

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	TITLE: Group 40524 – SCHOOL BUSES (Statewide)		
DATE: August 18, 2016	Classification Codes: 25		
TIME: 11:00 AM ET			
INVITATION FOR BIDS NUMBER: 23000	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	
<p>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</p>			
Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>		NYS Vendor Identification Number: <i>(See "New York State Vendor File Registration" clause)</i>	
If applicable, place an "x" in the appropriate box <input type="checkbox"/> Small Business <input type="checkbox"/> Minority Owned <input type="checkbox"/> Women Owned <i>(check all that apply):</i> _____ #Employees Business 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 <input type="checkbox"/> Manufactured Within <input type="checkbox"/> Manufactured Outside <i>(check all that apply):</i> New York State New York State			
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____			
Bidder's Signature:		Printed or Typed Name:	
Title:		Date:	
Phone : () - ext ()	Toll Free Phone : () - ext ()		
Fax : () - ext ()	Toll Free Fax : () - ext ()		
Contact E-mail Address for this IFB:			
P.R. # 23000-T LIT <input type="checkbox"/> MEMO <input type="checkbox"/> LET <input type="checkbox"/> OTHER <input type="checkbox"/> 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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APPENDIX B – *General Specifications (April 2016)*

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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. *Manufacturer's Certificate*

C. *Consortium Bid Form*

D. *Encouraging Use of NYS Businesses*

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 School Buses shall be multiple awards for each Item (see Section II *Method of Award*). 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 IV.7 *Non-State Agencies Participation in Centralized Contracts*.

- A. This IFB contains a total of twenty-one (21) Items, separated into three (3) Lots, which are specified in Table 1 below in Section I.2 *Scope*, and described in further detail in Attachment 1: *Specifications and Price Pages*. A Bidder is not required to bid on every Lot or on every Item within a Lot; A Bidder may bid on as few or as many Lots or Items as desired.
- B. Awards shall be made by Item in accordance with Section II *Method of Award*. Multiple bidders may receive awards. In the event that a Bidder receives awards for multiple Items under this IFB, a single Contract shall be executed covering all Items awarded.
- C. Award of an Item shall be made only to a Bidder (see Section I.12 *Definitions*) that has the ability to deliver the applicable Item a statewide basis to Authorized Users in all sixty-two (62) NYS counties. Bids for an Item can be submitted either by a single vendor or a Consortium (see Section I.10 *Consortium Bids*).
 1. If submitting as a single vendor, the single vendor is required to have the ability to deliver the applicable Item(s) on a statewide basis to Authorized Users in all sixty-two (62) NYS counties, and the single vendor shall be the resultant Contractor.
 2. If submitting as a Consortium, the NYS County distribution set forth in the Consortium bid must result in the ability of the vendors participating in the resultant Contracts to collectively deliver the applicable Item(s) on a statewide basis to Authorized Users in all sixty-two (62) NYS counties (e.g. Consortium of two (2) vendors: Vendor A responsible for New York, Kings, Richmond, Bronx, Queens, Nassau, and Suffolk counties; and, Vendor B responsible for all other counties in the state). If a Consortium bid is an awardee, each vendor participating in the Consortium shall be a resultant Contractor, and shall be responsible for orders of the applicable Item(s) placed under the Contract for the NYS Counties identified in the Contract, and for fulfilling the requirements of their Contract.
- D. 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*.
- E. This is a periodic recruitment solicitation. In order to participate in the initial recruitment period, a vendor must submit a bid by the “Submission of bid and bid opening” date and time indicated in Section I.3 *Key Events/Dates*. After this initial recruitment period, additional bid submissions shall not be accepted by OGS until the next periodic recruitment period is advertised by OGS. It is anticipated that the next periodic recruitment period shall not begin until at least one (1) calendar year from the date that the Contract term begins for the first Contract awarded under IFB 23000. OGS reserves the right to not advertise any additional periodic recruitment periods, to advertise a periodic recruitment that begins sooner than one (1) year from the date that the Contract term begins for the first Contract awarded under IFB 23000, and to offer additional periodic recruitment periods only to vendors that provide specific School Bus fuel types (e.g., electric or hybrid).

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.2 *Bid Format and Content*, or Section III.3 *Bid Pricing Submittal*, may result in either a disqualification with respect to

specific Items(s) or the entire bid. Bidders are further advised that pursuant to IFB Section III.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 Type A, C and D School Buses, and associated Optional Equipment and Additional Options. This IFB contains a total of twenty-one (21) Items, separated into three (3) Lots, which are specified in Table 1 below and described in further detail in Attachment 1: *Specifications and Price Pages*.

The resultant awards shall cover the outright purchase of new School Buses for which the equitable or legal title has never been transferred by a manufacturer, distributor or Dealer to an ultimate purchaser. Under no circumstances may "demos" or "used" School Buses be sold under the Contract(s) resulting from this IFB. Delivery of Dealer-stocked buses, that are preordered and preloaded with options not typically purchased, will not be permitted. Leasing of a School Bus shall not be permitted under the resultant Contract(s).

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

Table 1: List of Lots and Items

LOT (Item)	Item Description	Fuel Type	Pupil Capacity
A (Item 1-G)	Type A-1, SRW, Van Body with Roof and Window Conversion, 4 Rows	Gasoline	Minimum 16
A (Item 1-EV)	Type A-1, SRW, Van Body with Roof and Window Conversion, 4 Rows	Electric	Minimum 16
A (Item 2-G)	Type A-1, SRW, Cutaway, 4 Rows	Gasoline	Minimum 16
A (Item 2-EV)	Type A-1, SRW, Cutaway, 4 Rows	Electric	Minimum 16
A (Item 3-G)	Type A-2, DRW, Cutaway, 4 Rows	Gasoline	Minimum 20
A (Item 3-EV)	Type A-2, DRW, Cutaway, 4 Rows	Electric	Minimum 20
A (Item 4-G)	Type A-2, DRW, Cutaway, 4 Rows	Gasoline	Minimum 24
A (Item 4-EV)	Type A-2, DRW, Cutaway, 4 Rows	Electric	Minimum 24
A (Item 5-G)	Type A-2, DRW, Cutaway, 5 Rows	Gasoline	Minimum 30
A (Item 5-EV)	Type A-2, DRW, Cutaway, 5 Rows	Electric	Minimum 30
B	N/A. There is no Lot B (i.e., Type B School Buses) in this IFB	N/A	N/A
C (Item 1-D)	Type C, 28 Pupil Conventional Front-Engine Bus	Diesel	Minimum 28
C (Item 1-EV)	Type C, 28 Pupil Conventional Bus	Electric	Minimum 28
C (Item 2-D)	Type C, 46 Pupil Conventional Front-Engine Bus	Diesel	Minimum 46
C (Item 3-D)	Type C, 58 Pupil Conventional Front-Engine Bus	Diesel	Minimum 58
C (Item 4-D)	Type C, 64 Pupil Conventional Front-Engine Bus	Diesel	Minimum 64
D (Item 1-D)	Type D, 53 Pupil Forward Control Transit Style Bus	Diesel	Minimum 53
D (Item 1-EV)	Type D, 53 Pupil Transit Style Bus	Electric	Minimum 53
D (Item 2-D)	Type D, 65 Pupil Forward Control Transit Style Bus	Diesel	Minimum 65
D (Item 3-D)	Type D, 77 Pupil Forward Control Transit Style Bus	Diesel	Minimum 77
D (Item 4-D)	Type D, 65 Pupil Rear Engine (Pusher) Bus	Diesel	Minimum 65
D (Item 5-D)	Type D, 72 Pupil Rear Engine (Pusher) Bus	Diesel	Minimum 72

I.3 KEY EVENTS/DATES

EVENT	DATE	TIME
IFB release	June 2, 2016	
Closing date for vendor inquiries	June 16, 2016	5:00 PM ET
Pre-bid conference registration due	June 21, 2016	5:00 PM ET
Discretionary pre-bid conference	June 23, 2016	10:00 AM ET
Closing date for post pre-bid conference vendor inquiries	June 30, 2016	5:00 PM ET
OGS responses to vendor inquiries (estimated)	July 12, 2016	5:00 PM ET
Discretionary intent to bid deadline	August 11, 2016	5:00 PM ET
Submission of bid and bid opening	August 18, 2016	11:00 AM ET
Tentative awardee notification (estimated)	October 15, 2016	
Contract term begin (estimated)	December 1, 2016	

I.4 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 a Offeror/Bidder during the procurement process. An Offeror/Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter 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 Offeror/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 Offeror/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/acpl/>

I.5 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

Vendors are strongly encouraged to submit solicitation inquiries (i.e., questions, comments, proposed solicitation deviations and extraneous terms) at the earliest convenience. OGS prefers that vendors that intend to submit a Consortium bid designate one (1) entity to submit inquiries, rather than submit duplicates.

Submit all inquiries 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/Dates* for consideration prior to the pre-bid

conference. A vendor may also submit additional inquiries by the “Closing Date for post pre-bid conference vendor inquiries” indicated in Section I.3 *Key Events/Dates*.

