivery service. If requested by an Authorized User, the Contractor shall assist the Authorized User in locating a service location authorized by the Transit Bus or Optional Equipment OEM.

III.8 TRAINING

If requested by the Authorized User, complete training for each Transit Bus shall be provided by the Contractor at no additional charge. Training is to include operator training with instruction and demonstration on proper operation of the unit, safety, preventive maintenance and proper usage of parts and service manuals. Training provided must also be sufficient to update repair technician(s) on all new componentry and diagnostics capabilities. The Contractor shall provide the training services of qualified factory technician(s) for a minimum period of one (1) full Business Day, at one mutually agreed-upon location (e.g., at the location of delivery or at a field location within the State), at no additional charge. Additional training days and/or locations shall be provided upon request by the Authorized User. The Contractor may charge a mutually agreed-upon fee for any additional training days and/or locations.

One (1) copy of training programs (DVD or CD format) and/or PowerPoint presentations covering all or any part of the Transit Bus, that are normally available from the OEM, shall be provided to the Authorized User at no additional charge either with the training or in lieu of training.

III.9 REPLACEMENT ITEMS

The State may permit the Contractor to offer a replacement Model or a replacement Product Line if the Model series or the Product Line originally awarded is discontinued, replaced, or made unavailable by the OEM. Pricing

for such replacement items shall be based on the current OEM or Contractor-Published Pricelist for the replacement item and the previously agreed upon Contract discounts.

III.10 SERVICE/TECHNICAL BULLETINS AND RECALLS

The Contractor must immediately notify the Procurement Services Contract manager of any service/technical bulletins and recall notices that they are aware of pertaining to Transit Buses. Notification shall be made on a continual basis to keep the State informed regarding improvements, changes and/or problems concerning State owned vehicles and their component parts.

III.11 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION

Access by Authorized Users to Contract terms and pricing information shall be made available and publically posted on the OGS website. To that end, OGS shall publically post the Contract Pricelist, including all subsequent changes in the Contract offerings (adds, deletes, price revisions), Contractor contact information, and the Contract terms and conditions, throughout the Contract term.

III.12 PROCUREMENT INSTRUCTIONS

Authorized Users should follow the following procurement instructions when purchasing Transit Buses from the Contract(s).

A. When utilizing the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:

- A statement of need and associated requirements;
- Obtaining all necessary prior approvals;
- A summary of the Contract alternatives considered for the purchase; and
- The reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

B. Prior to issuing a Purchase Order to the Contractor, the Authorized User must submit a request for Contract use to NYS DOT at the address below and include the Contractor name, Contract number, Lot and quantity of Transit Buses.

New York State Department of Transportation
Public Transportation Bureau
50 Wolf Road, POD 54
Albany, NY 12232
Email address: ptb.5310@dot.ny.gov

C. Upon NYS DOT approval, Authorized Users shall issue Purchase Order(s), as described in Section II.14.1 *Purchase Orders*, directly to the Contractor(s), specifying the Transit Bus required and shipping/delivery requirements.

D. Before proceeding with their purchase, Authorized Users are advised to arrange a pre-production meeting with the Contractors(s) in order to ensure complete and accurate understanding of the Transit Bus specifications, and delivery requirements, that are required by the Authorized User.

E. Upon Authorized User acceptance of Transit Buses itemized on the Purchase Order, Contractor(s) shall invoice the Authorized User for the Transit Buses, and accordingly, Authorized User shall arrange for payment.

F. The Contractor is advised that Authorized User personnel shall not be authorized to obligate or bind the respective entity to contractual terms and conditions; therefore, there shall be no obligation to execute any Contractor documents that are not set forth in the Contract. See also Appendix B §31 *Purchase Orders.*

III.13 FORD FIN CODE NUMBER

New York State and Ford Motor Company have reached an understanding regarding Ford's FIN Code requirements. For further information, please contact Ford Motor Company Government Account Manager, Donald Cobb by telephone at 203-971-8672 or via email at dcobb@ford.com.

SECTION IV: METHOD OF AWARD

This section sets forth the method of award for the solicitation.

IV.1 AWARD OVERVIEW

As specified in Section I.2 *Scope*, Table 1: *List of Lots and Number of Awardees*, the IFB includes thirteen (13) Lots, which may each receive up to one (1) award each. Each Lot shall be awarded to the responsive and responsible Bidder with the lowest Grand Total For Lot.

Grand Total For Lot is calculated in accordance with Section IV.3 *Grand Total For Lot Calculation, a*nd is based on a combination of the Base Item Unit Price and Total Optional Equipment Evaluation Price, weighted by the Evaluation Quantity. The examples below in Section IV.2 *Total Optional Equipment Evaluation Price Calculation* and Section IV.3 *Grand Total For Lot Calculation*, indicate the calculations for each Lot. Included with the specifications for each Base Item is an Evaluation Quantity. This value is for evaluation purposes only, and is based on historic sales and anticipated future needs. The Evaluation Quantity is NOT a guaranteed purchase under the resultant Contract(s). See also Section I.8 *Estimated Quantities*.

IV.2 TOTAL OPTIONAL EQUIPMENT EVALUATION PRICE CALCULATION

The Total Optional Equipment Evaluation Price for each Lot is the sum of the Optional Equipment Evaluation Prices included in Column I of Part 4: *Optional Equipment Specifications and Prices*, on Attachment 1: *Specifications and Price* Pages for a Lot. Each Optional Equipment Evaluation Price is calculated by multiplying the Optional Equipment Unit Price entered by the Bidder, by the Optional Equipment Evaluation Quantity. Set forth below is an example of how the Total Optional Equipment Evaluation Price is calculated for each Lot in Attachment 1: *Specifications and Price Pages*. A Bidder enters the amounts highlighted in grey below (note: these cells are highlighted in yellow in Attachment 1: *Specifications and Price Pages*).

