



**Office of General Services  
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) | 518-474-6717

**AGREEMENT FOR  
VEHICLES, CLASS 1-8 (STATEWIDE)**

**BY AND BETWEEN**

**NEW YORK STATE  
OFFICE OF GENERAL SERVICES**

**AND**

**CONTRACTOR NAME**

**CONTRACT NUMBER PCXXXXX**

## TABLE OF CONTENTS

<b>1.</b>	<b>INTRODUCTION .....</b>	<b>6</b>
1.1.	OVERVIEW .....	6
1.2.	SCOPE .....	6
1.3.	ESTIMATED QUANTITIES.....	6
1.4.	DEFINITIONS AND ACRONYMS.....	7
<b>2.</b>	<b>GENERAL TERMS AND CONDITIONS.....</b>	<b>11</b>
2.1.	CONTRACT DOCUMENTS AND CONFLICT OF TERMS.....	11
2.2.	APPENDIX B MODIFICATIONS .....	11
2.3.	CONTRACT TERM AND EXTENSIONS.....	11
2.4.	SHORT TERM EXTENSION.....	11
2.5.	PRICE .....	12
2.6.	NYS DISCOUNT .....	12
2.7.	NYS AFTERMARKET COMPONENTS PRICE.....	12
2.8.	NYS PRICE FOR VEHICLE (SINGLE OEM VEHICLES AND CHASSIS) .....	12
2.9.	NYS PRICE FOR VEHICLE (BODY) .....	13
2.10.	MINI-BID METHOD OF AWARD .....	13
2.11.	ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC) PRICE .....	15
2.12.	ORDERING.....	15
2.13.	PURCHASING CARD ORDERS .....	16
2.14.	MINIMUM ORDER .....	16
2.15.	INVOICING AND PAYMENT .....	16
2.16.	PRODUCT DELIVERY.....	16
2.17.	PRE-DELIVERY INSPECTION OF VEHICLE(S) WITH BODY UPFIT .....	17
2.18.	CONDITION ON DELIVERY .....	17
2.19.	POST DELIVERY INSPECTION .....	18
2.20.	DELIVERY TIME .....	19
2.21.	DEFAULT ON MINI-BID.....	19
2.22.	LIQUIDATED DAMAGES .....	19
2.23.	CONTRACT ADMINISTRATION.....	20
2.24.	NYS FINANCIAL SYSTEM (SFS) .....	20
2.25.	DEALER CERTIFICATION .....	20
2.26.	INSURANCE .....	20
2.27.	REPORT OF CONTRACT USAGE .....	21

2.28. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN .....	21
2.29. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES .....	23
2.30. USE OF RECYCLED OR REMANUFACTURED MATERIALS .....	23
2.31. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4 .....	24
2.32. CONSUMER PRODUCTS CONTAINING MERCURY .....	24
2.33. DIESEL EMISSION REDUCTION ACT .....	24
2.34. OVERLAPPING CONTRACT PRODUCTS .....	24
2.35. NYS VENDOR RESPONSIBILITY .....	24
2.36. NYS TAX LAW SECTION 5-A .....	25
2.37. "OGS OR LESS" GUIDELINES .....	25
2.38. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.....	25
2.39. CENTRALIZED CONTRACT MODIFICATIONS.....	26
2.40. DRUG OR ALCOHOL USE PROHIBITED.....	26
2.41. TRAFFIC INFRACTIONS .....	26
2.42. PROCUREMENT METHOD .....	26
<b>3. SPECIFICATIONS.....</b>	<b>30</b>
3.1. VEHICLE REQUIREMENTS .....	30
3.2. STANDARDS, CODES, RULES, AND REGULATIONS .....	30
3.3. STANDARD EQUIPMENT .....	31
3.4. MANUALS .....	31
3.5. COMPATIBLE EQUIVALENT.....	31
3.6. EQUIPMENT, PARTS AND ACCESSORIES.....	31
3.7. OPTIONS .....	32
3.8. AFTERMARKET COMPONENTS .....	32
3.9. ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC).....	33
3.10. AVAILABILITY OF SERVICE & PARTS .....	33
3.11. ADVERTISING .....	33
3.12. VEHICLE INSPECTION .....	33
3.13. PRE-PRODUCTION MEETING .....	34
3.14. PILOT MODEL INSPECTION.....	34
3.15. GENERAL WARRANTY REQUIREMENTS.....	34
3.16. WARRANTY REPAIR BY AUTHORIZED USERS.....	35
3.17. POST-DELIVERY SERVICE .....	35

3.18. RECALLS .....35

3.19. TRAINING.....35

**4. GENERAL PROVISIONS.....35**

4.1. NOTICES.....35

4.2. CAPTIONS .....36

4.3. SEVERABILITY .....36

4.4. COUNTERPARTS .....36

4.5. ENTIRE AGREEMENT .....36

CONTRACT SIGNATURE PAGE.....37

**APPENDICES**

- Appendix A – Standard Clauses for NYS Contracts (January 2014)
- Appendix B – General Specifications For 40440-23166 Vehicles, Class 1-8 (June 2019)
- Appendix C – Contract Modification Procedure
- Appendix D – Lease Vehicles

**ATTACHMENTS**

- Attachment 1 – Contractor information
- Attachment 2 – Insurance Requirements
- Attachment 3 – Report of Contract Usage

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
AGREEMENT # PCXXXXX  
CENTRALIZED CONTRACT FOR THE ACQUISITION OF  
VEHICLES, CLASS 1-8 (STATEWIDE)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, **2019**, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 36<sup>TH</sup> Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

WHEREAS, OGS is statutorily authorized to enter into centralized contracts for commodities for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter “Authorized Users”); and

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Vehicles, Class 1-8, as further described herein; and

WHEREAS, OGS issued Solicitation #23166, for Vehicles Class 1-8 (Statewide), which was advertised in the July 25, 2019 edition of the New York State Contract Reporter as required by the New York State Economic Development Law; and

WHEREAS, the Solicitation was issued for the purposes of establishing a Contract for a Bidder’s complete or partial Vehicle OEM Product Line, as specified by the Bidder, with Product acquisition via an Authorized User competitive Mini-Bid process; and

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

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

## 1. INTRODUCTION

### 1.1. OVERVIEW

The purpose of this Contract is to provide Authorized Users with a means of acquiring (purchasing or leasing) new Vehicles, Class 1-8. Vehicle acquisition Shall be on an as-needed basis by Authorized Users via a competitive Mini-Bid process (see Section 2.42 *Procurement Method*).

### 1.2. SCOPE

This Contract sets forth the terms and conditions governing the purchase or lease of new Vehicles, (including Chassis, Bodies, Complete Vehicles, and associated Options and Aftermarket Components), as specified herein. The scope of this Contract Shall include one or more of the following Class Vehicles as set forth in Attachment 1 – *Contractor Information*: Class 1 (1 to 6,000 lb. GVWR), Class 2 (6,001 to 10,000 lb. GVWR), Class 3 (10,001 to 14,000 lb. GVWR.), Class 4 (14,001 to 16,000 lb. GVWR), Class 5 (16,001 to 19,500 lb. GVWR), Class 6 (19,501 to 26,000 lb. GVWR), Class 7 (26,001 to 33,000 lb. GVWR), and Class 8 (33,001 lb. GVWR & Over).

This Contract is for the OEM Product Line(s) available from the Dealer(s), and at the NYS Minimum Chassis Discount(s), if applicable, set forth in Attachment 1 – *Contractor Information*.

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 are outside the scope of this Contract and Shall not be sold in response to a Mini-Bid.

The following Vehicles are excluded from this Contract:

1. Heavy Construction Equipment (i.e., equipment which is intended for heavy work such as earthmoving, construction, lifting containers or materials, drilling holes in earth or rock, concrete or paving application or street sweeping (e.g., aerial lifts, large towable air compressors, generators and light towers, concrete saws, earth compactors and rollers, backhoes, motor graders, skid-steer loaders, bulldozers, wheel loaders, trenchers, utility tractors, excavators, forklifts, and sweepers), and other related attachments and equipment);
2. 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 GVWR less than 3,000 pounds);
3. School Buses (i.e., every motor vehicle owned, leased or contracted for by a School and operated for the transportation of pupils under the age of 21 years, children of pupils, teachers and other persons acting in a supervisory capacity, to or from School or School activities (i.e., any program for the benefit of pupils, sponsored and supervised by school officials), but does not include a bus designed and sold for operation as a common carrier in urban transportation); and
4. Transit Buses that will be purchased with FTA funding and are available from any OGS Contract awarded under Group 40523 *Transit Buses*.

### 1.3. ESTIMATED QUANTITIES

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor Must furnish all quantities actually ordered at or below the Contract prices. The individual value of each Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Section 28 *Estimated/Specific Quantity Contracts* and Appendix B, Section 25 *Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under a Contract to vary substantially from any estimates provided in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts May be non-exclusive Contracts.

- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimated quantities provided.

#### **1.4. DEFINITIONS AND ACRONYMS**

Capitalized terms used in this Solicitation Shall be defined in accordance with Appendix B, Section 2 *Definitions*, or as below. Additional definitions that are specific to a Lease Vehicle are included in Appendix D – *Lease Vehicles*, Section A *Lease Vehicle Terms and Conditions*, Paragraph 1 *Definitions*.