OGS reserves the right to also consider inquiries received after the official question and answer period has ended. Vendors are advised to submit inquiries at any time prior to the “Submission of bid and bid opening” date and time indicated in Section I.3 *Key Events/Dates*, if the specifications and/or terms and conditions included in the IFB may affect the ability of the Vendor to submit a responsive bid. To the extent that OGS elects to respond to inquiries 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*.

Vendors are advised that OGS will not entertain any exceptions or deviations to Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions or deviations to Appendix B (General Specifications) that are of a material and substantive nature.

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(s) which shall be posted on the OGS website and announced through the New York State Contract Reporter site. Only those answers provided by OGS in writing are effective and binding.

I.6 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) and Item(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/Dates*. 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.5 *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/Dates*. Only those answers provided by OGS in writing are effective and binding.

I.7 BID DEVIATIONS AND EXTRANEIOUS TERMS

While it is not the intent of OGS to deviate from the terms and conditions of this IFB, bid deviations and extraneous terms shall only be addressed as part of the inquiry periods. See Section I.5 *Inquiries / Designated Contacts*, where OGS has established a specific process for the submission of bid deviations and extraneous terms. Any bid deviations and extraneous terms submitted with the bid shall not be considered part of the bid or resulting Contract, and shall be disregarded.

I.8 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) and Item(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.9 QUALIFICATION OF BIDDER

A Bidder is advised that the State's intent in having the requirements listed below (i.e., Sections I.9.1 through I.9.4) is to ensure that only qualified and reliable Contractors provide the School Bus(es) under 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 reserves 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.9.1 BIDDER TYPE AND OEM CERTIFICATION

Bids shall be accepted only from an OEM or their authorized Dealers for School Buses 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 B: *Manufacturer's Certificate*) certifying that it is an authorized Dealer of the manufacturer of the relevant School Bus, and that the manufacturer has agreed to supply the Dealer with all quantities of School Buses required by the Dealer in fulfillment of its obligations under any resultant Contract with the State.

I.9.2 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. Current financial statements may be requested and must be provided within the timeframe specified by Procurement Services in the written request.

I.9.3 INSURANCE

A Bidder must provide proof of insurance coverage requirements as described in Attachment 4: *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.9.4 OTHER QUALIFICATIONS

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

- A. Evidence of Bidder's capacity to process and ship the volume of orders required by Authorized Users on a statewide basis, either as a single entity Bidder, or as a Consortium. For a Consortium bid, each vendor participating in the Consortium may be requested to provide evidence of its capacity to process and ship the volume of orders required by Authorized Users in the NYS counties that it has been designated within the Consortium;
- B. References that demonstrate the ability of Bidder(s) to provide School Bus(es) similar in scope to the size, nature and complexity of the applicable Item(s);
- C. Documentation to demonstrate Bidder(s) ability to meet the delivery requirements set forth in Section III.4 *Delivery*; and
- D. OGS reserves the right to investigate or make any inquiry into the capabilities of Bidder to properly perform under any resultant Contract.

I.10 CONSORTIUM BIDS

A Consortium bid shall be considered a single Bidder for the purposes of this IFB and for the evaluation of bids. Therefore, if a determination of non-responsiveness is made by OGS for all or any portion of the bid submitted either collectively (i.e., Attachment 1: *Specifications and Price Pages*), or by any individual vendor participating in the Consortium bid, then the applicable Item(s) bid shall be disqualified for all vendors participating in the Consortium bid. Additionally, if a vendor participating in a Consortium bid is disqualified based on a determination of non-responsibility by OGS (see Section IV.10 *New York State Vendor Responsibility Questionnaire for Profit*

Business Entity), then the Consortium bid shall be deemed non-responsive and disqualified for all Items bid. Only vendor(s) found to be non-responsible will be obligated to report the non-responsibility determination in relation to future NYS procurements. See IFB Section III.2 *Bid Format and Content* for additional information on submission of a Consortium bid.

If submitting a Consortium bid, the NYS Contract Prices and discounts (i.e., Base Item NYS Contract Price, Optional Equipment NYS Contract Prices, Additional Body Section NYS Contract Price, and Additional Options NYS Discount), for each applicable Item bid, shall be identical for each individual vendor participating in the Consortium, and each vendor shall commit to providing the Item(s) under the resultant Contract for the Consortium bid price.

In the sole discretion of the Commissioner, any Consortium 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. In the event that the Consortium bid receives an award, each vendor participating in a Consortium shall be a resultant Contractor, and shall be responsible for orders of the applicable Item(s) placed under the Contract for the NYS Counties identified in the Contract. OGS reserves the right to cancel all Contracts resulting from a Consortium if one or more of the Contractors cannot fulfill the requirements of their individual Contract.

I.11 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 \$260,000,000 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 §28 *Estimated/Specific Quantity Contracts* and §25 *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.12 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.

“Additional Body Section(s)” shall mean an additional section, excluding seats and other interior features, added to the Base Item Body to increase the overall length of the School Bus.

“Additional Options” shall mean an accessory, equipment, or feature, other than the Optional Equipment specified for the applicable Base Item, which can be added to, or deleted from, the applicable Base Item.

“Additional Options NYS Discount” shall mean the minimum percentage amount that shall be deducted from the MSRP for Additional Options purchased under the Contract.

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

“Base Item” shall refer to a School Bus and its corresponding specifications, excluding Optional Equipment, Additional Body Section(s), and Additional Options, as set forth in Attachment 1: *Specifications and Price Pages*.

“Bidder” shall refer to any business entity, or a Consortium, that 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 School Bus that carries the passengers, and is an incomplete School Bus that requires the addition of a Chassis to perform its intended functions.

“Build Sheet” shall refer to the document which lists, for the School Bus bid for the applicable Base Item, at a minimum,

- (1) The Make, Model and Model Code of the Chassis and Body; and
- (2) An itemized list of all equipment included in the Chassis and Body, including Option Codes if applicable.

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

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

“Consortium” shall refer to a bid comprised of two (2) or more vendors that elect to undertake Contract performance divided by NYS County boundaries, in which the NYS County distribution results in the ability of the vendors participating in the resultant Contracts to collectively deliver the applicable Item(s) on a statewide basis to Authorized Users in all sixty-two (62) NYS counties (e.g. Consortium of two vendors: Vendor A responsible for New York, Kings, Richmond, Bronx, Queens, Nassau, and Suffolk counties; and, Vendor B responsible for all other counties in the state).

“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) and configuration of the Base Item and associated Optional Equipment, and NYS Contract Prices and NYS Discounts, for Product which has been approved by Procurement Services for inclusion in the Contract.

“Contractor” as defined in Appendix B §2 *Definitions*.

“Contractor-Published Pricelist” shall refer to the electronic, (i.e., in Excel or PDF format), document(s) issued by the Contractor which lists, among other things, an item number, description and MSRP for the Contractor’s complete Product Line. Prior to Contract execution, the Contractor-Published Pricelist shall be referred to as the Bidder-Published Pricelist.

“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 Amount” shall refer to either a quantity or a dollar amount used in this IFB for evaluation. This number is based on three (3) years of historic sales and anticipated future needs, and is for evaluation purposes only. It is not a guaranteed purchase under the resultant Contract(s).

“**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.

“**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 corporations, public authorities, or local government entities.

“**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.

“**Grand Total For Item**” shall refer to the total of the following: Base Item Evaluation Price, Total Optional Equipment Evaluation Price, and Additional Options Evaluation Price. The Grand Total For Item is the dollar amount calculated in this IFB to evaluate an Item.

“**GVWR**” shall refer to Gross Vehicle Weight Rating, which means the maximum total Vehicle weight, measured at the tire-ground interfaces, for which the vehicle possesses components adequately rated to safely carry.

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

“**Item**” shall refer to a School Bus and its corresponding specifications, including Optional Equipment, as set forth in Attachment 1: *Specifications and Price Pages*.

“**Lot**” shall refer to a grouping of 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, Blue Bird, Trans Tech) 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., Phoenix, Vision, Roadstar) 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 Product provided under the Contract (i.e., Base Item, Optional Equipment, Additional Body Section, or Additional Option), and is inclusive of all Contractor costs associated with providing that Product to the Authorized User (e.g., all OEM fees, customs duties and charges, all preparation and clean-up charges, NYS DOT inspection, installation charges, delivery and all other incidentals normally included with providing the Product).

“**NYS DMV**” shall mean the New York State Department of Motor Vehicles.

“**NYS DOT**” shall mean the New York State Department of Transportation.

“**NYS DOT Approval Number**” shall refer to the number assigned by NYS DOT Passenger Carrier Safety Bureau for a School Bus that meets all specifications of this IFB, and resultant Contract, including applicable federal and New York State rules and regulations.

“**NYS Vendor ID**” shall refer to the ten-character identifier issued by NYS 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.

“**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 set forth for an Item in Attachment 1: *Specifications and Price Pages*, that may be added to the applicable Base Item at the request of an Authorized User, and which must be available from the Bidder and under the resultant Contract.

“**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.

“**Pupil**” shall mean a person under the age of 21 years that is enrolled in a School.