The mathematical calculation illustrated in the table below is as follows:

A. Each Optional Equipment Evaluation Price is calculated by multiplying the Optional Equipment Unit Price by the Optional Equipment Evaluation Quantity as follows:

   1. Additional Wheelchair Restraint System: Optional Equipment Unit Price ($5,000) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price ($50,000.00);

   2. Additional Seat: Optional Equipment Unit Price ($3,000) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price ($30,000.00).

B. The Optional Equipment Evaluation Prices calculated above are then totaled to equal the Total Optional Equipment Evaluation Price ($80,000.00).

Example Price Calculation for Total Optional Equipment Evaluation Price (all Lots)				
Optional Equipment	**Specification**	**Optional Equipment Unit Price**	**Optional Equipment Evaluation Quantity**	**Optional Equipment Evaluation Price**
Additional Wheelchair Restraint System	Provide an additional wheelchair station above the quantity required in the base vehicle. Price is per position to include all belts, floor/ shoulder hardware, and storage container.	$5,000.00	10	$50,000.00
Additional Seat (3-Step Fold Away; Feather Weight; and Forward Facing)	Provide and install one forward facing fold-away flip seat to accommodate two (2) ambulatory passengers, when not in use as a wheelchair station. Seat shall be of the same type (including grab handles) and color as standard seats.	$3,000.00	10	$30,000.00
	Total Optional Equipment Evaluation Price			**$80,000.00**

IV.3 GRAND TOTAL FOR LOT CALCULATION

The Grand Total For Lot for each Lot is a combination of the Base Item Unit Price and Total Optional Equipment Evaluation Price, weighted by the Evaluation Quantity. Set forth below is an example of how the Grand Total For Lot is calculated for each Lot in Attachment 1: *Specifications and Price Pages*. A Bidder enters the amounts highlighted in grey below (note: these cells are highlighted in yellow in Attachment 1: *Specifications and Price Pages*).

The mathematical calculation illustrated in the table below is as follows: [Evaluation Quantity (10) x Base Item Unit Price ($40,000.00)] plus the Total Optional Equipment Evaluation Price ($80,000.00) = Grand Total For Lot ($480,000.00).

Example Price Calculation for Grand Total For Lot (all Lots)		
Evaluation Quantity	Evaluation Quantity based on historic sales and anticipated future needs; this is NOT a committed purchase	10
Base Item Unit Price	The per unit NYS Contract Price (dollar amount) for the Transit Bus described in the Base Item Specifications, including the Delivery Charge. *[Automatically calculated: Chassis Price plus Body Price, plus Delivery Charge]*	$40,000.00
Total Optional Equipment Evaluation Price	The sum of the Optional Equipment Evaluation Prices in Column I of Part 4: *Optional Equipment Specifications and Prices*. *[Automatically calculated: Equal to the value in Column I, Row 161 below]*	$80,000.00
Grand Total For Lot	Automatically calculated: Evaluation Quantity multiplied by the Base Item Unit Price, plus the Total Optional Equipment Evaluation Price	**$480,000.00**

IV.4 COST PROPOSAL REVISION

Prior to award, the State reserves the right to request a cost proposal revision, in accordance with State Finance Law §163.9(c), from any Bidder determined by the State to be susceptible of being selected for contract award. For purposes of this IFB, “susceptible of being selected for contract award” shall mean the responsive Bidders that have the lowest three (3) Grand Total For Lot for the applicable Lot. Any Bidder that is determined by the State to be insusceptible of being selected for contract award shall receive no further consideration for award for a Lot, and shall not be asked to participate in the cost proposal revision process.

All Bidders are encouraged to propose the best possible offers at the onset of the initial bid as there is no guarantee that any proposal shall be allowed an opportunity to submit a revised cost proposal. Bidders are also advised that partially participating in the cost proposal revision process, or not participating at all, may result in a change in the Bidder’s rank if other Bidders choose to reduce pricing in the cost proposal revision process.

A Bidder who is selected to participate in a cost proposal revision process must submit the Attachment 1: *Specifications and Price Pages* provided by Procurement Services, revised with the Bidder's cost proposal revision, in accordance with the format described in Section V.2 *Bid Format and Content,* by the date required by Procurement Services in the cost proposal revision notice sent to the Bidder. The susceptible Bidder must also submit a notarized form provided by Procurement Services, by the date required, that certifies that the cost proposal revision has been submitted by an individual with the express authority to sign on behalf of the Bidder. The cost proposal revision process, including information sent to the Bidder and the Bidder's submission of the revised Attachment 1: *Specifications and Price Pages,* shall be conducted via email to a susceptible Bidder's designated point of contact, identified on Attachment 2: *Bid Documents (Electronic),* Section B: *General Questions*, Question 8, unless otherwise instructed by Procurement Services. Information about the cost proposal revision process shall be sent via email to susceptible Bidders prior to release of the cost proposal revision process, and susceptible Bidders shall be given the opportunity to submit questions at that time. Answers to questions shall be provided to all susceptible Bidders. There shall be no additional pre-bid conference for the cost proposal revision process.

A cost proposal revision must be a lower price than the initial bid. Bidders participating in the cost proposal revision process cannot add Lots to their bid that were not in the initial bid, or remove Lots that were included in the initial bid. Procurement Services shall not consider a cost proposal revision for the following: (1) Lots not identified in the notice sent to the Bidder as being included in the cost proposal revision process; (2) where the cost proposal revision is higher than the initial bid; or (3) for a Lot that was not included in the Bidder's initial bid. Pursuant to Appendix B §23 *Timeframe for Offers*, a bid for a Lot shall not be withdrawn during the cost proposal revision process.