**“Additional Options and Aftermarket Components (AOAC)”** Shall refer to any Option or Aftermarket Component that is either added to or deleted from the Authorized User Specifications for a Vehicle after a Mini-Bid has been awarded.

**“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).

**“AOAC Discount”** Shall refer to the percentage amount that is deducted from the MSRP (for Single OEM Vehicle or Chassis Options), or Contractor-Published Pricelist (for Body Options and Aftermarket Components), as applicable.

**“Authorized User Specifications”** Shall refer to the minimum Vehicle, delivery and Lease Vehicle specifications provided by the Authorized User for the Mini-Bid.

**“Body(ies)”** Shall refer to the portion of a Vehicle which Must be attached to a Chassis in order to carry the load or cargo, and is an incomplete Vehicle without being attached to a Chassis. Examples include aerial lift, ambulance, beverage, box/van, bus, concrete mixer, dump, flat bed, log, pickup, recyclable/refuse, refrigerator, service/utility, stake, sweeper, tank, tow truck, and trailer.

**“Body Upfit”** Shall refer to the installation of a Body on a Chassis.

**“Body Upfitter”** Shall refer to a business that installs Bodies on Chassis to form a Complete Vehicle.

**“Build-Out Date”** Shall mean the last calendar date that a Model Shall be manufactured for a particular Model Year.

**“Build Sheet”** Shall refer to the document which lists, at a minimum, for the Vehicle(s) offered in a Mini-Bid:

1. The Make and Model of the Vehicle(s);
2. An itemized list of all standard equipment, Options and Aftermarket Components included in the Vehicle(s); and
3. For Single OEM Vehicles and Chassis, the document Must also include:
  - A) The MSRP of the standard base Vehicle(s);
  - B) The MSRP and Option code for each Option included in the Vehicle(s); and
  - C) The total NYS Base MSRP of the Vehicle(s).

**“Built to Specifications”** Shall refer to a Vehicle that the Contractor Shall order directly from the OEM(s) and that Shall be built to meet the Authorized User Specifications identified in a Mini-Bid.

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

**“Chassis”** Shall mean the portion of a Vehicle that includes the frame, wheels, and machinery (e.g., engine, transmission, driveshaft, differential, and suspension), and is an incomplete Vehicle until it is joined to a Body. Chassis includes Chassis cabs, cutaway Chassis, and any other Chassis-only incomplete Vehicle.

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

**“Class”** Shall refer to a Vehicle classification that is determined based on the Vehicle’s GVWR.

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

**“Complete Vehicle”** Shall mean a Vehicle that is ready for use and requires no further manufacturing operations to perform its intended function, and is either 1) a Single OEM Vehicle, or 2) the result of a Body Upfit.

**“Contractor-Published Pricelist”** Shall refer to the electronic, (i.e., in Excel or PDF format), document(s) issued by the Contractor which lists, among other things, an item number, description and MSRP or Contractor’s standard list price for the Contractor’s complete Product Line.

**“Dealer(s)”** Shall refer to a distribution source for an OEM, authorized and designated by said OEM, subject to approval by OGS, which May include the OEM or an entity other than the OEM.

**“eProcurement Platform”** Shall mean the internet platform designated by OGS for the acceptance of new contractor Bids and the processing of Mini-Bids under this Award.

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

**“Grand Total Price For Mini-Bid”** Shall refer to, for a Mini-Bid for a Complete Vehicle that includes both a Chassis and a Body, the sum of the Total Price For Mini-Bid for the Chassis plus the Total Price For Mini-Bid for the Body.

**“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.

**“Lease(s)”** Shall mean an agreement under the Contract between an Authorized User and a Lease Provider, in which the Lease Provider agrees to provide a Lease Vehicle to the Authorized User in return for a periodic payment.

**“Lease Vehicle”** Shall mean the Vehicle that is provided under the Lease.

**“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).

**“Make”** Shall refer to the OEM company name of a Vehicle Model (e.g., Ford, International, Freightliner, Viking, Galion).

**“May”** Shall mean the permissive in a clause or specification of this Contract. “May” does not mean “required.” Also see “Shall” and “Must.”

**“Mini-Bid”** Shall refer to the competitive procurement process that a Contractor Must participate in to provide a Vehicle to an Authorized User under the Contract.

**“Mini-Bid Number”** Shall refer to the system-generated number assigned to the Mini-Bid.

**“Model”** Shall refer to a particular brand of Vehicle sold by an OEM (e.g., Malibu, Explorer, F-450, DuraStar, M2-106, 450U).

**“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 Model, irrespective of the calendar year in which the Vehicle was actually produced, provided that the production period does not exceed 24 months.

**“MSRP”** Shall refer to the Manufacturer’s Suggested Retail Price, as published by the OEM.

**“Must”** Shall mean the imperative in a clause or specification of this Contract. “Must” is synonymous with “required.” Also see “Shall” and “May.”

**“MWBE”** Shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

**“NYS Aftermarket Components Price”** Shall mean the total amount charged to the Authorized User for Aftermarket Components added to the Vehicle, inclusive of delivery, and installation at the Contractor’s normal, published labor rates, which Shall not be more than what is charged to the public at large.

**“NYS Base MSRP”** Shall refer to the total of the MSRP for either a Single OEM Vehicle or Chassis offered in a Mini-Bid, as applicable, including all standard equipment provided with the Vehicle, all Options necessary to meet the Authorized User Specifications, and all applicable OEM fees, (e.g., destination charges). The NYS Base MSRP does not include Aftermarket Components.

**“NYS Base Price”** Shall refer to the following:

1. For a Single OEM Vehicle or a Chassis, the NYS Base MSRP minus the NYS Discount; and
2. For a Body, the NYS Price For Vehicle for the Body, excluding the NYS Aftermarket Components Price.

**“NYS Discount”** Shall mean the actual percentage amount by which the NYS Base MSRP is reduced in both the Contractor’s response to a Mini-Bid and for the purchase resulting from the Mini-Bid.

**“NYS Holidays”** refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

**“NYS Minimum Discount”** Shall mean a minimum percentage amount by which the NYS Base MSRP of a Single OEM Vehicle or Chassis Shall be reduced in a Mini-Bid.

**“NYS Price For Vehicle”** Shall mean the dollar amount charged to the Authorized User for each Vehicle, and includes all standard equipment provided with the Vehicle, all Options necessary to meet the Authorized User Specifications, and all applicable OEM fees, (e.g., destination charges), all customs duties and charges, all Vehicle preparation and clean-up charges, Aftermarket Components, installation charges, delivery, and all other incidentals included with providing the Vehicle to the Authorized User.

**“NYS Vehicle Marketplace”** Shall refer to the OGS processes for conducting a Mini-Bid under this Contract, as set forth in Section 2.42 *Procurement Method*.

**“NYS Vendor ID”** is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the NYS Vendor File System.

**“OEM”** Shall mean Original Equipment Manufacturer.

**“OEM Pricelist”** Shall refer to the nationally published or internal document(s) issued by the Vehicle manufacturer which lists, among other things, an Option Code, description and MSRP for the OEM’s Product Line.

**“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.

**“Options”** Shall refer to accessories, equipment, or features that are available from the OEM and that can be added to, or deleted from, a Vehicle.

**“Option Code”** Shall refer to an alpha-numerical code (also known as a Feature Code) used by an OEM to identify a particular feature or Option included with, or available for, a Vehicle.

**“Pre-Existing Inventory”** Shall refer to Vehicle(s) that were manufactured by the OEM prior to posting of the Mini-Bid. Pre-Existing Inventory May either be located at the Contractor’s business location, or another location.

**“Procurement Services”** Shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPro”) and Procurement Services Group (“PSG”).

**“Product Line”** Shall mean a group of related products manufactured by a single company, or offered by a company in its usual course of business.

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

**“Shall”** Shall mean the imperative in a clause or specification of this Contract. “Shall” is synonymous with “required.” Also see “Must” and “May.”

**“Single OEM Vehicle(s)”** Shall mean a Complete Vehicle that is marketed and sold under one OEM brand name (e.g., cars, mini-vans, SUVs, and pickups).

**“SDVOB”** Shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

**“Total Price For Mini-Bid”** Shall refer to the following:

1. For a Single OEM Vehicle that is a Vehicle Built to Specifications, the NYS Price For Vehicle, multiplied by the number of Vehicles;
2. For a Single OEM Vehicle that is a Pre-Existing Vehicle, where the method of award is “Lowest price to a single contractor,” the sum of the NYS Price For Vehicle for each Pre-Existing Vehicle offered;
3. For a Chassis (i.e., in either a Chassis-only Mini-Bid or a Mini-Bid for Complete Vehicle that includes both a Chassis and Body), the NYS Price For Vehicle, multiplied by the number of Chassis; and
4. For a Body (i.e., in either a Body-only Mini-Bid or a Mini-Bid for Complete Vehicle that includes both a Chassis and Body), the NYS Price For Vehicle, multiplied by the number of Bodies.