“**School**” shall mean every place of academic, vocational or religious services or instruction for persons under the age of 21 years, except places of higher education (e.g., colleges and universities). It shall include every child care center, every institution for the care or training of the mentally or physically handicapped; and every day camp.

“**School Activities**” shall mean any program for the benefit of pupils, sponsored and supervised by school officials, and shall include, but shall not be limited to such activities as the following, when so supervised and sponsored: (1) extracurricular activities such as athletics, dramatics and musicals, (2) field trips directly connected with subjects included in the school curriculum, and (3) school dances and other similar activities.

“**School Bus(es)**” shall mean every motor vehicle designed to carry a driver and more than 10 passengers, that is owned, leased or contracted for by a School and operated for the transportation of Pupils, children of Pupils, teachers and other persons acting in a supervisory capacity, to or from School or School Activities, but does not include a bus designed and sold for operation as a common carrier.

“**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.

“**Type A**” shall mean a conversion School Bus constructed using a cutaway front-section vehicle with a left side driver's door. This definition includes two classifications: Type A-1, with a GVWR of 10,000 pounds or less; and Type A-2, with a GVWR equal to or greater than 10,001 pounds and less than or equal to 21,500 pounds.

“**Type C**” shall mean a School Bus with a Body installed upon a cowl and Chassis constructed using a chassis with a hood and front fender assembly. All of the engine is in front of the windshield and the entrance door is behind the front wheels. This is also known as a conventional school bus. This type also includes the cutaway truck chassis or truck chassis with cab, with or without a left side door, and with a GVWR greater than 16,000 pounds.

“**Type D**” shall mean a School Bus with a Body installed upon a Chassis or unitized type construction, with the engine mounted in the front or rear with a GVWR of greater than 16,000 pounds and designed to carry more than 10 persons. The engine may be behind the windshield and beside the driver’s seat; it may be at the rear of the bus, behind the rear wheels. The entrance door is ahead of the front wheels.

SECTION II: METHOD OF AWARD

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

II.1 AWARD OVERVIEW

As specified in Section I.2 *Scope*, Table 1: *List of Lots and Items*, the IFB includes a total of twenty-one (21) Items, separated into three (3) Lots. Because of the nature of the Products involved, and recognizing that no one Bidder will be able to supply all of the Products required by Authorized Users, award shall be made to multiple Bidders for each Item. A Consortium Bid shall be considered a single Bidder when determining award of each Item.

One (1) award shall be made for each different OEM Chassis Model/Body Model combination (e.g. Ford E-Series Chassis/Coach & Equipment Body, Ford Transit Chassis/Coach & Equipment Body, Chevrolet 3500 Chassis/Coach & Equipment Body, and Freightliner M2-106 Chassis/Blue Bird Body) offered for each Item. In the event that two (2) or more Bidders offer the same OEM Chassis Model/Body Model combination, then award for that OEM Chassis Model/Body Model combination for the applicable Item shall be made to the Bidder with the lowest Grand Total For Item.

Grand Total For Item is calculated in accordance with Section II.3 *Grand Total For Item Calculation*, and is based on the sum of a combination of the Base Item Evaluation Price, the Total Optional Equipment Evaluation Price, and the Additional Options Evaluation Price. The examples below in Section II.2 *Total Optional Equipment Evaluation Price Calculation* and Section II.3 *Grand Total For Item Calculation*, indicate the calculations for each Item.

II.2 TOTAL OPTIONAL EQUIPMENT EVALUATION PRICE CALCULATION

The Total Optional Equipment Evaluation Price for each Item is the sum of the Optional Equipment Evaluation Prices included in Column I of Part 4: *Optional Equipment Specifications and Pricing*, (excluding “Floor (Flat) With Recessed Wheelchair Track Throughout Entire Body”), on Attachment 1: *Specifications and Price Pages* for an Item. Each Optional Equipment Evaluation Price is calculated by multiplying the Optional Equipment NYS Contract 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 Item 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 NYS Contract Price by the Optional Equipment Evaluation Quantity as follows:
 1. Child Presence Check / Alarm: Optional Equipment NYS Contract Price (\$50) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price (\$500.00);
 2. Rear Axle, "No Spin": Optional Equipment NYS Contract Price (\$100) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price (\$1,000.00).

- B. The Optional Equipment Evaluation Prices calculated above are then totaled to equal the Total Optional Equipment Evaluation Price (\$1,500.00).

Example Price Calculation for Total Optional Equipment Evaluation Price (all Items)				
Optional Equipment	Specification	Optional Equipment NYS Contract Price	Optional Equipment Evaluation Amount	Optional Equipment Evaluation Price
Child Presence Check / Alarm	Shall be the Children and Adult Road Safety System (CARSS) Model "Child Saver Device 101" or Compatible Equivalent.	\$50.00	10	\$500.00
Rear Axle, "No Spin"	The manufacturer's standard device (e.g., power-lock, limited-slip, no-spin, positive-traction).	\$100.00	10	\$1,000.00
Total Optional Equipment Evaluation Price				\$1,500.00

II.3 GRAND TOTAL FOR ITEM CALCULATION

The Grand Total For Item is a combination of the prices and discount entered by the Bidder on Attachment 1: *Specifications and Price Pages* for the applicable Item (i.e., Base Item NYS Contract Price, Optional Equipment NYS Contract Prices, and Additional Options NYS Discount), weighted by Evaluation Amounts.

Set forth below are examples of how the Grand Total For Item is calculated for each Item 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*).

- A. Example Price Calculation for Items in Lot A. The mathematical calculation illustrated in the table below is as follows: [Base Item Evaluation Amount (75) multiplied by the Base Item NYS Contract Price (\$35,000.00)] plus the Total Optional Equipment Evaluation Price (\$54,304.00) plus [Additional Options Evaluation Amount (\$3,000) minus the Additional Options NYS Discount (5.00)] = Grand Total For Item (\$2,682,154.00).

Example Price Calculation for Grand Total For Item (All Items in Lot A)		
Base Item NYS Contract Price	The per unit NYS Contract Price (dollar amount) for the School Bus described in the Base Item Specifications.	\$35,000.00
Base Item Evaluation Amount	A quantity used in this IFB for evaluation.	75
Base Item Evaluation Price	<i>[Automatically calculated: The Base Item Evaluation Quantity multiplied by the Base Item NYS Contract Price]</i>	\$2,625,000.00
Total Optional Equipment Evaluation Price	The sum of the Optional Equipment Evaluation Prices in Column J of Part 4: <i>Optional Equipment Specifications and Prices</i> . <i>[Automatically calculated]</i>	\$54,304.00
Additional Body Section NYS Contract Price	The per unit NYS Contract Price (dollar amount) for adding one (1) Additional Body Section, excluding seats and other interior features, to the Base Item and the applicable Base Item NYS Contract Price. If there is no cost for an Additional Body Section, enter "\$0.00." If an Additional Body Section is not available for the School Bus bid, enter "Not Available." <i>The Additional Body Section NYS Contract Price is not included in the Grand Total For Item calculated below.</i>	\$1,000.00

Additional Options Evaluation Amount	A dollar amount used in this IFB for evaluation.	\$3,000.00
Additional Options NYS Discount	The minimum percentage amount that shall be deducted from the MSRP for all Additional Options purchased under the Contract for this Item.	5.00
Additional Options Evaluation Price	<i>[Automatically calculated: The Additional Options Evaluation Amount minus the Additional Options NYS Discount]</i>	\$2,850.00
Grand Total For Item	<i>[Automatically calculated: The Base Item Evaluation Price, plus the Total Optional Equipment Evaluation Price, plus the Additional Options Evaluation Price]</i>	\$2,682,154.00

B. Example Price Calculation for Items in Lots C and D. The mathematical calculation illustrated in the table below is as follows: [Base Item Evaluation Amount (30) multiplied by the Base Item NYS Contract Price (\$90,000.00)] plus the Total Optional Equipment Evaluation Price (\$21,704.00) plus [Additional Options Evaluation Amount (\$2,000) minus the Additional Options NYS Discount (3.00)] = Grand Total For Item (\$2,723,644.00).

