STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES

**New York State Contract #**

*(for State use only)*

# CONTRACT TEMPLATE

## CENTRALIZED CONTRACT FOR THE ACQUISITION OF

## VEHICLES, Class 3-8 (Statewide)

## BETWEEN

## THE NEW YORK STATE OFFICE OF GENERAL SERVICES

## AND

## CONTRACTOR NAME

**THIS AGREEMENT** (hereinafter the "Contract" or the "Agreement") is made by and between the People of the State of New York, acting by and through the Commissioner of the New York State Office of General Services ("OGS"), acting pursuant to authority granted under State Finance Law §163, whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "OGS" or "State"), and _____ _____(herein after "Contractor") with offices at _____ _____.

OGS and the Contractor are collectively referred to herein as "the Parties."

**WITNESSETH:**

WHEREAS, OGS issued a solicitation referenced as Solicitation #22904, for VEHICLES, Class 3-8 (Statewide), which was advertised in the Month XX, 2015 edition of the New York State Contract Reporter as required by the New York State Economic Development Law.

WHEREAS, the solicitation was for a backdrop contract for a Bidder's complete or partial Product Line, as specified by the Bidder, with Product acquisition via an Authorized User competitive Mini-Bid process.

WHEREAS, the State has determined the Contractor submitted a responsive proposal, and is willing to provide the OEM Product Line(s) at the minimum discounts set forth in the Contract.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each Party hereto from the other, the Parties hereby agree as follows:

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## APPENDICES

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

APPENDIX B: *General Specifications (May 2015)*

APPENDIX C: *Class 3-8 Vehicles Contract Documents:*

Number 1: Contractor Information

Number 2: Report of Contract Usage

Number 3: Insurance Requirements

Number 4: Contract Modification Procedures

Number 5: Vehicle Marketplace Forms

# SECTION I: SCOPE AND GENERAL INFORMATION

## I.1 SCOPE

This Contract sets forth the terms and conditions governing the acquisition (purchase) of new Vehicles, (including Chassis, Bodies, Complete Vehicles, and associated Options and Aftermarket Components), as specified herein. This Contract is for the following Class Vehicles: Class 3 (10,001 to 14,000 lbs GVWR.), Class 4 (14,001 to 16,000 lbs. GVWR), Class 5 (16,001 to 19,500 lbs. GVWR), Class 6 (19,501 to 26,000 lbs. GVWR), Class 7 (26,001 to 33,000 lbs. GVWR), and Class 8 (33,001 lbs. GVWR & Over). Heavy duty construction equipment (e.g., wheel loaders, bull dozers, and excavators) are not included in the definition of Vehicles, and are excluded from the Contract. Leasing is not permitted under this Contract.

This centralized Contract is for use by Authorized Users, as defined in Appendix B §2 *Definitions*, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See also, Section II.17 *Non-State Agencies Participation*. Terms used in this document shall have the meanings set forth in this Contract and Appendix B.

This contract is a backdrop Contract for the OEM Product Line(s) available from the Dealer(s), and at the NYS Minimum Chassis Discount(s), if applicable, set forth in Appendix C: *Class 3-8 Vehicles Contract Documents*, Number 1: *Contractor Information*. Vehicle acquisition shall be on an as-needed basis by NYS Authorized Users via a competitive Mini-Bid process (see Section II.11 *Procurement Method*).

The Vehicles shall include all standard equipment normally sold and marketed to the retail public, unless otherwise directed by an Authorized User. Vehicles shall be new, (i.e., the equitable or legal title to which has never been transferred by a manufacturer, distributor or Dealer to an ultimate purchaser). "Demos" or "used" Vehicles shall not be sold in response to a Mini-Bid.

## I.2 DEFINITIONS

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

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

**"Aftermarket Component Provider"** shall refer to the provider of an Aftermarket Component (i.e., Contractor or third-party).

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

**"Authorized User Specifications"** shall refer to the minimum Vehicle specifications provided by the Authorized User for the Mini-Bid.

**"Body(ies)"** shall refer to the portion of the Vehicle that carries the load or cargo, and may be attached to a Chassis (e.g., aerial lift, ambulance, beverage, box/van, bus, concrete mixer, dump, flat bed, log, pickup, recyclable/refuse, refrigerator, service/utility, stake, sweeper, tank, tow truck, trailer), and is an incomplete Vehicle that requires the addition of a Chassis to perform its intended functions.

**"Body Upfitter"** shall refer to a business that installs Bodies on Chassis to form a Complete Vehicle.

**"Build Sheet"** shall refer to the document which lists, at a minimum,

1. The Make, Model and Model Code of the Chassis and/or Body; and
2. An itemized list of all standard equipment, Options and Aftermarket Components included in the Chassis and/or Body.

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

**"Built to Specifications"** shall refer to Chassis or Bodies that the Contractor shall order directly from the OEM(s) and that shall be built to meet the Authorized User Specifications identified in a Mini-Bid.

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

**"Chassis"** shall mean the portion of a Vehicle that includes the frame, wheels, and machinery (e.g., engine, transmission, driveshaft, differential, and suspension), and is an incomplete Vehicle that requires the addition of a Body to perform its intended functions. Chassis includes Chassis cabs, Cutaway Chassis, and any other Chassis-only incomplete Vehicle.

**"Chassis Base MSRP"** shall refer to the total of the MSRP for the Chassis Model offered and all Options in the configured Chassis, including all applicable OEM fees. The Chassis Base MSRP does not include Aftermarket Components, the Body, or the Delivery Charge.

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

**"Class"** shall refer to a Vehicle classification, as designated by the U.S. Department of Transportation, which is determined based on the Chassis or Complete Vehicle's GVWR.

**"Compatible equivalent,"** shall mean any Product which, in the sole opinion of the Authorized User, is equal in performance, quality and design in such a way that the Product is directly interchangeable with the referenced Product without modification.

**"Complete Vehicle"** shall mean the Product that is the result of the Chassis and Body being joined together to form a Vehicle that is ready for use and requires no further manufacturing operations to perform its intended function.

**"Contract"** as defined in Appendix B.

**"Contractor"** as defined in Appendix B.

**"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.

**"Cutaway Chassis"** shall mean an incomplete Vehicle with a front end and cab design in which the body ends immediately behind the driver and front passenger seats; the back wall of the Chassis Cab is "cut away," allowing the driver direct access to the body without exiting the vehicle.

**"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.

**"Delivery Allowance Schedule (DAS)"** refers to the schedule that shall be used to determine maximum delivery charges for Vehicles purchased from the Contract.

**"Delivery Charge"** shall mean the total dollar amount charged to the Authorized User for shipment of the Vehicles from the Delivery Origin to the location(s) designated by the Authorized User on the Purchase Order.

**"Delivery Origin"** shall mean the location from which the Contractor delivers a Vehicle to the Authorized User (i.e., Contractor's place of business or other location specified by the Contractor). The Delivery Origin shall be expressed as the applicable NYS County on Form B (Class 3-8): *Mini-Bid Response.*

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

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

**"Grand Total Evaluation Price for Mini-Bid"** shall mean the dollar amount used to evaluate the Mini-Bid. Automatically calculated as the sum of the Total Evaluation Price for Item for all Items included in the Mini-Bid.

**"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.

**"Item"** shall refer to a Chassis and/or Body included in Form A (Class 3-8): *Mini-Bid Request*. Form A (Class 3-8): *Mini-Bid Request* may include one or more Items.

**"Make"** shall refer to the OEM company name of a Chassis or Body Model (e.g., Ford, International, Freightliner, Viking, Galion).

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

**"Mini-Bid"** shall refer to the competitive procurement process that a Contractor must participate in to provide a Vehicle to an Authorized User under the Contract.

**"Mini-Bid Number"** shall refer to the tracking number assigned by OGS to the Mini-Bid.

**"Model"** shall refer to a particular brand of Chassis or Body sold by an OEM (e.g., (e.g., F450, DuraStar, M2-106, Proline, 450U).

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

**"MSRP"** shall refer to the Manufacturer's Suggested Retail Price, as published by the OEM.

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

**"Must"** denotes the imperative in a contract clause or specification. "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 Aftermarket Component Price"** shall mean the total dollar amount charged to the Authorized User for Aftermarket Components added to a Chassis or Body, inclusive of any discounts or installation fees.

**"NYS Body Base Price"** shall mean the per unit NYS Contract Price for a Body, and includes any OEM fees, all customs duties and charges, all vehicle preparation and clean-up charges, installation charges, and all other incidentals normally included with providing the Body to the Authorized User. The NYS Body Base Price does not include Aftermarket Components or the Delivery Charge.

**"NYS Chassis Base Price"** shall mean the per unit NYS Contract Price for a Chassis, and includes any OEM fees, all customs duties and charges, all vehicle preparation and clean-up charges, NYS DMV inspection, installation charges, and all other incidentals normally included with providing the Chassis to the Authorized User. The NYS Chassis Base Price does not include Aftermarket Components or the Delivery Charge.

**"NYS Contract Price"** shall mean the dollar amount charged to the Authorized User for Product provided under the Contract..

**"NYS Chassis Discount"** shall mean the actual percentage amount by which the Chassis Base MSRP is reduced for NYS Contract purchases.

**"NYS Minimum Chassis Discount"** shall mean the minimum percentage amount by which the Chassis Base MSRP shall be reduced for NYS Contract purchases.

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

**"OEM"** shall mean Original Equipment Manufacturer.

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

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

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

**"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.

**"Pre-Existing Inventory"** shall refer to Chassis or Bodies that were manufactured by the OEM prior to posting of the Mini-Bid. Pre-Existing Inventory may either be located at the Contractor's business location, or other Delivery Origin.

**"Procurement Services"** 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. Procurement Services was formerly known as Procurement Services Group (PSG) and New York State Procurement (NYSPro).

