STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES

New York State Contract # **PC67295**

(for State use only)

CENTRALIZED CONTRACT FOR THE ACQUISITION OF

Light Duty Vehicles (Statewide)

BETWEEN

THE NEW YORK STATE OFFICE OF GENERAL SERVICES

AND

KINGSTON AUTOMOTIVE LLC

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 Kingston Automotive LLC. (herein after "Contractor") with offices at 140 NY-28 Kingston, NY 12401. OGS and the Contractor are collectively referred to herein as "the Parties."

WITNESSETH:

WHEREAS, OGS issued a solicitation referenced as Solicitation #22898, for Light Duty Vehicles (Statewide), which was advertised in the September 25, 2014 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 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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SECTION I: SCOPE AND GENERAL INFORMATION

I.1 SCOPE

This Contract sets forth the terms and conditions governing the acquisition (purchase) of new Light Duty Vehicles and related Options and Aftermarket Components, as specified herein. This centralized Contract is for use by Authorized Users, as defined in State Finance Law §163(1)(k), 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 Section II.18 *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 Product Line and minimum NYS Discount(s) set forth in Appendix C: *Light Duty Vehicles Documents*, Number 1: *Contractor Information*. Vehicle acquisition shall be via an Authorized User competitive Mini-Bid process (see Section II.12 *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. In addition, the following definitions shall apply:

"Aftermarket Component(s)" shall mean any accessory, equipment, or feature that is manufactured by an OEM other than the Vehicle OEM, and is not included in the OEM Product Line, and that may be installed on the Vehicle 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 State Finance Law §163(1)(k).

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

"Base MSRP" shall refer to the MSRP of the Vehicle, including other applicable OEM fees (e.g. destination fees), but exclusive of Options and Aftermarket Components.

"Base NYS Vehicle Price" shall mean the amount charged to the Authorized User for a Vehicle, exclusive of Aftermarket Components. The Base NYS Vehicle Price does not include the Delivery Charge.

"Base Vehicle MSRP" shall refer to the total of the Base MSRP and Options. The Base Vehicle MSRP does not include Aftermarket Components 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.

"Contract" as defined in Appendix B.

"Contractor" as defined in Appendix B.

"Dealer(s)" shall refer to alternate distribution sources for an OEM that are authorized and designated by said OEM, subject to approval by New York State.

"Dealer Invoice" shall refer to the Contractor document which lists, at a minimum,

(1) the make and model of the Vehicle bid for a Mini-Bid;

(2) the MSRP of the standard base Vehicle bid for the Mini-Bid, excluding Options, other applicable OEM fees (e.g. destination fees), and Aftermarket Components;

(3) the MSRP and Option code for each Option included in the Vehicle bid for a Mini-Bid; and

(4) The total Base Vehicle MSRP of the Vehicle bid for a Mini-Bid

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

"Delivery Charge" shall mean the total amount charged to the Authorized User for shipment of the Vehicle(s) from the Delivery Origin to the location(s) designated by the Authorized User on Form A: *Mini-Bid Request*, and 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 in the Mini-Bid). The Delivery Origin shall be expressed as the applicable NYS County on Form B: *Mini-Bid Response.*

"Executive Agency" 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 for a vehicle, in order to have the Vehicle built before Model Year Build-Out Date.

"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.

"Light Duty Vehicle(s)" shall mean a mobile machine that is primarily used to transport passengers and cargo (e.g., cars, vans, SUVs, pickup trucks), with a GVWR less than or equal to 10,000 pounds, (i.e., Class 1 through Class 2 Vehicles, as designated by the U.S. Department of Transportation). Low Speed Vehicles (i.e., a limited use automobile or truck that has a maximum speed greater than 20 miles per hour (mph) but not more than 25 mph and has a gross vehicle weight rating less than 3,000 pounds), are excluded from the definition of Light Duty Vehicles.

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

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

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

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

"Make" shall refer to the OEM company name of a Vehicle Model (e.g., Ford, Chevrolet, Dodge).

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

"Model" shall refer to a particular brand of Vehicle sold by an OEM (e.g., Taurus, Tahoe, Grand Caravan).

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

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

"Model Year Build-Out Date" shall mean the last date of manufacture for the Model Year of a vehicle.

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

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

"NYS Aftermarket Component Price" shall mean the total amount charged to the Authorized User for Aftermarket Components added to a Vehicle, inclusive of installation fees.

"NYS Contract Price for the Vehicle" shall mean the amount charged to the Authorized User for each Vehicle, inclusive of Aftermarket Components. The NYS Contract Price for the Vehicle does not include Delivery Charge.

"NYS Vehicle Discount" shall mean the percentage amount by which the Base Vehicle MSRP is 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 Vehicle Specifications" shall refer to the document(s) issued by the Vehicle manufacturer which lists, among other things,

(1) All standard equipment for the Vehicle;

(2) All Options available for the Vehicle, including the code number for each Option; and

(3) The MSRP for the Vehicle and available Options.

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

"Options" shall refer to an accessory, equipment, or feature that are available from the OEM and that can be added to, or deleted from, a Vehicle.

"Pre-Existing Inventory Vehicle(s)" shall refer to Vehicle(s) requested in a Mini-Bid that were manufactured by the OEM prior to posting of the Mini-Bid. Pre-Existing Inventory Vehicle(s) may either be located at the Contractor's business location, or other Delivery Origin.

"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).

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

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

"Total NYS Contract Price for Mini-Bid" shall mean the amount that will be evaluated for the Mini-Bid. Automatically calculated on *Mini-Bid Response Price Worksheet* as follows:

(1) Vehicle(s) Built to Specifications: Total NYS Contract Price for Vehicle(s) plus the Total Delivery Charge for Vehicles.

(2) Pre-Existing Inventory Vehicle(s): NYS Contract Price for the Vehicle plus Delivery Charge

"Total NYS Contract Price for Vehicle(s)" shall mean the NYS Contract Price for the Vehicle multiplied by the Total number of Vehicles, for a Mini-Bid for Vehicle(s) Built to Specifications.

"Vehicle(s)" shall mean all components of the Light Duty Vehicle(s) provided under a Mini-Mid, including Aftermarket Components.

"Vehicle(s) Built to Specifications" shall refer to Vehicle(s) requested in a Mini-Bid that will be ordered directly from the OEM and built to the specifications identified by the Authorized User on Form A: *Mini-Bid Request*.

"Vehicle Marketplace" shall refer to the OGS processes for conducting a Mini-Bid under this Contract, as set forth in Section II.12 *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 July 2014, 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.3 APPENDIX C

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

II.4 INTENTIONALLY OMITTED

II.5 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*;
D. Appendix C: *Light Duty Vehicles Documents*; and

II.6 MERCURY ADDED CONSUMER PRODUCTS

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

II.7 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.8 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.9 AUTHORIZED DEALER CERTIFICATION

Contractor certifies that it is an authorized Dealer of the manufacturer of the relevant Product. If an authorized Dealer, Contractor certifies that the manufacturer has agreed to supply the Dealer with all quantities of Product required by the Dealer in fulfillment of its obligations under any resultant Contract with the State.

II.10 INSURANCE REQUIREMENTS

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

II.11 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 will 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.12 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: *Light Duty Vehicles 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 will review the Contracts and associated NYS Vehicle Discounts on the OGS website under Contract Award 22898.

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: *Light Duty Vehicles 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 will complete Form A: *Mini-Bid Request*, and submit the completed Form A: *Mini-Bid Request* to OGS for processing to NYSPro.VehicleMarketPlace@ogs.ny.gov, or other address designated by OGS. Form A: *Mini-Bid Request* will 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, addition of Options or Aftermarket components, and interior/exterior colors), Aftermarket Component Provider, delivery requirements and locations, and any additional required terms for the Mini-Bid. See, also section III.1 *Vehicle Requirements* for minimum Vehicle requirements.

2. Upon completion of OGS review of the Form A: *Mini-Bid Request*, OGS will assign a Mini-Bid Number to the request. OGS will provide notification to the Contractors of the Mini-Bid 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/) within one (1) to three (3) business days of approval of Form A: *Mini-Bid Request*, as determined by whether or not the Authorized User has designated the request as “expedited,”

   b. Email distribution. An email notification of the Vehicle Marketplace posting shall be distributed to all Contractors under Award 22898 within one (1) hour of the posting. Such notification shall be sent to the email address(es) set forth in Appendix C: *Light Duty Vehicles Documents*: Number 1: *Contractor Information*. The Contractor shall be responsible for providing updated email address(es) during the Contract term to the NYSPro Contract Administrator identified on the Contact Award Notification page posted at the OGS website.

   c. OGS Reservation of Rights. OGS reserves the right to aggregate the volume of Authorized User requests for Vehicles by combining requests under one Mini-Bid Number.

3. From the date of OGS posting of Form A: *Mini-Bid Request*, Contractors shall have a minimum of three (3) to five (5) business days to submit bid responses. NYSPro reserves the right to set bid submittal deadlines that are longer than three (3) to five (5) business days. The bid 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 at the close of business on the bid submittal deadline date.

   A Contractor must provide bid responses at the Vehicle Marketplace website on Form B: *Mini-Bid Response*. Form B: *Mini-Bid Response* includes a fillable form section for general Contractor and Vehicle information, and an Excel workbook, *Mini-Bid Response Price Worksheet*, for Vehicle pricing information. A Contractor submitting a bid for a Mini-Bid must save the blank Excel *Mini-Bid Response Price Worksheet* provided at the Vehicle Marketplace website to its computer, enter the required Vehicle and

pricing information, and then upload the completed worksheet to the Vehicle Marketplace. The following two (2) *Mini-Bid Response Price Worksheets* will be provided at the Vehicle Marketplace website: (1) for Vehicle(s) Built to Specifications; and, (2) for Pre-Existing Inventory Vehicles. It shall be the Contractor's responsibility to ensure that the correct price worksheet is submitted for a Mini-Bid.