The lowest Grand Total For Lot received for the initial bid for Lots included in the cost proposal revision process shall be shared with participants in the cost proposal revision process. If OGS elects to conduct additional round(s) of the cost proposal revision process the lowest Grand Total for Lot from the immediately prior round of the cost proposal revision process shall be shared with the participants in the subsequent round of the cost proposal revision process. The company name of the Bidder with the lowest bid shall not be shared with participants in the cost proposal revision process.

Bids from susceptible Bidders participating in a cost proposal revision process shall be reevaluated based on the results of the cost proposal revision process. If a susceptible Bidder participating in a cost proposal revision process does not respond to a cost proposal revision request for a Lot it shall be presumed that the susceptible Bidder elected not to participate in the cost proposal revision for the Lot, and the susceptible Bidder shall only be evaluated based on the pricing submitted in their initial bid for the Lot, or a prior revised Attachment 1: *Specifications and Price Pages*, if there had been a previous cost proposal revision request in which the susceptible Bidder participated. Any susceptible Bidder who submits a revised Attachment 1: *Specifications and Price Pages* after the date required by Procurement Services in the cost proposal revision process notice sent to the susceptible Bidder, shall only be evaluated based on the pricing submitted in their initial bid, as applicable.

OGS reserves the right to conduct multiple rounds of the cost proposal revision process, if doing so is determined to be in the best interest of the State.

SECTION V: BID SUBMITTAL

This section sets forth bid submittal information and instructions for this solicitation.

V.1 IMPORTANT NOTICE TO POTENTIAL BIDDERS

A Bidder should take note of the following:

A. Receipt of these bid documents does not indicate that OGS Procurement Services has pre-determined your company's qualifications to receive a contract award. Such determination shall be made after the bid opening and shall be based on evaluation of bid submissions compared to the specific requirements and qualifications contained in these Bid documents;

B. This IFB contains a total of thirteen (13) Lots, which are specified in Table 1 in Section 1.2 *Scope*, and described in further detail in Attachment 1: *Specifications and Price Pages.* A Bidder is not required to bid on every Lot; A Bidder may bid on as few or as many Lots as desired.

C. To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in this solicitation;

D. The Commissioner of OGS shall receive bids pursuant to the provisions of Article XI of the State Finance Law. All bids and accompanying documentation shall become the property of the State of New York and shall not be returned;

E. If a Bidder wishes to make more than one bid, such bid(s) are to be submitted separately and are to be listed as "alternate" bids. "Alternate" bids must satisfy and address all requirements stated in this solicitation, and shall be evaluated as separate bids;

F. Awards shall be made in accordance with Section IV *Method of Award*. Multiple bidders may receive awards. In the event that a Bidder receives multiple awards under this IFB, a single Contract shall be executed covering all awards; and

G. Portions of the successful Bidder's bid shall be incorporated into a final Contract, executed by the Contractor and OGS. Therefore, the bid must be signed by a partner, corporate officer, or other person authorized to commit its firm to all provisions of this solicitation and its bid as submitted. Once the Contract resulting from this solicitation is executed and approved, it shall be posted on the OGS website.

V.2 BID FORMAT AND CONTENT

This section sets forth the format and content of a complete bid submission.

A. The complete bid consists of the following documents. Do not submit any documents not set forth below. A potential Contractor must submit all documents in the manner and format set forth below (i.e., **paper** or **electronic (on CD)**).

Bidders are required to submit the documents in subparagraphs 1, 2 and 3 below in the manner provided in Paragraph C below (i.e., electronic or hard-copy), by "Submission of bid and bid opening" time and date specified in Section I.3 Key Events/Dates. Failure to do so shall result in the bid being deemed non-responsive and in the disqualification of the bid.

If submitting a joint venture or partnership bid (see Section II.26 *Joint Venture or Partnership Bids*), one (1) business entity must be identified as the Bidder and subsequent Contractor. The additional entity(ies) participating in the joint venture or partnership bid shall be required to submit the documents in subparagraphs 7 through 10 below for a complete bid.

1. IFB Cover Page. A **paper** version of Page #1 of the IFB (the cover page/first page of this document), completed and with original ink signature.

2. IFB Acknowledgement Page. A **paper** version of Page #2 of the IFB (the acknowledgement page/second page of this document), completed and with original ink signature, and notarized;

3. Attachment 1: *Specifications and Price Pages*. An **electronic (on CD)** version of Attachment 1: *Specifications and Price Pages,* completed, in Excel format, (version 2003 or newer). *Do not submit a PDF version of this document. Do not split the individual tabs contained in this attachment into a separate Excel document for each Lot being bid.* ***Failure to submit the final version of this attachment with the correct revision date as posted on the OGS website and announced via the NYS Contract Reporter, shall result in the bid being deemed non-responsive and in the disqualification of the bid.***

   See Section III.1.3 *Bid Pricing Submittal* for additional information regarding submitting bid pricing on Attachment 1: *Specifications and Price Pages*. **Failure to provide a Base Item Unit Price or one or more Optional Equipment Unit Prices for a Lot shall render the bid non-responsive for that Lot and shall result in the disqualification of the bid for the applicable Lot.**

4. Additional Supporting Information. For each Base Item bid, an **electronic (on CD)** version of the documents listed below. For definitions see Section I.9 *Definitions*.

   a) Build Sheet(s). **Failure to provide a Build Sheet for a Base Item shall render the bid non-responsive for that individual Base Item and shall result in the disqualification of the bid for the applicable Lot**;

   b) Certificate of Conformity. A U.S. Environmental Protection Agency Certificate of Conformity. Instructions on how to obtain Certificates of Conformity are available on the EPA website at http://www.epa.gov/otaq/imports/ct-hd-nr.htm;

   c) FMVSS Documentation. Engineering assessment and test procedure results documentation showing compliance with all stipulated and relevant Federal Motor Vehicle Safety Standards (http://www.nhtsa.gov/cars/rules/import/FMVSS);

   d) STURAA Test Report.