Example Price Calculation for Grand Total For Item (All Items in Lots C and D)		
Base Item NYS Contract Price	The per unit NYS Contract Price (dollar amount) for the School Bus described in the Base Item Specifications.	\$90,000.00
Base Item Evaluation Amount	A quantity used in this IFB for evaluation.	30
Base Item Evaluation Price	<i>[Automatically calculated: The Base Item Evaluation Quantity multiplied by the Base Item NYS Contract Price]</i>	\$2,700,000.00
Total Optional Equipment Evaluation Price	The sum of the Optional Equipment Evaluation Prices in Column J of Part 4: <i>Optional Equipment Specifications and Prices.</i> <i>[Automatically calculated]</i>	\$21,704.00
Additional Options Evaluation Amount	A dollar amount used in this IFB for evaluation.	\$2,000.00
Additional Options NYS Discount	The minimum percentage amount that shall be deducted from the MSRP for all Additional Options purchased under the Contract.	3.00
Additional Options Evaluation Price	<i>[Automatically calculated: The Additional Options Evaluation Amount minus the Additional Options NYS Discount]</i>	\$1,940.00
Grand Total For Item	<i>[Automatically calculated: The Base Item Evaluation Price, plus the Total Optional Equipment Evaluation Price, plus the Additional Options Evaluation Price]</i>	\$2,723,644.00

SECTION III: BID SUBMITTAL

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

III.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 includes a total of twenty-one (21) Items, separated into three (3) 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 or on every Item within a Lot; A Bidder may bid on as few or as many Lots or Items as desired.
- C. To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in this solicitation for the Item(s) or Lot(s) bidding;
- 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. An alternate bid shall be considered an individual bid that is a completely different bid than any other bid received from the same vendor, and be subject to the same evaluation process specified in the IFB.
1. An alternate bid is required when a Bidder offers an additional OEM Chassis Model/Body Model combination that is different than what is offered on the Attachment 1: *Specifications and Price Pages* submitted with a bid for an Item. A feature that may be offered as an OEM option on a Model that is bid (e.g., a 6.0 liter gasoline engine that is available in lieu of the standard 4.8 liter engine included with the Chassis Model bid) would not require an alternate bid. The following are examples of situations that would require submittal of an alternate bid:
 - a) Two (2) different OEM Chassis are being offered by a Bidder for the same Item (e.g., one bid is for a Ford Chassis, and the other is for a Chevrolet Chassis).
 - b) Two (2) different OEM Chassis Model/Body Model combinations are being offered by a Bidder for the same fuel type for an Item (e.g. one bid is for a gasoline-fueled Ford E-Series Chassis/Coach & Equipment Body, and the other is for a gasoline-fueled Ford Transit Chassis/Coach & Equipment Body).
 2. The following is an example of the bid package assembly for an alternate bid:
 - a) Bid Package #1 (Ford Chassis)
Include in bid package all documents set forth in Section III.2 *Bid Format and Content*, Paragraph A, with the bid package labeled "Company Name, Bid #1, (Ford)." The Attachment 1: *Specifications and Price Pages* that is submitted with this alternate bid would include bid submittal information and pricing entered by the Bidder for the Ford Chassis that is being offered for each Item bid.
 - b) Bid Package #2 (Chevrolet Chassis)
At a minimum, include in bid package all documents set forth in Section III.2 *Bid Format and Content*, Paragraph A, that are required at the "Submission of bid and bid opening" date and time (i.e., IFB Cover Page, IFB Acknowledgement Page, Attachment 1: *Specifications and Price Pages*, and NYS DOT Approval Numbers), with the bid package labeled "Company Name, Bid #2, Alternate Bid (Chevrolet)." The Attachment 1: *Specifications and Price Pages* that is submitted with this alternate bid would include bid submittal information and pricing entered by the Bidder for the Chevrolet Chassis that is being offered for each Item bid.
- F. Awards shall be made in accordance with Section II *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.

III.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. A potential Contractor must submit all documents in the manner and format set forth below (i.e., **paper** or **electronic (on CD)**). Do not submit any documents not set forth below. Documents required in electronic format should not be submitted in paper format, and vice versa.

Bidders are required to submit the documents in subparagraphs 1, 2, 3 and 4 below in the manner provided in Paragraph D 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.

A Consortium bid shall be considered a single Bidder for the purposes of this IFB and for the evaluation of bids. Therefore, if a determination of non-responsiveness is made by OGS for all or any portion of the bid submitted either collectively (i.e., Attachment 1: Specifications and Price Pages), or by any individual vendor participating in the Consortium bid, then the applicable Item(s) bid shall be disqualified for all vendors participating in the Consortium bid. Additionally, if a vendor participating in a Consortium bid is disqualified based on a determination of non-responsibility by OGS (see Section IV.10 New York State Vendor Responsibility Questionnaire for Profit Business Entity), then the Consortium bid shall be deemed non-responsive and disqualified for all Items bid. Only vendor(s) found to be non-responsible will be obligated to report the non-responsibility determination in relation to future NYS procurements.

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 Item 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.3 *Bid Pricing Submittal* for additional information regarding submitting bid pricing on Attachment 1: *Specifications and Price Pages*. ***Failure to provide a Base Item NYS Contract Price, Optional Equipment NYS Contract Price, or Additional Options NYS Discount for an Item may result in the bid being deemed non-responsive for that Item and may result in the disqualification of the bid for the applicable Item.***

4. NYS DOT Approval. For each Item bid, a NYS DOT Approval Number must either be on file with, or have been applied for with, NYS DOT Passenger Carrier Safety Bureau for the School Bus bid. If a NYS DOT Approval Number for the School Bus bid has been applied for, but approval has not been received, enter "Pending" on Attachment 1: *Specifications and Price Pages*, and submit with your bid an electronic copy of the "Application for Approval of School Bus Body/Chassis Specifications" that has been submitted to NYS DOT.

Failure to have a NYS DOT Approval Number on file with NYS DOT by December 1, 2016 for the School Bus bid shall result in the bid being deemed non-responsive for that individual Base Item and shall result in the disqualification of the bid for the applicable Item. After the Contract term begins for the resultant Contracts for IFB 23000, a Contractor may request

Product additions in accordance with Section V.8 Replacement Product and Product Additions. See also Section I.1 Overview, Paragraph E, for information regarding periodic recruitment;

5. Additional Supporting Information. For each Item bid, an **electronic (on CD)** version of the documents listed below.
 - a) Build Sheet(s). A Build Sheet, as defined in Section I.12 *Definitions*. **Failure to provide a Build Sheet for a Base Item shall result in the bid being deemed non-responsive for that individual Base Item and shall result in the disqualification of the bid for the applicable Item;**
 - b) OEM Data Book(s). OEM Data Book(s), as defined in Section I.12 *Definitions*, for the Chassis Model offered; and
 - c) Bidder-Published Pricelist(s). Bidder-Published Pricelist(s), as defined in Section I.12 *Definitions* (see "Contractor-Published Pricelist"), for the Body Model offered.
6. 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*
7. 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 two (2) sections listed below.
 - a) Section A: *New York State Required Certifications*, completed and with original ink signature;
 - b) Section B: *Manufacturer's Certificate*, completed and with original ink signature;
 - c) Section C: *Consortium Bid Form*, completed and with original ink signature; and
 - d) Section D: *Encouraging Use of NYS Businesses*, completed and with original ink signature.
8. Attachment 4: Insurance Requirements. A **paper** or **electronic (on CD)** version of proof of compliance with general, automobile and/or garage liability, workers' compensation and disability insurance requirements, as specified in Attachment 4: *Insurance Requirements*;
9. 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 IV.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;
10. 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 IV.21 *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;
11. Form EEO-100. A **paper** version of form EEO-100 (Equal Employment Opportunity Staffing Plan), completed and with original ink signature (See Section IV.12 *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 5 through 11 of Paragraph A above, by the “Submission of bid and bid opening” time and date specified in Section I.3 *Key Events/Dates*. If Bidder does not submit any of these documents by the “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 result in the bid being deemed non-responsive and result in the disqualification of the bid.
- C. Consortium Bid. For a complete Consortium bid (see Section I.10 *Consortium Bids*, and III.1.3 *Bid Pricing Submittal*, Paragraph F), all documents listed in Section A above, with the exception of Attachment 1: *Specifications and Price Pages*, must be submitted by each vendor participating in the Consortium bid. A Consortium bid should be submitted in one (1) bid package, with separately bound documents for each participating vendor, labeled with its full legal business name, enclosed within. See Section III.3 *Bid Pricing Submittal* for additional information regarding submitting Consortium bid pricing on Attachment 1: *Specifications and Price Pages*.
- D. Each bid shall include separately bound original paper documents, and a CD containing the documents required in electronic format, as 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 23000. 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.**
- E. 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*.
- F. 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 <https://nyspro.ogs.ny.gov/content/finding-bid-opportunities> and be 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.**

III.3 BID PRICING SUBMITTAL

A Bidder shall submit Attachment 1: *Specifications and Price Pages* in accordance with Section III.2 *Bid Format and Content*. If submitting a bid for an Item, Bidder is required to select “Yes” for that Item on the Bid Summary worksheet, and complete all applicable yellow-shaded cells as instructed on the applicable Item worksheet in Attachment 1: *Specifications and Price Pages*. The following also applies to bid pricing:

- A. Base Item NYS Contract Price: Bidder shall enter a Base Item NYS Contract Price for the School Bus bid for an Item. **Failure to provide a Base Item NYS Contract Price for an Item may result in the bid being deemed non-responsive for that Item and in the disqualification of the bid for the applicable Item.**
- B. Additional Body Section NYS Contract Price: Bidder shall enter an Additional Body Section NYS Contract Price when submitting a bid for an Item in Lot A, if an Additional Body Section is available for the School

Bus bid. The Additional Body Section NYS Contract Price entered by the Bidder is based on adding one (1) Additional Body Section to the Base Item and the applicable Base Item NYS Contract Price. If there is no cost for an Additional Body Section, Bidder shall enter "\$0.00." If an Additional Body Section is not available for the School Bus bid, Bidder shall enter "Not Available." ***The Additional Body Section NYS Contract Price is not included in the Grand Total For Item that is calculated, and shall not be considered in the award for an Item.***

- C. Additional Options NYS Discount: Bidder shall enter a single discount for all Additional Options to be offered under the Contract for an Item. ***The Additional Options NYS Discount entered by a Bidder must be greater than 0%, or less than or equal to 100%. Providing a 0% Additional Options NYS Discount, or failing to provide an Additional Options NYS Discount for an Item, may result in the bid being deemed non-responsive for that Item and may result in the disqualification of the bid for the applicable Item.***

- D. Optional Equipment NYS Contract Price: Bidder must enter an Optional Equipment NYS Contract Price for each of the Optional Equipment listed for an Item, excluding "Floor (Flat) With Recessed Wheelchair Track Throughout Entire Body." An Optional Equipment NYS Contract Price must be entered for "Floor (Flat) With Recessed Wheelchair Track Throughout Entire Body" only if the Bidder shall offer that Optional Equipment under the resultant Contract.