**"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.

**"Region"** shall refer to a grouping of New York State counties as set forth in the Delivery Allowance Schedule (DAS) in Section III.1.7 *Delivery Allowance Schedule.*

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

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

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

**"Total Evaluation Price for Item"** shall mean the dollar amount used in a Mini-Bid for evaluation of an Item cost. Automatically calculated as the sum of the following:

(1) Total NYS Contract Price (Chassis);
(2) Total NYS Contract Price (Bodies); and
(3) Total Delivery Charge for Vehicles;

**"Total NYS Contract Price"** shall mean the NYS Contract Price (Chassis or Body) multiplied by the Total number of Chassis or Bodies.

**"Vehicle(s)"** shall mean a mobile machine that may be used to transport passengers or cargo. All components of the Class 3-8 Vehicle(s) provided under a Mini-Bid (i.e., Chassis, Bodies, and Complete Vehicles), including associated Aftermarket Components, are collectively referred to as "Vehicle(s)" in this Contract.

**"Vehicle Marketplace"** shall refer to the OGS processes for conducting a Mini-Bid under this Contract, as set forth in Section II.11 *Procurement Method*.

# SECTION II: GENERAL TERMS AND CONDITIONS

This section sets forth the general terms and conditions of the Contract.

## II.1 APPENDIX A

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

## II.2 APPENDIX B

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

### II.2.1 APPENDIX B MODIFICATIONS

The following Appendix B clause is hereby modified for the purposes of this solicitation:

A. Section 32, *Product Delivery*, is deleted in its entirety and replaced with Section III.5 of this Contract, *Delivery*.

## II.3 APPENDIX C

Appendix C: *Class 3-8 Vehicles Contract Documents,* is hereby expressly made part of this Contract as fully as if set forth at length herein.

## II.4 CONFLICT OF TERMS

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

A. Appendix A: *Standard Clauses for New York State Contracts*;
B. This document (Base Agreement), the portion of the Contract preceding the Parties' signatures;
C. Appendix B: *Office of General Services General Specifications*; and
D. Appendix C: *Class 3-8 Vehicles Contract Documents*.

## II.5 MERCURY ADDED CONSUMER PRODUCTS

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

## II.6 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

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

## II.7 USE OF RECYCLED OR REMANUFACTURED MATERIALS

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

## II.8 DEALER CERTIFICATION

Contractor and third party businesses used to satisfy Mini-Bid Requests under the Contract shall be a Dealer for the Chassis and Body OEM(s) offered under the Mini-Bids, and be identified as such in Appendix C: *Class 3-8 Vehicles Contract Documents*: Number 1: *Contractor Information*. The Contractor shall provide certification of that status, in the form of Attachment 1: *Bid Documents (Paper),* Section D: *Manufacturer's Certificate*, upon request by OGS or an Authorized User. A Contractor may submit a Mini-Bid response for a Chassis or Body OEM to be provided by a Dealer that is not set forth in Appendix C: *Class 3-8 Vehicles Contract Documents*: Number 1: *Contractor Information*, provided that the Contractor provides certification of Dealer status, in the form of Attachment 1: *Bid Documents (Paper),* Section D: *Manufacturer's Certificate*, for the provider of the Chassis or Body to OGS and the Authorized User upon tentative award of the Mini-Bid.

## II.9 INSURANCE REQUIREMENTS

Contractor shall comply with the insurance requirements as described in Appendix C: Number 3: *Insurance Requirements*. If requested by Procurement Services, Contractor must provide proof of current insurance, certifications, licensing, etc. throughout the Contract term.

## II.10 NEW YORK STATE VENDOR RESPONSIBILITY

If it is found by the State that the Contractor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. Contractor agrees it shall recertify its Questionnaire no later than the end of the eleventh month of each Contract year.

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.

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

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

## II.11 PROCUREMENT METHOD

The following procurement instructions shall apply to the Contract. OGS reserves the right to change the processes set forth in this Section and in Appendix C: *Class 3-8 Vehicles Contract Documents:* Number 5: *Vehicle Marketplace Forms,* in non-material and substantive ways without seeking a contract amendment.

A. When utilizing the Contract, 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, if any; and
- The reason(s) supporting the resulting purchase.

B. An Authorized User shall review the Contracts and associated NYS Minimum Chassis Discounts and available Dealers and OEM Product Lines on the OGS website under Contract Award 22904.

C. Vehicle Marketplace.
Authorized User purchases under this Contract shall be made through a competitive Mini-Bid conducted via the Vehicle Marketplace, facilitated by OGS, as described below. The Contractor shall only provide a Vehicle under this Contract when it has been awarded under the Mini-Bid process. A Mini-Bid awarded by an Authorized User to a Contractor may not be utilized by another Authorized User for procurement of a Vehicle. See Appendix C: *Class 3-8 Vehicles Contract Documents:* Number 5: *Vehicle Marketplace Forms*, for forms used in the Vehicle Marketplace.

1. When a need is identified, an Authorized User is required to obtain all internal/control agency approvals necessary prior to initiating a Mini-Bid through the Vehicle Marketplace. Upon internal/control agency approvals, the Authorized User shall complete Form A (Class 3-8): *Mini-Bid Request*, and submit the completed Form A (Class 3-8): *Mini-Bid Request* to OGS for processing to NYSPro.VehicleMarketPlace@ogs.ny.gov, or other address designated by OGS.

   Form A (Class 3-8): *Mini-Bid Request* shall identify such things as the number of Vehicles needed, a description of the Vehicles, including specifications, (e.g., required features, deletion of any standard equipment, and addition of Options or Aftermarket components), Aftermarket Component Provider(s), delivery requirements and locations, and any additional required terms for the Mini-Bid.

   An Authorized User may request a Chassis only, Body only, or a Complete Vehicle. If the Authorized User shall supply the Chassis or Body to be installed by the Contractor on the Vehicle that has been requested on Form A: (Class 3-8): *Mini-Bid Request*, then the Authorized User shall be required to provide specifications for that Chassis or Body for the Mini-Bid.

   A Mini-Bid that does not include a Chassis, Body or Complete Vehicle (e.g., a request for a stand-alone Option or Aftermarket Component) shall not be processed by OGS.

2. Upon completion of OGS review of the Form A (Class 3-8): *Mini-Bid Request*, OGS shall assign a Mini-Bid Number to the request. OGS shall provide notification of the Mini-Bid to the Contractors in the following manner:

   a. Vehicle Marketplace posting. A Mini-Bid shall be posted to the Vehicle Marketplace website (http://Vehicles.nyspro.ogs.ny.gov/); and

b. Email distribution. An email notification of the Vehicle Marketplace posting shall be distributed to all Contractors under Award 22904 within one (1) hour of the posting. Such notification shall be sent to the email address(es) set forth in Appendix C: *Class 3-8 Vehicles Contract Documents*: Number 1: *Contractor Information*. The Contractor shall be responsible for providing updated email address(es) during the Contract term to the Procurement Services Contract Administrator identified on the Contact Award Notification page posted at the OGS website.

3. From the date of OGS posting of Form A (Class 3-8): *Mini-Bid Request*, Contractors shall have ten (10) Business Days to submit Mini-Bid responses. Procurement Services reserves the right to set Mini-Bid response submittal deadlines that are shorter or longer than ten (10) Business Days. The Mini-Bid response submittal deadline for each Mini-Bid shall be posted on the Vehicle Marketplace website. OGS shall remove the Mini-Bid posting from the Vehicle Marketplace website by the close of business on the first Business Day immediately following the Mini-Bid response submittal deadline date.

4. The Mini-Bid posting on the OGS website shall include contact information for the Authorized User requesting the Vehicle(s). All questions regarding the Authorized User Specifications and other information posted for a Mini-Bid shall be directed to the contacts identified on the Mini-Bid posting.

   The Authorized User shall be responsible for answering Contractor questions regarding the Authorized User Specifications and other information posted for a Mini-Bid, and are instructed to provide the answers to all questions asked to all of the Contractors using the email address(es) set forth in Appendix C: *Class 3-8 Vehicles Contract Documents*: Number 1: *Contractor Information*.

   The Contractor shall be responsible for providing updated email address(es) during the Contract term to the Procurement Services Contract Administrator identified on the Contact Award Notification page posted at the OGS website.

   OGS reserves the right to create a formal question and answer period process for Mini-Bids, and to post a question and answer document created by the Authorized User as part of that process.

5. A Contractor that offers a Vehicle in response to a posted Mini-Bid must provide the Mini-Bid response on Form B (Class 3-8): *Mini-Bid Response,* which is an Excel workbook that is available for download from the Vehicle Marketplace website. Form B (Class 3-8): *Mini-Bid Response* includes Contractor response sections for Contractor information, Chassis and Body information, and pricing information. A Contractor submitting a Mini-Bid response for a Mini-Bid must save the blank Excel worksheet to its computer, enter the required information on the "Response Summary" worksheet and on the "Item" worksheets for each Item applicable to the Mini-Bid, and then email the completed Form B (Class 3-8): *Mini-Bid Response* to OGS at NYSPro.VehicleMarketPlace@ogs.ny.gov. Instructions for completion and submittal are included on the form.

   Form B (Class 3-8): *Mini-Bid Response*, Part D: *Additional Information* provides the Contractor with a field to enter bid deviations or other additional information applicable to the Mini-Bid. A Contractor shall use this field to identify issues related to the providing the Vehicle requested by the Authorized User.

   A Mini-Bid response submitted in a format other than Form B (Class 3-8): *Mini-Bid Response* shall be considered non-responsive and the Mini-Bid response shall be disqualified.

6. A Contractor that chooses to <u>not</u> offer a Vehicle in response to a posted Mini-Bid is requested to complete and submit Form B (Class 3-8) *Mini-Bid Response* (No Bid) to OGS at NYSPro.VehicleMarketPlace@ogs.ny.gov. A Contractor is requested to include on this form a reason that a "No Bid" is being submitted in response to the posted Mini-Bid. Submittal of this form is not mandatory, however it is strongly recommended if the Contractor is a Dealer for the Vehicle specified in the Mini-Bid.