      1) A STURAA Test Report;

         OR

      2) Certification of exemption as specified under FTA provisions.

         OR

      3) Manufacturer's Certificate of Anticipated Testing. *Note: All testing must be completed and the required STURAA test reports must be submitted prior to an order being placed for such Transit Buses. This shall not exclude the State from awarding to a responsive Bidder that met testing/reporting requirements at the time of bid opening*.

   e) Warranty information. Documentation that shows compliance with the minimum required warranty for the equipment included in the Transit Bus. See Section III.6 *General Warranty Requirements*;

   f) Body Documentation. Documentation supporting compliance of the Body with the Base Item Specifications (e.g., OEM brochures and specification sheets, and dimensional drawings, including floor plans). Documentation shall include current (i.e., not older than five years unless the structure has not been significantly modified as defined by 49 CFR 665) substantiating documentation confirming compliance with FMVSS 220 *School Bus Rollover Protection,* 221 *School Bus Body Joint Strength* and 214 *Side Impact Protection* (excluding Lots C, D, E, G, H, I, J, and K).

   g) Air Conditioner OEM Certification. Certification from the OEM that the performance requirements listed in the Base Item Specifications can be met with the air conditioner(s) offered.

5. Attachment 2: *Bid Documents (Electronic).* An **electronic (on CD)** version of Attachment 2: *Bid Documents (Electronic)*, completed. This attachment includes the two (2) sections listed below. *Note: Do not submit a PDF version of this document. Do not split the individual tabs contained in this attachment into a separate Excel document for each section.*

   a) Section A: *Bid Submittal Checklist*

   b) Section B: *General Questions*

6. Attachment 3: *Bid Documents (Paper).* A **paper** version of each section in Attachment 3: *Bid Documents (Paper)*, completed and with original ink signature, where applicable. This attachment includes the four (4) sections listed below.

   a) Section A: *New York State Required Certifications*, completed and with original ink signature;

   b) Section B: *Intentionally Omitted*;

   c) Section C: *Manufacturer's Certificate*, completed and with original ink signature; and

   d) Section D: *Federal Transit Administration Certifications*, completed and with original ink signature.

7. Attachment 4: *Insurance Requirements*. A **paper** or **electronic (on CD)** version of proof of compliance with general, automobile liability, workers' compensation and disability insurance requirements, as specified in Attachment 4: *Insurance Requirements*;

8. Standard Vendor Responsibility Questionnaire (SVRQ). A **paper** version print-out of the online certification page (if completed and certified online), OR a **paper** version of the SVRQ, completed and with original ink signature and notarized (see Section II.10 *New York State Vendor Responsibility Questionnaire for Profit Business Entity*. Forms are available on the OSC website here: http://www.osc.state.ny.us/vendrep/vendor_index.htm. Click on "Accessing the VendRep System" to complete the SVRQ online, or "Forms for Vendor Use" to complete the paper version;

9. NY State Taxation and Finance forms ST-220-CA and ST-220-TD. A **paper** version of form ST-220-CA, completed and with original ink signature, and notarized (see Section II.11 *Tax Law §5-A*). *Note: Form ST-220-TD, completed and with original ink signature, and notarized, must be submitted directly to the NYS Tax Department.* Forms are available on the Tax Department website here: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf and http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf;

10. Form EEO-100. A **paper** version of form EEO-100 (Equal Employment Opportunity Staffing Plan), completed and with original ink signature (See Section II.24 *Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises.* The form is available on the OGS website here: http://www.ogs.ny.gov/MWBE/Docs/EEO100.docx;

B. Bidders are requested to submit the documents in paragraphs 4 through 10 of Paragraph A above, by the time and date specified in Section I.3 *Key Events/Dates*. If Bidder does not submit any of these documents by "Submission of bid and bid opening" time and date specified in Section I.3 *Key Events/Dates*, Bidder is requested to submit such documents within five (5) Business Days of Procurement Services' written request for such document(s). Failure to submit a document within five (5) Business Days of Procurement Services' written request for such document(s) may render the bid non-responsive and result in the disqualification of the bid.

C. Each bid shall include separately bound original paper documents, and a CD containing electronic files of the required documents specified above in Paragraph A. In the case of discrepancies between the hard copy and the electronic media submission the electronic media submission shall take precedence over the hard copy submission.

1. Paper documents shall include original signatures and notary, where applicable. Documents should be submitted bound in a binder or by some other method (e.g., through the use of a three-hole report cover). Spiral binding is not desired by the State.

2. Electronic media files shall be submitted on CD-ROM in Windows Vista format or later versions. Where the term "CD" or "CD-ROM" is used, it shall be understood that any of the following electronic media may be used: CD-ROM, DVD or USB flash drive. Each CD-ROM must be labeled on the outside with: (1) Full legal business name of Bidder and (2) Solicitation Number 22945. It is the Bidder's responsibility to ensure that the documents submitted on CD are readable; Bidder is advised to verify that all submitted documents can be opened and viewed from the CD. **If the Attachment 1: *Specifications and Price Pages* file submitted on the CD is not readable, the bid shall be deemed non-responsive and shall be disqualified.**

D. Documents required at the time of bid opening (i.e., IFB Cover Page, IFB Acknowledgement Page and Attachment 1: *Specifications and Price Pages*) must be submitted in one (1) sealed package and be received by the time and date specified in Section I.3, *Key Events/Dates*.