**“Vehicle(s)”** Shall mean all components of a mobile machine that May be used to transport passengers or cargo. All components provided under a Mini-Bid (i.e., Chassis, Bodies, Light Duty Vehicles, and Complete Vehicles) but not including any associated Aftermarket Components, are collectively referred to as “Vehicle(s)” in this Contract.

**“Written”** Shall mean any writing that makes use of words. Examples of Written communications include e-mail, Internet websites, letters, proposals, and contracts.

## 2. GENERAL TERMS AND CONDITIONS

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

### 2.1. CONTRACT DOCUMENTS AND CONFLICT OF TERMS

Any conflicts among these documents Shall be resolved in the following order of precedence:

1. Appendix A – *Standard Clauses for New York State Contracts* (January 2014)
2. This document (Base Agreement), the portion of the Contract preceding the Parties' signatures, and Appendix D – *Lease Vehicles*
3. Appendix B – *General Specifications For 40440-23166 Vehicles, Class 1-8* (June 2019)
4. Attachment 2 – *Insurance Requirements*
5. Attachment 1 – *Contractor Information*
6. Appendix C – *Contract Modification Procedure*
7. Attachment 3 – *Report of Contract Usage*

Contractor is responsible for retaining the original of all completed forms submitted through the eProcurement Platform with its Bid for Solicitation 23166, with ink signatures if applicable. The original forms Must be retained by the Contractor for the life of the Contract (a longer retention period than the six (6) year period referenced in Appendix A, Section 10 *Records*), and Must be provided to OGS upon request.

### 2.2. APPENDIX B MODIFICATIONS

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

1. Appendix B, Section 31 *Product Delivery*, is deleted and replaced in its entirety by Section 2.16 of this Contract, *Product Delivery*.

### 2.3. CONTRACT TERM AND EXTENSIONS

All Contracts awarded under Solicitation 23166 Shall terminate simultaneously ten (10) calendar years from the date of OGS approval of the first Contract awarded. The Contract term Shall commence after all necessary approvals and Shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, Section 22 *Contract Creation/Execution*).

This Contract and all OGS Centralized Contracts resulting from the Solicitation Shall have a co-terminus end date. At the State's option, the Contract May be extended as set forth in Appendix B, Section 23 *Contract Term – Extension*. Whether the optional extension is exercised is at the sole discretion of the State. A Contractor Shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements.

The Contract term provided for in this section Shall extend six (6) months beyond its termination date only for Authorized Users whose contracts Must be registered with the Office of the New York City Comptroller. During the six-month period the definition of Authorized User Shall be deemed to refer only to Authorized Users whose contracts Must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph Shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, May agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

### 2.4. SHORT TERM EXTENSION

This section Shall apply in addition to any rights set forth in Appendix B, Section 23 *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State May be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension May be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

**2.5. PRICE**

Pricing for Vehicles provided under the Contract Shall be subject to the terms and conditions in Sections 2.5 through 2.11. A Contractor providing pricing in a response to a Mini-Bid Must submit such response in the manner communicated by OGS to all Contractors under this Award. This May include the use of a third-party eProcurement Platform, which May dictate the format of data entry and use of the data entered by the Contractor to perform the bid calculation. The required method of submitting Mini-Bid responses is subject to change at the discretion of OGS, without requiring an amendment to this Contract.

Unless otherwise specified by an Authorized User, the NYS Base Price Shall include all customs and duties, OEM destination fee, all Vehicle preparation and clean-up charges, NYS motor Vehicle inspection, installation charges and all other OEM and Dealer incidentals normally included with providing a Vehicle.

Options, when specified in the Authorized User Specifications included with the Mini-Bid, (See Section 3.7 *Options*), 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 Options. If a standard Option is being deleted from a Vehicle, the Contractor Must give the Authorized User proof of the MSRP for the Option if requested, as shown in the OEM or Contractor-Published Pricelist.

**2.6. NYS DISCOUNT**

The Contractor Shall offer Single OEM Vehicles and Chassis purchased under the Contract at either the NYS Minimum Discount(s) set forth in Attachment 1 – *Contractor Information*, or a greater discount. The NYS Minimum Discount Must be one (1) percent or greater. A Mini-Bid offer that includes a NYS Discount that is less than the NYS Minimum Discount, and any offer of pricing greater than MSRP, Shall be rejected by the Authorized User.

The Contractor May offer a NYS Discount that is greater than the NYS Minimum Discount set forth in the Contract, for Mini-Bids conducted under the Contract, at any time without prior approval. The Contractor May request an increase to the NYS Minimum Discount set forth in the Contract by submitting Appendix C – *Contract Modification Procedure* (see Section 2.39 *Centralized Contract Modifications*). The NYS Minimum Discount May not be decreased during the Contract term.

**2.7. 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. 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.

**2.8. NYS PRICE FOR VEHICLE (SINGLE OEM VEHICLES AND CHASSIS)**

A Contractor responding to a Mini-Bid for a Single OEM Vehicle, or a Mini-Bid that includes a Chassis (i.e., a Chassis-only Mini-Bid, or a Mini-Bid for Complete Vehicle that includes both a Chassis and a Body), Shall provide a NYS Base MSRP, NYS Discount and, if applicable, NYS Aftermarket Components Price for the Single OEM Vehicle or the Chassis, as applicable. Set forth below is an example of how the NYS Price For Vehicle is calculated for Single OEM Vehicles and Chassis.

<b>Description</b>	<b>Price</b>
NYS Base MSRP	\$60,000.00
NYS Discount [ <i>in this example, 23.00% of \$60,000 is equal to \$13,800</i> ]	23.00
NYS Base Price [ <i>Automatically calculated: NYS Base MSRP minus NYS Discount</i> ].	\$46,200.00
NYS Aftermarket Components Price	\$450.00
<b>NYS Price For Vehicle</b>	<b>\$46,650.00</b>

**2.9. NYS PRICE FOR VEHICLE (BODY)**

A Contractor providing a response to a Mini-Bid that includes a Body (i.e., either a Body-only Mini-Bid, or a Mini-Bid for a Complete Vehicle that includes both a Chassis and a Body), Shall provide the NYS Base Price and, if applicable, NYS Aftermarket Components Price, for the Body. Set forth below is an example of how the NYS Price For Vehicle is calculated for a Body.

Description	Price
NYS Base Price	\$50,000.00
NYS Aftermarket Components Price	\$2,000.00
NYS Price For Vehicle	\$52,000.00

**2.10. MINI-BID METHOD OF AWARD**

Each Mini-Bid will be ranked and evaluated based on either 1) the NYS Price For Vehicle, 2) the Total Price For Mini-Bid, or 3) the Grand Total Price For Mini-Bid. Set forth below are examples of the method of award for the Vehicles that meet the Authorized User Specifications for each type of Mini-Bid.

**1. Single OEM Vehicles (Built to Specifications)**

Mini-Bids for Single OEM Vehicles that are for Vehicles Built to Specifications Shall be awarded based on lowest Total Price For Mini-Bid, which is calculated as shown in the example below.

Description	Price
NYS Price For Vehicle	\$46,500.00
Number of Vehicles	2
Total Price For Mini-Bid [ <i>Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles</i> ]	\$93,000.00

**2. Single OEM Vehicles (Pre-Existing)**

Mini-Bids for Single OEM Vehicles that are for Pre-Existing Vehicles Shall be awarded as specified by an Authorized User in the Mini-Bid. The method of award Shall be either "Lowest price, per Vehicle," or "Lowest price to a single contractor." Examples of how each method is calculated is shown in the examples below.

- A. **Lowest price, per Vehicle," to multiple Contractors.** Each Pre-Existing Vehicle offered by the Contractor(s) for the Mini-Bid Shall be ranked based on NYS Price For Vehicle, and award will be made in order from lowest to highest, to the number of Contractors required to fulfill the Vehicle request.

Bidder / Vehicle	Description	Price
Bidder 1 / Vehicle 1	NYS Price For Vehicle	\$25,080.00
Bidder 1 / Vehicle 2	NYS Price For Vehicle	\$25,085.60
Bidder 2 / Vehicle 1	NYS Price For Vehicle	\$26,090.00
Bidder 1 / Vehicle 3	NYS Price For Vehicle	\$26,100.00
Bidder 2 / Vehicle 2	NYS Price For Vehicle	\$28.900.00
Bidder 2 / Vehicle 3	NYS Price For Vehicle	\$28.950.00

- B. **Lowest price to a single contractor.** Each Contractor that offers the total number of Pre-Existing Vehicles requested is ranked based on Total Price For Mini-Bid, which is the sum of the NYS Price For Vehicle for each Pre-Existing Vehicle offered. Award will be made to the Contractor with the lowest Total Price For Mini-Bid.

Bidder / Vehicle	Description	Price
Bidder 1 / Vehicle 1	NYS Price For Vehicle	\$25,080.00
Bidder 1 / Vehicle 2	NYS Price For Vehicle	\$25,085.60
Bidder 1 / Vehicle 3	NYS Price For Vehicle	\$26,100.00
Bidder 1 Mini-Bid Offer	Total Price For Mini-Bid	\$76,265.60

Bidder / Vehicle	Description	Price
Bidder 2 / Vehicle 1	NYS Price For Vehicle	\$26,090.00
Bidder 2 / Vehicle 2	NYS Price For Vehicle	\$28,900.00
Bidder 2 / Vehicle 3	NYS Price For Vehicle	\$28,950.00
Bidder 2 Mini-Bid Offer	Total Price For Mini-Bid	\$83,940.00

**3. Complete Vehicles (Chassis and Body)**

Mini-Bids for Complete Vehicles that include both a Chassis and a Body Shall be awarded based on lowest Grand Total Price For Mini-Bid, which is the sum of the Total Price For Mini-Bid for the Chassis and the Total Price For Mini-Bid for the Body. An example of the calculation is shown below.

Description	Price
NYS Price For Vehicle (Chassis)	\$36,500.00
Number of Vehicles (Chassis)	2
Total Price For Mini-Bid (Chassis) <i>[Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles]</i>	\$73,000.00

Description	Price
NYS Price For Vehicle (Body)	\$66,250.00
Number of Vehicles (Body)	2
Total Price For Mini-Bid (Body) <i>[Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles]</i>	\$132,500.00

Description	Price
Total Price For Mini-Bid (Chassis)	\$73,000.00
Total Price For Mini-Bid (Body)	\$132,500.00
Grand Total Price For Mini-Bid <i>[Automatically calculated: the sum of the Total Price For Mini-Bid (Chassis) plus the Total Price For Mini-Bid (Body)]</i>	\$205,500.00

**4. Chassis-Only)**

Mini-Bids that are for only a Chassis, with no Body Upfit, Shall be awarded based on lowest Total Price For Mini-Bid for the Chassis, which is calculated as shown in the example below.

Description	Price
NYS Price For Vehicle (Chassis)	\$36,500.00
Number of Vehicles (Chassis)	2
Total Price For Mini-Bid (Chassis) <i>[Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles]</i>	\$132,500.00

**5. Body-Only**

Mini-Bids that are for only a Body, with no Chassis, Shall be awarded based on lowest Total Price For Mini-Bid for the Body, which is calculated as shown in the example below.

<b>Description</b>	<b>Price</b>
NYS Price For Vehicle (Body)	\$66,250.00
Number of Vehicles (Body)	2
Total Price For Mini-Bid (Body) [ <i>Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles</i> ]	\$73,000.00

**2.11. ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC) PRICE**

The following terms and conditions apply to the AOAC price. See Section 3.9 *Additional Options and Aftermarket Components (AOAC)* for terms and conditions applicable to offering AOAC under the Contract.

1. Unless otherwise agreed-upon by the Authorized User, the AOAC Discount Shall be at five (5) percent or a greater discount. Offers of pricing greater than either the MSRP on the OEM Pricelist, or the standard list price on the Contractor-Published Pricelist, as applicable, Shall be rejected by the Authorized User.
2. If an AOAC is being added to the Vehicle awarded in the Mini-Bid, the AOAC Discount Shall be applied to the MSRP on the OEM or Contractor-Published Pricelist, as applicable, to yield a NYS Contract Price. The price for the AOAC Shall be added to the applicable NYS Price For Vehicle.
3. If an AOAC is being deleted from the Vehicle awarded in the Mini-Bid, the MSRP of the AOAC Shall be subtracted from the NYS Base MSRP (for a Single OEM Vehicle or a Chassis) or NYS Base Price (for a Body), and the applicable NYS Price For Vehicle Shall be recalculated to reflect the deletion.

**2.12. ORDERING**

Purchase Orders Shall be made in accordance with the terms set forth in Appendix B, Section 30 *Purchase Orders*. Authorized Users May submit orders by hard copy, and, if available, May submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted Shall be deemed received by Contractor on the date submitted.

All Purchase Orders are to include the following information;

1. Purchase Order Number
2. Contract number;
3. Contractor business name;
4. Contractor NYS Vendor ID Number;
5. NYS Vehicle Marketplace Mini-Bid Number;
6. General description of Vehicle(s);
7. Make, Model and Model Code of the Vehicle(s);
8. Option Code(s) and descriptions, if applicable;
9. Make, Model, part numbers and descriptions, of Aftermarket Components, if applicable;
10. NYS Price For Vehicle(s);
11. Quantity ordered;
12. Total Price For Mini-Bid;
13. Total Aftermarket Component cost, if applicable; and
14. Liquidated damages, if any.

All Purchase Orders Shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor’s receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable). Contractor’s issuance of an order confirmation Shall be deemed a representation to the Authorized User that the Contractor has received and reviewed the Purchase Order and has entered the order with the OEM and that the

manufacturer has accepted the order and assigned an order number and anticipated build and delivery dates.  
*See also Section 2.20 Delivery Time.*

**2.13. PURCHASING CARD ORDERS**

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Section 15 *Purchasing Card*), also referred to as the Procurement Card, the Contractor Shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

**2.14. MINIMUM ORDER**

There is no minimum order amount for this Contract.

**2.15. INVOICING AND PAYMENT**

Invoicing and payment Shall be made in accordance with the terms set forth in Appendix B, Section 45 *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice Must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields Must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- NYS Vehicle Marketplace Mini-Bid Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Make, Model, and Model Code of the Vehicle(s)
- Make, Model, part numbers and descriptions, of Aftermarket Components, if applicable;
- NYS Price For Vehicle(s)
- Quantity
- Total Price For Mini-Bid

Cost centers or branch offices within an Authorized User May require separate invoicing as specified by each Authorized User. The Contractor's billing system Shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>.

**2.16. PRODUCT DELIVERY**

Contractors Shall be required to deliver Vehicles anywhere within New York State boundaries, as designated by the Authorized User in the Mini-Bid and on the Purchase Order. The following terms and conditions apply to Delivery:

1. The Contractor agrees to bear the risk of loss, injury, or destruction of the Product ordered, prior to receipt of the Vehicle by the Authorized User.
2. Delivery Shall be made in accordance with instructions on the Purchase Order from each Authorized User. It Shall be presumed 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 to the Authorized User that the

order was received on a later date. If there is a discrepancy between the Purchase Order and what was listed in the Mini-Bid or agreed upon after tentative award of the Mini-Bid it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS.

3. Contractor Shall secure a signed receipt from the Authorized User certifying delivery of a Vehicle and odometer reading. from Vehicles that have an odometer. In the event deficiencies are later noted and a properly signed receipt cannot be found, Contractor Shall be responsible for certifying delivery and odometer reading.
4. Pursuant to Appendix B, Section 33 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.
5. An Authorized User May choose to stagger the delivery of Vehicles over a period of time, and to multiple delivery locations, as specified on the Purchase Order. For example, an Authorized User May order forty (40) Vehicles with instructions to deliver four (4) Vehicles to each of ten (10) locations over a period of time.
6. Upon mutual agreement, delivery locations May be expanded per Section 2.38 *Non-State Agencies Participation in Centralized Contracts*.

#### **2.17. PRE-DELIVERY INSPECTION OF VEHICLE(S) WITH BODY UPFIT**

At the discretion of the Authorized User, the Contractor May be required to present a Vehicle with a Body Upfit for pre-delivery inspection. The terms and conditions of such inspection(s) Shall be provided by the Authorized User, and should be agreed upon by the Contractor and Authorized User prior to scheduling production. This inspection Shall take place inside a building and on a dry Vehicle at the OEM's facility or Contractor's place of business, as mutually agreed upon by the Contractor and the Authorized User. When pre-delivery inspection is required, the Contractor Shall make no delivery of a Vehicle without Written approval of the Authorized User.

The Contractor Shall notify the Authorized User that the Vehicle is ready for inspection. Within five (5) Business Days of the Contractor's notification, the Authorized User Shall send a qualified inspector(s) to the mutually agreed upon location, to accomplish the inspection of the Vehicle before delivery. Upon arrival of the inspector(s) at the facility, the Contractor Shall assign a mechanic, a runner and a delivery bay to the inspector. If multiple Vehicles are being inspected, it is the Contractor's responsibility to properly itemize, organize and segregate all pre-delivery inspection Vehicles from any other Vehicles. The above areas of responsibility Must be accomplished in order to facilitate an expeditious and orderly inspection flow. This Shall also allow discrepancies to be corrected while the inspector is located at the Contractor's facility.

Inspected Vehicles which are found to not meet the specifications of the Mini-Bid or any other agreed-upon deviation Shall be rejected (see also Appendix B, Section 36 *Rejected Product*). All rejected Vehicles Shall be corrected, at the expense of the Contractor, and the corrected Vehicle Shall be presented for re-inspection within ten (10) working days. The Authorized User May cancel the Purchase Order if the Contractor fails to correct any problem, without incurring any cost or fee.

#### **2.18. CONDITION ON DELIVERY**

Vehicles Must be delivered strictly in accordance with the Authorized User Specifications and Shall be "Ready for Use," and/or as requested by the Authorized User. Each Vehicle and its components Shall be completely assembled, serviced and ready for use when delivered to the Authorized User. Unless specified otherwise, any parts, components, equipment, controls, materials, features, performances, capacities, ratings or designs which are standard and/or necessary to form an efficient and complete working Vehicle Shall be furnished whether specifically required herein or not. Additionally, each Vehicle Shall, at no additional cost to the Authorized User:

1. At point of acceptance, have an odometer reading that is consistent with the miles, in distance, to the anticipated odometer mileage incurred between the OEM factory, the Contractor's place of business, other mutually agreed upon location, if applicable, and the point of delivery. Note: In the event that a Vehicle is delivered with an odometer reading that the Authorized User considers to be excessive, the Contractor Shall be required to provide a reasonable explanation for the odometer reading. Vehicles that are delivered with an odometer reading that is considered excessive without a reasonable explanation May be rejected. Chassis Shall only be used for transport of other Chassis (e.g., as "mule" trucks), that are included in the Authorized User's delivery.

2. Be certified to meet or exceed requirements to obtain a NYS registration. The GVWR Shall be identified in the Chassis on the certification label. The Gross Combined Weight Rating (GCWR) Shall be identified by a decal in the cab indicating the approved weight which can be towed, if applicable.
3. Include the proper forms to apply for a NYS registration. These forms Shall include, but are not limited to:
  - A. Required from Contractors in New York State: MSO (Manufacturer's Statement of Origin), MV50 Retail Certificate of Sale (except for trailers with an unladen weight under 1,000 lb.; Include lienholder information when required by Authorized User), and MV82 (Vehicle Registration/Title Application); or
  - B. Required from Contractors outside New York State: Manufacturer's Certificate or Statement of Origin, and Odometer Disclosure Statement (This is not required if the Manufacturer's Certificate/Statement of Origin includes the odometer disclosure.) When a lien is required by the Authorized User, Out of state dealers Must additionally prepare a Notice of Lien (MV-900) and either (1) ensure it is submitted with the Title Application/Registration Paperwork, or (2), supply proof that the MV-900 was sent directly to the Title Bureau upon completion of the sale.
4. Have a valid NYS inspection sticker and a valid NYS emissions inspections sticker. Unless otherwise instructed by the Authorized User, all NYS state inspection requirements are the sole responsibility of the Contractor. See Section 3.12 *Vehicle Inspection*.
5. Have the OEM's recommended pre-delivery service completed.
6. Have the Chassis OEM's Model and Model Code stated on a decal affixed to the inside of the driver's side door.
7. Be clean, lubricated, serviced, with the fuel gauge registering no less than one half full, all adjustments completed, all components fully functional and operational, and the Vehicle in "road ready" condition.
8. Have permanent antifreeze to protect it at a level of -34 °F. Only a low silicate type anti-freeze Shall be used for Vehicles having diesel engines.
9. Be free from all Dealer signs/emblems. See Section 3.11 *Advertising*.
10. Include a copy of the OEM warranty and service policy with all warranty vouchers, certificates and coupons. Delayed warranty forms are to be provided with the required motor Vehicle paper work.
11. Have each Chassis, Body, and other applicable components identified with an identification tag that provides the OEM's name, Model, and individual serial number if applicable. Tags Shall be affixed in an accessible and readable position on the item.
12. If a Vehicle with a Body Upfit, include a bill of materials or line-setting ticket. The bill of materials Shall list by part number, capacity, size or otherwise, all major components of the Vehicle (engine, frame, transmission, drive line, axles, alternator, storage battery, fuel tank, etc.). The bill of materials Shall be at least as comprehensive as the OEM's line-set ticket.
13. If towed to the Authorized User for delivery, the towing device May not be attached in such a way that holes are drilled in the bumper of the Vehicle being towed. Drilling of holes in the Vehicle bumpers is not permitted. Any bumper damaged by a towing device Shall be replaced by the Contractor at no charge to the Authorized User. If a Vehicle is being towed by another Vehicle, the Vehicle being towed Must have the drive shaft disconnected to eliminate unnecessary mileage.

## **2.19. POST DELIVERY INSPECTION**

After Vehicles have been delivered to the location stated on the Purchase Order, a post-delivery inspection Shall be performed by the Authorized User. If any deficiencies are found, it is the responsibility of the Contractor to arrange to have the necessary corrective work completed within five (5) Business Days after receipt of Written notification from the Authorized User. If the Contractor cannot arrange to have the necessary work completed within such time period, and the Authorized User cannot agree to an extension of such time period, the Authorized User May either reject the Vehicle (see Appendix B, Section 36 *Rejected Product*) or choose to have

the corrections made by an entity of the Authorized User's choosing. The Contractor Shall then be required to issue a revised invoice if any credits are required by the Authorized User as a result of deficiencies found during the post-delivery inspection.

## **2.20. DELIVERY TIME**

The following provisions for delivery time Shall apply:

1. 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. Failure to deliver within the previously agreed upon time period Shall result in payment of liquidated damages in accordance with Section 2.22 *Liquidated Damages*.
2. Contractor Shall provide Written acknowledgement of orders within five (5) Business Days After Receipt of Order.
3. Contractor Shall provide ordering Authorized User with anticipated shipping date of completed Vehicles upon receipt of purchase order or at the pre-production meeting. See Section 3.13, *Pre-Production Meeting*. If the anticipated shipping date cannot be provided by the Contractor at the time of the acknowledgement of order, or at the pre-production meeting, then the Contractor Shall provide the Authorized User with a reasonable explanation for not providing a date, and Shall provide the anticipated delivery date at the time it becomes known to the Contractor.
4. Unless otherwise agreed-upon by the Authorized User, the Contractor Shall furnish the Authorized User with Written acknowledgement of the delivery date to the Authorized User at least fourteen (14) calendar days prior to shipment.
5. If delivery 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 delivery Shall not be made within the delivery time. This notification Must include the reasons for the delay and the latest date the Vehicle Shall be delivered. Should the delay not be acceptable to the Authorized User, the Authorized User May assess liquidated damages (see Section 2.22 *Liquidated Damages*).
6. All correspondence on delivery time Shall be directed to the ordering Authorized User's contact person.  
*See also Section 2.12 Ordering.*

## **2.21. DEFAULT ON MINI-BID**

If during the Contract period an Authorized User has issued a Purchase Order on or before the 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, Section 44 *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 specified in the Mini-Bid. The price for the substitute Vehicles Shall be equal to or less than the 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 for the Vehicle, Chassis or Body that is unavailable or cannot be supplied (except as provided for in Appendix B, Section 44 *Savings/Force Majeure*).

## **2.22. LIQUIDATED DAMAGES**

In the event of a delay that is within control of Contractor that results in a default in the delivery timeframe previously agreed upon by the Contractor and the Authorized User, the Authorized User Shall be entitled to and May assess against the Contractor as liquidated damages and not by way of penalty, a sum calculated as follows:

**1. Single OEM Vehicles or Chassis-only orders**

Seventy dollars (\$70) per seven (7) calendar day period, per Vehicle, to compensate for delay, and other losses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time delivery was due as specified on the Purchase Order. The liquidated damages Shall be prorated for a period less than seven (7) days to be an amount equal to ten (\$10) per twenty-four (24) hour period that the delivery is delayed. A grace period of seven (7) calendar days commencing on and including the Purchase Order date for delivery Shall be extended to the Contractor prior to the assessment of such liquidated damages. Notice is hereby given to the Contractor that, despite the grace period herein specified, time Shall be of the essence in regard to delivery of the Vehicle.

**2. Complete Vehicles that include both a Chassis and Body Upfit, and Body-only orders**

One hundred and fifty dollars (\$150) per seven (7) calendar day period, per Complete Vehicle or Body, as applicable, to compensate for delay, and other losses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time delivery was due as specified on the Purchase Order. The liquidated damages Shall be prorated for a period less than seven (7) days to be an amount equal to twenty-two dollars (\$22) per twenty-four (24) hour period that the delivery is delayed. A grace period of seven (7) calendar days commencing on and including the Purchase Order date for delivery Shall be extended to the Contractor prior to the assessment of such liquidated damages. Notice is hereby given to the Contractor that, despite the grace period herein specified, time Shall be of the essence in regard to delivery of the Vehicles

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

**2.23. CONTRACT ADMINISTRATION**

The Contractor Shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor Shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor Shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator Shall be set forth in Attachment 1 – *Contractor Information*. Contractor Must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes Shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

**2.24. NYS FINANCIAL SYSTEM (SFS)**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State May be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place May be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

**2.25. DEALER CERTIFICATION**

Contractor and third-party businesses used to satisfy Mini-Bid Requests under the Contract Shall be a Dealer for the Vehicle OEM(s) offered under the Mini-Bids. Upon request by OGS or an Authorized User, the Contractor Shall provide proof of that status in a format that is acceptable to the entity that made the request. The Vehicle OEM(s) for which the Contractor is a Dealer Shall be identified in Attachment 1 – *Contractor Information*.

**2.26. INSURANCE**

The Contractor Shall maintain in force at all times during the term of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 2 – *Insurance Requirements*.

**2.27. REPORT OF CONTRACT USAGE**

Contractor Shall submit Attachment 3 – *Report of Contract Usage* (including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any) to OGS no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification, or other person identified by OGS for this purpose, and Shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 3 – *Report of Contract Usage* contains the minimum information required. Additional related sales information May be required by OGS and Must be supplied upon request. Failure to submit reports on a timely basis May result in Contract cancellation and designation of Contractor as non-responsible.

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

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for 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. Failure to comply with all of the requirements herein May result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women Shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors Shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO Shall

apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

**B. Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO- 101- Commodities and Services")**

1. The Contractor Shall submit, and Shall require each of its subcontractors to submit, a Form EEO-101- Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services Must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms Shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor May not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor Shall submit the Form EEO-101- Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor Shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

**IV. Contract Goals**

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.**

Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846- 8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**B. Good Faith Efforts**

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

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

#### V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs Shall be immediately reported to ESD’s Division of Minority and Women’s Business Development at (855) 373- 4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

#### **2.29. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation May be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Contractor is encouraged to contact the Division of Service-Disabled Veteran’s Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

#### **2.30. 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 Solicitation. Warranties on refurbished or remanufactured components or Products Must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Section 11 *Remanufactured, Recycled, Recyclable or Recovered Materials*.

**2.31. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 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 Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, May be found at <https://ogs.ny.gov/greenny/>. 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.

**2.32. CONSUMER PRODUCTS CONTAINING MERCURY**

Contractor Shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

**2.33. DIESEL EMISSION REDUCTION ACT**

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

The Law May be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles Must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

**2.34. OVERLAPPING CONTRACT PRODUCTS**

Products available under 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.

**2.35. NYS VENDOR RESPONSIBILITY**

The Contractor Shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, 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, 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 issues a Written notice authorizing a resumption of performance under the Contract.

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

Upon Written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract May be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS 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.

**2.36. NYS TAX LAW SECTION 5-A**

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings May render a Contractor non-responsive and non-responsible. Contractor Shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors May call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

**2.37. "OGS OR LESS" GUIDELINES**

Purchases of the Products included in the scope of this Contract are subject to the "OGS or Less" provisions of 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.).

Agencies are reminded that they Must provide the State 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 Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

**2.38. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS**

New York State political subdivisions and others authorized by New York State law May participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Section 25 *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that May have delivery locations adjacent to New York State), the terms of the Price clause Shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies Must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's

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

**2.39. CENTRALIZED CONTRACT MODIFICATIONS**

1. 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.
2. Updates to the Centralized Contract and the Appendices May be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, 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.
3. 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.
4. All modifications proposed by Contractor Shall be processed in accordance with Appendix C – *Contract Modification Procedure*. The Contractor Shall submit all requests to the OGS Contract Administrator identified on the OGS website for this Contract, in the form and format contained in Appendix C – *Contract Modification Procedure*. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. 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, Section 26 *Modification of Contract Terms*.

**2.40. DRUG OR ALCOHOL USE PROHIBITED**

For reasons of safety and public policy, the use of alcoholic beverages or illegal drugs by the Contractor’s personnel Shall not be permitted in performance of this Contract.

**2.41. TRAFFIC INFRACTIONS**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor’s personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of this Contract.

**2.42. PROCUREMENT METHOD**

The following procurement instructions Shall apply to this Contract. OGS reserves the right to change the processes set forth in this Section, in either non-material or substantive ways without seeking a Contract amendment.

1. 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.

2. An Authorized User Shall review the Contracts and associated NYS Minimum Discounts and available Dealers and OEM Product Lines on the OGS website under Award 23166.
3. NYS Vehicle Marketplace.

Authorized User purchases under this Contract Shall be made through a competitive Mini-Bid conducted via the NYS Vehicle Marketplace eProcurement Platform, as described below. OGS reserves the right to not use an eProcurement Platform, or change the eProcurement Platform's host and/or functionality, throughout the term of the Contract at its discretion, without requiring an amendment of the Contract. 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.

  - A. 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 NYS Vehicle Marketplace. Upon internal/control agency approvals, the Authorized User Shall complete the on-line Vehicle request form at the eProcurement Platform. Information to be entered will include the number of Vehicles needed, a description of the Vehicles, Authorized User Specifications, (e.g., required features, deletion of any standard equipment, and addition of Options or Aftermarket components), delivery requirements and locations, and any additional required terms for the Mini-Bid. Authorized User acknowledges that any Vehicle specification information made available through the eProcurement Platform is for the Authorized User's convenience, and that although such information is believed to be accurate, accuracy is not guaranteed.

If the Authorized User is requesting a Chassis or Body for the Contractor to combine with a corresponding Chassis or Body that will be supplied by the Authorized User, then the Authorized User Shall be required to provide specifications for that Chassis or Body supplied by the Authorized User.

A Mini-Bid that does not include a Chassis, Body or Single OEM Vehicle (e.g., a request for a stand-alone Option or Aftermarket Component) is out of the scope of this Contract and Shall not be processed by OGS.
  - B. Each Mini-Bid request Shall be assigned a system-generated Mini-Bid Number. OGS will review the request within three (3) business days and will expedite upon request. The Mini-Bid Shall be publicly posted on the eProcurement Platform, and a system-generated email will be sent to each Contractor. Postings can be viewed by the Contractor on the eProcurement Platform, and May also be publicly viewed via a link on the OGS NYS Vehicle Marketplace website.
  - C. From the date of OGS posting of a Mini-Bid request, Contractors Shall have five (5) business days to submit a response for a Single OEM Vehicles, and fifteen (15) business days to submit a response for a Complete Vehicle that includes both a Chassis and a Body, via the eProcurement Platform. Procurement Services reserves the right to set Mini-Bid response submittal deadlines that are longer or shorter than the standard five (5) or fifteen (15) business days. The Mini-Bid response submittal deadline for each Mini-Bid Shall be posted on the eProcurement Platform.
  - D. Each Mini-Bid posting Shall include contact information for the Authorized User requesting the Vehicle(s). Any questions regarding the Authorized User Specifications and other information posted for a Mini-Bid Must be submitted via the question and answer feature on the eProcurement Platform. The Authorized User Shall be responsible for answering Contractor questions via the eProcurement Platform. Each question and answer submitted via the eProcurement Platform will be publicly posted for all Contractors to view.
  - E. The Contractor Shall be responsible for providing updated email address(es) during the Contract term to the OGS Contract Administrator identified on the Contact Award Notification page posted at the OGS website. The Contractor Must also update its eProcurement Platform profile with updated email addresses(es) during the Contract term.
  - F. A Contractor that offers a Vehicle in response to a posted Mini-Bid Must provide the Mini-Bid response via the eProcurement Platform. The Contractor is responsible to ensure its response is accurate and complete. Contractor Must enter any bid deviations or other additional information applicable to the Mini-

Bid in the designated field on the eProcurement Platform. A Mini-Bid response submitted in a format other than the eProcurement Platform Shall be considered non-responsive and the Mini-Bid response Shall be disqualified.

- G. Timeframe for offers in Mini-Bids. The Vehicle and pricing offered in a Mini-Bid is firm for the timeframes listed below. Once the Contractor has accepted a Purchase Order (see Section 2.12 *Ordering*), the Contractor May not withdraw their offer.
- 1) If providing Vehicle(s) Built to Specifications, the timeframe for offers Shall be as specified in Appendix B, Section 19 *Timeframe for Offers*.
  - 2) If providing Pre-Existing Inventory Vehicle(s), the timeframe during which offers Shall remain firm and cannot be withdrawn Shall be ten (10) calendar days from the first Business Day immediately following the Mini-Bid response submittal deadline, or such other period of time as specified in the Mini-Bid. In order for a Mini-Bid response to be responsive to a Mini-Bid involving Pre-Existing Inventory Vehicle(s), the Contractor is required to retain the Pre-Existing Inventory Vehicle(s) for the ten (10) calendar day period, or such other period of time as set forth in the Mini-Bid. Contractor's failure to retain the Pre-Existing Inventory Vehicle(s) for such period of time Shall render Contractor's Mini-Bid response non-responsive and the Mini-Bid response Shall be disqualified.
- H. The Authorized User Shall be notified via email from the eProcurement Platform when Mini-Bid results are available. The Authorized User Shall be responsible for evaluation and award of the Mini-Bid. Authorized Users are instructed to notify the Contractors by entering each Contractor's award or non-award status via the eProcurement Platform within ten (10) Business Days of receipt of Mini-Bid responses.
- I. The Authorized User Shall evaluate all Mini-Bid responses received in response to the Mini-Bid, and is responsible for verifying that the Vehicle(s) offered meet the Authorized User Specifications. The Contractor Shall, upon request of the Authorized User, submit a Build Sheet, OEM Pricelist and Contractor-Published Pricelist, as applicable, to the Authorized User prior to award of the Mini-Bid. Award Shall be made by the Authorized User to a responsive Contractor based on the requirements specified by the Authorized User in their Mini-Bid.
- J. Upon determination of either award or that an award Shall not be made, the Authorized User Shall issue notification of tentative award, non-award, or that an award Shall not be made, via the eProcurement Platform, to all Contractors that submitted a Mini-Bid response. Notification of tentative award Shall include the final number of Vehicles that the Authorized User intends to issue a Purchase Order for.
- K. A Contractor May submit a Mini-Bid response for a Vehicle OEM that is not set forth in Attachment 1 – *Contractor Information*, provided that the Contractor submits a request to add the OEM to the Contract, in the form and format contained in Appendix C – *Contract Modification Procedure* prior to, or upon, tentative award of the Mini-Bid.

Failure to either submit a request to add the OEM to the Contract, or to provide proof of Dealer status if requested by OGS or the Authorized User, Shall result in the Mini-Bid response being deemed non-responsive and in the rejection of the Mini-Bid response.

- L. After notice of tentative award of the Mini-Bid, the Authorized User Shall issue a Purchase Order to the Contractor following the Authorized User's standard procedures (see Section 2.12 *Ordering*). The Authorized User, at its discretion, May request lower pricing for a Vehicle from the Contractor that is the tentative awardee prior to issuance of a Purchase Order. The contractor May offer lower pricing, but is not obligated to do so (see Appendix B, Section 13 *Pricing*). The Authorized User May request that Additional Options and Aftermarket Components (AOAC) be added or deleted from the awarded Vehicle specifications in accordance with Section 3.9 *Additional Options and Aftermarket Components (AOAC)*. Upon receipt of the Purchase Order for a Vehicle that includes both a Chassis and a Body, at the Authorized User's discretion, the Contractor and Authorized User Shall conduct a pre-production meeting in order to ensure complete and accurate understanding of the Authorized User Specifications and delivery requirements. See Section 3.13 *Pre-Production Meeting*.

M. Upon completion of this Mini-Bid process, the Authorized User Must document the outcome of the Mini-Bid on the eProcurement Platform. This Shall include justification of method of award. If at least three (3) Mini-Bid responses are not submitted, the Authorized User Must justify the reasonableness of award. The Authorized User Must also ensure that copies of the documents are maintained for audit purposes following the Authorized User's standard procedures.

4. Authorized User Procurement Rights.

Authorized Users hereby reserves the right in a Mini-Bid to:

- A. Reject any or all responses received in response to the Mini-Bid;
- B. Withdraw the Mini-Bid at any time, at the Authorized User's sole discretion;
- C. Make an award under the Mini-Bid in whole or in part;
- D. Disqualify any Contractor submitting a response whose conduct and/or proposal fails to conform to the requirements of the Mini-Bid;
- E. Seek clarifications and revisions of Mini-Bid responses;
- F. Prior to the Mini-Bid response submittal deadline, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Prior to the Mini-Bid response submittal deadline, direct Contractors to submit modifications addressing subsequent Mini-Bid amendments;
- H. Change any of the schedule dates with notification through the eProcurement Platform to all Contractors;
- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Contractors;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Mini-Bid responses received;
- L. Adopt all or any part of a Contractor's Mini-Bid response in selecting the optimum configuration.
- M. Negotiate with the Contractor responding to the Mini-Bid within the Mini-Bid requirements to serve the best interests of the State. This includes requesting clarifications of any or all Contractor's Mini-Bid responses;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Contractor's Mini-Bid response and/or to determine a Contractor's compliance with the requirements of the Mini-Bid;
- O. Select and award the Mini-Bid to other than the selected Contractor in the event of unsuccessful negotiations; and
- P. Use information obtained through site visits, management interviews, and the state's investigation of a Contractor's qualifications, experience, ability or financial standing, and any material or information submitted by the Contractor in response to the agency's request for clarifying information in the course of evaluation and/or selection under the Mini-Bid.

5. New York State Reserved Rights

The State reserves the right to:

- A. Use an on-line process, such as reverse auction, to make acquisitions under the Contracts. Contractor agrees to participate in an on-line process through the eProcurement Platform established by OGS;
- B. Exclude from the Contract any Vehicles that, at the sole discretion of the State, Shall not be approved for purchase by an Authorized User;
- C. Aggregate the volume of Authorized User requests for Vehicles by combining requests under one Mini-Bid Number; and
- D. Issue a Mini-Bid for Vehicles that May be utilized by all Authorized Users over a period of time.

### 3. SPECIFICATIONS

#### 3.1. VEHICLE REQUIREMENTS

The terms and conditions in this Section (i.e., 3.1 through 3.19) Shall be considered minimum Vehicle requirements. The Authorized Users Shall include supplemental required specifications in the Mini-Bids. Vehicles delivered to an Authorized User in a condition that would be considered unacceptable to a reasonable person May be rejected (see also Appendix B, Section 36 *Rejected Product*). Items which determine this acceptance level Shall include, but not be limited to, the general appearance of the interior and exterior of the Vehicle for completeness and quality of workmanship, lubrication and fluid levels, with any leaks corrected, mechanical operation of the Vehicle and all electrical components operational. Equipment specified to be furnished and installed Shall conform to the best quality standards known to that particular industry, both product and installation.

#### 3.2. STANDARDS, CODES, RULES, AND REGULATIONS

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

1. Vehicles Shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR), New York State Vehicle and Traffic Law (NYSVTL), and New York State Dept. of Motor Vehicles (NYSDMV).
2. Vehicles Shall comply with all current applicable Federal Motor Vehicle Safety Standards (FMVSS), Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic and Safety (NHTSA), Environmental Protection Agency (EPA), and Occupational Safety & Health Administration (OSHA) requirements.
3. Vehicles Shall comply with the regulations of the Federal Government and New York State (NYCRR) governing the control of air pollution from new motor Vehicles and new motor Vehicle engines in effect on the date of manufacture. Please refer to NYCRR (NY Codes Rules and Regulations), Title 6 (Environmental Conservation) Part 218, *Emissions Standards for Motor Vehicles and Motor Vehicle Engines*.
4. Vehicles Shall be manufactured in accordance with any codes, standards and engineering practices as recommended by the following professional organizations for the specific Vehicle/equipment:

American Institute of Steel Construction (AISC)  
American National Standards Institute (ANSI)  
American Society of Mechanical Engineers (ASME)  
American Society for Testing and Materials (ASTM)  
American Trucking Association (ATA)  
American Welding Society (AWS)  
American Wood-Preservers Association (AWPA)  
Battery Council International (BCI)  
British Standards Institute (BSI): Limits and Fits  
Compressed Air and Gas Institute (CAGI)  
Industrial Fastener Institute (IFI)  
International Standards Organization (ISO)  
Joint Industrial Council (JIC)  
National Fire Protection Association (NFPA)  
National Truck and Equipment Association (NTEA)  
Power Crane and Shovel Association (PCSA)  
Society of Automotive Engineers (SAE)  
Society of Manufacturing Engineers (SME)  
Steel Structure Painting Council (SSPC)

Tire and Rim Association (TRA)

**3.3. 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. When Optional equipment is specified, all components listed in the OEM Pricelist as being included with the Option Shall be furnished.

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

**3.4. MANUALS**

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

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

**3.5. COMPATIBLE EQUIVALENT**

Whenever an item, other than the Vehicle Model, is specified in a Mini-Bid by trade name of an OEM, the term "compatible equivalent," if not inserted therewith, Shall be implied. Any reference to a particular OEM's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Authorized User Shall only consider Mini-Bid responses that include the referenced Product.

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

1. Furnish complete identification of the Compatible Equivalent it is offering by trade name, brand and/or Model Code;
2. Furnish descriptive literature and data with respect to the Compatible Equivalent it proposes to furnish; and
3. Indicate any known specification deviations from the referenced Product.

**3.6. EQUIPMENT, PARTS AND ACCESSORIES**

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

1. All electronic systems Shall be properly insulated so as to not cause any interference with the operation of the Vehicle or the land mobile radio communications system, when properly installed in the Vehicle;
2. Power systems Must be compatible with the engine, transmission, axles, hydraulic system and power steering, etc., in order to meet the requirements specified herein;
3. Complete Vehicles Shall meet the maximum gradeability of the manufacturer when loaded to maximum GVWR without exceeding the engine manufacturer's recommended maximum revolutions per minute ("RPM");

4. The ratio of the rear axle and transmission Shall be geared to maintain a road speed of approximately sixty-five (65) mph on a level road, when operating at maximum GVWR without exceeding the recommended engine RPM figure;
5. Brakes, axles, and suspension components Shall meet or exceed the specified axle rating;
6. All welds to brackets Shall be high quality and show no visible signs of porosity. All OEM and fabricated brackets and braces Shall be finish ground smooth, all sharp corners or edges removed, prepped, primed and painted on all sides to match their surroundings;
7. The Authorized User Shall have its choice of the manufacturer's standard paint colors, and Shall designate the selection on the Purchase Order. All surfaces, including bumpers, wheels and spares which are normally painted Shall be factory painted with the specified color. Aftermarket Components Shall have any rust spots and welding slag removed, be properly sanded, cleaned, prepped and primed per the paint manufacturer's recommendations at no additional cost to the Authorized User. The Vehicle Shall be carefully smoothed, cleaned, primed and finished with top quality transportation enamel. Bodies and auxiliary equipment Shall be primed and finished with not less than two (2) coats of durable enamel in the manufacturer's standard color specified by the Authorized User. All paint, primer, basecoats, clear coats or any other coating within the paint system Shall be lead free;
8. The Vehicle Shall have all required rust proofing applied to the exterior and underside of the Vehicle. No rustproofing compound can be on the personnel compartment's items or the exterior of the Body in unsightly or unintended areas;
9. Tire size and type Shall be original equipment brand or as indicated in the Authorized User Specifications. Tire inflation monitors Shall be supplied as required by Federal Motor Vehicle Safety Standard (FMVSS) 138;
10. All fuel, oil, hydraulic, and air filters Shall be serviceable without interference from other Vehicle components. If the Vehicle is a Vehicle that includes both a Chassis and a Body, then the Contractor Shall coordinate filter and component placements with the Chassis provider or Body Upfitter to ensure unimpeded servicing is available;
11. Complete Vehicles Shall not exceed the aggregate value of the GAWR (Gross Axle Weight Rating). The GAWR of a front and rear axle assembly Shall meet, or exceed, the lowest component rating thereof;
12. If the Vehicle is a Vehicle that includes both a Chassis and a Body, then the Contractor Shall ensure installed Body components Shall not interfere with the Chassis configuration and vice versa; and
13. If the Vehicle is a Vehicle that includes both a Chassis and a Body, then the Authorized User Specifications (e.g., Cab to Axle and Wheel Base measurements) Shall be adjusted appropriately for the Complete Vehicle's intended application. See also Section 3.13 *Pre-Production Meeting*.

### **3.7. OPTIONS**

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

### **3.8. AFTERMARKET COMPONENTS**

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

**3.9. ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC)**

After tentative award of a Mini-Bid, the Authorized User May choose to add or delete Options and Aftermarket Components from the Vehicle awarded in a Mini-Bid from those previously included in the Authorized User Specifications for the Mini-Bid. Any changes to the Authorized User Specifications Shall be by mutual Written agreement between the Authorized User and the Contractor. See Section 2.11 *Additional Options and Aftermarket Components (AOAC) Price*, for terms and conditions applicable to the price of AOAC.

The following AOAC are excluded from the scope of this Contract, and would require that the Authorized User either conduct a new Mini-Bid, or make a non-Contract purchase for the AOAC:

1. AOAC that result in a five (5) percent or greater increase or decrease to the NYS Price For Vehicle, for the Vehicle awarded in the Mini-Bid.
2. AOAC that result in a different Model, Model Code, or Body type than the Vehicle awarded in the Mini-Bid; and
3. AOAC that result in material changes to the Authorized User Specifications included in the Mini-Bid. Material changes include, but are not limited to, the Vehicle feature modifications listed below:
  - A. Engine (e.g., replacing the engine included with the Vehicle offered with another engine available for the same Model);
  - B. Transmission (e.g., replacing the transmission included with the Vehicle offered with another transmission available for the same Model);
  - C. Cab type (e.g., replacing a regular cab with a crew cab);
  - D. Drive/axle type (e.g., replacing a 4x2 with a 4x4);
  - E. Body material (e.g., replacing steel with aluminum); and
  - F. Body length (e.g., increasing length from eight feet to ten feet).

**3.10. AVAILABILITY OF SERVICE & PARTS**

Service and parts for Product offered under this Contract Must be available to Authorized users within New York State. Parts Must be available on an on-demand basis to Authorized Users for delivery within twenty-four (24) hours, or other timeframe mutually agreed-upon between the Contractor and the Authorized User, unless such part is nationally backordered. Nationally backordered parts Shall be delivered immediately upon availability. Additional payment for expedited orders is at the discretion of the Contractor(s), and Must be mutually agreed upon prior to shipment.

**3.11. ADVERTISING**

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

**3.12. VEHICLE INSPECTION**

Unless otherwise instructed by the Authorized User, all Complete Vehicles Must be delivered with complete NYS Inspections. In the event that a Complete Vehicle is delivered uninspected, \$250 Shall be deducted from the invoice by the Authorized User to cover the cost of the inspection and to compensate for time. The Authorized User reserves the right to cancel a Mini-Bid award and/or take other action if Complete Vehicles are not properly inspected or if the New York State Department of Motor Vehicles inspection sticker is not properly affixed to a Complete Vehicle.

**3.13. PRE-PRODUCTION MEETING**

If required by the Authorized User, and the Vehicle includes both a Chassis and a Body, then the Contractor Shall coordinate and attend a pre-production meeting at a location convenient to the Authorized User, to provide all necessary information prior to building a Vehicle, or scheduling production. Only after the pre-production meeting, if required by Authorized User, and subsequent Written approval from the Authorized User, Shall the Contractor begin the production.

**3.14. PILOT MODEL INSPECTION**

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

**3.15. GENERAL WARRANTY REQUIREMENTS**

In addition to Appendix B, Section 54 *Warranties*, the following general warranty requirements Shall apply to all Vehicles provided under the Contract.

1. The Contractor Shall warrant the Vehicle and related Aftermarket Components against parts failure or malfunction due to design, construction or installation errors, defective workmanship, and missing or incorrect parts. Warranty service Shall be available within New York State, and Shall be honored by all the manufacturer's Dealers in New York State.
2. The Authorized User Shall be responsible for all transportation, pick-up and delivery for any Vehicles procured under the Contract requiring warranty service, unless otherwise agreed upon by the Contractor. Upon Authorized User request, the Contractor May provide delivery and/or pickup service. Any fee for such service is at the discretion of the Contractor, and Must be agreed upon by the Authorized User prior to service.
3. The warranty period for all coverage Shall begin on the date the Vehicle is put in service by the Authorized User. The Authorized User May request a delayed warranty start date when the in-service date is after the delivery date of the Vehicle to the Authorized User. Delayed warranty forms are to be provided with the required motor Vehicle paper work. Where Vehicles develop Chronic Failures during the warranty period, Contractor Shall extend the warranty period following correction of such failures, for a period of time equal to the period of time the Vehicle was out of service.
4. The Contractor Shall be responsible for all warranty claims related to the Vehicle, including Aftermarket Components, as provided by the Contractor at the time of delivery. All components supplied by the Contractor Shall be included and covered by the basic 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 Shall cover all labor and parts replacement during the warranty period. Normal wear and tear items Shall be warranted in accordance with manufacturer's standard warranty. Parts replaced under this warranty Shall be of OEM quality or higher. Service Shall be at a level to maintain or meet the manufacturer's requirements to sustain the warranty. See Appendix B, Section 54 *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.
5. Any warranty requirements included in the Authorized User Specifications are considered minimum. If a minimum warranty requirement is not stated in the Authorized User Specifications, then the contractor Shall guarantee such equipment against defective materials and workmanship for a period of one (1) year from the in-service date, with no mileage limitation. If the manufacturer's standard warranty exceeds the warranty stated in the Authorized User Specifications, or the minimum one (1) year warranty stated herein, then the manufacturer's standard warranty Shall apply.

6. Whenever extended warranty packages are being offered by the OEM or the Contactor at "No Additional Charge," the extended warranty packages Shall be extended to all Contract purchases during the time period that the extended warranty packages are offered.
7. All Vehicle Warranties, including extended warranties, Shall be provided in Written or electronic form to the Authorized User.

**3.16. WARRANTY REPAIR BY AUTHORIZED USERS**

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

**3.17. POST-DELIVERY SERVICE**

Post-delivery service at locations authorized by the Vehicle OEMs Must be available within NYS for Product provided under the Contract. Post-delivery service Shall be performed in a modern, properly equipped service shop.

An Authorized User Shall have the right to utilize any service location for post-delivery service. If requested by an Authorized User, the Contractor Shall assist the Authorized User in locating a service location authorized by the Vehicle OEM.

**3.18. RECALLS**

Upon request from the Authorized User, the Contractor Must assist in determining if the Vehicle is subject to any open recalls, and also, if requested by the Authorized User, Must assist in finding an OEM Dealer or other qualified location to perform the recall service.

**3.19. TRAINING**

If requested by the Authorized User, complete training for each Class 3-8 Vehicle, excluding Single OEM Vehicles, Shall be provided by the Contractor at no additional charge. Training is to include operator training with instruction and demonstration on proper operation of the unit, safety, preventive maintenance and proper usage of parts and service manuals. Training provided Must be sufficient to update technician(s) on all new componentry and diagnostics capabilities. The Contractor Shall provide the training services of qualified factory technician(s) for a minimum period of one (1) full Business Day, at one mutually agreed-upon location (e.g., at the location of delivery or at a field location within the State), at no additional charge. Additional training days and/or locations Shall be provided upon request by the Authorized User. The Contractor May charge a mutually agreed-upon fee for any additional training days and/or locations.

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

**4. GENERAL PROVISIONS**

**4.1. NOTICES**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract 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 Contract 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 Contract. 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 any 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.

**4.2. 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.

**4.3. 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.

**4.4. COUNTERPARTS**

This Contract 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 Contract. Any signature page of any such counterpart May be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and Shall bind such party.

**4.5. 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, Section 26 *Modification of Contract Terms*, and Section 30, *Purchase Orders*, no alteration or modification Shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms Shall have any force and effect.