7. Timeframe for offers in Mini-Bids.

a. If providing Chassis and Bodies Built to Specifications. The timeframe for offers shall be as specified in Appendix B §23 *Timeframe for Offers.*

b. If providing Pre-Existing Inventory, the timeframe during which offers shall remain firm and cannot be withdrawn shall be ten (10) calendar days from the first Business Day immediately following the Mini-Bid response submittal deadline, or such other period of time as specified in the Mini-Bid. In order for a Mini-Bid response to be responsive to a Mini-Bid involving Pre-Existing Inventory, the Contractor is required to retain the Pre-Existing Inventory for the ten (10) calendar day period, or such other period of time as set forth in the Mini-Bid. Contractor's failure to retain the Pre-Existing Inventory for such period of time shall render Contractor's Mini-Bid response non-responsive and the Mini-Bid response shall be disqualified.

6. OGS shall send all responses received in response to a Mini-Bid via email to the Authorized User contact designated on Form A (Class 3-8): *Mini-Bid Request* by the close of business on the first Business Day immediately following the Mini-Bid response submittal deadline date. The Authorized User shall be responsible for evaluation and award of the Mini-Bid. Authorized Users are instructed to notify the Contractors of award or non-award within ten (10) Business Days of receipt of Mini-Bid responses from OGS.

7. The Authorized User shall evaluate all Mini-Bid responses received in response to the Mini-Bid, and may request verification that the Vehicle(s) offered meet the Authorized User Specifications. The Contractor shall, upon request of the Authorized User, submit a Build Sheet, OEM Pricelist and Contractor-Published Pricelist, as applicable, to the Authorized User prior to award of the Mini-Bid. Award shall be made by the Authorized User to a responsive Contractor based on the requirements specified by the Authorized User on Form A (Class 3-8): *Mini-Bid Request*. The Authorized User must note justification of method of award on Form C (Class 3-8): *Mini-Bid Report of Use*. If at least three (3) Mini-Bid responses are not submitted, the Authorized User must justify the reasonableness of award on Form C (Class 3-8): *Mini-Bid Report of Use.*

8. Upon determination of either award or that an award shall not be made, the Authorized User shall issue notification of tentative award non-award, or that an award shall not be made, to all Contractors that submitted a Mini-Bid response. Notification of tentative award shall include the final number of Vehicles that the Authorized User intends to issue a Purchase Order for.

   If the tentative awardee has submitted a Mini-Bid response for a Chassis or Body OEM to be provided by a Dealer that is not set forth in Appendix C: *Class 3-8 Vehicles Contract Documents:* Number 1: *Contractor Information*, then the Contractor shall provide certification of Dealer status in the form of Attachment 1: *Bid Documents (Paper),* Section D: *Manufacturer's Certificate*, for the provider of the Chassis or Body to Procurement Services and the Authorized User prior to, or upon, tentative award of the Mini-Bid. Failure to provide such certification shall result in the Mini-Bid response being deemed non-responsive and in the rejection of the Mini-Bid response.

9. After notice of tentative award of the Mini-Bid, the Authorized User shall issue a Purchase Order to the Contractor following the Authorized User's standard procedures (see Section II.12.1 *Purchase Orders)*. Upon receipt of the Purchase Order, at the Authorized User's discretion, the Contractor and Authorized User shall conduct a pre-production meeting in order to ensure complete and accurate understanding of the Authorized User Specifications and delivery requirements. See Section III.3 *Pre-Production Meeting*.

10. Upon completion of this Mini-Bid process, the Authorized User must provide Form C (Class 3-8): *Mini-Bid Report of Use*, with any supporting documentation to NYSPro.VehicleMarketPlace@ogs.ny.gov, or other address designated by OGS, and ensure that a copy of the documents is also maintained for audit purposes following the Authorized User's standard procedures.

D. Authorized User Procurement Rights.
Authorized Users hereby reserves the right in a Mini-Bid to:

1. Reject any or all responses received in response to the Mini-Bid;
2. Withdraw the Mini-Bid at any time, at the Agency's sole discretion;
3. Make an award under the Mini-Bid in whole or in part;
4. Disqualify any Contractor submitting a response whose conduct and/or proposal fails to conform to the requirements of the Mini-Bid;
5. Seek clarifications and revisions of Mini-Bid responses;
6. Prior to the Mini-Bid response submittal deadline, amend the solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the Mini-Bid response submittal deadline, direct Contractors to submit modifications addressing subsequent Mini-Bid amendments;
8. Change any of the schedule dates with notification through the Vehicle Marketplace and via email distribution to all Contractors;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Contractors;
10. Waive any requirements that are not material;
11. Utilize any and all ideas submitted in the Mini-Bid responses received;
12. Adopt all or any part of a Contractor's Mini-Bid response in selecting the optimum configuration.
13. Negotiate with the Contractor responding to the Mini-Bid within the Mini-Bid requirements to serve the best interests of the State. This includes requesting clarifications of any or all Contractor's Mini-Bid responses;
14. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Contractor's Mini-Bid response and/or to determine a Contractor's compliance with the requirements of the Mini-Bid;
15. Select and award the Mini-Bid to other than the selected Contractor in the event of unsuccessful negotiations (e.g., if it is determined at the pre-production meeting that the Authorized User Specifications shall need significant adjustments to meet their Vehicle needs), or, optionally, in other specified circumstances as detailed in the Mini-Bid requirements; and
16. Use information obtained through site visits, management interviews, and the state's investigation of a Contractor's qualifications, experience, ability or financial standing, and any material or information submitted by the Contractor in response to the agency's request for clarifying information in the course of evaluation and/or selection under the Mini-Bid.

E. <u>New York State Reserved Rights</u>
The State reserves the right to:

1. Use an on-line process, such as reverse auction, to make acquisitions under the Contracts. Contractor agrees to participate in an on-line process established by OGS;
2. Exclude from the Contract any Vehicles that, at the sole discretion of the State, shall not be approved for purchase by an Authorized User;
3. Aggregate the volume of Authorized User requests for Vehicles by combining requests under one Mini-Bid Number; and
4. Issue a Mini-Bid with general specifications for Vehicles that may be utilized by all Authorized Users over a period of time.

## II.12 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 and reviewed the Purchase Order and has

entered the order with the OEM and that the manufacturer has accepted the order and assigned an order number and anticipated build and delivery dates.

### II.12.1 PURCHASE ORDERS

Authorized User Purchase Orders are to include the following information:

A. Contract number;
B. Contractor business name;
C. Contractor NYS Vendor ID Number;
D. Vehicle Marketplace Mini-Bid Number;
E. General description of Vehicle(s);
F. Make, Model and Model Code of the Chassis and Bodies;
G. Option Code(s) and descriptions, if applicable;
H. Aftermarket Components Make, Model, part numbers and descriptions, if applicable;
I. NYS Contract Price for the Chassis and Bodies;
J. Number of Chassis and Bodies;
K. Total NYS Contract Price for the Chassis and Bodies;
L. Total Delivery Charge; and
M. Liquidated damages, if any.

### II.12.2 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. Contractor business name
C. Vendor ID Number
D. Vehicle Marketplace Mini-Bid Number;
E. General Description of Vehicle(s);
F. Make, Model and Model Code of the Chassis and Bodies;
G. Option Code(s) and descriptions, if applicable;
H. Aftermarket Components Make Model, part numbers and descriptions, if applicable;
I. Calculation of the Total NYS Contract Price for the Chassis and Bodies;
J. Total Delivery Charge; and
K. Breakdown of Liquidated damages, if any (see III.3.6 *Liquidated Damages*).

## II.13 CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the Vehicles have been delivered and accepted in accordance with Section III.5 *Delivery*. Payment shall be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section II.12 *Purchase Orders and Invoicing*. See also Appendix B §48 *Contract Invoicing*.

## II.14 PRICE VERIFICATION

The Contractor shall, upon request by the Authorized User, provide supporting documentation that verifies the pricing entered by the Contractor on the "Vehicle Request Price Worksheets" on Form B (Class 3-8): *Mini-Bid Response.* Such verification may include a Build Sheet and the most recently published OEM Pricelist and Contractor-Published Pricelist, as applicable, for each Chassis and Body offered in the Mini-Bid.

## II.15 "OGS OR LESS" GUIDELINES APPLY

Purchases of the Vehicles 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 Vehicles from sources other than the Contractor provided that such Vehicles are substantially similar in form, function or utility to the Vehicles herein and are:

1. Lower in price

   -And/Or-

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

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

## II.16 REPORT OF CONTRACT USAGE

Contractor shall furnish a report of all Vehicles provided under the Contract during each quarterly period, no later than the 15th of the month following the close of each quarter. Quarterly periods shall end on March 31st, June 30th, September 30th and December 31st. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. A template for such report is included in Appendix C: *Class 3-8 Vehicles Contract Documents,* Number 2: *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 Group Number, Award Number, Contract Number, Sales Period, and Contractor's (or other authorized agent) Name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.

## II.17 NON-STATE AGENCIES PARTICIPATION

Upon request, all eligible non-State agencies must furnish Contractor with the proper tax exemption certificates and documentation certifying eligibility to use the Contract. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to Procurement Services Customer Services at 518-474-6717.

## II.18 CONTRACT PERIOD AND RENEWALS

All Contracts awarded under solicitation 22904 shall terminate simultaneously three (3) calendar years from the date of OGS approval of the first Contract awarded. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional calendar years. The Contract renewal may be exercised on a month to month basis such as an additional three month, six month, twelve month, or 24 month period.

### II.18.1 SHORT TERM EXTENSION

In the event a replacement Contract has not been issued, this Contract 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. However, this extension terminates should a replacement Contract be issued in the interim.

## II.19 POOR PERFORMANCE

Authorized Users should notify Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of the Contract. 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
Fax: 518-474-2437
Email: customer.services@ogs.ny.gov

## II.20 CONTRACT ADVERTISING

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

## II.21 OVERLAPPING CONTRACT ITEMS

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

## II.22 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

### II.22.1 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 and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to clause VII of this section or enforcement proceedings as allowed by the Contract.

## II.22.2 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

A. Contractor shall comply with the following provisions of Article 15-A:

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.

2. The Contractor certifies by entering into this Contract 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 submitted a staffing plan 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 Employment Utilization Report ("Workforce Report")

(Insert one of the following, but not both clauses in the final contract)

EITHER: Contractor agrees it will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

OR: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically 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 conviction and prior arrest.

## II.22.3 CONTRACT GOALS

A. OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the contract goals established in clause III-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VI below).

## II.22.4 MWBE UTILIZATION PLAN

A. Contractor certifies that it has submitted, in accordance with 5 NYCRR § 142.4, a completed MWBE Utilization Plan on Form MWBE 100 and will follow such Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause II.22.3 *Contract Goals*, Paragraph A.

B. Contractor further understands that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments.

C. Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## III.22.5 REQUEST FOR WAIVER

A. If the Contractor, after making good faith efforts, as set forth in clause VI below, is unable to comply with MWBE goals, the Contractor may submit, in accordance with 5 NYCRR § 142.7, a Request for Waiver form (BDC 333) documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

B. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

**C. Prior to submission of a request for a partial or total waiver, Contractor shall speak to the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.**

## III.22.6 REQUIRED GOOD FAITH EFFORTS

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

A. 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.

B. 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.

C. 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.

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

E. 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.

F. Other information deemed relevant to the request.

## III.22.7 MONTHLY MWBE CONTRACTOR COMPLIANCE REPORT

A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **"Introduction to the System for Vendors"** and **"Contract Compliance Reporting - Vendor Training"** to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/events.asp

D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on **"Account Lookup"** to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing **"Change Info."** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **"Request New User."** When identifying the person responsible, please add **"- MWBE Contact"** after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause III.20.8 below.

## III.22.8 BREACH OF CONTRACT AND LIQUIDATED DAMAGES

A. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

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

## II.23 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 Appendix C: Number 4: *Contract Modification Procedure*. The Contractor shall submit all requests in the form and format contained in Appendix C: Number 4: *Contract Modification Procedure*.

   The form contained within Appendix C: Number 4: *Contract Modification Procedure* is subject to change at the sole discretion of OGS.

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

## II.24 EXTENSION OF USE

The Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in the Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional minimum NYS Vehicle Discounts based on any increased volume generated by such extensions.

### II.24.1 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section II.24 *Extension of Use*) which are in compliance with the pricing, terms, and conditions set forth in the Contract.

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

### II.25 SUSPENSION OF CONTRACT

The Commissioner of OGS or his 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.

### II.26 PERFORMANCE AND BID BONDS

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

### II.27 WEB ACCESSABILITY

Any web-based information and applications development, or programming delivered pursuant to the contract, 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.

### II.28 ADDITIONAL REQUIREMENTS

A. 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.

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

## SECTION III: SPECIAL TERMS AND CONDITIONS

### III.1 PRICE

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

### III.1.1 CHASSIS PRICE WORKSHEET

A Contractor providing a response to a Mini-Bid that includes a Chassis shall provide the following information on Form B (Class 3-8): *Mini-Bid Response.*

A. Chassis Base MSRP. The Chassis Base MSRP shall include all standard equipment provided with the Chassis, and all Options necessary to meet the Authorized User Specifications. All OEM fees, (e.g.,

destination charges), associated with providing the Chassis Model shall also be included in the Chassis Base MSRP. The Chassis Base MSRP does not include Aftermarket Components or the Delivery Charge.

Options, when specified in the Authorized User Specifications included with the Mini-Bid, (See Section III.2.6 *Options*), shall include any and all labor, installation, fittings, connections, etc., that might be needed to attach the Option to the Chassis so that the Option operates to the Option's full design capabilities; there shall be no additional up-charges, fees, etc., for adding OEM Options. If a standard Option is being deleted, the Contractor must give the Authorized User proof of the MSRP for the Option if requested, as shown in the OEM or Contractor-Published Pricelist.

B. NYS Chassis Discount. The NYS Chassis Discount shall be either equal to the NYS Minimum Chassis Discount(s) set forth in Appendix C: *Class 3-8 Vehicles Contract Documents*: Number 1: *Contractor Information*, or a greater discount. The NYS Chassis Discount shall refer to the actual percentage amount by which the Chassis Base MSRP is reduced for NYS Contract purchases. The Contractor may increase the NYS Minimum Chassis Discount listed in the Contract at any time during the Contract term. The NYS Minimum Chassis Discount may not be decreased during the Contract term. Offers of pricing greater than MSRP in a Mini-Bid shall be rejected.

The NYS Chassis Discount entered by the Contractor shall account for all non-OEM fees (e.g., customs duties and charges, all vehicle preparation and clean-up charges, NYS DMV inspection, installation charges, and all other incidentals), normally included with providing the Chassis to the Authorized User, excluding Aftermarket Components and the Delivery Charge.

C. NYS Aftermarket Component Price (Chassis). The NYS Aftermarket Component Price (Chassis) shall include installation fees for all Aftermarket Components included in the Authorized User Specifications at the normal, published labor rates and, labor shall not be more than what is charged to the public at large. The price of the Aftermarket Components shall be a discount from the OEM or Contractor-Published Pricelist, as applicable. Offers of pricing greater than MSRP shall result in rejection of the Mini-Bid response.

The NYS Contract Price (Chassis) shall be calculated as set forth below. See Section I.2 *Definitions*, for definitions of terms.

| Description | Price |
|---|---|
| **Chassis Base MSRP** | $60,000.00 |
| **NYS Chassis Discount** (Example: 5%) | - $3,000.00 |
| **NYS Chassis Base Price** | $57,000.00 |
| **NYS Aftermarket Component Price (Chassis)** | $1,000.00 |
| **NYS Contract Price (Chassis)** | $58,000.00 |

## III.1.2 BODY PRICE WORKSHEET

A Contractor providing a response to a Mini-Bid that includes a Body shall provide the following information on Form B (Class 3-8): *Mini-Bid Response.*

A. NYS Body Base Price. The NYS Body Base Price shall include all standard equipment provided with the Body, and all Options necessary to meet the Authorized User Specifications. The NYS Body Base Price does not include Aftermarket Components or the Delivery Charge.

Options, when specified in the Authorized User Specifications included with the Mini-Bid, (See Section III.2.6 *Options*), shall include any and all labor, installation, fittings, connections, etc., that might be needed

to attach the Option to the Body so that the Option operates to the Option's full design capabilities; there shall be no additional up-charges, fees, etc., for adding OEM Options.

The NYS Body Base Price entered by the Contractor shall account for all OEM fees, (e.g., destination charges and non-OEM fees (e.g., customs duties and charges, all vehicle preparation and clean-up charges, NYS DMV inspection, installation charges, and all other incidentals), normally included with providing the Body to the Authorized User, excluding Aftermarket Components and the Delivery Charge.

B. NYS Aftermarket Component Price (Body). The NYS Aftermarket Component Price (Body) shall include installation fees for all Aftermarket Components included in the Authorized User Specifications at the normal, published labor rates and, labor shall not be more than what is charged to the public at large. The price of the Aftermarket Components shall be a discount from the OEM or Contractor-Published Pricelist, as applicable. Offers of pricing greater than MSRP shall result in rejection of the Mini-Bid response.

The NYS Contract Price (Body) shall be calculated as set forth below. See Section I.2 Definitions, for definitions of terms.

| Description | Price |
|---|---|
| **NYS Body Base Price** | $50,000.00 |
| **NYS Aftermarket Component Price (Body)** | $2,000.00 |
| **NYS Contract Price (Body)** | $52,000.00 |

## III.1.3 DELIVERY

A Contractor responding to a Mini-Bid shall specify a Delivery Charge for the Vehicles requested in the Mini-Bid on Form B (Class 3-8) *Mini-Bid Response*. Contractors shall be required to deliver Vehicles anywhere within New York State boundaries, as designated by the Authorized User on the Purchase Order. Pursuant to Appendix B §34 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination. The maximum Delivery Charge shall be calculated in accordance with the Delivery Allowance Schedule (DAS) below.

## III.1.4 DELIVERY ALLOWANCE SCHEDULE

The following Delivery Allowance Schedule (DAS) indicates the maximum dollar amount that shall be paid for delivery of a Vehicle from the Delivery Origin to the applicable Region to which the Vehicle is delivered. A Contractor may include a Delivery Charge that is less than the Delivery Allowance on Form B (Class 3-8): *Mini-Bid Response*. A Mini-Bid response that includes a Delivery Charge that exceeds the Delivery Allowance shall be rejected. The Region is determined by the New York State County in which the Delivery Origin is located. If the Delivery Origin is not located within the State of New York, then the Region utilized shall be the Region that is closest in distance to the Delivery Origin.

EXAMPLE: If the Delivery Origin is in Albany County (Region 3), and the delivery location is in Westchester County (Region 5), the Delivery Allowance is $275. Each Contractor shall only be concerned with their particular region (i.e., if the Delivery Origin is in Region 1, the only row that shall be utilized is the first one).

Each February 1st, beginning with February 2016 each dollar amount in the DAS chart shall be updated in accordance with changes in the CPI, (Series Id: CUUR0100SA0, CUUS0100SA0; Not Seasonally Adjusted; Area: Northeast urban; Item: All items, http://data.bls.gov/pdq/SurveyOutputServlet?series_id=CUUR0100SA0,CUUS0100SA0; by comparing the value for December of the year involved to the value for December 2014. Each dollar amount may be increased from, decreased from, or remain the same as the previous values.

For example, if the value for December 2015 is 220.4 and the value for December 2014 was 206.2, the DAS would increase by 6.89% (e.g., 220.4/206.2 = 1.0688965 = 6.89% rounded increase), effective February 1,

2016. The values in chart shall be rounded to the nearest five (5) dollar amount (e.g., $161 would be rounded to $160, and $166 would be rounded to $165).

**DELIVERY ALLOWANCE SCHEDULE (DAS):**

| VENDOR LOCATION | Delivery to Region | | | | | |
|---|---|---|---|---|---|---|
| **Region** | **1** | **2** | **3** | **4** | **5** | **6** |
| **1** | $190 | $275 | $455 | $525 | $620 | $815 |
| **2** | $275 | $190 | $275 | $275 | $345 | $620 |
| **3** | $455 | $275 | $190 | $275 | $275 | $620 |
| **4** | $525 | $275 | $275 | $190 | $525 | $795 |
| **5** | $620 | $345 | $275 | $525 | $190 | $310 |
| **6** | $815 | $620 | $620 | $795 | $310 | $190 |

**DELIVERY REGIONS:**

| Region 1 | Region 2 | Region 3 | Region 4 | Region 5 | Region 6 |
|---|---|---|---|---|---|
| Allegany | Broome | Albany | Clinton | Dutchess | Bronx |
| Cattaraugus | Cayuga | Columbia | Essex | Orange | Kings |
| Chautauqua | Chenango | Fulton | Franklin | Putnam | Nassau |
| Chemung | Cortland | Greene | St. Lawrence | Rockland | New York |
| Erie | Delaware | Hamilton | | Sullivan | Queens |
| Genesee | Herkimer | Montgomery | | Ulster | Richmond |
| Livingston | Jefferson | Rensselaer | | Westchester | Suffolk |
| Monroe | Lewis | Saratoga | | | |
| Niagara | Madison | Schenectady | | | |
| Ontario | Oneida | Schoharie | | | |
| Orleans | Onondaga | Warren | | | |
| Schuyler | Oswego | Washington | | | |
| Seneca | Otsego | | | | |
| Steuben | Tioga | | | | |
| Wayne | Tompkins | | | | |
| Wyoming | | | | | |
| Yates | | | | | |

### III.1.5 REBATES

The State reserves the right to determine the disposition of any rebate settlement, restitution, liquidated damage, etc., which arise from the administration of the Contract.

## III.2 VEHICLE REQUIREMENTS

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

## III.2.1 STANDARDS, CODES, RULES, AND REGULATIONS

Vehicles shall be designed and assembled in accordance with all applicable industry standards, including, but not limited to, those listed below. The Vehicles shall comply with all governmental regulations as they apply to the operation of the Vehicle described in the Authorized User Specifications including, but not limited to, those listed below. If applicable, the appropriate decals indicating compliance shall be affixed to the Vehicle.

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

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

C. Vehicles 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 NYCRR (NY Codes Rules and Regulations), Title 6 (Environmental Conservation) Part 218, *Emissions Standards for Motor Vehicles and Motor Vehicle Engines*.

D. Vehicles shall be manufactured in accordance with any codes, standards and engineering practices as recommended by the following professional organizations for the specific Vehicle/equipment:

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 Trucking Association (ATA)
American Welding Society (AWS)
American Wood-Preservers Association (AWPA)
Battery Council International (BCI)
British Standards Institute (BSI): Limits and Fits
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)
Power Crane and Shovel Association (PCSA)
Society of Automotive Engineers (SAE)
Society of Manufacturing Engineers (SME)
Steel Structure Painting Council (SSPC)
Tire and Rim Association (TRA)

## III.2.2 STANDARD EQUIPMENT

All items of standard equipment which are provided by the OEM shall be furnished unless such items are expressly deleted by the Authorized User or are specified to be other than standard. When Optional equipment is specified, all components listed in the OEM Pricelist as being included with the Option shall be furnished.

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

## III.2.3 MANUALS

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

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

## III.2.4 COMPATIBLE EQUIVALENT

Whenever an item, other than the Chassis or Body Model, is specified in a Mini-Bid 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, the Authorized User shall consider Mini-Bid responses that include only the referenced Product.

At the request of the Authorized User, a Contractor that submits a Mini-Bid response that includes a Compatible Equivalent shall:

A. Furnish complete identification of the Compatible Equivalent it is offering by trade name, brand and/or Model Code;

B. Furnish descriptive literature and data with respect to the Compatible Equivalent it proposes to furnish; and

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

## III.2.5 EQUIPMENT, PARTS AND ACCESSORIES

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

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

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

C. Complete Vehicles shall meet the maximum gradeability of the manufacturer when loaded to maximum GVWR without exceeding the engine manufacturer's recommended maximum revolutions per minute ("RPM");

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

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

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

G. The Authorized User shall have its choice of the manufacturer's standard paint colors, and shall designate the selection on the Purchase Order. All surfaces, including bumpers, wheels and spares which are normally painted shall be factory painted with the specified color. Aftermarket Components shall have any rust spots and welding slag removed, be properly sanded, cleaned, prepped and primed per the paint manufacturer's recommendations at no additional cost to the Authorized User. The Vehicle shall be carefully smoothed, cleaned, primed and finished with top quality transportation enamel. Bodies and auxiliary equipment shall be primed and finished with not less than two (2) coats of durable enamel in the manufacturer's standard color specified by the Authorized User. All paint, primer, basecoats, clear coats or any other coating within the paint system shall be lead free;

H. The Vehicle shall have all required rust proofing applied to the exterior and underside of the Vehicle. No rustproofing compound can be on the personnel compartment's items or the exterior of the Body in unsightly or unintended areas;

I. Tire size and type shall be original equipment brand or as indicated in the Authorized User Specifications. Tire inflation monitors shall be supplied as required by Federal Motor Vehicle Safety Standard (FMVSS) 138;

J. All fuel, oil, hydraulic, and air filters shall be serviceable without interference from other Vehicle components. The Contractor shall coordinate filter and component placements with the Chassis provider or Body Upfitter to ensure unimpeded servicing is available;

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

L. The Contractor shall ensure installed Body components shall not interfere with the Chassis configuration and vice versa; and

M. Authorized User Specifications (e.g., Cab to Axle and Wheel Base measurements) shall be adjusted appropriately for the Complete Vehicle's intended application. See also Section III.3 *Pre-Production Meeting*.

## III.2.6 OPTIONS

The Contractor shall provide Options, if specified by an Authorized User in a Mini-Bid, for Chassis and Bodies. A Contractor must provide all Options available from the OEM that are requested by the Authorized User. Options to be offered under the Contract are limited to products that are (1) listed on the OEM or Contractor-Published Pricelist(s), and (2) may be installed on the Chassis or Body Model awarded in the Mini-Bid.

## III.2.7 AFTERMARKET COMPONENTS

The Contractor shall provide Aftermarket Components, if specified by an Authorized User in a Mini-Bid, for Chassis and Bodies. A Contractor must provide all Aftermarket Components available in the Contractor's normal course of business that are requested by the Authorized User. Unless otherwise specified by an Authorized User in a Mini-Bid, Aftermarket Components may be installed by any Aftermarket Component Provider utilized in the Contractor's normal course of business. Aftermarket Components to be offered under the Contract are limited to products that are (1) listed on the Contractor-Published Pricelist(s), and (2) shall be installed on the Chassis or Body Model awarded in the Mini-Bid.

## III.2.9 AVAILABILITY OF SERVICE & REPAIR PARTS

Service and repair parts for Product on Contract must be available to Authorized users within New York State. Repair parts must be available on an on-demand basis to Authorized Users for delivery within twenty-four (24) State business hours, unless such part is nationally backordered. Nationally backordered parts shall be delivered immediately upon availability. Additional payment for expedited orders is at the discretion of the Contractor(s), and must be mutually agreed upon prior to shipment.

### III.2.10 ADVERTISING

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

### III.2.11 VEHICLE INSPECTION

Unless otherwise instructed by the Authorized User, all Complete Vehicles must be delivered with complete NYS Inspections. In the event that a Complete Vehicle 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 Authorized User reserves the right to cancel a Mini-Bid award and/or take other action if Complete Vehicles are not properly inspected or if the New York State Department of Motor Vehicles inspection sticker is not properly affixed to a Complete Vehicle.

## III.3 PRE-PRODUCTION MEETING

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

## III.4 PILOT MODEL INSPECTION

Prior to completion of the Vehicles ordered, a complete pilot model inspection of one or more Vehicles 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 Vehicle at the OEM's facility or Contractor's place of business, as agreed to by the Authorized User. The Authorized User shall be responsible for transportation, lodging and meals associated with the initial pilot model inspection. The Authorized User, at their discretion, may require that the Contractor cover the costs of subsequent pilot model inspections should the pilot model not pass the initial inspection.

## III.5 DELIVERY

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

A. The Contractor agrees to bear the risk of loss, injury, or destruction of the Product ordered, prior to receipt of the Vehicle 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 was listed in the Mini-Bid or agreed upon after tentative award of the Mini-Bid 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 a Vehicle and odometer reading from Vehicles that have an odometer. In the event deficiencies are later noted and a properly signed receipt cannot be found, Contractor shall be responsible for certifying delivery and odometer reading.

D. Pursuant to Appendix B §34 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination. The Delivery Charge shall be calculated in accordance with the Delivery Allowance Schedule (DAS). See Section III.1.7 *Delivery Allowance Schedule.*

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

F. Upon mutual agreement, delivery locations may be expanded per Section II.17 *Non-State Agencies Participation in Centralized Contracts*, Section II.24 *Extension of Use* and Section II.24.1 *Extension of Use Commitment*, incorporated herein.

## III.5.1 PRE-DELIVERY INSPECTION

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

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

## III.5.2 CONDITION ON DELIVERY

Vehicles must be delivered strictly in accordance with the Authorized User Specifications and shall be "Ready for Use," and/or as requested by the Authorized User.

Each Vehicle and its components shall be completely assembled, serviced and ready for use when delivered to the Authorized User. 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 Vehicle shall be furnished whether specifically required herein or not. Additionally, each Vehicle, 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 Vehicle 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. Vehicles that are delivered with an odometer reading that is considered excessive without a reasonable explanation may be rejected. Chassis shall only be used for transport of other Chassis (e.g., as "mule" trucks), that are included in the Authorized User's delivery.*

B. Include the proper forms 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 Chassis as the final complete certification label (minimum rating). The Gross Combined Weight Rating (GCWR) shall be identified by decal in the cab to indicate the approved weight, which can be towed, if applicable.

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

1. Required from Contractors in New York State: MSO (Manufacturer's Statement of Origin), MV50 Retail Certificate of Sale (except for trailers with an unladen weight under 1,000 lbs.), 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 inspection sticker and a valid NYS emissions inspections sticker. Unless otherwise instructed by the Authorized User, all NYS state inspection requirements are the sole responsibility of the Contractor. See Section III.2.11 *Vehicle Inspection*.

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

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

H. Be clean, lubricated, serviced, fuel gauge registering no less than one half recommended capacity, all adjustments completed, all mechanical and electrical motors and components fully functional and operational, and the Vehicle shall be "road ready" for immediate use.

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

J. Be free from all Dealer signs/emblems. See Section III.2.10 *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, Body, and other applicable components identified with a metal identification tag that provides the OEM's name, Model and individual serial number. Tags shall be affixed in an accessible and readable position on the item.

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 Vehicle (engine, frame, transmission, drive line, axles, alternator, storage battery, fuel tank, etc.). The bill of materials shall be at least as comprehensive as the OEM's line-set ticket.

N. If towed to the Authorized User for delivery, the towing device may not be attached in such a way that holes are drilled in the bumper of the Vehicle being towed. Drilling of holes in the Vehicle bumpers is not permitted. Any bumper damage caused by a towing device shall be replaced by the Contractor at no charge to the Authorized User. If a Vehicle is being towed by another Vehicle, the Vehicle being towed must have the drive shaft disconnected to eliminate unnecessary mileage.

## III.5.3 POST DELIVERY INSPECTION

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

the corrections made by an entity of the Authorized User's choosing and the Contractor shall be required to reimburse the Authorized User for this expense within thirty (30) calendar days of the request for reimbursement

## III.5.4 SHIPPING DATES AND DELIVERY TIME

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

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

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

C. Contractor shall provide ordering Authorized User with anticipated shipping date of Vehicles with written acknowledgement of the order, or at the pre-production meeting (see Section III.3 Pre-Production Meeting). If the anticipated shipping date cannot be provided by the Contractor at the time of the acknowledgement of order, or at the pre-production meeting, then the Contractor shall provide the Authorized User with a reasonable explanation for not providing a date, and shall provide the anticipated shipping date at the time it becomes known to the Contractor.

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

E. If shipment shall not be made within the delivery time, the Contractor is required to notify the Authorized User in writing within one (1) Business Day of when Contractor knows the shipment shall not be made within the delivery time. This notification must include the reasons for the delay and the latest date the Vehicle shall be shipped. Should the delay not be acceptable to the Authorized User, appropriate contract default proceedings shall be initiated under Section III.5.5 *Liquidated Damages*. Failure to supply timely written notification of delay may be cause for default proceedings.

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

## III.5.5 DEFAULT ON DELIVERY

If during the Contract period an Authorized User has issued a Purchase Order on or before the Final Order Due Date for a Chassis or Body and that Chassis or Body becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B §47 *Savings/Force Majeure*), following the issuance of the Purchase Order, a substitute Chassis or Body deemed by the Authorized User to be equal to the specifications for the Chassis or Body specified in the Mini-Bid, must be supplied by Contractor if requested by the Authorized User. The price for the substitute Chassis or Body shall be equal to or less than the NYS Chassis or Body Base Price provided in the Mini-Bid.

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

## III.5.6 LIQUIDATED DAMAGES

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

One hundred and fifty dollars ($150) per seven (7) calendar day period, per Chassis, Body, or Complete Vehicle, as applicable, 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. The liquidated damages shall be prorated for a period less than seven (7) days to be an amount equal to twenty-two dollars ($22) per twenty-four (24) hour period that the delivery is delayed. 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 Vehicles.

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

## III.6 GENERAL WARRANTY REQUIREMENTS

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

A. The Contractor shall warrant the Vehicle and related Aftermarket Components 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 in New York State.

B. The Authorized User shall be responsible for all transportation, pick-up and delivery for any Vehicles procured under the Contract requiring warranty service, unless otherwise agreed upon by the Contractor. Upon Authorized User request, the Contractor may provide delivery and/or pickup service. Any fee for such service is at the discretion of the Contractor, and must be agreed upon by the Authorized User prior to service.

C. The warranty period for all coverage shall begin on the date the Vehicle is put in service by the Authorized User. The Authorized User may request a delayed warranty start date when the in-service date is after the delivery date of the Vehicle to the Authorized User. Delayed warranty forms are to be provided with the required motor Vehicle paper work. Where Vehicles 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 Vehicle, including Aftermarket Components, as provided by the Contractor at the time of delivery. All components supplied by the Contractor shall be included and covered by the basic Chassis, Body or Aftermarket Component warranty. OEM replacement parts are to be new, not remanufactured, unless the OEM has specified that a replacement part be remanufactured, or prior approval has been granted by the Authorized User. All warranties shall cover all labor and parts replacement during the warranty period. Normal wear and tear items shall be warranted in accordance with manufacturer’s standard warranty. Parts replaced under this warranty shall be of OEM quality or higher. Service shall be at a level to maintain or meet the manufacturer’s requirements to sustain the warranty. See Appendix B §58 *Warranties*. The Contractor shall furnish with each repaired Vehicle an information sheet that indicates the type of warranty work performed, parts replaced, and number of labor hours involved.

E. Any warranty requirements included in the Authorized User Specifications are considered minimum. If a minimum warranty requirement is not stated in the Authorized User Specifications, then the contractor shall guarantee such equipment against defective materials and workmanship for a period of one (1) year from the in-service date, with no mileage limitation. If the manufacturer's standard warranty exceeds the warranty stated in the Authorized User Specifications, or the minimum one (1) year warranty stated herein, then the manufacturer's standard warranty shall apply.

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

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

### III.6.1 WARRANTY REPAIR BY AUTHORIZED USERS

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

## III.7 POST-DELIVERY SERVICE

Post-delivery service at locations authorized by the Vehicle 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 locations authorized by the Vehicle OEM.

## III.8 TRAINING

If requested by the Authorized User, complete training for each Vehicle 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 be sufficient to update 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 Vehicle, that are normally available from the OEM, shall be provided to the Authorized User at no additional charge.

## III.9 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 Contractor hereby certifies and

warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this contract, shall comply with the specifications and provisions of NYECL §19 0323, and 6 NYCRR Parts 248 and 249.

# SECTION IV. GENERAL PROVISIONS

## IV.1 CAPTIONS

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

## IV.2 SEVERABILITY

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

## IV.3 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Agreement shall bind such party.

## IV.4 NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement. Contact information for the designated individuals shall be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which shall be posted on the OGS website.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor shall be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

## IV.5 ENTIRE AGREEMENT

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B §27 *Modification of Contract Terms*, and §32 *Purchase Orders*, no preprinted terms or conditions on a Purchase Order issued by an Authorized User which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor shall have any force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

The parties further hereby certify that original copies of this executed and approved signature page shall be affixed to exact copies of this Agreement being executed simultaneously herewith.

**CONTRACTOR**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Company Name: _____

Federal ID: _____

NYS Vendor ID _____

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Office of General Services

**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

**Notary Public Registration No.**_____**State**_____

# APPENDIX A

# STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

January 2014

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**18. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>**. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# 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 Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

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

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

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

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

5. **Contract Letter** A letter to the successful Bidder indicating acceptance of its Bid in response to a Solicitation. Unless otherwise specified, the issuance of a letter of acceptance forms a Contract but is not an order for Product, and the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**gg. STATE** State of New York.

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

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

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

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

## BID SUBMISSION

**3. INTERNATIONAL BIDDING** All Bids, including all information and Product required by the Solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be

expressed, and all payments shall be made, in United States Dollars ($US). Any Bids submitted which do not meet the above criteria will be rejected.

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

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

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

**6. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Solicitation. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

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

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

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

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

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

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

**7. CONFIDENTIAL/TRADE SECRET MATERIALS**

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

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

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

**a. PREVAILING WAGE RATE APPLICABLE TO BIDS** A copy of the applicable prevailing wage rate schedule is attached to the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

**b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep

informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

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

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

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

**iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

**iv. Day's Labor** No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

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

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

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

**9. TAXES**

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

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

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

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

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

**12. PRODUCT REFERENCES**

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

**b. Discrepancies in References** In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

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

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

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

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

**15. PRICING**

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

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

**c. "No Charge" Bid** When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid "no charge" on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

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

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

**f. Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

**g. Specific price decreases:**

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

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

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

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

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

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

**16. DRAWINGS**

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

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

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

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

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

**19. SAMPLES**

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

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

**b. Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

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

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

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

## BID EVALUATION

**20. BID EVALUATION** The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

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

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

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

## TERMS & CONDITIONS

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

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

**26. PARTICIPATION IN CENTRALIZED CONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

With respect to any specific quantity stated in the Contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

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

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

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

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

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

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

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

**34. SHIPPING/RECEIPT OF PRODUCT**

**a. Packaging** Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

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

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

**35. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

**37. PRODUCT SUBSTITUTION** In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for termination of Contract.

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

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

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

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

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

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

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

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

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

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

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

**46. TERMINATION**

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

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

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

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

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

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

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

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

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

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

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

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

a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

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

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

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

**48. <u>CONTRACT INVOICING</u>**

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

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

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

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

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

**49. DEFAULT – AUTHORIZED USER**

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

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

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

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

**50. PROMPT PAYMENTS**

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

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

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

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

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

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

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

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

**d. Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted

for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

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

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

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

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

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User representative.

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

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

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

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

**58. WARRANTIES**

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

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

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

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

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

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

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

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

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

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

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

**e. Date/Time Warranty** Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS**

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

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

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

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

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

- Processing Capacity - 10 copies per Site

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

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

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

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

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

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

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

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

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

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

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

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

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

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

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

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

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

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

**a. Definitions**

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

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

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

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

**(i) Existing Products**:

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

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

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

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

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

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

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

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

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

**70. CHANGES TO PRODUCT OR SERVICE OFFERINGS**

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

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

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

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

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

**71. NO HARDSTOP/PASSIVE LICENSE MONITORING**

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all upgrades do not and will not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

**72. SOURCE CODE ESCROW FOR LICENSED PRODUCT**

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such Source Code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

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

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# Appendix C:

## *Class 3-8 Vehicles Contract Documents*:

**Number 1:** ***Contractor Information***

**Number 2:** ***Report of Contract Usage***

**Number 3:** ***Insurance Requirements***

**Number 4:** ***Contract Modification Procedure***

**Number 5:** ***Vehicle Marketplace Forms***

# Appendix C: Number 1: *Contractor Information*

| Contract # / MWBE/SB | Contractor & Address | Centralized Contract Contact | Federal ID<br>NYS Vendor ID |
|---|---|---|---|
| **NYS Contract**:<br>PC12345<br>WBE | Business Name<br>Street Address<br>City, State, ZIP | Name:<br>Title:<br>Phone:<br>Toll Free:<br>Fax:<br>Email: | **Federal ID**<br>00-0000000<br><br>**NYS Vendor ID**<br>1000001234 |
| **Business Hours:** M-F, 8AM-5PM | | | |

**ADDITIONAL CONTACTS**
**(Sales Questions, Emergencies After Business Hours, and Contact Person for Mini-Bids)**

| **Sales Questions and Contact Person for Mini-Bids:** | **Emergencies After Business Hours** |
|---|---|
| Name:<br>Title:<br>Phone:<br>Toll Free:<br>Fax:<br>Email: | Name:<br>Title:<br>Phone:<br>Toll Free:<br>Fax:<br>Email: |

**PAYMENT/ORDERING INFORMATION**

| | |
|---|---|
| Does Contractor offer Electronic Access Ordering (EDI)? | |
| Does Contractor offer Prompt Payment Discounts? | |

**NYS MINIMUM CHASSIS DISCOUNTS**

The Contractor shall offer the following Chassis Models at the NYS Minimum Discount(s) listed below for Chassis purchased under the Contract.

| Make | Model | NYS Minimum Discount |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

## VEHICLES OFFERED

The OEM Product Line(s) that will be offered by the Contractor business, and third party Dealers under the Contract are listed below.

| Dealer Business Name | Dealer Business Address | Dealer Contact Information | Chassis OEM Product Line(s) Offered | Body OEM Product Line(s) Offered | Body Types Offered |
|---|---|---|---|---|---|
| Example Business | 120 Main St.<br>City, NY 12422 | John Doe<br>Phone: (518) 555-5555<br>Email: John.doe@example.com | | | |
| | | | | | |
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# Group 40500-22904, VEHICLES, Class 3-8

## Appendix C: Number 2: *Report of Contract Usage*

***DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.***

**Enter Contractor information below.**

| | |
|---|---|
| **Contract Group & Award Number:** | **Group 40500, Award 22904** |
| **Contract Number:** | |
| **Contract Sales Period:** | |
| **Contractor Company Name:** | |
| **Contact Name:** | |
| **Contact E-Mail:** | |
| **Contact Phone Number:** | |

GROUP 40500-22904 VEHICLES, Class 3-8 (Statewide)

## Report of Contract Usage - Vehicle Data

***DO NOT ADD, REMOVE OR REARRAGE ANY COLUMNS OR ROWS.***

| Contract Number | Mini-Bid Number | Contractor Order Number | Vehicle Order Date | Order Cancellation Date (if applicable) | Authorized User Purchase Order Number | Authorized User Entity Name | Region/ Facility/ Location Name (if applicable) | Indicate "State" or "Non-State" Entity (see "State Agency" tab) | Ship to County | Equipment Type |
|---|---|---|---|---|---|---|---|---|---|---|
| PC12345 | T15060001 | 1234 | 6/15/2015 | 8/15/2015 | 7891011 | NYS Department of Transportation | DOT Region 5 Buffalo | State | Erie | Chassis |
| PC12345 | T15060002 | 1235 | 7/15/2015 | | 12345 | Albany County | Department of Public Works | Non-State | Albany | Body |
| PC12345 | T15060003 | 1236 | 7/18/2015 | | 99810 | Saratoga County | | Non-State | Saratoga | Complete Vehicle |

GROUP 40500-22904 VEHICLES, Class 3-8 (Statewide)

| **Equipment Description** | **Chassis Model Year** (if applicable) | **Chassis OEM/Make** (if applicable) | **Chassis Model/Model Code** (if applicable) | **VIN** (if applicable) | **Body OEM/Make** (if applicable) | **Body Model/Model Code** (if applicable) | **Vehicle GVWR** (if applicable) | **Chassis Base MSRP** (including Options + all OEM fees) | **NYS Chassis Discount** | **NYS Chassis Base Price** |
|---|---|---|---|---|---|---|---|---|---|---|
| 20k Chassis Cab | 2016 | Navistar International | 7300 SFA 4X4 | 11223344556677800 | N/A | N/A | 37,000 | $60,000.00 | 5.00 | $57,000.00 |
| Tandem Axle Dump Body | 2016 | N/A | N/A | | Viking | Proline 1415LW | | | | $0.00 |
| Tandem Axle Dump Truck | 2016 | Navistar International | 7300 SFA 4X4 | 11223344556677899 | Viking | Proline 1415LW | 48,000 | $60,000.00 | 5.00 | $57,000.00 |

GROUP 40500-22904 VEHICLES, Class 3-8 (Statewide)

| NYS Aftermarket Component Price (Chassis) | NYS Contract Price (Chassis) | Total number of Chassis | Total NYS Contract Price (Chassis) | NYS Body Base Price (including Options + all OEM fees) | NYS Aftermarket Component Price (Body) | NYS Contract Price (Body) | Total number of Bodies | Total NYS Contract Price (Bodies) | Delivery Charge | Total NYS Contract Price for Vehicles |
|---|---|---|---|---|---|---|---|---|---|---|
| $1,000.00 | $58,000.00 | 2 | $116,000.00 | | | $0.00 | | $0.00 | $400.00 | $116,400.00 |
| | $0.00 | | | $45,000.00 | $1,000.00 | $46,000.00 | 2 | $92,000.00 | $400.00 | $92,400.00 |
| $1,000.00 | $58,000.00 | 2 | $116,000.00 | $45,000.00 | $1,000.00 | $46,000.00 | 2 | $92,000.00 | $400.00 | $208,400.00 |

# Appendix C: Number 3: *Insurance Requirements*

The prospective awardee shall be required to procure, at its sole cost and expense, all insurance required by this Section and, unless otherwise required by this Section, provide proof of the same within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation. In addition, following award of any Contract resulting from this solicitation, the Contractor shall procure, at its sole cost and expense, and maintain in force at all times during the term of any Contract resulting from this solicitation, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy with an insurer rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. After the initial submission of proof of coverage, the Contractor shall be required to provide proof of the coverage required by this Section within three (3) business days of request.

The prospective awardee/Contractor shall deliver to OGS evidence of the insurance required by this Section in a form acceptable to OGS. Insurance must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not, and shall not be construed to, relieve the prospective awardee/Contractor of any obligations, responsibilities or liabilities under this solicitation or any Contract resulting from this solicitation.

1. General Conditions

**A. Conditions Applicable to Insurance**

All policies of insurance required by this solicitation, and any Contract resulting from this solicitation, must meet the following requirements:

1. ***Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the prospective awardee/Contractor are specified in Paragraph B ***Insurance Requirements*** below.
2. ***Policy Forms.*** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
3. ***Certificates of Insurance/Notices. The prospective awardee/Contractor shall provide a Certificate or Certificates of Insurance and required amendatory endorsements, in a form satisfactory to OGS, within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation and, thereafter, within three (3) business days of request. Certificates shall reference the solicitation and/or Contract Number. Certificates and endorsements must name: The New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Albany, New York 12242 as the Entity Requesting Proof of Coverage (The Entity being listed as the Certificate Holder). Certificates and endorsements shall be mailed to The New York State Office of General Services, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, New York 12242.***

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior, written notice except for non-payment, in which case, notice shall be provided as required by law to OGS. The prospective awardee/Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Certificates of Insurance shall:

- Be in the form acceptable to OGS (ie: an Acord);
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this solicitation, or any Contract resulting from this solicitation;
- Specify the Additional Insureds and Named Insured as required herein;
- Refer to this solicitation, and/or any Contract resulting from this solicitation, by number and any other attachments on the face of the certificate; and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.

4. ***Primary Coverage.*** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation for any claim arising from the Contractor's work under any Contract resulting from this solicitation, or as a result of the Contractor's activities. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services or any entity authorized by law or regulation to use any Contract resulting from this solicitation shall be excess of and shall not contribute with the Contractor's insurance.

5. ***Policy Renewal/Expiration.*** At least thirty (30) days prior to the expiration of any policy required by this solicitation, or any Contract resulting from this solicitation, evidence of renewal or replacement policies of insurance with terms no less favorable than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of any Contract resulting from this solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this solicitation, or any Contract resulting from this solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this solicitation or any Contract resulting from this solcitation, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under any Contract resulting from this solicitation and/or treat such failure as a material breach or default of any Contract resulting from this solicitation. In the event of such a material breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to the People of the State of New York, the New York State Office of General Services or any entity authorized by law or regulation to use any Contract resulting from this solicitation. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of any Contract resulting from this solicitation, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by any Contract resulting from this solicitation or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of any Contract resulting from this solicitation and no liability shall be incurred by or arise against the People of the State of New York, the New York State Office of General Services or any entity authorized by law or regulation to use any Contract resulting from this solicitation, or their officers agents and employees for lost profits or any other damages.

6. ***Self-Insured Retention/Deductibles.*** Certificates of Insurance must indicate deductibles or self-insured retentions above $100,000, which are subject to approval from OGS, which shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. ***Subcontractors.*** During the term of any Contract resulting from this solicitation, should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of any Contract resulting from this solicitation the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS in accordance with the requirements of this Section.

All insurance required by this solicitation, and any Contract resulting from this solicitation, shall name The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities for both Premises Operations and Products/Completed Operations. Additional Insured Endorsements shall be provided within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation and, thereafter, within three (3) business days of request to OGS, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242. The additional insured requirement does not apply to Workers' Compensation and Disability coverage.

**B. Insurance Requirements**

The Contractor, throughout the term of any Contract resulting from this solicitation, or as otherwise required by any Contract resulting from this solicitation, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by this terms of this solicitation, or any Contract resulting from this solicitation, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. **Commercial General Liability Insurance** with a limit of not less than $2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

    - General Aggregate $2,000,000
    - Products – Completed Operations $2,000,000
    - Personal and Advertising Injury $1,000,000
    - Each Occurrence $2,000,000
    - Damage to Rented Premises-$50,000.00
    - Medical Expense-$5,000.00

    Coverage shall include, but not be limited to, the following:

    - premises liability;
    - independent contractors;
    - blanket contractual liability, including tort liability of another assumed in a contract;
    - defense and/or indemnification obligations, including obligations assumed under this solicitation or any Contract resulting from this solicitation;
    - cross liability for additional insureds;
    - products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by this solicitation or any Contract resulting from this solicitation;

- explosion, collapse, and underground hazards;
- contractor means and methods; and
- liability resulting from Section 240 and 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

a. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B); and

b. Waiver of Subrogation Endorsement.

2. **Business Automobile Liability Insurance** covering liability arising out of any automobile in connection with the work required under this solicitation or any Contract resulting from this solicitation, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least **$2,000,000.00** each accident and shall name The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies. If the contract involves the removal of hazardous waste from the project site or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.

   In the event that the Contractor does not own, lease, or hire any vehicles to fulfill the requirements of the Contract, the Contractor must attest to that fact and does not need to obtain business automobile liability insurance. If, however, during the term of the Contract, the Contractor acquires, leases, or hires a vehicle that will be used to fulfill the requirements of the Contract, the Contractor must obtain business automobile liability insurance that meets all of the requirements set forth in the Contract and provide evidence of such coverage no more than 10 days following the date automobile liability insurance coverage is bound.

3. **Garage Liability Insurance** including coverage for all garage operations of the Contractor, including premises and operations; products and completed operations, and garagekeepers liability coverage with minimum limits of:

   - Garage liability insurance-$1,000,000.00 for garage operations; and
   - Garagekeepers liability-$100,000.00 per vehicle in custody, $500,000.00 aggregate on a "direct primary" basis.

   The policy shall name The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds.

4. **Environmental Liability Insurance** If the work involves abatement, removal, repair, replacement,enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous material or substance including asbestos, lead, fungus and those as defined by applicable state and federal laws and regulations, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the Contract, and for two years after completion hereof, pollution legal liability insurance with limits not less than $10,000,000.00, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal,

seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the State, OGS or any authorized user arising from the Contractor's work. The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds and the coverage shall be primary.

This requirement applies to mold as well, if excluded in the Commercial General Liability policy.

If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48 03 06 or CA 00 12 03 06) as well as proof od MCS 90.

Waiver of Subrogation. For the coverages required above, the prospective awardee/Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds. Waiver of Subrogation Endorsements shall be provided within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation and, thereafter, within three (3) business days of request to OGS, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

5. **Workers' Compensation Insurance and Disability Benefits Requirements:**

   The New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

**Proof of Compliance with Workers' Compensation Coverage Requirements:**

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or

B) Obtain such coverage from an insurance carrier; or

C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

Notwithstanding any other requirements of this Section, a contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to The New York Office of General Services **at the time of bid submission:**

A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb. ny.gov); (Reference applicable IFB/RFP and Group #s on the form.)

B) Certificate of Workers' Compensation Insurance:

1) Form C-105.2 (9/07) if coverage is provided by the Contractor's insurance carrier, the Contractor must request its carrier to send this form to the New York State Office of General Services, or

2) Form U-26.3 if coverage is provided by the State Insurance Fund, the Contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.

C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.

D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Contractor's Group Self-Insurance Administrator.

**Proof of Compliance with Disability Benefits Coverage Requirements:**

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:

A) Be legally exempt from obtaining disability benefits coverage; or

B) Obtain such coverage from an insurance carrier; or

C) Be a Board-approved self-insured employer.

Notwithstanding any other requirements of this Section, a contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the New York State Office of General Services **at the time of bid submission**:

A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb. ny.gov); (Reference applicable IFB/RFP and Group #s on the form.)

B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or

C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

# Appendix C: Number 4: *Contract Modification Procedure*

The following guidelines are subject to change at the discretion of OGS. A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form.

**(1) TYPES OF CONTRACT MODIFICATIONS**: In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.

**a)** **UPDATES**: "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.

**b)** **AMENDMENTS**: "Amendments" are 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. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.

**(2) CONTRACTOR'S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:

- request additional information
- reject Contract modifications
- remove Products from Contract modification requests
- request additional discounts for new or existing Products

**(3) PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Price level increases
- Price level decreases
- Products being added

**(4) SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.

**(5) SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

STATE OF NEW YORK
EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
Corning Tower – 38th Floor
Empire State Plaza
Albany, New York 12242

# CONTRACT MODIFICATION FORM

| **DATE OF THIS SUBMISSION:** | **DATE DOCUMENTATION EMAILED:** |
|---|---|
| **CONTRACTOR NAME:**_____<br>OGS GROUP #:_____<br>OGS AWARD #:_____<br>OGS CONTRACT #:_____ | **CONTRACTOR CONTACT:**<br>Name:_____<br>Phone #:_____<br>Email:_____ |
| **NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).** | |

**INSTRUCTIONS:**

1. This form is to be used for all Contract modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price level information for the update electronically via e-mail in either an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request.
5. The Contract modification request must be accompanied by the relevant current contract pricing discount information.

***COMPLETE STATEMENTS 1 THROUGH 5 BELOW:***

| | |
|---|---|
| 1. This request is for an:<br>_____ Update<br>_____ Amendment<br><br>See Contract Modification Procedure for an explanation of these terms. | 2. The intent of this submittal is to request:<br>_____ Addition of new products or services<br>_____ Deletion of products or services<br>_____ Change in pricing level<br>_____ Other Update<br>_____ Other Amendment |
| 3. All discounts are:<br>_____ GSA<br>_____ Most Favored Nation*<br>_____ Other (provide explanation)<br>_____<br>_____<br>_____<br>*Prices offered are the lowest offered to any similarly situated entity. | 4. Attached documentation includes:<br>_____ Current approved GSA (labeled "For information only")<br>_____ Current relevant Price List (labeled "For information only")<br>_____ Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract<br>_____ Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only) |

5. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to customers, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.

_____

_____

_____

_____

_____

_____

_____

**The following CORPORATE ACKNOWLEDGEMENT statement must be signed by an individual authorized to sign on behalf of Contractor for the modification being requested in this Contract Modification document. The authorizing authority's signature must be notarized.**

_____
Signature of Authorized Vendor Representative

**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 reside(s) in _____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, (☐ a partnership, ☐ a limited liability company):** _he is the _____ of _____, the *corporation/ partnership/ Limited Liability Company* described in the above instrument; that, _he is authorized to execute the foregoing instrument on behalf of the *corporation/ partnership/ 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 *corporation/ partnership/ Limited Liability Company* as the act and deed of said *corporation/ partnership/ Limited Liability Company*.

_____
Signature of Notary Public

**Notary Public**
**Registration No.**_____ **State of:**_____

**OGS APPROVAL:** Approved _____ Approved as amended _____ Disapproved_____

Signature:_____ Date:_____

Printed Name:_____ Title_____

## Appendix C: Number 5: *Vehicle Marketplace Forms*

The Contractor and Authorized Users, as applicable, shall use Form A (Class 3-8): *Mini-Bid Request*, Form B (Class 3-8): *Mini-Bid Response* and Form C (Class 3-8): *Mini-Bid Report of Use*, when utilizing the Vehicle Marketplace for the procurement of Vehicles under the Contract. The below list of items will be represented in an Excel form for use in the Vehicle Marketplace. OGS reserves the right to amend the list of items set forth in this Appendix in non-material and substantive ways without seeking a Contract amendment. The Vehicle Marketplace process steps will remain the same as described in Contract Section II.11 *Procurement Method*, Paragraph C *Vehicle Marketplace*.

# Form A: Mini-Bid Request

(Placeholder. Form will be placed in final Contract Template)

# Form B: Mini-Bid Response

(Placeholder. Form will be placed in final Contract Template)

# Form C: Mini-Bid Report of Use

(Placeholder. Form will be placed in final Contract Template)