E. Bidder is responsible for ensuring that the most recently updated version of all required documents has been submitted. Any updated versions released after the initial bid release date shall be posted at http://www.ogs.ny.gov/purchase/biddocument/22945BID.ASP and announced via the NYS Contract Reporter. ***Failure to submit the final version of Attachment 1: Specifications and Price Pages with***

the correct revision date as posted on the OGS website and announced via the NYS Contract Reporter shall result in the bid being deemed non-responsive and in the bid being disqualified.

V.3 BID DEVIATIONS

If your bid differs from the specifications explain such deviation(s) or qualification(s); and if necessary, attach a separate sheet. Deviations related to specifications listed in Attachment 1: *Specifications and Price Pages* may be set forth in the "Notes/Comments" columns of that attachment. In accordance with Appendix B §6 *Extraneous Terms,* material deviations may render the bid non-responsive and may result in rejection of the bid.

V.4 BID DELIVERY

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. LATE BIDS shall be considered in accordance with Appendix B §5 *Late Bids Rejected*. Email bid submissions for items required at the time of bid opening are not acceptable and shall not be considered.

Bid envelopes and packages

An envelope and/or package containing a bid shall be clearly marked "**BID ENCLOSED**" and must state the **Bid Number, Bid Opening Date,** and **Time**. Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality. Bids shall be delivered to:

State of New York Executive Department
Office of General Services Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242

FAX transmittals

Facsimile transmittals are NOT acceptable for this solicitation.

Hand deliveries

Bidders must allow extra time to comply with the building access procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. Bidders assume all risks for timely, properly submitted deliveries.

V.5 IMPORTANT BUILDING ACCESS PROCEDURES

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk.

A Bidder who elects to deliver its proposal is encouraged to pre-register for building access by contacting the Procurement Services receptionist at 518-474-6262 at least 24 hours prior to the bid submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered shall be directed to a designated phone to call the Procurement Services Receptionist. The Receptionist shall register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct Procurement Services business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. Note: Bids not received within Procurement Services, or the OGS Mailroom, by "Submission of bid and bid opening" time and date specified in Section I.3 *Key Events/Dates*, shall be considered late.

V.6 ELECTRONIC BID OPENING RESULTS

Procurement Services posts bid results on the OGS/ Procurement Services web page. The web page makes available bids (i.e., the IFB Cover Page and the Bid Summary worksheet of Attachment 1: *Specifications and Price Pages)* received by Procurement Services for scheduled bid openings. Previously only available through Freedom of Information, such information is anticipated to be available online within two Business Days after the bid opening.

The Bid Opening Results Page is available at: http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp

V.7 NOTIFICATION OF AWARD

The successful Bidder(s) shall be advised by OGS in accordance with Appendix B §24 *Contract Creation/ Execution*. OGS also distributes email notification to registered Authorized Users announcing the resultant contract award(s). The email includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered Authorized Users. Authorized Users may register for the PNS at the following URL address: http://ogs.ny.gov/PNS/default.asp under Classification Code 25. All subsequent contract updates are also sent out via the PNS. Authorized Users of the contract submit Purchase Orders or other such order documents directly to the Contractor. See Appendix B §31 *Purchase Orders*.

V.8 DEBRIEFING

Unsuccessful Bidders shall be notified upon Notification of Award to the winning Contractor(s). A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's proposal or bid. The debriefing prior to Contract award should be requested in writing within thirty (30) days of notification that the bid or proposal was disqualified from further consideration or the Bidder was a non-awardee.

After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such Bidder was not selected for a Contract award. The post-award debriefing should be requested in writing within 30 days of posting of the Contract award on the OGS website.

V.9 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

A. Reject any or all bids received in response to the IFB;

B. Withdraw the IFB at any time, at the sole discretion of the OGS.

C. Make an award under the IFB in whole or in part;

D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;

E. Seek clarifications and revisions of bids;

F. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;

G. Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent IFB amendments;

H. Change any of the schedule dates with notification through the NYS Contract Reporter;

I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;

J. Waive any requirements that are not material;

K. Utilize any and all ideas submitted in the bids received;

L. Adopt all or any part of a Bidder's proposal in selecting the optimum configuration;

M. Negotiate with the Bidder responding to this IFB within the IFB requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' proposals;

N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors, (e.g., incorrect equipment specified by the Bidder for a required feature in the Base Item specifications), for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation;

O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations;

P. If an incorrect reference/parameter/component/product/etc. is stated by the State or by the Bidder, the evident parameter/component/product shall prevail; the proper alternative or corrected parameter/model/code number(s) shall be considered;

Q. To have the flexibility to consider bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the solicitation. This flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a contract is threatened due to a minor technicality or a minor deviation, and

R. To reject an obviously unbalanced bid or to make "NO AWARD" on individual listing(s) or sub-item(s) if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining listings or sub-items, and award would be made on the remaining listings or sub-items. The determination of an unbalanced bid shall be at the sole discretion of the State.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

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

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

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

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

13. <u>CONFLICTING TERMS</u>. 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. <u>GOVERNING LAW</u>. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

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

16. <u>NO ARBITRATION</u>. 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. <u>SERVICE OF PROCESS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

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

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

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

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GENERAL

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

2. DEFINITIONS Terms used herein shall have the following meanings:

a. AUTHORIZED USER Authorized User shall have the meaning set forth in State Finance Law Section 163(1)(k) and includes, but is not limited to, New York State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

b. BID A response to the Solicitation submitted by a Bidder to provide Products.

c. BIDDER Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

d. BID SPECIFICATIONS A written description drafted by OGS or an Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, 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 this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

e. COMMISSIONER The Commissioner of OGS or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

f. CONTRACT The writings that 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, and which most typically include the following classifications of public procurements:

1. **Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.