A bid submitted in a format other than Form B: *Mini-Bid Response*, and the applicable *Mini-Bid Response Price Worksheet* will be considered unresponsive and shall be rejected.

4. Timeframe for offers in Mini-Bids.
   a. Vehicle(s) Built to Specifications. The timeframe for offers shall be as specified in Appendix B, §25, Timeframe for Offers.
   b. Pre-Existing Inventory Vehicles. The timeframe during which offers shall remain firm and cannot be withdrawn shall be ten (10) calendar days from the date of the Mini-Bid's bid opening, or such other period of time as specified in the Mini-Bid. The ten (10) calendar day period commences on the calendar day immediately following the date of the Mini-Bid's bid opening. In order for a bid to be responsive to a Mini-Bid involving Pre-Existing Inventory Vehicles Contractor is required to retain the Pre-Existing Inventory Vehicles for the ten (10) calendar day period, or such other period of time as set forth in the Mini-Bid, bids are required to remain firm and cannot be withdrawn. Contractor's failure to retain the Pre-Existing Inventory Vehicles for such period of time shall render Contractor's bid non-responsive and the bid shall be disqualified.
5. OGS shall send all bids received in response to a Mini-Bid via email to the Authorized User contact designated on Form A: *Mini-Bid Request* by the close of business on the first business day following the bid 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 five (5) business days of receipt of bids from OGS.
6. The Authorized User shall evaluate all bids received in response to the Mini-Bid. The Contractor shall, upon request of the Authorized User, submit a Dealer Invoice and OEM specifications to the Authorized User prior to award of the Mini-Bid. Award shall be made by the Authorized User to a responsive bidder based on the requirements specified by the Authorized User on Form A: *Mini-Bid Request*. The Authorized User must note justification of method of award on Form C: *Mini-Bid Procurement Record*. If at least three (3) bids are not submitted, the Authorized User must justify the reasonableness of award on Form C: *Mini-Bid Report of Use.*
7. Upon award, the Authorized User shall issue notification of award or non-award to all Bidders. Upon notification of award for Vehicle(s) Built to Specifications, a Mini-Bid awardee shall provide the Authorized User with either the Final Order Date for the Vehicle(s), or notification that the date is "TBD," (if the date has not yet been set by the OEM).
8. Upon 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.13.1 *Purchase Orders)*. In addition, the Authorized User must provide Form A: *Mini-Bid Request*, Form B: *Mini-Bid Response* and Form C: *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 bids received in response to the solicitation;
2. Withdraw the solicitation at any time, at the Agency's sole discretion;
3. Make an award under the solicitation in whole or in part;
4. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the solicitation;

5. Seek clarifications and revisions of bids;
6. Prior to the bid opening, amend the solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the bid opening, direct Bidders to submit solicitation modifications addressing subsequent solicitation amendments;
8. Change any of the schedule dates with notification through the Vehicle Marketplace;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
10. Waive any requirements that are not material;
11. Utilize any and all ideas submitted in the bids received;
12. Adopt all or any part of a Bidder's bid in selecting the optimum configuration.
13. Negotiate with the Bidder responding to the solicitation within the solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' bids;
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 Bidder's bid and/or to determine a Bidder's compliance with the requirements of the solicitation;
15. Select and award the Mini-Bid to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the solicitation requirements;
16. Use bid information obtained through site visits, management interviews, and the state's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the solicitation.

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 Light Duty Vehicles that, at the sole discretion of the State, will not be approved for purchase by an Authorized User (e.g., Vehicles which are considered to be "luxury sports cars" or "exotic cars").

II.13 PURCHASE ORDERS AND INVOICING

All Purchase Orders and invoices/vouchers shall include the following information. All matters pertaining to registration and licensing of a Vehicle are the responsibility of the ordering Authorized User.

II.13.1 PURCHASE ORDERS

Authorized User Purchase Orders are to include the following information:

A. Contract Number;
B. Vehicle Marketplace Mini-Bid Number;
C. Make, Model and Model Code of the Vehicle(s);
D. Option code(s) and descriptions, if applicable;
E. Aftermarket Components part numbers and descriptions, if applicable;
F. NYS Contract Price for the Vehicle;
G. Number of Vehicles;
H. Total NYS Contract Price (number of Vehicles x NYS Contract Price for the Vehicle(s)); and
I. Liquidated damages, if any.

II.13.2 INVOICES

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

Invoices shall include, at a minimum, the following information:

A. Contract Number;
B. Vehicle Marketplace Mini-Bid Number;
C. Make, Model and Model Code of the Vehicle(s);
D. Option code(s) and descriptions, if applicable;
E. Aftermarket Components part numbers and descriptions, if applicable;
F. Calculation of the total NYS Contract Price, including:
    1. Base Vehicle MSRP;
    2. NYS Vehicle Discount;
    3. Base NYS Vehicle Price;
    4. NYS Aftermarket Components Price;
    5. Delivery Charge;
    6. NYS Contract Price for the Vehicle;
    7. Number of Vehicles; and
    8. Total NYS Contract Price (Number of Vehicles x NYS Contract Price for the Vehicle)
G. Breakdown of Liquidated damages, if any (see III.3.6 *Liquidated Damages*).

II.14 CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the Vehicles have been delivered and accepted in accordance with Section III.3 *Delivery*. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section II.13 *Purchase Orders and Invoicing*, including description of the Vehicles as well as Vendor ID. See also Appendix B §49 *Contract Invoicing*.

II.15 MSRP VERIFICATION

An Authorized User may verify MSRP information, especially for Options and Aftermarket Components. The Contractor shall, upon request by the Authorized User, provide a copy of a Dealer Invoice and the most recently published OEM Specifications for each Vehicle in the Mini-Bid.

II.16 “OGS OR LESS” GUIDELINES APPLY

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

1. Lower in price

    -And/Or-

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

State agencies are reminded that they must provide the Contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet

all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit.

II.17 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. 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: *Light Duty Vehicles 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 without acquiring the approval of the Office of the State Comptroller or the Attorney General.

II.18 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 OGS NYSPro Customer Services at 518-474-6717.

II.19 CONTRACT PERIOD AND RENEWALS

The Contract(s) shall be in effect for three (3) years, unless terminated in accordance with the contractual provisions. 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 one 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.19.1 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 including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. 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.20 POOR PERFORMANCE

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

Office of General Services New York State Procurement 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.21 CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B §13 *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by NYSPro prior to issuance.

II.22 OVERLAPPING CONTRACT ITEMS

Products/services available in this Contract may also be available from other New York State contracts. Authorized Users will 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.23 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.23.1 GENERAL PROVISIONS

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("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, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

II.23.2 CONTRACT GOALS

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that this contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is however encouraged to make every good faith effort to promote and assist the participation of MWBEs who perform commercially useful functions on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: https://ny.newnycontracts.com/frontend/diversityusers.asp. Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. **Commercially Useful Function**

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

(1) the amount of work subcontracted;

(2) industry practices;

(3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;

(4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and

(5) any other relevant factors.

C. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.

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

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

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

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

(6) Other information deemed relevant to the request.

II.23.3 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. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this Section, the Contractor shall submit Form EEO 100- Staffing Plan 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. Contractor shall complete the Staffing plan form and submit it as part of their contract.

C. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")

Contractor agrees it is responsible for updating and providing notice to the OGS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

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

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

II.24 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 5: *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 §28 *Modification of Contract Terms*.

II.25 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.25.1 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section 25 *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 will be grounds for cancellation of the Contract.

II.26 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.27 PERFORMANCE AND BID BONDS

There are no bonds required for the Contract. In accordance with Appendix B §45 *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.28 WEB ACCESSABILITY

Any web-based information and applications development, or programming delivered pursuant to the contract, will 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 will be conducted by OGS and the results of such testing must be satisfactory to OGS before web-based information and applications will be considered a qualified deliverable under the contract.

II.29 ADDITIONAL REQUIREMENTS

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

The State will 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.

II.30 AMENDMENTS TO APPENDIX B

Appendix B §64, *Disputes*, is deleted in its entirety and replaced with the following language:

§64. DISPUTES

I. Policy

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration. OGS Dispute Resolution Procedures may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

II. Dispute Resolution Procedures

A. Informal Dispute Resolution Process

1. In the event there is a dispute under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the

Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

B. Formal Dispute Process

1. Definitions

   a. Filed means the complete receipt of any document by OGS before its close of business.

   b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.

   c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.

   d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.

   e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

   f. A Formal Dispute means a written objection by an Interested Party to any of the following:

      i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.

      ii. The cancellation of the solicitation or other request by OGS.

      iii. An award or proposed award of the Contract by OGS.

      iv. A termination or cancellation of an award of the Contract by OGS.

      v. Changes in the scope of the Centralized Contract by the Commissioner.

      vi. Determination of "materiality" in an instance of nonperformance or contractual breach.

      vii. vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Formal Disputes

   a. A Formal Dispute must be filed in writing with the Director of NYSPro by mail, or facsimile, using the following contact information:

Director, New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

   b. The Formal Dispute must include:

      i. Name, address, e-mail address, fax and telephone numbers of the filer.
      ii. Solicitation or Contract number.
      iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
      iv. Copies of relevant documents.
      v. Request for a ruling by the agency.
      vi. Statement as to the form of relief requested.
      vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
      viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.

5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.

6. Agency Response

   a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.

   b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.

c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

d. OGS reserves the right to consider or reject the merits of any Formal Dispute.

e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or facsimile, using the following contact information:

Chief Procurement Officer
New York State Procurement
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPro shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of NYSPro shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or Contractor to seek and pursue remedies of law through the judicial process.

SECTION III. SPECIAL TERMS AND CONDITIONS

III.1 VEHICLE REQUIREMENTS

The following shall be considered minimum Vehicle requirements. The Authorized User shall include supplemental required specifications for Vehicles specified in a Mini-Bid. Unless otherwise indicated, all items specified which are listed on the OEM Pricelist as standard or optional equipment shall be factory installed and operative. Vehicles delivered to an Authorized User in a condition considered to be below retail customer acceptance levels will not be accepted. 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. Product specified to be furnished and installed which is not available through the OEM shall conform to the standards known to that particular industry, both product and installation.

III.1.2 STANDARDS, CODES, RULES, AND REGULATIONS

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

A. Vehicle 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. Vehicle 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. Vehicle 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. Bidders are advised to verify with the OEM whether or not “NE” satisfies the CARB emissions requirements.

III.1.3 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 in the Mini-Bid. When Optional equipment is specified, all components listed in the OEM’s data book as being included with the Option shall be furnished.

Example: If the Vehicle comes with air conditioning, then it must be included with the Vehicle. Air conditioning cannot be deleted because it was not identified as required by the specifications.

III.1.4 OPTIONS

The Contractor shall provide Options, if specified by an Authorized User in a Mini-Bid, for Vehicles. The Options would normally be readily available from the “factory” when the OEM is building the vehicle and would normally be expected to be listed on the OEM Vehicle Specifications. A Contractor must offer all Options available from the OEM.

III.1.5 AFTERMARKET COMPONENTS

The Contractor shall provide Aftermarket Components, if specified by an Authorized User in a Mini-Bid, for Vehicles. 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.

III.1.6 MANUALS

Simultaneous with delivery, all Product shall be furnished with standard manuals (e.g. maintenance, parts and operational manuals) as would normally accompany such Product(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 on the OEM Specifications or Contractor-published price list.

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.1.7 DMV INSPECTION

All Vehicles must be delivered with complete NYS Inspections, unless otherwise specified by the Authorized User. In the event that a Vehicle is delivered uninspected, $250 will be deducted from the invoice by the Authorized User for each uninspected vehicle to cover the cost of the inspection and to compensate for time. The State reserves the right to cancel a Contract and/or take other action if Vehicles are not properly inspected or if the New York State Department of Motor Vehicles inspection sticker is not properly affixed to a Vehicle.

III.1.8 OEM VEHICLE SPECIFICATIONS

Contractor shall be required to furnish, without charge, OEM Vehicle Specifications pursuant to the contract, to Authorized Users who request them.

OEM Vehicle Specifications may be furnished to Authorized Users in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. Upon request, the Contractor shall assist Authorized Users in the use of OEM Vehicle Specifications.

III.1.9 AVAILABILITY OF SERVICE & REPAIR PARTS

Service and repair parts for Vehicles provided under the Contract must be available to Authorized users within New York State. Repair parts must be available on an on-demand basis to the Authorized User-designated repair facility within twenty-four (24) State business hours, unless such part is nationally backordered.

III.1.10 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 <u>not</u> be attached to the Vehicle without prior approval by the Authorized User. In any instance of violation of these restrictions the cost to the State for removal of such advertising will be deducted from Contractor's invoice.

III.2 VEHICLE PRICE

Pricing for each Vehicle provided under the Contract shall be subject to the following terms and conditions.

III.2.1 NYS VEHICLE DISCOUNT

The Contractor shall offer Vehicles purchased under the Contract at the minimum NYS Vehicle Discount(s) set forth in Appendix C: *Light Duty Vehicles Documents*: Number 1: *Contractor Information*. The NYS Vehicle Discount shall refer to the percentage amount by which the Base Vehicle MSRP is reduced for NYS Contract purchases. The Contractor may increase the minimum NYS Vehicle Discount listed in the Contract at any time during the Contract term, and may also increase the minimum NYS Vehicle Discount for Mini-Bids conducted under the Contract. The NYS Vehicle Discount may not be decreased during the Contract term. Offers of pricing greater than MSRP in a Mini-Bid shall be rejected.

III.2.2 NYS CONTRACT PRICE FOR THE VEHICLE

Unless otherwise specified by an Authorized User, the NYS Contract Price for the Vehicle shall include all customs duties and charges, all Vehicle preparation and clean-up charges, New York State motor vehicle inspection, installation charges and all other incidentals normally included with providing a Vehicle, including the manufacturer's fees (e.g., destination charges). The NYS Contract Price for the Vehicle does not include Delivery Charge. The NYS Contract Price for the Vehicle shall be calculated as set forth below See Section I.2 *Definitions*, for definitions of terms.

Description	Price
Base Vehicle MSRP	$21,500.00
NYS Vehicle Discount (Example: 5%)	- $1,075.00
Base NYS Vehicle Price	$20,425.00
NYS Aftermarket Component Price	$1,500.00
NYS Contract Price for the Vehicle	$21,925.00

III.2.3 OPTION PRICE

Options, when specified by an Authorized User, shall include any and all labor, installation, fittings, connections, etc., that might be needed to attach the Option to the Vehicle 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 MSRP for Options shall be included in the Base Vehicle MSRP, and be discounted in accordance with the NYS Vehicle Discount. Offers of pricing greater than MSRP in a Mini-Bid shall result in rejection of the bid.

When a standard Vehicle Option is being deleted, the Contractor must give the Authorized User proof of the MSRP for the Option, as shown in the OEM Specifications. If the Option is not in the OEM Specifications, the Contractor must provide documentation showing the MSRP for the Option. Any deletion must clearly be shown on the invoice and clearly show cost deduction.

III.2.4 NYS AFTERMARKET COMPONENTS PRICE

The NYS Aftermarket Components Price for Aftermarket Components specified by an Authorized User shall be a discount from MSRP, or Aftermarket Component Provider list price, if applicable. Offers of pricing greater than the MSRP or Aftermarket Component Provider list price in a Mini-Bid, if applicable, shall result in rejection of the bid. The NYS Aftermarket Components Price shall include installation at the normal, published labor rates, to install such Aftermarket Component and, labor shall not be more than what is charged to the public at large. Upon request, Contractors are required to give the Authorized Users a copy of the MSRP, or Aftermarket Component Provider list price, if applicable, for Aftermarket Components.

III.3 DELIVERY

Contractors will be required to deliver Vehicles anywhere within New York State boundaries, as designated by the Authorized User on the Purchase Order. 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. Failure to deliver within the previously agreed upon time period shall result in payment of liquidated damages in accordance with Section III.3.6 *Liquidated Damages*.

Delivery shall be made in accordance with instructions on 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, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS NYSPro.

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

Pursuant to Appendix B, §35 *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).

III.3.1 DELIVERY ALLOWANCE SCHEDULE

The following Delivery Allowance Schedule (DAS) indicates the maximum dollar amount that will be paid for delivery of a Vehicle from the Delivery Origin to the applicable Region to which the Vehicle(s) are delivered. A Contractor may include a Delivery Charge that is less than the Delivery Allowance in the bid submitted for the Mini-Bid. A bid for a Mini-Bid 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 $280. Each Contractor will only be concerned with their particular region (i.e., if the Delivery Origin is in Region 1, the only row that will be utilized is the first one).

Each October 1st, beginning with October 2015, 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 May of the year involved to the value for May 2014. **For example**, if the value for August 2015 is 253.6 and the value for August 2014 was 248.6, the DAS would increase by 2.01% (e.g., 253.6/248.6 = 1.020112631 = 2.01% rounded increase), effective October 1, 2015. The values in chart shall be rounded to the nearest five (5) dollar amount (e.g., $191 would be rounded to $190, and $196 would be rounded to $195).

DELIVERY ALLOWANCE SCHEDULE (DAS):

LOCATION OF VENDOR	Delivery to Region					
Region	**1**	**2**	**3**	**4**	**5**	**6**
1	$195	$280	$460	$535	$630	$825
2	$280	$195	$280	$280	$350	$630
3	$460	$280	$195	$280	$280	$630
4	$535	$280	$280	$195	$535	$805
5	$630	$350	$280	$535	$195	$315
6	$825	$630	$630	$805	$315	$195

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.3.2 CONDITION ON DELIVERY

If a Vehicle accepted by an Authorized User is found to have been delivered with minor deviations or improper servicing, the Contractor must arrange to have the necessary work done within 48 hours (exclusive of Saturdays, Sundays and Federal or NYS Holidays) after receipt of written notification from the Authorized User and/or NYSPro. If Contractor cannot arrange to have the necessary work done within such time period, the corrections shall be made by an entity of the Authorized User's choosing and Contractor will be required to reimburse the Authorized User for this expense within thirty (30) calendar days of request.

At point of acceptance, the Vehicle shall 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, or other OEM Dealer location that is nearest to the delivery location, the Aftermarket Component Provider (if applicable), and the point of delivery.

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, as determined by the Authorized User, may be rejected by the Authorized User.

III.3.3 DELIVERY CERTIFICATION

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

III.3.4 SHIPPING DATES AND DELIVERY TIME

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

A. Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order.

B. Contractor shall provide ordering Authorized User with anticipated shipping date of completed Vehicle with written acknowledgement of order. If the anticipated shipping date cannot be provided by the Contractor at the time of the acknowledgement of order, then the Contractor shall provide the Authorized User with a reasonable explanation for not providing a date, and will provide the anticipated shipping date at the time it becomes known to the Contractor.

C. 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.

D. If shipment will 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 will not be made within the delivery time. This notification must include the reasons for the delay and the latest date the Vehicle will be shipped. Should the delay not be acceptable to the Authorized User, appropriate contract default proceedings will be initiated under Section III.3.5 *Default On Delivery*. Failure to supply timely written notification of delay may be cause for default proceedings.

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

III.3.5 DEFAULT ON DELIVERY

If during the Contract period an Authorized User has issued a Purchase Order on or before Final Order Due Date for a Vehicle, and that Vehicle becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B §48 *Savings/Force Majeure*), following the issuance of the Purchase Order, a substitute Vehicle deemed by the Authorized User to be equal to the specifications for the Vehicle specified in the Mini-Bid, must be supplied by Contractor if requested by the Authorized User. If the Vehicle awarded in the Mini-Bid (i.e., Model

Year, Make, Model, Model Code) is not available or not deemed equal to the specifications for the Vehicle specified in the Mini-Bid, then Contractor must supply a similar vehicle that meets the specifications for the Vehicle provided in the Mini-Bid. The price for substitute Vehicles shall be equal to or less than the Base NYS Vehicle Price for the Vehicle provided in the Mini-Bid.

Alternatively, the Authorized User may, at their sole discretion, cancel the order and purchase the Vehicle from other sources. In such event the Contractor shall reimburse the Authorized User for all excess costs over the contract price.

III.3.6 LIQUIDATED DAMAGES

In the event of a delay that is within control of the Contractor, 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:

Seventy dollars ($70) per seven (7) calendar day period, per Vehicle, to compensate for delay, and other loses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time delivery was due as specified on the Purchase Order. A grace period of seven (7) calendar days commencing on and including the Purchase Order date for delivery shall be extended to the Contractor prior to the assessment of such liquidated damages. Notice is hereby given to the Contractor that, despite the extensions of the grace period herein specified, time shall be of the essence in regard to delivery of the Vehicle.

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

III.4 SERVICE

PRIOR DELIVERY SERVICING

Prior delivery service by authorized representatives of the Vehicle and equipment manufacturers must be available within New York State.

Prior to delivery, each Vehicle, unless otherwise specified by the Authorized User, shall be completely serviced by the Contractor or by an authorized Dealer of the manufacturer in a modern, properly equipped service shop. Service shall include not less than the following:

- Lubrication,
- Wash,
- Engine tune-up,
- Wheel alignment,
- NY State Inspection,
- Body condition, and
- All other checks and adjustments required for proper complete servicing of a new vehicle.

Particular attention shall be given to door alignment, weather stripping, hardware, paint condition and tagging of cooling system. It shall be the Contractor's responsibility to ensure at that time that all components and accessories specified have been properly installed.

If the New York State service shop where the Vehicles are to be serviced and prepped is other than the Contractor's service shop, the Contractor shall provide a letter to the Authorized User indicating the name, address, and telephone number of the authorized Dealer(s) of the manufacturer where the pre-delivery service will be performed. In addition, a letter from the authorized Dealer(s) agreeing to perform this service must be provided.

POST-DELIVERY SERVICING

Post-delivery service by authorized representatives of the Vehicle and Aftermarket Components OEMs must be available within New York State for all Vehicles 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 servicing Dealer.

The Contractor is responsible for any warranty service/repair/recall, which will be at Contractor's own expense. In the event that a warranty service/repair/recall is for an Aftermarket Component, the Contractor shall be the primary point of contact, and will assist the Authorized User with the warranty service/repair/recall. Events beyond Contractor's control, such as lack of parts due to strikes and unforeseen acts of God, shall constitute valid reasons for delay in making necessary repairs. However, the State shall make such determination.

III.5 GENERAL WARRANTY REQUIREMENTS

The Contractor shall warrant the Vehicle and 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. 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. The warranty period for all coverage shall begin on the date the Vehicle is accepted by the Authorized User or put in service, whichever occurs later. Delayed warranty forms are to be provided with the required motor vehicle paper work. Where 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.

The Contractor will be responsible for all warranty claims related to the Vehicle, including all 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 Vehicle, 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 will cover all labor and parts replacement during the warranty period. Normal wear and tear items will be warranted in accordance with manufacturer’s standard warranty. Parts replaced under this warranty will be of OEM quality or higher. Service will be at a level to maintain or meet the manufacturer’s requirements to sustain the warranty. See Appendix B §59 *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.

The warranty requirements stated by the Authorized User in the Mini-Bid are considered minimum. If the manufacturer's standard warranty exceeds the specified warranty, or if a minimum warranty requirement is not stated in the Mini-Bid, the manufacturer's standard warranty shall apply. Whenever extended warranty packages are being promoted by the factory at "No Additional Charge", they shall be extended to all Contract purchases. Manufacturer's warranty shall be provided in written or electronic form to the Authorized User.

III.6 SERVICE/TECHNICAL BULLETINS AND RECALLS

The Contractor must immediately notify NYSPro of any service/technical bulletins and recall notices pertaining to Vehicles sold under the Contract. These documents shall be submitted on a continual basis to keep the State informed regarding improvements, changes and/or problems concerning State owned Vehicles and their component parts.

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 will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will 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, §28 *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 will be affixed to exact copies of this Agreement being executed simultaneously herewith.

CONTRACTOR

Signature: _____

Printed Name: Richard Gaillard

Title: Managing Member

Date: 12/3/15

Company Name: Kingston Nissan

Federal ID: 204295454 7

NYS Vendor ID 1100153608

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____

Printed Name: Bruce Hallenbeck

Title: Director Procurement Services

Date: _____

Office of General Services

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF New York }
: **Sworn Statement:**
COUNTY OF Ulster }

On the 3rd day of December in the year 2015, before me personally appeared Richard Gaillard, 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 140 Rt. 28 Kingston, NY 12401

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 Kingston Automotive, 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

LISA M. BRINK
Notary Public State of New York
No. 01BR6165426
Qualified in Ulster County
Commission Expires May 7, 2019

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.

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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. 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.

b. AUTHORIZED USER(S) Authorized User shall have the meaning set forth in New York 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.

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

d. CONTRACT The writing(s) which 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 specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).

2. **Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services 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 Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.

3. **Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications 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 Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

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 state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

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

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

f. CONTRACTOR Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

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

h. EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

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

j. 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.

k. 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.

l. GROUP A classification of Product, services or technology which is designated by OGS.

m. INVITATION FOR BIDS (IFB) A type of Bid Document which 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(s).

n. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

o. LICENSEE(S) One or more Authorized Users who acquire 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(s)" shall be deemed to refer separately to the individual Authorized User(s) 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.

p. 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.

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

r. NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

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

t. PRODUCT A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

u. PROPRIETARY Protected by secrecy, patent, copyright or trademark against commercial competition.

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

w. REQUEST FOR PROPOSALS (RFP) A type of Bid Document 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).

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

y. 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.

z. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

aa. 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.

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

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

dd. 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.

ee. STATE State of New York.

ff. SUBCONTRACTOR Any individual or other 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.

gg. 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.

hh. 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. INTENTIONALLY OMITTED

4. INTENTIONALLY OMITTED

5. INTENTIONALLY OMITTED

6. 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 Bid Documents 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 Bid Specifications 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 Bid Documents 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 their specifications. 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.

7. BID CONTENTS Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening may not be considered.

8. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as 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 term(s) 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; and

b. The writing must identify the particular specification 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 Bid Document, and the reasons therefore.

No extraneous term(s), 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 term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

9. 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 as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

10. INTENTIONALLY OMITTED

11. TAXES

a. Unless otherwise specified in the 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.

12. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, 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.

13. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid 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 Bid or Contract for press or other media releases.

14. PRODUCT REFERENCES

a. "**Or Equal**" In all 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 Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

15. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS Upon the conditions specified in the Bid Specifications 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 Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, 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.

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

17. PRICING

a. Unit Pricing If required by the Bid Specifications, 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 Bid. 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 Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

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 NYS Net Prices are 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 NYS Net Prices are 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 Price 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 NYS Net Price 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 Bid Specifications, 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 or service 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.

18. INTENTIONALLY OMITTED

19. INTENTIONALLY OMITTED

20. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased Products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for Products returned as defective or faulty.

21. INTENTIONALLY OMITTED

BID EVALUATION

22. 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.

23. 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.

24. 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 Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications 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.

25. 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 Bid Documents, 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 Bid Documents, 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

26. 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 Bid Specifications, 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.

27. PARTICIPATION IN CENTRALIZED CONTRACTS

a. Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Bid Documents limit 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 Bid Specifications 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. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(a)(iv) of the State Finance 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 or services 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.

28. 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.

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within 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 proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. 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.

31. 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 or 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.

32. 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 Contracts 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.

33. 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.

34. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications 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.

35. 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 Bid Specifications, 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.

36. 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 Bid Specifications 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 Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

37. 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.

38. PRODUCT SUBSTITUTION In the event a specified manufacturer's 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.

39. 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.

40. INTENTIONALLY OMITTED

41. REPAIRED OR REPLACED PARTS / 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.

42. EMPLOYEES, SUBCONTRACTORS & 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 Bid Specifications or the Bid Documents, whichever is more restrictive, 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 agents of the Contractor.

43. ASSIGNMENT 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, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder 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 assignment(s) with the 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 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.

44. 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.

45. 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.

46. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this 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.

47. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty calendar days or other specified period after 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 where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. 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: By written notice, this Contract may be terminated at any time by the Commissioner for convenience upon sixty calendar days written notice or other specified period 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 provide any outstanding deliverables.

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/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/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 or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his 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.

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

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

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

decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

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/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. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

a. **Invoicing.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. 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.

50. 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 shipments of Product or provision of services 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 service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

51. 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 §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§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 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 Agencies. Neither expressly nor by any implication is the statute applicable to Non-State 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.

52. 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 formally Bidding: (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 service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement service or 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 under the Disputes clause.

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 its 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 services, and/or 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 awarded by a court of competent jurisdiction, 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 substitute 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.

53. 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.

54. 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.

55. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its 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.

56. 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.

57. 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.

58. 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 the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month-to-month basis or in other stated periods of time during the one year extension.

59. WARRANTIES

a. Product Performance Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous

warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

Unless recycled 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 attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

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) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

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

Where Contractor, the Independent Software Vendor (ISV), or other third-party manufacturer markets any project deliverable 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 Project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third-party manufacturer's Product.

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

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any Product or parts thereof replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the Warranty Period set forth under paragraph (a) above; or b) if a separate warranty for that Product or parts thereof is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

e. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

f. 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.

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

g. 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.

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

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.

60. 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 Bid 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.

61. 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 Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (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.

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.

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS 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 Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given 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 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 Users 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 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.

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights 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 and services, or parts thereof forming the basis of the Authorized User's claim (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) 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.

64. INTENTIONALLY OMITTED

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

65. INTENTIONALLY OMITTED

66. INTENTIONALLY OMITTED

67. INTENTIONALLY OMITTED

68. INTENTIONALLY OMITTED

69. INTENTIONALLY OMITTED

70. INTENTIONALLY OMITTED

71. INTENTIONALLY OMITTED

72. INTENTIONALLY OMITTED

73. INTENTIONALLY OMITTED

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Appendix C:

Light Duty Vehicles Documents:

Number 1: ***Contractor Information***

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

Number 3: ***Insurance Requirements***

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

Number 5: ***Auto Marketplace Forms***

Appendix C: Number 1: *Contractor Information*

Contract # / MWBE/SB	Contractor & Address	Centralized Contract and Sales Contact	Federal ID NYS Vendor ID
NYS Contract: PC67295 SB	Kingston Automotive LLC 140 NY-28 Kingston, NY 12401	Name: Peter Burnett Title: Sales Manager Phone: (845) 338-3100 Fax: (845) 338-3231 Email: pburnett@kingstonnissan,net	**Federal ID** 20-2954547 **NYS Vendor ID** 1100153608
Business Hours: M-Thurs: 9:00 AM-7:00 PM, F: 9:00 AM-6:00 PM, Sat: 9:00 AM-5:00 PM, Sun: 11:00 AM-3:00 PM			

PAYMENT/ORDERING INFORMATION

Does Contractor offer Electronic Access Ordering (EDI)?	No
Does Contractor offer Prompt Payment Discounts?	No

NYS VEHICLE DISCOUNTS

The Contractor shall offer the following Vehicle Make(s)/Models at the minimum NYS Vehicle Discount(s) listed below for Vehicles purchased under the Contract.

Make	Model	NYS Vehicle Discount
Nissan	All Products	1%

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 40451, Award 22898**
Contract Number:	
Contract Sales Period:	
Contractor Company Name:	
Contact Name:	
Contact E-Mail:	
Contact Phone Number:	

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)	Ship to County	Vehicle Identification Number	Vehicle Manufacturer	Vehicle Make
PC12345	14080001	1234	12/1/2012	12/1/2012	7891011	NYS Department of Transportation	DOT Region 5 Buffalo	Erie	11223344556677889	GM	Chevrolet

Vehicle Model	Vehicle Model Number	Vehicle Model Year	Base MSRP (including all OEM fees)	Options MSRP	Base Vehicle MSRP (Base MSRP + Options)	NYS Vehicle Discount	Base NYS Vehicle Price	NYS Aftermarket Components Price	NYS Contract Price for the Vehicle	Delivery Charge	Total NYS Contract Price (per Vehicle)	Number of Vehicles	Total NYS Contract Price (Number of Vehicles x Per Vehicle Price)
Tahoe	CC10706	2013	$ 25,000.00	$ 600.00	$ 25,600.00	10%	$ 23,040.00	$ 2,500.00	$ 25,540.00	$ 300.00	$ 25,540.10	4	$ 25,840.00

Report of Contract Usage - Option 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)	Ship to County	Vehicle Identification Number	Vehicle Manufacturer
PC12345	14080001	1234	12/1/2012	12/1/2012	7891011	NYS Department of Transportation	Region 5 Buffalo	Erie	11223344556677889	GM

Vehicle Make	Vehicle Model	Vehicle Model Number	Vehicle Model Year	Option Code	Option Description	Option MSRP (per Unit)	Number of Units	Total Option MSRP (Number of Units x Option MSRP)
Chevrolet	Tahoe	CC10706	2013	A51	Tinted Windows	$ 40.00	2	$ 80.00

Appendix C: Number 3: *Insurance Requirements*

A Contractor shall be required to procure, at their sole cost and expense, all insurance required by this section. In addition, Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this solicitation, policies of insurance required by this section. All insurance shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and which have an A.M. Best Company rating of "A-" Class "VII" or better. If, during the term of a 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 licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and which is rated at least "A-" Class "VII" or better in the most recently published Best's Insurance Report.

Bidders and Contractors shall deliver to OGS evidence of such policies in a form acceptable to OGS. Policies 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 Bidders or Contractors of any obligations, responsibilities or liabilities under this solicitation or any Contract resulting from this solicitation.

General Conditions

A. Conditions Applicable to Insurance. All policies of insurance required by this solicitation or 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 Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.

2. Policy Forms. Except as otherwise specifically provided herein, or agreed to in writing by OGS, policies must be written on an occurrence basis.

3. Certificates of Insurance/Notices. Bidders and Contractors shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS, upon tentative award, and thereafter within three (3) business days of request. Certificates shall reference the Solicitation or Contract Number. As applicable, the requested forms must name The New York State Office of General Services, New York State Procurement, 38th Floor, Corning Tower, Albany, New York 12242 as the Certificate Holder. Certificates shall be submitted to The New York State Office of General Services, New York State Procurement, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed to in writing, 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 to OGS, except in cases of cancellation for non-payment, in the event of which notice shall be provided as required by law to OGS.

Bidders and Contractors 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. Not less than thirty (30) days prior to the expiration date or renewal date, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- Be in the form acceptable to OGS (ie: an Acord);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this solicitation or any Contract resulting from this solicitation;
- Be accompanied by an Additional Insured and a Waiver of Subrogation Endorsement as required herein;
- Refer to this solicitation and 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 (Certificates of Insurance, endorsements & other attachments) or electronic forms, that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution or similar means, 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 OGS or any Authorized User for any claim arising from a Contractor's work under any Contract awarded as a result of this solicitation, or as a result of a Bidder or Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Bidders/Contractor's insurance.

5. If, during the term of any Contract awarded as a result of 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. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by this solicitation or any Contract resulting from this solicitation or not providing proof of the same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should a Contractor fail to provide or maintain any insurance required by this solicitation or any Contract resulting from this solicitation, or proof thereof is not provided, OGS or an Authorized User may withhold further contract payments, treat such failure as a breach or default of the Contract.

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

7. ***Subcontractors.*** Should a Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of work by the Subcontractor, to secure and keep in force during the term of any Contract resulting from this solicitation, the insurance requirements of this document, as applicable. Proof thereof shall be supplied to OGS as required by this Section.

As applicable, insurance required by this solicitation or any Contract resulting from this solicitation shall name The People of the State of New York, its officers, agents, and employees as additional insureds hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent). Specifically, the additional insured requirement does not apply to Workers' Compensation, Disability or Professional Liability coverage.

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, at their own expense, the following insurance with limits not less than those described below, 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 ISO occurrence form CG 00 01 01 96, or a substitute form providing equivalent coverages and shall cover liability arising from 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.

   Policy shall include bodily injury, property damage and broad form contractual liability coverage.

   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $2,000,000
   - Personal and Advertising Injury $1,000,000
   - Each Occurrence $2,000,000

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 contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the contract;
- Explosion, collapse and underground hazards; and
- Contractor means and methods.

The following ISO forms must be endorsed to the policy:

a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form

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

c. Waiver of Subrogation Endorsement.

Limits may be provided through a combination of primary and umbrella/excess liability policies.

2. **Comprehensive Business Automobile Liability Insurance** with a limit of not less than $2,000,000.00 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

Waiver of Subrogation. Contractor shall cause to be include in each of the above referenced policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS. A Waiver of Subrogation Endorsement shall be provided upon tentative award, and thereafter, within three (3) days of request.

C. Workers' Compensation Insurance and Disability Benefits Requirements

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 that they have 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 a bid or renewal. **A Bidder may not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.**

1. **Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form (certificate of insurance) is NOT acceptable proof of workers' compensation coverage.** In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a Bidder/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.

A Bidder seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS at the time of bid submission, and thereafter, within three (3) days of request:

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 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 Bidder/Contractor's insurance carrier, the Bidder/Contractor must request that its insurance carrier send this form to OGS, or
   2) Form U-26.3 if coverage is provided by the State Insurance Fund, the Bidder/Contractor must request that the State Insurance Fund send this form to OGS;

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

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

2. Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a Bidder/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.

A Bidder seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS at the time of bid submission and thereafter, within three (3) days of request:

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 RFP and Group #s on the form.);

B) Form DB-120.1, Certificate of Disability Benefits Insurance. The Biddder/Contractor must request that its insurance carrier send this form to OGS; or

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

Proof of coverage or an exemption shall be submitted to The New York State Office of General Services, New York State Procurement, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

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:_____ OGS GROUP #:_____ OGS AWARD #:_____ OGS CONTRACT #:_____	**CONTRACTOR CONTACT:** Name:_____ Phone #:_____ 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: _____ Update _____ Amendment See Contract Modification Procedure for an explanation of these terms.	2. The intent of this submittal is to request: _____ Addition of new products or services _____ Deletion of products or services _____ Change in pricing level _____ Other Update _____ Other Amendment
3. All discounts are: _____ GSA _____ Most Favored Nation* _____ Other (provide explanation) _____ _____ _____ *Prices offered are the lowest offered to any similarly situated entity.	4. Attached documentation includes: _____ Current approved GSA (labeled "For information only") _____ Current relevant Price List (labeled "For information only") _____ Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract _____ 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: *Mini-Bid Request*, Form B: *Mini-Bid Response* and Form C: *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 a web-based or 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.12 *Procurement Method*, Paragraph C *Vehicle Marketplace*.

Form A: Mini-Bid Request

Instructions:
This webform is to be used by authorized users to request Light Duty Vehicles. Once you identify your vehicle purchase need and secure authorized approvals, complete the webform to submit your vehicle request. A separate form must be filled out for each type of vehicle, and for vehicles with different specifications. Upon receipt, NYSPro will review your request for completeness, assign a mini-bid number, and post it on the vehicle request board. NYSPro will contact you if we need additional information. For assistance in completing this form, please contact the Vehicle Marketplace team at sst_auto@ogs.ny.gov.

PART A: AUTHORIZED USER CONTACT INFORMATION

1. Authorized User Entity Name *
Enter the name of your state agency, municipal government office, or other NYS authorized contract user entity name.

2. Agency Code (for state agencies only) *

3. Authorized User # (for non-state agencies)
What's an authorized user number?

4. Primary Contact Information

Contact Name *
This person will be the point of contact for procurement lobbying and bidder questions.

Contact Title *

Contact Email *

Contact Phone *

5. Secondary Contact Information

Contact Name *

Contact Title *

Contact Email *

Contact Phone *

PART B: GENERAL QUESTIONS (Intentionally omitted)

PART C: MINI-BID PROCESS

1. Types of Vehicle(s) Requested

- [x] Any vehicle(s) that meet the specifications
- [ ] Specific Vehicle(s) (i.e., year/make/model/model code)

2. Type of Vehicle Order *

- [ ] Vehicle(s) built to specifications at the OEM factory.
- [ ] Contractor's pre-existing inventory (i.e.: off the lot).

3. Are you willing to accept vehicles built to specifications and pre-existing inventory? If "Yes," NYSPro will issue two separate mini-bids for this request, and purchase can be made from the resulting award for both mini-bids.

- [ ] Yes
- [ ] No

4. Method of Award

Select a method of award below for vehicles built to specifications at the OEM factory, and/or pre-existing inventory, as applicable.

Method of Award for Vehicles Built to Specifications at the OEM Factory:

- [ ] Lowest price to a single contractor that can meet the specified delivery date, and supply the total number of vehicles requested.

Method of Award for Pre-Existing Inventory Vehicles:

- [ ] Lowest price to a single contractor that can meet the specified delivery date, and provide the total number of vehicles requested. Lowest price for each contractor responding to the mini-bid will be determined by calculating the sum of the Total NYS Contract Price for Mini-Bid for all vehicles bid (i.e., the Grand Total NYS Contract Price of Vehicles Bid).
- [ ] Lowest price, per vehicle (i.e., the Total NYS Contract Price for Mini-Bid), to multiple Contractors that can meet the specified delivery date.

PART D: VEHICLE REQUEST INFORMATION

Enter the information for your vehicle request below. You are able to enter multiple delivery locations for your request. If only one delivery location is required, use "Delivery Location 1" and skip all other location entries.

1. Number of vehicles * [ ]

This amount is the estimated number of vehicles that the authorized user will purchase from the mini-bid in the event of an award. The Authorized User reserves the right to partially award a Mini-Bid for a number of Vehicles that is less than number of Vehicles specified. In the event of an award, the Contractor must supply the Vehicles ordered by the Authorized User at the NYS Contract Price for the Vehicle.

2. Vehicle Type * [- Select -]

Note: Only Light Duty Vehicles can be purchased via this mini-bid process. A Light Duty Vehicle is defined as a mobile machine that is primarily used to transport passengers and cargo (e.g., cars, vans, SUVs, pickup trucks), with a GVWR less than or equal to 10,000 pounds, (i.e., Class 1 through Class 2 Vehicles, as designated by the U.S. Department of Transportation).

3. Model Year - None -

4. Will you consider other years, if offered? *

Yes

No

5. Make * - Select -

"Make" refers to the OEM (Original Equipment Manufacturer) company name of a vehicle model (e.g., Ford, Chevrolet, Dodge).

6. Model

"Model" refers to a particular brand of vehicle sold by an OEM (e.g., Taurus, Tahoe, Grand Caravan).

7. Drive Type - None -

8. Model Code

"Model Code" is the OEM code used to identify a particular subset of a vehicle model.

9. Fuel Type * - Select -

10. Interior/Exterior Color and Seat Fabric

Standard Colors/Fabric (no additional cost)

Other Colors/Fabric As Specified (additional cost)

11. Aftermarket Component Provider (if necessary)

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 Component(s)" refers to any accessory, equipment, or feature that is manufactured by an OEM other than the vehicle OEM, and is not included in the OEM Product Line, and that may be installed on the vehicle by the contractor, or third-party.

12. Additional Vehicle Specifications (type in box below or upload document)

Upload Additional Vehicle Specifications Attachments

Upload

13. If the mini-bid is for Any Vehicle(s) that meet the specifications provided, enter example vehicles that will meet specification provided.

14. Delivery Locations

Delivery Location 1

Number of vehicles to be delivered to this location

Address

Address 1

Address 2

City *

State * - Select -

Zip Code

County - None -

Region (select one)

Region 1 (Allegany, Cattaragus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Yates)

Region 2 (Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Tioga, Tompkins)

Region 3 (Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington)

Region 4 (Clinton, Essex, Franklin, St. Lawrence)

Region 5 (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester)

Region 6 (Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk)

15. Enter the last possible delivery date that the vehicle(s) will be accepted *

Month Month Day Day Year Year

16. Other Delivery Requirements (type in box below or upload document)

Upload Other Delivery Requirements

Upload

Form B: Mini-Bid Response

Vehicle Dealers on Contract: Fill-out the form below, and upload a price worksheet as described below, to submit a response to a vehicle mini-bid on the New York State Vehicle Marketplace contract. For assistance in completing this form, please contact the Vehicle Marketplace team at sst_auto@ogs.ny.gov.

PART A: CONTRACTOR INFORMATION

1. Mini-Bid Request Number *

2. Business Information

Full Legal Business Name *

State Contract Number *

Federal Employer Identification Number (FEIN) *

NYS Vendor ID Number *

3. Primary Contact Information

Contact Name *

Contact Email *

Contact Phone (1) *

Contact Phone (2)

4. Secondary Contact Information

Contact Name *

Contact Email *

Contact Phone (1) *

Contact Phone (2)

PART B: MINI-BID CRITERIA

1. Type of vehicle(s) requested by the authorized user on Form A: *Mini-Bid Request* (choose one): *

- Vehicle(s) built to specifications at the OEM factory
- Pre-existing inventory vehicle(s) (i.e., off the lot)

2. Can the vehicles bid be delivered by the delivery date specified?*

○ Yes

○ No (I understand that my bid shall be rejected)

3. Enter the estimated number of days after receipt of a Purchase Order (After Receipt of Order ("ARO")) that the delivery will be made. *

PART C: VEHICLE BID AND PRICING

Select the type of vehicles requested by the authorized user on Form A: *Mini-Bid Request* to view the required bidder entry fields.

Vehicle(s) built to specifications at the OEM factory

1. Vehicle Type * - Select -

General Description of Vehicle

2. Model Year *

3. Make - None -

"Make" refers to the OEM (Original Equipment Manufacturer) company name of a vehicle model (e.g., Ford, Chevrolet, Dodge).

4. Model

"Model" refers to a particular brand of vehicle sold by an OEM (e.g., Taurus, Tahoe, Grand Caravan).

5. Drive Type - None -

6. Model Code

"Model Code" is the OEM code used to identify a particular subset of a vehicle model.

7. Aftermarket Components Provider(s), if applicable

Unless otherwise specified by an Authorized User on Form A: *Mini-Bid Request*, Aftermarket Components may be installed by any Aftermarket Component Provider utilized in the Contractor's normal course of business. A bid that includes an Aftermarket Component Provider other than that specified by the authorized user on Form A: *Mini-Bid Request* shall be rejected.

8. Additional Information or Specifications: An Authorized User may verify MSRP information, especially for Options and Aftermarket Components. The Contractor shall, upon request by the Authorized User, provide a copy of a Dealer Invoice and the most recently published OEM Specifications for each Vehicle bid.

9. Vehicle(s) Pricing for the Above Specifications

To enter pricing for the vehicle(s) bid, click on the "Download Price Worksheet" link below to download the mini-bid response price worksheet for Vehicle(s) Built to Specifications. Save the blank Excel worksheet to your computer, enter the required information, and then upload the completed worksheet to the Vehicle Marketplace by clicking on the "Upload Price Worksheet" link below. Completed pricing worksheets should use the following naming convention for the file name: 22898 Mini-Bid 14080001 Contract PC12345. Do not submit completed worksheets in PDF, JPG or any other type of file format other than Excel. Pricing submitted using a format other than this spreadsheet will be deemed non-responsive and shall be rejected.

Download Price Worksheet

Upload

Upload Price Worksheet

Upload

Pre-Existing Inventory Vehicles

1. Aftermarket Components Provider(s), if applicable

Unless otherwise specified by an Authorized User on Form A: *Mini-Bid Request*, Aftermarket Components may be installed by any Aftermarket Component Provider utilized in the Contractor's normal course of business. A bid that includes an Aftermarket Component Provider other than that specified by the authorized user on Form A: *Mini-Bid Request* shall be rejected.

2. Vehicle(s) Pricing for the Above Specifications

To enter pricing for the vehicle(s) bid, click on the "Download Price Worksheet" link below to download the mini-bid response price worksheet for Pre-Existing Inventory Vehicles. Save the blank Excel worksheet to your computer, enter the required information, and then upload the completed worksheet to the Vehicle Marketplace by clicking on the "Upload Price Worksheet" link below. Completed pricing worksheets should use the following naming convention for the file name: 22898 Mini-Bid 14080001 Contract PC12345. Do not submit completed worksheets in PDF, JPG or any other type of file format other than Excel. Pricing submitted using a format other than this spreadsheet will be deemed non-responsive and shall be rejected.

Download Price Worksheet

Upload

Upload Price Worksheet

Upload

Mini-Bid Response Price Worksheet: Vehicle(s) Built to Specifications

Enter Bidder information below:

Mini-Bid #	Bidder full legal business name	State Contract #	Contact name and Email address

Form Instructions

A Contractor bidding on a Mini-Bid that specifies Vehicle(s) Built to Specifications at the Original Equipment Manufacturer (OEM) factory shall provide the following pricing information for the Vehicle(s) bid.

If the Mini-Bid requires delivery of Vehicles to more than one location this price worksheet allows for entry of more than one Delivery Charge.

Save this blank Excel worksheet to your computer, enter the required Vehicle and pricing information, and then upload the completed worksheet to the Vehicle Marketplace by clicking "Upload Price Worksheet" in Part 3: Vehicle Bid and Pricing, on the applicable Form B: Mini-Bid Response. Completed pricing worksheets should use the following naming convention for the file name: 22898 Mini-Bid 14080001 Contract PC12345. Do not submit completed worksheets in PDF, JPG or any other type of file format other than Excel. Pricing submitted using a format other than this spreadsheet will be deemed non-responsive and shall be rejected.
Complete all fields highlighted in yellow. Failure to enter a response in a yellow field may result in rejection of your bid. Bidder is responsible for reviewing the completed price worksheet prior to bid submittal and ensuring that all necessary fields have been populated correctly.

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

Price Worksheet

Definitions and Instructions	Price
Base Vehicle MSRP (the total of the Base MSRP and Options. The Base Vehicle MSRP does not include Aftermarket Components or the Delivery Charge). *Note: "Base MSRP" shall refer to the MSRP of the Vehicle, including other applicable OEM fees (e.g. destination fees).*	
NYS Vehicle Discount (the percentage amount by which the Base Vehicle MSRP is reduced for NYS Contract purchases). *Note: Type a number only (e.g., 5.5); Do not type a percentage sign (%) after the number; The percentage discount entered must be equal to or greater than the minimum NYS Vehicle Discount listed in the Contract.* ***A bid that includes a percentage discount that is less than the minimum NYS Vehicle Discount listed in the Contract shall be rejected.***	
Base NYS Vehicle Price (the amount charged to the Authorized User for a Vehicle, exclusive of Aftermarket Components). The Base NYS Vehicle Price does not include the Delivery Charge. Automatically calculated: Base Vehicle MSRP minus NYS Vehicle Discount	**$0.00**
NYS Aftermarket Component Price (the total amount charged to the Authorized User for Aftermarket Components added to a Vehicle, inclusive of installation fees). *Enter $0.00 if there are no Aftermarket Components included in the Vehicle.*	
NYS Contract Price for the Vehicle (the amount charged to the Authorized User for each Vehicle, inclusive of Aftermarket Components). The NYS Contract Price for the Vehicle does not include Delivery Charge. Automatically calculated: NYS Base Vehicle Price plus the NYS Aftermarket Components Price.	**$0.00**
Total number of Vehicles (the number of Vehicles specified by the Authorized User, and to be provided at the NYS Contract Price for the Vehicle). The quantity entered should match the number of Vehicles specified by the authorized user. ***Note: The number of Vehicles specified by the Authorized User is the estimated quantity of vehicles that the Authorized User will purchase from the mini-bid in the event of an award. The Authorized User reserves the right to partially award a Mini-Bid for a number of Vehicles that is less than number of Vehicles specified. In the event of an award, the Contractor must supply the Vehicles ordered by the Authorized User at the NYS Contract Price for the Vehicle.***	
Total NYS Contract Price for Vehicle(s) (the NYS Contract Price for the Vehicle multiplied by the Total number of Vehicles). Automatically calculated.	**$0.00**

Delivery Charge (the total amount charged to the Authorized User for shipment of the Vehicle(s) from the Delivery Origin to the location(s) designated by the Authorized User on Form A: *Authorized User Mini-Bid Vehicle Request*, and on the Purchase Order). *Note: 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 in the Mini-Bid).*

For each Region that the number of Vehicles requested by the Authorized User are to be delivered to, enter (1) the number of Vehicles delivered to Region, (2) Delivery Origin NYS County, (3) Region delivered to, and (4) Delivery Charge for each Vehicle. Multiple yellow-highlighted rows have been provided for Mini-Bids that require delivery to more than one Region. Total Delivery Charge for Region will be automatically calculated (Number of Vehicles multiplied by Delivery Charge for Each Vehicle). Total Number of Vehicles (the sum of the Number of Vehicles entered) and Total Delivery Charge for Vehicles (the sum of the Total Delivery Charges for Region) will also be automatically calculated.

Refer to the Delivery Region Chart below for the applicable Region for a NYS County. Refer to the Delivery Allowance Schedule (DAS) below for the maximum dollar amount that will be paid for delivery of a Vehicle from the Delivery Origin to the applicable Region delivered to. A Contractor may include a Delivery Charge that is less than the Delivery Allowance in the bid submitted for the Mini-Bid. A bid that includes a Delivery Charge that exceeds the Delivery Allowance shall be rejected.

# of Vehicles Delivered to Region	**Delivery Origin NYS County** (Drop-down list)	**Region Delivered to** (drop-down list)**:**	**Delivery Charge for Each Vehicle**	**Total Delivery Charge for Region:**
5	No Additional Counties	No Additional Regions	$0.00	$0.00
6	No Additional Counties	No Additional Regions	$0.00	$0.00
0	No Additional Counties	No Additional Regions	$0.00	$0.00
0	No Additional Counties	No Additional Regions	$0.00	$0.00
0	No Additional Counties	No Additional Regions	$0.00	$0.00
0	No Additional Counties	No Additional Regions	$0.00	$0.00
0	No Additional Counties	No Additional Regions	$0.00	$0.00
0	No Additional Counties	No Additional Regions	$0.00	$0.00
0	No Additional Counties	No Additional Regions	$0.00	$0.00

Total Number of Vehicles (This quantity should match the quantity specified by the authorized user)	**Total Delivery Charge for Vehicles**
0	**$0.00**

Total NYS Contract Price for Mini-Bid (the amount that will be evaluated for the Mini-Bid). Automatically calculated: the Total NYS Contract Price for Vehicle(s) plus the Total Delivery Charge for Vehicles.	**$0.00**

Delivery Region Chart

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					

Delivery Allowance Schedule

The following Delivery Allowance Schedule (DAS) indicates the maximum dollar amount that will be paid for delivery of a Vehicle from the Delivery Origin to the applicable Region to which the Vehicle(s) are delivered. A Contractor may include a Delivery Charge that is less than the Delivery Allowance in the bid submitted for the Mini-Bid. A bid for a Mini-Bid 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 $280. Each Contractor will only be concerned with their particular region (i.e., if the Delivery Origin is in Region 1, the only row that will be utilized is the first one).

		Delivery to Region					
	Region	**1**	**2**	**3**	**4**	**5**	**6**
Delivery Origin	**1**	$195	$280	$460	$535	$630	$825
	2	$280	$195	$280	$280	$350	$630
	3	$460	$280	$195	$280	$280	$630
	4	$535	$280	$280	$195	$535	$805
	5	$630	$350	$280	$535	$195	$315
	6	$825	$630	$630	$805	$315	$195

Mini-Bid Response Price Worksheet: Pre-Existing Inventory Vehicle(s)

Enter Bidder information below:

Mini-Bid #	Bidder full legal business name	State Contract #	Contact name and Email address

Form Instructions

A Contractor bidding on a Mini-Bid that specifies Pre-Existing Inventory Vehicle(s) shall provide the following Vehicle and pricing information for each Vehicle bid.