The Optional Equipment NYS Contract Price entered by the Bidder is based on adding to or deleting the Optional Equipment from the Base Item and the applicable Base Item NYS Contract Price. If there is no cost for the Optional Equipment, or the equipment is already included in the School Bus bid for the Base Item, enter "\$0.00." If adding or deleting the Optional Equipment results in a credit, Bidder shall enter a negative number for the Optional Equipment NYS Contract Price.

All Optional Equipment listed for an Item, excluding "Floor (Flat) With Recessed Wheelchair Track Throughout Entire Body," shall be available from the Bidder. "Floor (Flat) With Recessed Wheelchair Track Throughout Entire Body" is not a mandatory Optional Equipment, and is not included in the "Total Optional Equipment Evaluation Price" calculated for an Item. If "Floor (Flat) With Recessed Wheelchair Track Throughout Entire Body" is not available for the School Bus bid, enter "Not Available."

Failure to provide an Optional Equipment NYS Contract Price for one or more Optional Equipment listed for an Item, (excluding "Floor (Flat) With Recessed Wheelchair Track Throughout Entire Body"), may result in the bid being deemed non-responsive for that individual Optional Equipment and may result in the disqualification of the bid for the applicable Item.

- E. Pick Up Allowance: Bidder shall enter the dollar amount, per School Bus, that will be deducted from the Base Item NYS Contract Price, if the Authorized User elects to pick up the School Bus at the Contractor's location, for the School Bus bid for an Item.
- F. Consortium Bid. For a Consortium bid (see Section I.10 *Consortium Bids*), NYS Contract Prices and discounts (i.e., Base Item NYS Contract Price, Optional Equipment NYS Contract Prices, Additional Body Section NYS Contract Price, and Additional Options NYS Discount), for each applicable Item bid, shall be identical for each individual vendor participating in the Consortium. Therefore, a single Attachment 1: *Specifications and Price Pages* shall be submitted for a Consortium bid.

The Attachment 1: *Specifications and Price Pages* for a Consortium bid should be enclosed in its own envelope labeled "Attachment 1: *Specifications and Price Pages*," separate from the other required bid documents for each participating vendor, and be included in the Consortium bid package.

- G. For all dollar amounts and discount percentages 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).

- H. The bid submitted by the successful Bidder shall be incorporated into any resulting Contract and the Bidder shall be required to provide the awarded Item(s) at the prices and discounts quoted in its bid.

III.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.

III.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.

III.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 (2) Business Days after the bid opening.

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

III.7 NOTIFICATION OF AWARD

The successful Bidder(s) shall be advised by OGS in accordance with Appendix B §22 *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 §30 *Purchase Orders*.

III.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 ten (10) Business 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 thirty (30) days of posting of the Contract award on the OGS website.

III.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, Lot(s) or individual Items(s) in a Lot at any time, at the sole discretion of the OGS.
- C. Make an award under the IFB in whole or in part by Lot(s) or Item(s) in a Lot;
- 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 Items(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 Items(s), and award would be made on the remaining Items(s). The determination of an unbalanced bid shall be at the sole discretion of the State.

SECTION IV: GENERAL TERMS AND CONDITIONS

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

IV.1 CONTRACT PERIOD AND EXTENSIONS

The following terms and conditions apply to the contract period and extensions.

- A. Base Term. 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 §23 *Contract Creation/Execution*). All School Bus Contracts awarded under solicitation 23000 shall terminate simultaneously three (3) years from the date of OGS approval of the first contract awarded.
- B. Extensions.
 1. If mutually agreed between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to two (2) additional years. The Contract extension may be exercised on a month to month basis such as an additional three month, six month, twelve month, or 24 month period.
 2. At the conclusion of the extension in subparagraph (1) above, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) 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 (3) months in lieu of one (1) month. The extensions provided for in this subparagraph automatically terminate should a replacement contract be issued in the interim.
- C. The extensions provided under Paragraph (B) of this section are in addition to any rights set forth in Appendix B §23 *Contract Term – Extension*.

IV.2 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.

IV.3 APPENDIX B

Appendix B, *Office of General Services General Specifications*, dated April 2016, 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.

IV.4 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:

17. TIE BIDS In the event two offers for an Item are found to be substantially equivalent, the lowest Base Item NYS Contract Price shall be the basis for determining the award recipient for the Item. If two or more

Bidders submit substantially equivalent bids for an Item 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 31, *Product Delivery*, is deleted and replaced in its entirety by Section V.4 of this IFB, *Delivery*.

IV.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. This Invitation For Bids;
- C. Appendix B: *Office of General Services General Specifications*; and
- D. Other Attachments as deemed necessary.

IV.6 "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.

IV.7 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 §25 *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 V.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.

IV.8 EXTENSION OF USE

Any Contract resulting from this solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between OGS and the Contractor following the procedure under Section IV.9 *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.

IV.9 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law to participate in this Contract (see Section IV.8 *Extension of Use*), which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

Any unilateral limitations or restrictions imposed by the Contractor on eligible Authorized Users will be grounds for cancellation of the Contract. If a Contract, or any portion thereof, is canceled for this reason, any additional costs incurred by the eligible purchaser will be borne by the Contractor.

IV.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.

IV.11 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/.

IV.12 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

I. Policy Statement

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.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

III. Equal Employment Opportunity (EEO)

- A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, 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.
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or 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. This requirement does not apply to: (i) the performance of work, or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.
- B. Form EEO 100 – Staffing Plan
To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
 - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the

Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and any subcontractor.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, 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 and conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, 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, following Contract execution, 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.

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

IV.13 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 Product 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.

IV.13.1 PURCHASE ORDERS

Purchase orders are to include the following information:

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

IV.13.2 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 and Item designation of the School Bus;
- E. Make, Model and Model Code of the School Bus;
- F. Optional Equipment, Additional Body Sections, and Additional Options, if applicable;
- G. Calculation of NYS Contract Price, including Additional Options NYS Discount; and
- H. Breakdown of liquidated damages, if any (see Section V.4.6 *Liquidated Damages*);

IV.14 CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the School Bus been delivered and accepted in accordance with Section V.4 *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 IV.13 *Purchase Orders and Invoicing*, including description of the School Bus as well as NYS Vendor ID. See also Appendix B §45 *Contract Invoicing*.

When a School Bus is delivered the Authorized User shall process the invoice immediately for the full amount of the NYS Contract Price if, in its opinion, the School Bus is in compliance with the School Bus specifications in the Contract (see Section V.2 *School Bus Requirements*), and the Purchase Order. However, if poor workmanship and/or minor deviations exist, the Authorized User may withhold up to 20% of the NYS Contract Price upon delivery and delay payment of the balance until the Contractor has made all necessary corrections. The Authorized User may withhold the full amount of the NYS Contract Price if, in its opinion, the School Bus contains major deviations

from the School Bus specifications in the Contract (see Section V.2 *School Bus Requirements*), and the Purchase Order. However, Contractor must be notified, in writing, of reasons for delay of payment.

IV.15 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
Procurement Services
Customer Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

Tel: 518-474-6717
Email: customer.services@ogs.ny.gov

IV.16 CONTRACT ADVERTISING

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 V.2.9 *Advertising*.

IV.17 OVERLAPPING CONTRACT ITEMS

Products/services available in the resulting Contract may also be available from other NYS 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.

IV.18 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.

IV.19 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.

IV.20 DIESEL EMISSIONS

Pursuant to N.Y. Environmental Conservation Law §19 0323 ("the Law") it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by

December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19 0323, and 6 NYCRR Parts 248 and 249.

IV.21 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/>.

IV.22 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 Appendix B §11 *Remanufactured, Recycled, Recyclable or Recovered Materials*.

IV.23 REPORT OF CONTRACT USAGE

The Contractor shall furnish a report of all Purchase Orders received for Product under the Contract during each quarterly period, no later than fifteen (15) Business 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 Purchase Orders received during this fractional period should be reported in that quarterly report. Purchase Orders placed 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, quarterly 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.

IV.24 USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS

Contractor shall be fully liable for Subcontractor, Dealer, distributor and/or reseller performance under the Contract, and their compliance with all Contract terms and conditions.

IV.25 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 §26 *Modification of Contract Terms*.

IV.26 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.

IV.27 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. 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/>

IV.28 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 V: SPECIAL TERMS & CONDITIONS

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

V.1 PRICE

Pricing for School Buses to be provided under the Contract shall be subject to the terms and conditions in this Section (i.e., V.1.1 through V.1.4).

V.1.1 BASE ITEM, OPTIONAL EQUIPMENT AND ADDITIONAL BODY SECTIONS PRICE

The Base Item, Optional Equipment, and Additional Body Section NYS Contract Prices shall include any OEM fees, all customs duties and charges, all vehicle preparation and clean-up charges, NYS DOT inspection, installation charges, delivery and all other incidentals normally included with providing the applicable Product under the Contract. Pursuant to Appendix B §33 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.

The Contractor must offer Base Items, Optional Equipment and Additional Body Sections sold under the Contract at net prices that are equal to the applicable NYS Contract Price that was bid, or less. The Optional Equipment NYS Contract Price is based on adding to or deleting the Optional Equipment from the Base Item and the applicable Base Item NYS Contract Price. The Additional Body Section NYS Contract Price is based on adding the Additional Body Section to the Base Item and the applicable Base Item NYS Contract Price.

Contractors will be required to deliver School Buses in accordance with Section V.4 *Delivery*, and the Base Item NYS Contract Price shall include the delivery charge. However Authorized Users, at their sole discretion, may pick up School Bus(es) at the Contractor location and shall be given a Pick Up Allowance equal to or greater than the dollar amount included in the bid for the applicable Item. This Pick Up Allowance shall be included as a separate line item on the Authorized User’s invoice.

V.1.2 ADDITIONAL OPTIONS PRICE

The following terms and conditions apply to Additional Options pricing:

- A. The Contractor must offer all Additional Options sold under the Contract at either the Additional Options NYS Discount awarded, or a greater discount.
- B. The Additional Options NYS Discount shall be applied to the MSRP on the current OEM Data Book or Contractor-Published Pricelist, as applicable, to yield the NYS Contract Price, as follows:
 1. Chassis. The Additional Options NYS Discount shall be applied to the MSRP included on the OEM Data Book. If the Additional Options offered are not offered directly from the OEM, then the Additional Options NYS Discount shall be applied to the MSRP included on the Contractor-Published Pricelist;
 2. Body. The Additional Options NYS Discount shall be applied to the MSRP included on the Contractor-Published Pricelist;
 3. Credits. The Additional Options NYS Discount shall not apply when either an option is being deleted from the Base Item, or when an Additional Option with an MSRP that is a credit (e.g., -\$20.00), is being added to the Base Item. The credit for such features shall be applied to the Base Item NYS Contract Price before applicable discounts are applied; and
 4. Replacement Parts. The discount for replacement parts shall be equal to or greater than the Additional Options NYS Discount, and shall apply to the MSRP on the OEM Data Book or Contractor-Published Pricelist as applicable. See Section V.2.8 *Replacement Parts*.
- C. When an Additional Option is either being added to or deleted from the Base Item specifications, or upon request, Contractors are required to give the Authorized Users a copy of the OEM Data Book or Contractor-Published Pricelist for the applicable Additional Option. Any addition or deletion must be clearly shown on the invoice and clearly show the MSRP, the application of the Additional Options NYS Discount for the Additional Option, and the resultant NYS Contract Price.
- D. The NYS Contract Price for Additional Options offered by the Chassis or Body OEM shall include any and all labor, installation, fittings, connections, etc., that might be needed to attach the Additional Option to the Chassis or Body so that the Additional Option operates to the Additional Option's full design capabilities; there shall be no additional up-charges, fees, etc., for adding Additional Options offered by the Chassis or Body OEM. The Contractor may add normal, published labor rates to install Additional Options that are not offered directly from the OEM, and such labor rates shall not be more than what is charged to the public at large.
- E. If the Contractor sells an Additional Option to the public at large with pricing that is lower than the application of the Additional Options NYS Discount to the MSRP, then the price that is charged to the public at large shall be charged to Authorized Users. This shall be clearly shown on the invoice as a "Special Value" or by some other phrase or identifying designation.

V.1.3 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")), NYS Contract Prices (i.e., for the Base Item, Additional Body Section, and Optional Equipment), Additional Options NYS Discount, 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 Procedure*) 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.

V.1.4 PRICE ADJUSTMENTS

Prices are firm for the entire Contract period and the extension periods, if any, except for the price changes as outlined below. Price adjustments that are approved by OGS shall be communicated via email to the “Centralized Contract Contact,” at the address specified in Attachment 2: *Bid Documents (Electronic)*, Section B: *General Questions*, and be announced to Authorized Users via a Contract Update memo posted on the OGS website at <http://www.ogs.ny.gov/purchase/spg/awards/4052423000can.HTM>.

A. PPI Price Adjustment

Each September 15th during the Contract term, beginning September 15, 2017, the Base Item, Additional Body Section, and Optional Equipment NYS Contract Prices shall be updated in accordance with the Producer Price Index (PPI) indicated below in Paragraph 1 *PPI*. Contract prices are firm until September 14, 2017.

The Price Adjustment Factor shall be calculated as set forth below in Paragraph 2, *Formula to Calculate Price Adjustment Factor*.

The “Latest Finalized Monthly PPI Data” as used in the “Formula to Calculate Price Adjustment Factor” means the latest finalized monthly PPI data (i.e., data that does not include a “(P)” next to the posted PPI figure) published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) in the month of August immediately preceding the September 15th adjustment. See chart below. Historically, BLS publishes finalized monthly PPI data for the month of March during the second week of August of the same calendar year.

Adjustment Date	Latest Finalized Monthly PPI Data
September 15, 2017	Latest Finalized Monthly PPI Data posted by the BLS by August 31, 2017
September 15, 2018	Latest Finalized Monthly PPI Data posted by the BLS by August 31, 2018
September 15, 2019	Latest Finalized Monthly PPI Data posted by the BLS by August 31, 2019

The Price Adjustment Factor shall be rounded to the nearest thousandth and shall be applied to the originally awarded Base Item, Additional Body Section, and Optional Equipment NYS Contract Prices, to yield the adjusted prices effective for all Purchase Orders issued from September 15th and continuing through September 14th of the following calendar year. Each dollar amount may be increased from, decreased from, or remain the same as the previous values.

The State reserves the right to modify or correct miscalculations or errors in the PPI Price Adjustment as set forth in this Section.

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 Monthly PPI data] divided by [finalized PPI data for the Month/Year 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, 2017 for the time period from September 15, 2017 to September 14, 2018:
 - [Latest Finalized Monthly PPI Data (141.0)] divided by [finalized PPI data for the Month/Year 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, Additional Body Section, and Optional Equipment NYS Contract Price would be multiplied by 1.026 to calculate the NYS Contract Price for the time period from September 15, 2017 to September 14, 2018 (e.g., if the original awarded Base Item NYS Contract Price was \$50,000, the adjusted price would be \$50,000.00 multiplied by 1.026, or \$51,300.00)
- b) Price Adjustment calculated on September 15, 2018 for the time period from September 15, 2018 to September 14, 2019:
 - [Latest Finalized Monthly PPI Data (134.0)] divided by [finalized PPI data for the Month/Year in which the bid opening was held (137.4)]
 - $134.0/137.4 = .9752547$; rounded to nearest thousandth = .975
 - Price Adjustment Factor = .975
 - Each originally awarded Base Item, Additional Body Section, and Optional Equipment NYS Contract Prices would be multiplied by .975 to calculate the NYS Contract Price for the time period from September 15, 2018 to September 14, 2019 (e.g., if the original awarded Base Item NYS Contract Price was \$50,000, the adjusted price would be \$50,000.00 multiplied by .975, or \$48,750.00)

B. Additional Options

The NYS Contract Price for Additional Options offered under the contract in accordance with Section V.2.7 *Additional Options*, shall be the Additional Options NYS Discount bid, or higher, applied to the MSRP on the current OEM Data Book or Contractor-Published Pricelist, as applicable. See Section V.1.2 *Additional Options Price*.

C. 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.

D. Additional Price Adjustments for Consideration

Notwithstanding the allowable PPI Price 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. 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.

E. 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 Procurement Services, and no adjustment in price is mutually agreeable, OGS reserves the sole right upon ten (10) Business 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.

F. 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.

V.2 SCHOOL BUS REQUIREMENTS

The terms and conditions in this Section (i.e., V.2 through V.2.10) shall be considered minimum requirements for a School Bus. Attachment 1: *Specifications and Price Pages*, includes supplemental required specifications for each Item. School Buses delivered to an Authorized User in a condition that would be considered unacceptable to a reasonable person may be rejected (see also Appendix B §36 *Rejected Product*). Criteria which determine this acceptance level shall include, but not be limited to, the general appearance of the interior and exterior of the School Bus for completeness and quality of workmanship, lubrication and fluid levels, with any leaks corrected, mechanical operation of the School Bus and all electrical components operational. Equipment specified to be furnished and installed shall conform to all applicable industry standards.

V.2.1 STANDARDS, CODES, RULES, AND REGULATIONS

School Buses shall be designed and assembled in accordance with all applicable industry standards, including, but not limited to, those listed below. The School Bus shall comply with all governmental regulations as they apply to the operation of the School 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 School Bus.

- A. Only School Buses approved by NYS DOT Passenger Carrier Safety Bureau for use as 2016 and newer Models, as indicated by a NYS DOT Approval Number, shall be delivered pursuant to the contract.
- B. School 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).
- C. School 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.
- D. School Buses shall comply with 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.
- E. School 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*.

- F. School 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)
 Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)
 Society of Automotive Engineers (SAE)
 Society of Manufacturing Engineers (SME)
 Tire and Rim Association (TRA)
 Rehabilitation Engineering and Assistive Technology Society of North America

V.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 or Additional Options are specified, all components listed in the OEM Data Book, or Contractor-Published Pricelist, if applicable, as being included with the Optional Equipment or Additional 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.

V.2.3 MANUALS

Simultaneous with delivery, all School Buses and associated Optional Equipment shall be furnished with standard manuals (e.g. maintenance, parts and operational manuals) as would normally accompany the Product. 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.

V.2.4 BUILD SHEET

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

V.2.5 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.

V.2.6 OPTIONAL EQUIPMENT AND ADDITIONAL BODY SECTIONS

The Contractor must offer the Optional Equipment as specified for the applicable Item in Attachment 1: *Specifications and Price Pages*, and may also offer Additional Body Section(s). An Authorized User may choose to add one (1) or more of the Optional Equipment from the list of Optional Equipment, and/or Additional Body Sections, associated with the Base Item. The Contractor shall be required to honor all such requests, provided that adding the requested combination of Optional Equipment, and/or Additional Body Sections, results in a School Bus that meets the minimum specifications stated herein (see Section V.2 *School Bus Requirements*).

The Contractor shall only provide the Optional Equipment and Additional Body Sections awarded, or approved by OGS and NYS DOT after award (see Section V.8 *Replacement Product*), under the Contract. See Section V.1 *Price* for pricing information relative to Optional Equipment and Additional Body Sections.

V.2.7 ADDITIONAL OPTIONS

The following terms and conditions apply to Additional Options provided under the Contract. See Section V.1.2 *Additional Options Price* for pricing information relative to the addition and deletion of options.

- A. Additional Options to be offered under the Contract are limited to products that are:
 - (1) listed on the OEM or Contractor-Published Pricelist(s);
 - (2) may be installed on the awarded Base Item by the Contractor, or third-party; or
 - (3) have been approved for installation on the School Bus by NYS DOT, if the applicable Additional Option is produced by an OEM other than the School Bus OEM; and
 - (4) does not result in a change to the fuel type of an awarded Base Item (e.g., changing the gasoline-fueled engine on the Chassis Model awarded for the “Gasoline” Base Item to a diesel-fueled engine).
- B. **Deletions:** It is anticipated that Authorized Users may delete options that have been required by the Base Item specifications for the School Bus awarded. Contractors will be required to honor all such deletions, provided that deletion of such options does not result in a School Bus that does not comply with all governmental regulations as they apply to the operation of the School Bus.
- C. **Additions:** It is anticipated that Authorized Users may add Options above and beyond that which have been required by the Base Item specifications, or are available on the associated Optional Equipment list for the applicable Item. Contractor shall be required to honor all such additions, provided that the Additional Options are offered in the Contractor's normal course of business, and addition of such options does not result in a School Bus that does not comply with all governmental regulations as they apply to the operation of the School Bus.

V.2.8 REPLACEMENT PARTS

It is anticipated that Authorized Users may require purchase of replacement parts for Contract Items. Replacement parts are Product that is intended to replace a part on a School Bus purchased from the Contract. Such Product may include replacement parts for the Base Item, Additional Body Section, Optional Equipment, or Additional Options. Contractor shall be required to honor all such purchases.

It is the responsibility of the Authorized User to ensure that replacement parts purchased under the Contract are used only for School Buses that have been purchased from the Contract.

V.2.9 ADVERTISING

No name, trade mark, decal or other identification, other than that of the OEM, shall be applied to the School Buses. Identification of the Contractor shall not be attached to the School Bus. Splash guards shall be plain (without lettering). 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.

V.2.10 NYS INSPECTIONS

Unless otherwise instructed by the Authorized User, all School Buses shall be delivered with a complete NYS DOT Passenger Carrier Safety Bureau inspection, and have a "Regular Certificate of Inspection." If mutually agreed-upon prior to delivery, the School Bus may be delivered without the "Regular Certificate of Inspection," but the certificate shall be provided within two (2) weeks after delivery by the Contractor. A School Bus presented for NYS DOT inspection must include all equipment and features specified in the Contract and/or by Authorized User on the Purchase Order, including any Optional Equipment and Additional Options.

In the event that a School 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 rights under this section do not preclude the State from exercising any other remedies provided for under the Contract.

V.3 PILOT MODEL INSPECTION

Prior to completion of all School Buses ordered, a complete pilot model inspection of one or more School 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 School 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.

V.4 DELIVERY

Contractors shall be required to deliver School Buses anywhere within New York State boundaries, or within their assigned NYS counties, if a participant in a Consortium, as designated by the Authorized User on the Purchase Order. In accordance with Section V.1.1 *Base Item, Optional Equipment and Additional Body Sections Price*, the Base Item NYS Contract Price shall include the cost of delivery. The following terms and conditions (i.e., Section V.4 through V.4.6) apply to delivery:

- A. In accordance with Appendix B §34 *Title and Risk of Loss for Products Other than Technology Products*, the Contractor agrees to bear the risk of loss, injury, or destruction of the School Bus ordered, prior to acceptance of the School 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 School 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 §33 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.
- E. An Authorized User may choose to stagger the delivery of School Buses over a period of time, and to multiple delivery locations, as specified on the Purchase Order. For example, order forty (40) School Buses with instructions to deliver four (4) School Buses to each of ten (10) locations over a period of time.
- F. Upon mutual agreement, delivery locations may be expanded per Section IV.7 *Non-State Agencies Participation in Centralized Contracts*, Section IV.8 *Extension of Use* and Section IV.9 *Extension of Use Commitment*.

V.4.1 PRE-DELIVERY INSPECTION

At the discretion of the Authorized User, the Contractor may be required to present a School 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 School 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 School Bus without written approval of the Authorized User.

The Contractor shall notify the Authorized User that the School 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 School 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 School 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 School Buses which do not comply with these or other requirements shall be rejected (see also Appendix B §36 *Rejected Product*). All rejected School Buses shall be corrected at the expense of the Contractor, and the corrected School 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.

V.4.2 CONDITION ON DELIVERY

School Buses must be delivered in accordance with the Contract specifications and shall be "ready for use," and/or as requested by the Authorized User. See also Section V.4.3 *Post Delivery Inspection*.

Each School Bus and its components shall be completely assembled, serviced and ready for use when delivered to the Authorized User, which shall include, but not be limited to, 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 School Bus shall be furnished whether specifically required herein or not. Additionally, each School 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 School 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. School Buses that are delivered with an odometer reading that is*

considered excessive without a reasonable explanation, as determined in the sole discretion of the Authorized User, may be rejected by the Authorized User.

- 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 School 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, the following:
 - 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 DOT inspection sticker, and a valid NYS emissions inspections sticker if applicable. 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. Have the fuel gauge registered at no less than one half recommended capacity. 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/emoles. See Section V.2.9 *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 School 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.

V.4.3 POST DELIVERY INSPECTION

After School 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 School Bus (see Appendix B §36 *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

V.4.4 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 School Buses must be delivered within the number of calendar days previously agreed upon by the Contractor and Authorized User, after receipt of the Purchase Order by the Contractor. Failure to deliver within the previously agreed upon time period shall result in payment of liquidated damages in accordance with Section V.4.6 *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 School 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, 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 School 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 V.4.6 *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.

V.4.5 DEFAULT ON DELIVERY

If during the Contract period an Authorized User has issued a Purchase Order for a School Bus, and the Base Item or requested Optional Equipment awarded for the applicable Item becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B §44 *Savings/Force Majeure*), following the issuance of the Purchase Order, a substitute Base Item or Optional Equipment deemed by OGS and NYS DOT to be equivalent to the specifications for the Base Item or Optional Equipment included in the 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 NYS Contract Prices in the Contract.

Alternatively, the Authorized User may, at their sole discretion, cancel the order and purchase the School 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 §44 *Savings/Force Majeure*).

V.4.6 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 School 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 Contractor prior to the assessment of such liquidated damages. Notice is hereby given to the Contractor that, despite the extensions of the grace period herein specified, time shall be of the essence in regard to delivery of the School Bus

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

V.5 GENERAL WARRANTY REQUIREMENTS

In addition to the Appendix B §54 *Warranties*, the following general warranty requirements (i.e., Section III.5 through III.5.1) shall apply to all School Buses provided under the Contract.

- A. The Contractor shall warrant the School 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 School Bus with a warranty claim within ninety (90) calendar days of the date the warranty period begins, for any School Buses procured under the Contract. After ninety (90) calendar days, the Authorized User shall be responsible for all transportation, pick-up and delivery for any School 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 School 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 School 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 School 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 (See Section V.2.8 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 §54 *Warranties*. The Contractor shall furnish with each repaired School Bus an information sheet that indicates the type of warranty work performed, parts replaced, and number of labor hours involved.
- E. The Contractor shall warranty all School Buses offered under the Contract against defective materials and workmanship from the in-service date, as specified on the delayed warranty form, as follows:
 1. The warranty period for the Chassis shall be the manufacturer's standard commercial warranty period; and
 2. The warranty period for the Body, and all other Product, shall be the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one (1) year.
- 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 the Contract during the time period that they are offered to other entities.

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

V.5.1 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 Authorized User 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.

V.6 POST-DELIVERY SERVICE

Post-delivery service at businesses authorized by the School 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 School Bus or Optional Equipment OEM.

V.7 TRAINING

If requested by the Authorized User, complete training for each School 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 School 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.

V.8 REPLACEMENT PRODUCT AND PRODUCT ADDITIONS

- A. The State may permit the Contractor to offer a replacement Product if the Base Item, Optional Equipment or Additional Body Sections awarded is discontinued, replaced, or made unavailable by the OEM during the life of the Contract. The Contractor must offer replacement Product at net prices that are equal to the NYS Contract Price for the applicable Base Item, Optional Equipment or Additional Body Section that was awarded, or less

Requests to offer replacement Product shall be submitted to OGS on Attachment 7: *Contract Modification Procedure*, and shall include the following:

1. Complete identification of the Product it is offering by trade name, brand and/or model number;
2. Descriptive literature and data with respect to the substitute Product it proposes to furnish; and
3. Indication any known specification deviations from the awarded Product.

- B. The State may permit the Contractor to add School Buses and additional fuel type Base Items to the Contract Pricelist during the life of the Contract. Such Product additions shall be limited to (1) additional fuel types, (e.g., LPG, CNG, hybrid), for an OEM Chassis Model/Body Model combination awarded to the Contractor for an Item, and (2) OEM Chassis Model/Body Model combinations that have not previously

been awarded for an Item to any Contractor. Product additions must meet the minimum requirements and specifications of IFB 23000.

A Contractor may request OGS consideration of Product additions by submitting a Contract Modification Form (see Attachment 7: *Contract Modification Procedure*) to the OGS Contract Administrator identified in the Contract.

V.9 SERVICE/TECHNICAL BULLETINS AND RECALLS

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

V.10 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.

V.11 PROCUREMENT INSTRUCTIONS

Authorized Users should follow the following procurement instructions when purchasing School 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. The Contracts under Award 23000 are multiple award for each Item. Authorized Users shall follow their applicable procurement guidelines when making a purchase. Awarded Contractors' Product offerings, Contract and pricing information will be posted to the OGS website at <http://ogs.ny.gov/purchase/spg/awards/4052423000CAN.HTM>.
- C. Authorized Users shall issue Purchase Order(s), as described in Section IV.13.1 *Purchase Orders*, directly to the Contractor(s), specifying the School Bus required and shipping/delivery requirements. Authorized users should follow up with Contractor if they do not receive order acknowledgement within five (5) days.
- D. Upon Authorized User acceptance of School Buses itemized on the Purchase Order, Contractor(s) shall invoice the Authorized User for the School Buses, and accordingly, Authorized User shall arrange for payment. Payment shall not be made until a NYS DOT "Regular Certificate of Inspection" (not a short term certificate) has been issued.

- E. 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 §30 *Purchase Orders*.

V.12 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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of 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.

APPENDIX B

GENERAL SPECIFICATIONS

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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 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 Award 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, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, 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. OGS The New York State Office of General Services.

u. PATCH Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

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 one or more responsive and responsible Bidders.

y. REQUEST FOR QUOTATION (RFQ) A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

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. THIRD-PARTY SOFTWARE Any software that is developed independently of Contractor and which may be governed by a separate license.

ll. 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. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

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 Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

6. CONFIDENTIAL/TRADE SECRET MATERIALS

a. BIDDER/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/Contractor. 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/Contractor. 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 Commissioner's or Authorized User'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/Contractor 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.

7. 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 incorporated into 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 (e.g., 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 rates 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.

8. 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.

9. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized Users 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.

10. 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.

11. 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.

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

13. 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 indicated in the Solicitation or Purchase Order.

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. 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 on its commercial price lists 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 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.

g. 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 Section 163(9)(c). A cost proposal revision must be a lower price than the initial price.

14. 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.

15. 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.

BID EVALUATION

16. 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 or her sole discretion, may accept or reject illegible, incomplete or vague Bids, and the Commissioner’s 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.

17. 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.

18. 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.

19. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

20. DEBRIEFINGS Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

21. CONTRACT PUBLICITY Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

TERMS & CONDITIONS

22. 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 Bidders 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.

23. CONTRACT TERM - EXTENSION In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

24. 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.

25. 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 hold 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.

26. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users 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 any Authorized User 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 and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User 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 an Authorized User 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.

27. 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 30 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.

28. 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.

29. 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 or 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, as the Commissioner in his or 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.

30. 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 (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

All Purchase Orders issued pursuant to a Contract let by the Commissioner must be identified with 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.

31. 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 30 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. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

32. 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.

33. 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 the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

34. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS

Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products 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. Title, risk of loss, and acceptance for technology Products shall be governed by the Product Acceptance clause.

35. 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.

36. 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.

37. 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 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.

38. 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.

39. EMPLOYEES, SUBCONTRACTORS AND AGENTS All employees, Subcontractors, or agents of the Contractor 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 or the Purchase Order, and must comply with all security and administrative requirements of the Authorized User that are communicated to the Contractor. The Commissioner and the Authorized

User reserve 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 or the Purchase Order. The Commissioner and the Authorized User reserve the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

40. 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. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

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.

41. 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.

42. SUSPENSION OF WORK The Commissioner, in his or 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.

43. TERMINATION

a. For Cause For a material breach that remains uncured for more than 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. Neither the State nor an Authorized User shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. 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 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.

44. SAVINGS/FORCE MAJEURE 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 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 to the 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 performing in accordance with the Contract as changed.

45. CONTRACT INVOICING

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.

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.

46. 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 30 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 10 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.

47. PROMPT PAYMENTS

a. By State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 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 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.

48. REMEDIES FOR BREACH Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User,

the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

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

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 Authorized User.

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.

49. 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.

50. 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 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 Safety Data Sheet must be provided to and approved by the Authorized User.

51. 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.

52. SECURITY Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

53. 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.

54. 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 substantially 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 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 Third-Party Software vendor, 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 Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer’s Product.

Where Contractor, Third-Party Software vendor, 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 Product acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at an Authorized User’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 the applicable industry standards, if any. The Authorized User must notify Contractor of any services warranty deficiencies within 90 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 Contractor 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.

55. 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 extensions 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.

56. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold the Authorized Users harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) 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 be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

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 or proceeding 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 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.

57. INDEMNIFICATION RELATING TO INFRINGEMENT

The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided 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; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (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.

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 or proceeding 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 or proceeding 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 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. This constitutes the Authorized User's sole and exclusive remedy for infringement of a patent, copyright, trademark, trade secret, or other proprietary right.

58. 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.

59. 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 the OGS website. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

60. 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 (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, 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.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

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. Product Documentation Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

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. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone

or on-line functionality. 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 maintenance term.

Licensee 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 Licensee does not initially acquire or discontinue 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 that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

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 within Agencies, between Agencies, and pursuant to governmental restructuring or reorganization ("permitted license transfers"). Licensees do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 days prior written notice to Contractor of such moves 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 Third Parties Third parties 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 third party, Site of intended use of the Product, and means of access; and (ii) such third 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) such third party maintains 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.

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; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (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. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means 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. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

h. Confidentiality Restrictions If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

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 the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

61. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have 30 days from the date of delivery to accept hardware Products and 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 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 to be specified by Authorized User. Where using its own data or tests, Authorized User must have the tests or data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, which shall be made part of the Contractor's standard documentation and shall be covered by the Product warranty. 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 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.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, 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 30 days to correct the deficiency, and the Authorized User shall have an additional 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.

62. AUDIT OF LICENSED PRODUCT USAGE 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. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee's security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee's normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (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. 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.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

63. NO HARDSTOP OR PASSIVE LICENSE MONITORING Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall 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). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee 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 Licensee shall be entitled.

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

a. Definitions

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

b. Title to Project Deliverables Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing hardware Products 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 Third-Party Software vendor ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor'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 Third-Party Software vendor'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 Products, 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 purposes 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 Products, 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 Third-Party Software Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

65. 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; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

66. 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 and each Licensee 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 similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

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 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 Commissioner and each Licensee 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 similarly situated, supported customer, or (b) not less than 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.

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