2. **Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. **Back-Drop Contracts** Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

4. **Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

5. **Contract Letter** A letter to the successful Bidder 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 the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

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

h. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Commissioner.

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

j. ENTERPRISE The total business operations in the United States of an Authorized User without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of the Authorized User.

k. ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

***l.* 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.

m. GROUP A classification of a Product that is designated by OGS.

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes

Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

p. LICENSEE An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

q. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

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

s. MINI-BID A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

t. NEW LICENSED SOFTWARE RELEASES (Licensed Software Revisions) Any commercially released revisions to the licensed version of Licensed Software as may be generally offered and available to Authorized Users who are current on technical support/maintenance. New Licensed Software Releases involve a substantial revision of functionality from a previously released version of the Licensed Software. Updates are provided when available, and Contractor is under no obligation to develop any future Product or functionality.

u. OGS The New York State Office of General Services.

v. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

w. PURCHASE ORDER The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Purchasing Card, electronic Purchase Order, or other authorized instrument).

x. REQUEST FOR PROPOSALS (RFP) A type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

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

z. RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

aa. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

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

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

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

ee. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

ff. 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.

gg. STATE State of New York.

hh. STATE AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

ii. SUBCONTRACTOR Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

jj. TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

kk. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, 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.

BID SUBMISSION

3. INTERNATIONAL BIDDING All Bids, including all information and Product 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 Bids submitted which do not meet the above criteria will be rejected.

4. BID OPENING Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

5. LATE BIDS REJECTED For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Solicitation or, if no place is specified, in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Solicitation for the Bid opening. For purposes of Bid openings held and conducted by Authorized Users other than OGS, the term late Bid is defined as a Bid not received in the location established in the Bid Specifications at or before the date and time specified for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Solicitation are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with the Solicitation. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User, shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance, shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

6. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Solicitation. 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 terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form;

b. The writing must identify the particular Solicitation requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and

c. The Bidder shall enumerate the proposed addition, deletion, counter-offer, deviation, or modification from the Solicitation, and the reasons therefor.

No extraneous terms, whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such terms in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of extraneous terms.

7. CONFIDENTIAL/TRADE SECRET MATERIALS

a. CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The State's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. COMMISSIONER OR AUTHORIZED USER Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

8. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. PREVAILING WAGE RATE APPLICABLE TO BIDS A copy of the applicable prevailing wage rate schedule is attached to the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. 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. 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 that fail to comply with this requirement will be disqualified.

b. 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 resulting from this Contract, 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 for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

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 Subcontractors 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 the 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 Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Day's Labor No laborers, workmen or mechanics 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 calendar 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 NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

9. TAXES

a. Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

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

c. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

10. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

11. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Solicitation to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Solicitation or Contract for press or other media releases.

12. PRODUCT REFERENCES

a. "**Or Equal**" In all Solicitations or Bid Specifications, the words "or equal" are understood to apply where a copyrighted, 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 Commissioner's 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 Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

13. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and 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 Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements or by

the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

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

15. PRICING

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

b. Net Pricing Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Solicitation.

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 Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. Third Party Financing If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.

f. 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 upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

g. Specific price decreases:

(i) GSA Changes: Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where net pricing under the Contract is based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

h. Cost Proposal Revisions A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

16. DRAWINGS

a. Drawings Submitted With Bid When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, 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, or carrying out any other requirements of the intended scope of work.

17. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

18. PURCHASING CARD The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

19. SAMPLES

a. Bidder Supplied Samples The Commissioner 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 the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner 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.

b. 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 Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

c. Conformance with Samples Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

d. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

e. Requests For Samples By Authorized Users Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

BID EVALUATION

20. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, 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 Bidder's conditional or revocable terms in the Bid.

21. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

22. QUANTITY CHANGES PRIOR TO AWARD The Commissioner 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 Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

23. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Solicitation, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Solicitation, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

TERMS & CONDITIONS

24. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidder(s) upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

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

26. PARTICIPATION IN CENTRALIZED CONTRACTS

a. State Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through

Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law.

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

27. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner 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 Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner 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 User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

28. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

29. ESTIMATED/SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the Contract, the Commissioner 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 Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

30. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

31. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to a Contract let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor

of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

32. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

33. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Contract or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

34. SHIPPING/RECEIPT OF PRODUCT

a. Packaging 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 any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

b. Shipping Charges Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

35. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products 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 Contract or Purchase Order. 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 that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

36. RE-WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

37. PRODUCT SUBSTITUTION In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product 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 Commissioner's written approval may be cause for termination of Contract.

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

39. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those

of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

40. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

41. EMPLOYEES, SUBCONTRACTORS AND AGENTS All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Contract, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

42. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

43. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

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

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

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

46. TERMINATION

a. For Cause For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively, at the Contractor's expense. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by the Commissioner for convenience upon sixty (60) calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

c. For Violation of Sections 139-j and 139-k of the State Finance Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing

written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

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

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

f. Upon Conviction of Certain Crimes The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

47. <u>SAVINGS/FORCE MAJEURE</u> A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond thirty (30) days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

a. The Commissioner may 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 quantities without penalty or liability to the State, or
b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

48. <u>CONTRACT INVOICING</u>

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the

Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at **www.osc.state.ny.us**, by e-mail at **HelpDesk@sfs.ny.gov**, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

49. DEFAULT – AUTHORIZED USER

a. Breach by Authorized User An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least ten business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. Insufficient basis If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

50. PROMPT PAYMENTS

a. State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a non-State agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

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

a. Cover/Substitute Performance In the event of Contractor's material, uncured breach, the Commissioner may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute to be resolved in accordance with the OGS Dispute Resolution Procedures.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable 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, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

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

52. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

53. 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 Authorized User representative.

54. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

55. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

56. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

57. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period(s) of up to one year. Such extension may be exercised on a month-to-month basis or in other stated periods of time during the one year extension.

58. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one (1) year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Where Contractor, the independent software vendor (ISV), or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with ISV or other third-party manufacturers for warranty repair or replacement of ISV or other third-party manufacturer's Product.

Where Contractor, ISV or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through the standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at Licensee's Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract 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) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

g. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

h. Prompt Notice of Breach The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

j. No Limitation of Rights The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

59. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

60. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

61. INDEMNIFICATION RELATING TO INFRINGEMENT The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: (a) such claim arises solely out of the Products as supplied by the Contractor,

and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, and (b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

The Authorized User shall give Contractor the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against an Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized User's negligent act, failure to act, gross negligence or willful misconduct.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

62. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Authorized User's claim or (ii) five hundred thousand dollars ($500,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

63. DISPUTE RESOLUTION PROCEDURES
It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at: **http://nyspro.ogs.ny.gov/content/dispute-resolution-procedures**. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

64. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per Site

- Processing Capacity - 10 copies per Site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the Terms of License.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, fixes, upgrades and New Licensed Software Releases to Licensee, and (ii) help desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line help desk accessibility. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the technical support/maintenance term.

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 notice to Contractor. In the event that Authorized User does not initially acquire or 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 the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give 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); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

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

Any third party with whom a Licensee has a relationship for a State function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: (i) 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 that require Licensee to restore backups or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. The phrase "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; (iii) 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 herein. "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, copyrighted 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 Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

65. <u>PRODUCT ACCEPTANCE</u> Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have

been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

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

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the 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 Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

66. <u>AUDIT OF LICENSED PRODUCT USAGE</u> Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any Site where a copy of the Product resides provided that: (i) Contractor gives Licensee at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

67. <u>OWNERSHIP/TITLE TO PROJECT DELIVERABLES</u>

a. Definitions

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Solicitation or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to Authorized User upon acceptance.

2. Software - Title and ownership to Existing Software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements

or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Authorized User is a State Agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(**ii) Custom Products**: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

68. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

69. PRODUCT VERSION Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

70. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other customer, or (b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing

of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other customer, or (b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

71. NO HARDSTOP/PASSIVE LICENSE MONITORING

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the 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 Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

72. SOURCE CODE ESCROW FOR LICENSED PRODUCT

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall: (i) 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 State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, 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 State 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 and such updating of escrow shall be certified to the State in writing. 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 clause.

The State 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.

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APPENDIX C

FEDERAL GOVERNMENT REQUIRED CLAUSES (FTA)

FEDERAL GOVERNMENT REQUIRED CLAUSES (FTA) http://www.fta.dot.gov/12831_6195.html	**ROLLING STOCK** (applies to this Contract)**	**APPLICABLE LAWS AND REGULATIONS**
1. Fly America Requirements	Y	49 U.S.C. §40118; 41 CFR Part 301-10
2. Buy America Requirements	> $100,000	49 U.S.C. 5323(j); 49 CFR Part 661
3. Charter Bus and School Bus Requirements	N/A	---
4. Cargo Preference Requirements	Y	46 U.S.C. 1241; 46 CFR Part 381
5. Seismic Safety Requirements	N/A	---
6. Energy Conservation Requirements	Y	42 U.S.C. 6321 et seq; 49 CFR Part 18
7. Clean Water Requirements	> $100,000	33 U.S.C. 1251-1377
8. Bus Testing	Y	49 U.S.C. 5318(e); 49 CFR Part 665
9. Pre-Award and Post Delivery Audit Requirements	Y	49 U.S.C. 5323; 49 CFR Part 663
10. Lobbying	> $100,000	31 U.S.C. 1352; 49 CFR Part 19; 49 CFR Part 20
11. Access to Records and Reports	Y	49 U.S.C. 5325; 18 CFR 18.36 (i); 49 CFR 633.17
12. Federal Changes	Y	49 CFR Part 18; Master Agreement
13. Bonding Requirements	N/A	---
14. Clean Air	> $100,000	42 U.S.C 7401 et seq; 40 CFR 15.61; 49 CFR Part 18
15. Recycled Products	> $10,000 *	42 U.S.C. 6962; 40 CFR Part 247; Executive Order 12873
16. Davis-Bacon and Copeland Anti-Kickback Acts	N/A	---
17. Contract Work Hours and Safety Standards Act	Y	40 U.S.C. 3701 et seq; 40 U.S.C. 3702; 29 CFR 5.5 (b)
18. [Reserved]	N/A	---
19. No Government Obligation to Third Parties	Y	No Obligation by the Federal Government
20. Program Fraud and False or Fraudulent Statements and Related Acts	Y	31 U.S.C. 3801 et seq; 49 CFR Part 31 18 U.S.C. 1001; 49 U.S.C. 5307
21. Termination	> $10,000	49 U.S.C. Part 18; FTA Circular 4220.1F
22. Government-Wide Debarment and Suspension (Nonprocurement)	> $25,000	49 CFR Part 29; Executive Order 12549
23. Privacy Act	Y	5 U.S.C. 552
24. Civil Rights Requirements	Y	29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630, 41 CFR Parts 60 et seq
25. Breaches and Dispute Resolution	> $100,000	49 CFR Part 18; FTA Circular 4220.1F
26. Patent and Rights in Data	N/A	---
27. Transit Employee Protective Agreements	N/A	---
28. Disadvantaged Business Enterprises (DBE)	Y	49 CFR Part 26
29. [Reserved]	N/A	---
30. Incorporation of Federal Transit Administration (FTA) Terms	Y	FTA Circular 4220.1F
31. Drug and Alcohol Testing	N/A	---

* Procurement of items designated by EPA (40 CFR Part 247); **N/A indicates that the clause listed does not apply to this Contract.