Save this blank Excel worksheet to your computer, enter the required Vehicle and pricing information, and then upload the completed worksheet to the Vehicle Marketplace by clicking "Upload Price Worksheet" in Part 3: Vehicle Bid and Pricing, on the applicable Form B: Mini-Bid Response. Completed pricing worksheets should use the following naming convention for the file name: 22898 Mini-Bid 14090001 Contract PC12345. Do not submit completed worksheets in PDF, JPG or any other type of file format other than Excel. Pricing submitted using a format other than this spreadsheet will be deemed non-responsive and shall be rejected.

For each Vehicle bid, complete all fields highlighted in yellow. Failure to enter a response in a yellow field for a Vehicle bid may result in rejection of your bid for that Vehicle. A Bidder is responsible for reviewing the completed price worksheet prior to bid submittal and ensuring that all necessary fields have been populated correctly.

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

Price Worksheet (Columns B through Q) ***Note: Column Definitions and Instructions, the Delivery Region Chart and the Delivery Allowance Schedule are located below the Price Worksheet, beginning on Row 116)***

B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
Ref#	**Model Year**	**Make**	**Model**	**Model Code**	**Exterior Color**	**Interior Color**	**Seat Fabric**	**Base Vehicle MSRP**	**NYS Vehicle Disc.**	**Base NYS Vehicle Price**	**NYS Aftermarket Component Price**	**NYS Contract Price for the Vehicle**	**Delivery Origin NYS County** (Drop-down list)	**Region Delivered to** (drop-down list)**:**	**Delivery Charge**	**Total NYS Contract Price for Mini-Bid**
Ex.	2015	Ford	Fusion	P0G	Ruby Red	Dune	Cloth	$21,500.00	5.00	$20,425.00	$1,500.00	$21,925.00	Monroe	4	$195.00	$22,120.00
001										$0.00		$0.00				$0.00
002										$0.00		$0.00				$0.00
003										$0.00		$0.00				$0.00
004										$0.00		$0.00				$0.00
005										$0.00		$0.00				$0.00
006										$0.00		$0.00				$0.00
007										$0.00		$0.00				$0.00
008										$0.00		$0.00				$0.00
009										$0.00		$0.00				$0.00
010										$0.00		$0.00				$0.00
									Grand Total NYS Contract Price of Vehicles Bid (the amount that will be evaluated for a Mini-Bid for Pre-Existing Vehicles that will be awarded to a single Contractor that can meet the specified delivery date, and provide the total number of Vehicles requested). Automatically calculated: The sum of the Total NYS Contract Price for Mini-Bid for all Vehicles bid. This amount will not be evaluated for a Mini-Bid for Pre-Existing Vehicles that will be awarded per Vehicle to multiple Contractors that can meet the specified delivery date.						**$0.00**

Column Definitions and Instructions

Column	Column Name	Definition/Instruction
B	Reference #	The number used to reference an individual Vehicle that has been bid for a Mini-Bid for pre-existing Vehicles. Pre-populated by NYSPro.
C	Model Year	The year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.
D	Make	The OEM company name of a Vehicle Model (e.g., Ford, Chevrolet, Dodge).
E	Model	A particular brand of Vehicle sold by an OEM (e.g., Taurus, Tahoe, Grand Caravan).
F	Model Code	The OEM code used to identify a particular subset of a Vehicle Model.
G	Exterior Color	The OEM term used to identify the exterior color of the Vehicle.
H	Interior Color	The OEM term used to identify the interior color of the Vehicle.
I	Seat Fabric	The OEM term used to identify the fabric that the Vehicle seat coverings are made of from.
J	Base Vehicle MSRP	The total of the Base MSRP and Options. The Base Vehicle MSRP does not include Aftermarket Components or the Delivery Charge. *Note: "Base MSRP" shall refer to the MSRP of the Vehicle, including other applicable OEM fees (e.g. destination fees).*
K	NYS Vehicle Discount	The percentage amount by which the Base Vehicle MSRP is reduced for NYS Contract purchases). Note: Type a number only (e.g., 5.5); Do not type a percentage sign (%) after the number; The percentage discount entered must be equal to or greater than the minimum NYS Vehicle Discount listed in the Contract. ***A bid that includes a percentage discount that is less than the minimum NYS Vehicle Discount listed in the Contract shall be rejected.***
L	Base NYS Vehicle Price	The amount charged to the Authorized User for a Vehicle, exclusive of Aftermarket Components. The Base NYS Vehicle Price does not include the Delivery Charge. Automatically calculated: Base Vehicle MSRP minus NYS Vehicle Discount
M	NYS Aftermarket Component Price	The total amount charged to the Authorized User for Aftermarket Components added to a Vehicle, inclusive of installation fees. *Enter $0.00 if there are no Aftermarket Components included in the Vehicle.*

N	NYS Contract Price for the Vehicle	The amount charged to the Authorized User for each Vehicle, inclusive of Aftermarket Components. The NYS Contract Price for the Vehicle does not include Delivery Charge. Automatically calculated: NYS Base Vehicle Price plus the NYS Aftermarket Components Price.
O	Delivery Origin NYS County	The NYS County 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 in the Mini-Bid). Use the drop-down menu to enter the applicable NYS County.
P	Region Delivered to:	The NYS Region that a Vehicle will be delivered to (refer to the Delivery Region Chart below for the applicable Region for a NYS County). Use the drop-down menu to enter the applicable NYS Region.
Q	Delivery Charge	The total amount charged to the Authorized User for shipment of the Vehicle from the Delivery Origin to the location designated by the Authorized User on Form A: *Authorized User Mini-Bid Vehicle Request*, and on the Purchase Order. Refer to the Delivery Allowance Schedule (DAS) below for the maximum dollar amount that will be paid for delivery of a Vehicle from the Delivery Origin to the applicable Region delivered to. A Contractor may include a Delivery Charge that is less than the Delivery Allowance in the bid submitted for the Mini-Bid. ***A bid that includes a Delivery Charge that exceeds the Delivery Allowance shall be rejected.***
R	Total NYS Contract Price for Mini-Bid	The amount that will be evaluated for a Mini-Bid for Pre-Existing Vehicles that will be awarded per Vehicle to multiple Contractors that can meet the specified delivery date, and the total amount that will be charged to the Authorized User for the Vehicle, inclusive of delivery. Automatically calculated: the NYS Contract Price for the Vehicle plus Delivery Charge. This amount will not be evaluated for a Mini-Bid for Pre-Existing Vehicles that will be awarded per Vehicle to multiple Contractors that can meet the specified delivery date.

Delivery Region Chart

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					

Delivery Allowance Schedule

The following Delivery Allowance Schedule (DAS) indicates the maximum dollar amount that will be paid for delivery of a Vehicle from the Delivery Origin to the applicable Region to which the Vehicle(s) are delivered. A Contractor may include a Delivery Charge that is less than the Delivery Allowance in the bid submitted for the Mini-Bid. A bid for a Mini-Bid 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 $280. Each Contractor will only be concerned with their particular region (i.e., if the Delivery Origin is in Region 1, the only row that will be utilized is the first one).

		Delivery to Region					
	Region	**1**	**2**	**3**	**4**	**5**	**6**
Delivery Origin	**1**	$195	$280	$460	$535	$630	$825
	2	$280	$195	$280	$280	$350	$630
	3	$460	$280	$195	$280	$280	$630
	4	$535	$280	$280	$195	$535	$805
	5	$630	$350	$280	$535	$195	$315
	6	$825	$630	$630	$805	$315	$195

Form C: Mini-Bid Report of Use

Authorized users who conducted a mini-bid using the Vehicle Marketplace must provide a record of use. Please provide NYSPro with the following information. If you need assistance, please contact please contact the Vehicle Marketplace team at sst_auto@ogs.ny.gov.

PART A: AUTHORIZED USER CONTACT INFORMATION

1. Authorized User Entity Name *
Enter the name of your state agency, municipal government office, or other NYS authorized contract user entity name.

2. Agency Code (for state agencies only) *

3. Authorized User # (for non-state agencies)
What's an authorized user number?

4. Primary Contact Information

Contact Name *
This person will be the point of contact for procurement lobbying and bidder questions.

Contact Title *

Contact Email *

Contact Phone *

5. Secondary Contact Information

Contact Name *

Contact Title *

Contact Email *

Contact Phone *

PART B: MINI-BID INFORMATION

1. Mini-Bid Request # *

2. Number of Bids Received *

3. Number of Bids Disqualified *

4. Top Three Responsive Bidders

Bidder 1 Business Name *

Was this business awarded the bid?

○ Yes

○ No

Bidder 2 Business Name

Was this business awarded the bid?

○ Yes

○ No

Bidder 3 Business Name

Was this business awarded the bid?

○ Yes

○ No

PART C: FINAL AWARDED VEHICLE(S)

If more than one Model Code and/or vehicle price was awarded, upload a list of vehicles below under question #11.

1. Quantity *

2. Vehicle Type * - Select -

General Description of Vehicle

3. Model Year *

4. Make * - None -

"Make" refers to the OEM (Original Equipment Manufacturer) company name of a vehicle model (e.g., Ford, Chevrolet, Dodge).

If other, please specify:

5. Model

"Model" refers to a particular brand of vehicle sold by an OEM (e.g., Taurus, Tahoe, Grand Caravan).

6. Drive Type - None -

7. Model Code

"Model Code" is the OEM code used to identify a particular subset of a vehicle model.8. Final accepted price per vehicle (excluding delivery charge) $

9. Was a Purchase Order issued for this mini-bid?

○ Yes

○ No (enter a reason)

Enter reason Purchase Order was not issued

10. Purchase Order/Invoice *

Upload

11. Additional Documentation (upload document)

Please upload any additional documentation supporting the evaluation and award of the mini-bid, including justification of award.

Upload