Exclusionary or Discriminatory Specifications.

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor agrees to comply with the requirements of 49 U.S.C. 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Interest of Members of or Delegates to the United States Congress.

In accordance with 41 U.S.C. Section 22, the contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the Project or any benefit derived there from.

In-State or Local Geographic Restrictions.

The contractor agrees to refrain from using state or local geographical preferences, except those expressly mandated or encouraged by Federal statue, and as permitted by the FTA in 49 U.S.C. Section 5325(i), such as in the acquisition of management, architectural, and engineering services provided an appropriate number of qualified firms are eligible to compete for the third party contract.

1. Fly America Requirements.

Applicability-All contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

2. Buy America Requirements.

Applicability-Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

3. Charter Bus Requirements.

Applicability-Operational Service Contracts. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with

Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

3. School Bus Requirements.

Applicability-Operational Service Contracts. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Pursuant to 69 USC 5323(f) and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities.

4. Cargo

Preference. Use of US-Flag Vessels. Applicability-Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

5. Seismic Safety.

Applicability-Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

6. Energy

Conservation. Applicability-All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

7. Clean Water.

Applicability-All Contracts and Subcontracts over $100,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

8. Bus Testing.

Applicability-Rolling Stock/Turnkey.

Contractor [manufacturer] shall comply with 49 USC A 5323(c), applicable amendments of Map-21, and FTA's implementing regulation 49 CFR 665 and shall perform the following:

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

9. Pre-Award & Post-Delivery Audit Requirements.

Applicability-Rolling Stock/Turnkey.

Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

1. Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
   A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
   B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
   C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
   D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

10. Lobbying.

Applicability-Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over $100,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not

and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

11. Access to Records and Reports.

Applicability-As shown below. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Contract	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I. State Grantees	**a. Contracts below SAT ($100,000)**	None	Those imposed on state pass thru to Contractor	None	None	None	None
	b. Contracts above $100,000/Capital Projects	None unless[1] non-competitive award	Those imposed on state pass thru to Contractor	Yes, if non-competitive award or if funded thru[2] 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II. Non State Grantees	**a. Contracts below SAT ($100,000)**	Yes[3]	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
	b. Contracts above $100,000/Capital Projects	Yes[3]	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

Sources of Authority

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

12. Federal Changes.

Applicability-All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

13. Bonding Requirements

Applicability-For those construction or facility improvement contracts or subcontracts exceeding $100,000.

FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

   1) 50% of the contract price if the contract price is not more than $1 million;

2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or

3) $2.5 million if the contract price is more than $5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Bid Bond Requirements (Construction)

a. Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

b. Rights Reserved-In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

<u>Performance and Payment Bonding Requirements (Construction)</u>

The Contractor shall be required to obtain performance and payment bonds as follows:

a. Performance bonds

1) The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2) The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

b. Payment bonds

1. The penal amount of the payment bonds shall equal:

i. Fifty percent of the contract price if the contract price is not more than $1 million.

ii. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

iii. Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

a. The following situations may warrant a performance bond:

   1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

   2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

   3. Substantial progress payments are made before delivery of end items starts.

   4. Contracts are for dismantling, demolition, or removal of improvements.

b. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

   1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

   2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

      The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

   1. The penal amount of payment bonds shall equal:

      i. Fifty percent of the contract price if the contract price is not more than $1 million;

      ii. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

      iii. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. Clean Air

Applicability-All contracts over $100,000.

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

15. Recycled Products.

Applicability-All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. Davis-Bacon and Copeland Anti-Kickback Acts.

Applicability-Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over $2,000.

1. Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination

(including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.(C) In the event the contractor, the

laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

2. Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

   (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in

Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe

benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

17. Contract Work Hours & Safety Standards Act.

Applicability-Contracts over $100,000.

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards,

employed in violation of the clause set forth in para. (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

3. Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

18. [Reserved].

19. No Government Obligation to Third Parties.

Applicability-All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

1. The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. Program Fraud and False or Fraudulent Statements or Related Acts.

Applicability-All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. Termination.

Applicability-All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $100,000.

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

   If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

   If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

   If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails

to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

   Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

   1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
   2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

   If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

   If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

22. Government-wide Debarment and Suspension (Nonprocurement).

Applicability-Contracts over $25,000.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. Contracts Involving Federal Privacy Act Requirements.

Applicability-When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. Civil Rights Requirements.

Applicability-All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
   a. Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.
   b. Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.
   c. Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.
3. Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

25. Breaches and Dispute Resolution.

Applicability-All contracts over $100,000.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. Patent and Rights Data.

Applicability-Research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contracts Involving Experimental, Developmental, Or Research Work:

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

   1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

   2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA. (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in

the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. Transit Employee Protective Provisions.

Applicability-Contracts for transit operations except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

1. Contractor shall comply with applicable transit employee protective requirements as follows:

   (a) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5311, the contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current, and any alternative comparable arrangement specified by U.S. DOL for application to the project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto. [New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et. Seq., August 13, 2008.]

2. Contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

28. Disadvantaged Business Enterprise (DBE).

Applicability-Contracts over $3,000 awarded on the basis of a bid or proposal offering to use DBEs.

a. This contract is subject to the requirements of Section 1101(b) of Map-21, 23U.S.C. § 101 note, Title 49, Code of Federal Regulations, Part 26, and 49 U.S.C. § 5332 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

29. [Reserved].

30. Incorporation of Federal Transit Administration (FTA) Terms.

Applicability-All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

31. Drug & Alcohol Abuse and Testing.

Applicability-Operational service contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), " 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq. b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable.