



Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Invitation for Bids
(REVISED September 17, 2019)

Redline version for information ONLY; Do not submit with Bid

BID OPENING DATE: October 3, 2019
TIME: 11:00 A.M. EST
INVITATION FOR BIDS NUMBER: 23170
TITLE: Group 40523 - BUSES, TRANSIT (Adult Passenger) (Statewide)
Classification Codes: 25
CONTRACT PERIOD: Two (2) years, plus up to three (1) year renewal options
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation.

Deleted: September 12, 2019

Bidder's Federal Tax Identification Number:
NYS Vendor Identification Number:
Legal Business Name of Company Bidding:
D/B/A - Doing Business As (if applicable):
Street City State County Zip Code
E-mail Address: Company Web Site:

If applicable, place an "x" in the appropriate box(es) (check all that apply)
NYS Small Business # Employees
Service Disabled Veteran Owned Business
NYS Minority Owned Business
NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only.
WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY
LITERATURE PURC. MEMO
LETTER OTHER
USB FLASH DRIVE
of Binders/Packages:
Documented by:

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 90 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (*Standard Clauses for NYS Contracts for 40523-23170 Buses, Transit (Adult Passenger) (July 2019)*) and Appendix B (*General Specifications*).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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APPENDICES

- Appendix A – *Standard Clauses for NYS Contracts 40523-23170 Buses, Transit (Adult Passenger) (July 2019)*
- Appendix B – *General Specifications (April 2016)*
- Appendix C – *Contract Modification Procedure*
- Appendix D – *U.S. Government (FTA) Required Clauses (April 2019)*

ATTACHMENTS

- Attachment 1 – *Specifications and Pricing*
- Attachment 2 – *NYS Required Certifications*
- Attachment 3 – *Intentionally Omitted*
- Attachment 4 – *Insurance Requirements*
- Attachment 5 – *Bidder Information Questionnaire*
- Attachment 6 – *Bidder Submission Checklist*
- Attachment 7 – *Bidder Questions Form*
- Attachment 8 – *Report of Contract Usage*
- Attachment 9 – *Manufacturer’s Certificate*
- Attachment 10 – *Federal Transit Administration Certifications*
- Attachment 11 – *Transit Bus Pre-Order Worksheet*

1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Transit Buses as specified herein for all Authorized Users eligible to purchase through this Solicitation.

- A. The resultant contracts Shall provide Federally Funded Transit Buses using subsidies provided by the Federal Transit Administration for the Section 5310 Program – Enhanced Mobility of Seniors and Individuals with Disabilities, <https://www.dot.ny.gov/divisions/policy-and-strategy/public-transportation/specialized-transportation/5310> and for the Section 5311 Programs - Public Transportation in Nonurbanized Areas, <https://www.dot.ny.gov/divisions/policy-and-strategy/public-transportation/ruralprograms/5311>. The contract Shall be subject to U.S. Government (FTA) Required Clauses, see Appendix D - *U.S. Government (FTA) Required Clauses (April 2019)*.

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

- B. This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.
- C. This IFB does not constitute an offer. OGS May, at its sole discretion, award Contracts as a result of this Solicitation. The commodity Contracts awarded as a result of this IFB for Transit Buses, Shall be one (1) Centralized Contract for each Lot. The centralized Contracts awarded as a result of this Solicitation are for use by Authorized Users as defined in Appendix B §2, *Definitions*, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See also Section 6.37 *Non-State Agencies Participation in Centralized Contracts*.
- D. This IFB contains a total of thirteen (13) Lots, which are specified in Table 1 below in Section 1.2 *Scope*, and described in further detail in Attachment 1 - *Specifications and Pricing*. A Bidder is not required to bid on every Lot; A Bidder May bid on as few or as many Lots as desired.
- E. Awards Shall be made by Lot in accordance with Section V *Method of Award*. Multiple bidders May receive awards. In the event that a Bidder receives awards for multiple Lots under this IFB, a single Contract Shall be executed covering all Lots awarded.
- F. References to the State and its Agencies or Non-State Agencies as Authorized Users under this Solicitation and the ensuing Contract(s) encompass and include all such entities within the definition of “Authorized User” set forth in Appendix B §2, *Definitions*.
- G. Bidders are advised that failure to comply with the provisions of Section 4.4 *Content* or Section 4.5 *Bid Pricing Submittal*, May result in either a disqualification with respect to specific Lot(s) or the entire bid. Bidders are further advised that pursuant to IFB Section 4.16, *NYS Reserved Rights*, Paragraph D, the State reserves the right to “Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the IFB.”

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1.2 Scope

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

The resultant award is to cover the outright purchase of current Model Year Transit Buses for which the equitable or legal title has never been transferred by a manufacturer, distributor or Dealer to an ultimate purchaser. Under no circumstances May "demos" or "used" Transit Buses be sold under the Contract(s) resulting from this IFB without prior approval of Procurement Services and NYS DOT, Public Transportation Bureau. Leasing of a Transit Bus is not permitted under this IFB or resultant Contract(s). See Section 6.3 *Price* and Section 3.1 *Transit Bus Requirements* for additional requirements for the Transit Buses to be provided under the resultant Contracts.

Table 1: List of Lots and Number of Awardees

Lot	Lot Description	Minimum Capacity [Ambulatory (A) plus Wheelchairs (WC)]	Number of Awardees
A	Low Floor Vehicle <10,000 lb.	4 Passenger [3A/1WC]	One (1) Statewide
B	High Headroom Wagon <10,000 lb.	7 Passenger [5A/1WC]	One (1) Statewide
C	High Headroom Wagon <10,000 lb. (Flexible Floor Plan)	7 Passenger [6A/1WC]	One (1) Statewide
D	Dual Rear Wheel Cutaway <22 ft.	9 Passenger [8A/1WC]	One (1) Statewide
E	Dual Rear Wheel Cutaway <22 ft.	11 Passenger [10A/1WC]	One (1) Statewide
F	Low Floor Cutaway	17 Passenger [15A/2WC]	One (1) Statewide
G	Dual Rear Wheel Cutaway >22 ft.	16 Passenger [14A/2WC]	One (1) Statewide
H	Dual Rear Wheel Cutaway >22ft. (Electric)	16 Passenger [14A/2WC]	One (1) Statewide
I	Medium Duty Cutaway (Alternate Fuels)	20 Passenger [18A/2WC]	One (1) Statewide
J	Conventional Style	24 Passenger [22A/2WC]	One (1) Statewide
K	Conventional Style	28 Passenger [26A/2WC]	One (1) Statewide
L	Low Floor (Front Engine)	25 Passenger [23A/2WC]	One (1) Statewide
M	Low Floor (Rear Engine)	35 Passenger [33A/2WC]	One (1) Statewide

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1.3 Estimated Quantities

A Contract resulting from this Solicitation Shall be an estimated quantity Contract, with Authorized User purchases using FTA funding limited to 20% above or below the Annual FTA Quantity (see quantities identified as an "Evaluation Quantity" on Attachment 1 – *Specifications and Pricing* for the applicable item). 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 anticipated dollar value of all awards for this Solicitation, based on historical purchases under previous awards, is approximately \$20,000,000.00 annually. The individual value of each resultant 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 §28, *Estimated/Specific Quantity Contracts* and §25, *Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from this Solicitation to vary substantially from the estimates 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.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

1.4 Key Events/Dates

EVENT	DATE	TIME
IFB Release	07/24/2019	N/A
Closing Date for First Round of Bidder Questions	08/08/2019	5:00 PM ET
OGS Procurement Services Responses to First Round of Bidder Questions	08/22/2019 (tentative) <u>09/17/2019</u>	N/A
Closing Date for Optional Second Round of Bidder Questions	08/29/2019 (tentative) <u>09/20/2019</u>	5:00 PM ET
OGS Procurement Services Responses to Second Round of Bidder Questions	09/06/2019 (tentative) <u>09/27/2019</u>	N/A
Bid Opening / Due date for Bids	10/03/2019	11:00 AM ET
Contract Approval Date / Award Publish Date	12/22/2019 (tentative)	N/A

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1.5 NYS Contract Reporter

Bidders Must register with the New York State Contract Reporter ("NYSCR") at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the "I want to find contracts to bid on" page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you Must "bookmark the ad" on the upper right hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select "send me notification updates" option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information May result in your Bid being deemed non-responsive to the Solicitation.

1.6 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form Must be emailed to SST_Auto@ogs.ny.gov by the date and time indicated in Section 1.4 *Key Events/Dates*. Questions submitted after the deadline indicated May not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter ("NYSCR"). Your company Must select the "opt-in" option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they May be given due consideration prior to the submission of Bids. See Section 4.12 *Bid Deviations* for additional information.

1.7 Summary of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law § 139-j and § 139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://ogs.ny.gov/acpl/>

1.8 Definitions

Capitalized terms used in this Solicitation Shall be defined in accordance with Appendix B, §2 *Definitions*, or as below.

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

“Annual FTA Quantity” Shall mean the estimated annual quantity of Authorized User Contract purchases using subsidies provided by the FTA (see Section 1.1 *Overview*, Paragraph A). These quantities are identified as an “Evaluation Quantity” on Attachment 1 - *Specifications and Pricing* for the applicable Lot and are based on historic sales and anticipated annual future needs.

“Base Item” Shall refer to a Transit Bus and its corresponding specifications, excluding Optional Equipment, as set forth in a Lot in Attachment 1 - *Specifications and Pricing*.

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

“Bid Deviation” Shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

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

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

“Build Sheet” Shall refer to the document which lists, for the Base Item for the Transit Bus bid, at a minimum, the Make, Model and Model Code of the Chassis and Body; and an itemized list of all standard equipment, Options and Aftermarket Components included in the Chassis and Body.

“Business Day” Shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

“Buy America” Shall refer to FTA Buy America requirements, which require that federal tax dollars used to purchase steel, iron, and manufactured goods used in a transit project are steel, iron, and manufactured goods that have been produced domestically in the United States.

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

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

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

“Compatible Equivalent,” Shall mean any Product which is equal in performance, quality and design in such a way that the Product is directly interchangeable with the referenced Product without modification. The determination of whether or not a Product is deemed a Compatible Equivalent Shall be at the sole discretion of OGS.

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

“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.

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

“**Evaluation Quantity(ies)**” Shall refer to a quantity used in this IFB for evaluation, and to identify the Annual FTA Quantity for the applicable item. It is not a guaranteed purchase quantity under the resultant Contract(s).

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

“**Finalized Order**” Shall mean a Transit Bus order submitted to the Contractor by the Authorized User that includes both a Purchase Order and a completed Transit Bus Pre-Order Worksheet (see Attachment 11 - *Transit Bus Pre-Order Worksheet*), that has been reviewed and verified as complete by the Contractor. The Finalized Order date is referenced by the Contractor to affirm that the order is completed and is the basis for providing an estimated delivery date. (See Section 6.19 *Delivery Time*).

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

“**FTA**” Shall mean the Federal Transit Administration.

“**Grand Total For Lot**” Shall refer to the Evaluation Quantity multiplied by the Base Item Unit Price, plus the Total Optional Equipment Evaluation Price. The Grand Total For Lot is the dollar amount calculated in this IFB to evaluate award(s) for each Lot. See Section 5 *Method of Award*.

“**Lot**” Shall refer to a grouping of Base Items as set forth in Attachment 1 - *Specifications and Pricing*.

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

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

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

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

“**Model Code**” Shall refer to the OEM code used to identify a particular subset of a Model.

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

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

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

“**NYS**” Shall mean New York State.

“**NYS Contract Price(s)**” Shall mean the dollar amount listed on the Contract Pricelist and charged to the Authorized User for a Base Item or Optional Equipment, inclusive of all Contractor costs associated with providing the Transit Bus to the Authorized User (e.g., all OEM fees, customs duties and charges, all Transit

Bus preparation and clean-up charges, NYS DMV and NYS DOT inspection, installation charges, delivery and all other incidentals normally included with providing a Transit Bus).

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

“**NYS 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 Vendor ID**” Shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

“**OEM**” Shall refer to the Original Equipment Manufacturer.

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

“**OGS**” Shall mean the New York State Office of General Services.

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

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

“**Optional Equipment**” Shall mean additional equipment specified for a Base Item in a Lot, which Must be available from the Bidder and under the resultant Contract.

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

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

“**Rolling Stock**” as defined in Buy America regulations (49 CFR Part 661.3), shall refer to transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.

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

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

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

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

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

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

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

1.9 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – *Standard Clauses for NYS Contracts 40523-23170 Buses, Transit (Adult Passenger)(July 2019)*

Appendix B – *General Specifications (April 2016)*

Appendix C – *Contract Modification Procedure*

Appendix D – *U.S. Government (FTA) Required Clauses (April 2019)*

Attachment 1 – *Specifications and Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Intentionally Omitted*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Bidder Submission Checklist*

Attachment 7 – *Bidder Questions Form*

Attachment 8 – *Report of Contract Usage*

Attachment 9 – *Manufacturer’s Certificate*

Attachment 10 – *Federal Transit Administration Certifications*

Attachment 11 – *Transit Bus Pre-Order Worksheet*

1.10 Conflict of Terms

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

- A. Appendix A, Standard Clauses for NYS Contracts 40523-23170 Buses, Transit (Adult Passenger)(July 2019)
- B. Appendix D, U.S. Government (FTA) Required Clauses (April 2019)
- C. The Solicitation;
- D. Appendix B, General Specifications; and
- E. All other appendices and attachments to the Solicitation;

1.11 Appendix B Modifications

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

- A. Appendix B §31, *Product Delivery*, is deleted and replaced in its entirety by Section 6.15 of this IFB, *Product Delivery*.

2. BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder Shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. A Bidder Shall meet the following qualifications:

2.1 Bidder Type and OEM Certification

Bids Shall be accepted only from an OEM or its Dealers for Transit Buses that comply with Buy America, and that can be serviced within New York State. Any Dealer submitting a bid is required to provide Attachment 9 - *Manufacturer's Certificate* (See Section 4.11 *Manufacturer's Certificate*) for each Lot being bid.

2.2 Other Qualifications

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

- Satisfactory evidence that a Bidder has maintained an organization for a minimum of two (2) years, capable of performing the work specified herein through submission of a Dun & Bradstreet Business Information Report or other equivalent evidence;
- Evidence of a business establishment with the capacity to process and ship the volume of orders required by Authorized Users on a statewide basis;
- References that demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the applicable Lot(s);
- Documentation to demonstrate a Bidder's ability to meet the delivery requirements set forth in Section 6.15 *Product Delivery*; and
- OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

3. SPECIFICATIONS

3.1 Transit Bus Requirements

The terms and conditions in this Section (i.e., Section 3.1 through Section 3.9) Shall be considered minimum Transit Bus requirements. Attachment 1 - *Specifications and Pricing*, includes supplemental required specifications for Transit Buses in each Lot. Transit Buses delivered to an Authorized User in a condition that would be considered unacceptable to a reasonable person May be rejected (see also Appendix B §36, *Rejected Product*). Items which May be evaluated by the Authorized User to determine this acceptance level Shall include, but not be limited to, the general appearance of the interior and exterior of the Transit Bus for completeness and quality of workmanship, lubrication and fluid levels, with any leaks corrected, mechanical operation of the Transit Bus and all electrical components operational. Equipment specified to be furnished and installed Shall conform to the best quality standards known to that particular industry, both product and installation.

3.2 Standards, Codes, Rules, And Regulations

Transit Buses Shall be designed and assembled in accordance with all applicable industry standards, including, but not limited to, those listed below. The Transit Bus Shall comply with all governmental regulations as they apply to the Transit Bus described in the Base Item Specifications and Optional Equipment 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 Transit Bus.

- A. Transit Buses Shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR), New York State Vehicle and Traffic Law (NYSVTL), and New York State Dept. of Motor Vehicles (NYSDMV).
- B. Transit Buses Shall comply with all current applicable Federal Motor Vehicle Safety Standards (FMVSS), Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic and Safety (NHTSA), Environmental Protection Agency (EPA), and Occupational Safety & Health Administration (OSHA) requirements.
- C. Transit Buses Shall comply with Federal Motor Vehicle Safety Standards (FMVSS) 214 (applicable only to Lots A, B, [C](#), and F), FMVSS 220 ([applicable to Lots D, E, F, G, H, I, J, K, L, and M](#)), Part 38 of the American's with Disabilities Act (ADA), and NYS DOT regulations outlined under NYCRR Chapter VI, Article 3, Part 720-721 or any amendments thereto, except as relating to school buses. Unless otherwise stated, wheelchair lift/ramp equipped buses Shall be defined under NYCRR Part 720-721 regulations.
- D. Transit Buses Shall comply with the regulations of the Federal Government and New York State (NYCRR) governing the control of air pollution from new motor vehicles and new motor vehicle engines in effect on the date of manufacture. Please refer to New York Codes, Rules and Regulations (NYCRR), Title 6 *Environmental Conservation*, Part 218, *Emissions Standards for Motor Vehicles and Motor Vehicle Engines*.
- E. Transit Buses Shall be manufactured in accordance with any codes, standards and engineering practices as recommended by the following professional organizations:
 - American Institute of Steel Construction (AISC)
 - American National Standards Institute (ANSI)
 - American Society of Mechanical Engineers (ASME)
 - American Society for Testing and Materials (ASTM)
 - American Welding Society (AWS)
 - Battery Council International (BCI)
 - Compressed Air and Gas Institute (CAGI)
 - Industrial Fastener Institute (IFI)
 - International Standards Organization (ISO)
 - Joint Industrial Council (JIC)
 - National Fire Protection Association (NFPA)
 - National Truck and Equipment Association (NTEA)
 - Society of Automotive Engineers (SAE)
 - Society of Manufacturing Engineers (SME)
 - Tire and Rim Association (TRA)

3.3 Standard Equipment

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

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

3.4 Instruction Manuals

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

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

3.5 Compatible Equivalent

Whenever an item is specified in Attachment 1 - *Specifications and Pricing* by trade name of an OEM, the term "Compatible Equivalent," if not inserted, 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, OGS Shall consider bids for the referenced Product only. The determination of whether or not a Product is deemed a Compatible Equivalent Shall be at the sole discretion of OGS. Bidder quoting on a Product other than the referenced Product Shall:

- A. Furnish complete identification in its bid of the Product it is offering by trade name, brand and/or model number;
- B. Furnish descriptive literature and data with respect to the substitute Product it proposes to furnish; and
- C. Indicate any known specification deviations from the referenced Product.

3.6 Equipment, Parts and Accessories

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

- A. All electronic systems Shall be properly insulated so as to not cause any interference with the operation of the Transit Bus or the land mobile radio communications system, when properly installed in the Transit Bus;
- B. Power systems Must be compatible with the engine, transmission, axles, hydraulic system and power steering, etc., in order to meet the requirements specified herein;
- C. Transit Buses Shall meet the maximum gradeability of the manufacturer when loaded to maximum GVWR without exceeding the engine manufacturer's recommended maximum revolutions per minute ("RPM") based on maximum net torque;

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- D. The ratio of the rear axle and transmission Shall be geared to maintain a road speed of approximately sixty-five (65) mph on a level road, when operating at maximum GVWR without exceeding the recommended engine RPM figure;
- E. Brakes, axles, and suspension components Shall meet or exceed the specified axle rating;
- F. All welds to brackets Shall be high quality and show no visible signs of porosity. All OEM and fabricated brackets and braces Shall be finish ground smooth, all sharp corners or edges removed, prepped, primed and painted on all sides to match their surroundings;
- G. Tire size and type Shall be original equipment brand or as indicated in Attachment 1 - *Specifications and Pricing*. Tire inflation monitors Shall be supplied as required by Federal Motor Vehicle Safety Standard (FMVSS) 138;
- H. All fuel, oil, hydraulic, and air filters Shall be serviceable without interference from other air & hydraulic system components. Filter and component placements Shall be coordinated to ensure unimpeded servicing is available;
- I. The Transit Bus Shall not exceed the aggregate value of the GAWR (Gross Axle Weight Rating). The GAWR of a front and rear axle assembly Shall meet, or exceed, the lowest component rating thereof;
- J. The Contractor Shall ensure installed Body components Shall not interfere with Chassis configurations and vice versa;
- K. Specifications provided by the Authorized User (e.g., Cab to Axle and Wheel Base measurements) Shall be adjusted appropriately for the intended application of the Transit Bus. See also Section 3.10 *Pre-Production Meeting*.
- L. The specified Gross Vehicle Weight Ratio (GVWR) for each Transit Bus Shall be the OEM's original rating and no other rating for the GVWR Shall be used. The GVWR and individual axle GAWR Shall not be exceeded when loaded with the specified number of adult passengers, including the driver.
- M. Rustproofing Shall be provided as follows:
1. With the exception of OEM Chassis, the interior of doors, walls, pillars, windshield framing, headers, headlamp recesses, hood braces and all double panel areas Shall be treated with a rustproof process material, which Shall be listed on the Qualified Products List under Military Specification MIL-C-62218A. Holes drilled in doorposts, edges, sills, etc. for the application of corrosion-protection material Shall be plugged with rubber, neoprene, plastic plugs, or approved equal.
 2. The Body structural framing Shall be suitably treated against corrosion prior to finish panel attachment. Special attention is required to welded areas. All sidewalls Shall be protected with epoxy primer to protect structure from corrosion. All window line tube structure Shall be protected with DuPont Corlar 2.1-ST Satin High Solids Epoxy Mastic, or Compatible Equivalent (which Shall be determined by verification of inclusion on the Qualified Products List under Military Specification MIL-C-62218A), to protect tube structure from corrosion. Aluminized steel construction, in lieu of the stated corrosion prevention products, is acceptable to protect against corrosion.
 3. All joints and connections of dissimilar metals Shall be isolated to minimize the effects of galvanic corrosion.
 4. Rustproof requirement as detailed above does not apply if OEM can certify all components listed above have been zinc coated, or equivalent, prior to finish coating application. OEM certification, if applicable, Must be supplied with bid submission. Entire underside of the Transit Bus, including floor members and chassis fenders, Shall receive a nonflammable rustproof undercoating at the time of manufacture. Rustproof undercoating Shall be applied to a uniform thickness with no bare spots.

N. Wiring Shall be provided as follows:

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

O. Finish Shall be provided as follows:

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

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

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

Contractor Shall take necessary corrective action, at no additional cost to the Authorized User, when leaks are found to exist on the tested Transit Bus, and conduct additional water test(s) to re-check for leaks

following corrective actions. Evidence of water leakage following delivery Shall be cause for rejection of the Transit Bus and withholding of payment until leaks are corrected.

3.7 Optional Equipment

The Contractor Must offer the Transit Bus as specified in the base item specifications for the applicable base item in Attachment 1 - *Specifications and Pricing*. An authorized user May choose one (1) or more of the optional equipment from the list of optional equipment associated with the base item. The Contractor Shall be required to honor all such requests, provided that adding the requested combination of optional equipment results in a Transit Bus that meets the minimum specifications stated herein (see Section 3.1 *Transit Bus Requirements*). See Section 6.5 *Optional Equipment Unit Price* for pricing information relative to optional equipment. After contract award, a Contractor May offer substitute compatible equipment product in the event that the optional equipment becomes unavailable during the life of the contract. Requests to substitute optional equipment Shall be submitted to OGS on Appendix C - *Contract Modification Procedure*.

3.8 Advertising

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

3.9 NYS Inspections

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

3.10 Pre-Production Meeting

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

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

3.11 Pilot Model

Upon award, and prior to fulfilling orders of Transit Buses for Authorized Users, a complete pilot model Shall be manufactured and provided by the Contractor to NYS DOT for inspection. The terms and conditions of such inspection Shall be provided by NYS DOT, and should be agreed upon by the Contractor and NYS DOT prior to scheduling production. This inspection Shall take place inside a building and on a dry Transit Bus at the OEM's facility or Contractor's place of business, as agreed to by NYS DOT. NYS DOT Shall be responsible for NYS personnel DOT transportation, lodging and meals associated with the initial pilot model inspection. NYS DOT, 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. An Authorized User (other than NYS DOT) May also require its own pilot model.

3.12 Training

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

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

3.13 General Warranty Requirements

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

- A. The Contractor Shall warrant the Transit Bus against parts failure or malfunction due to design, construction or installation errors, defective workmanship, and missing or incorrect parts. Warranty service Shall be available within New York State, and Shall be honored by all the manufacturer's Dealers.
- B. The Contractor Shall be responsible for all transportation, pick-up and delivery cost to either the Contractor's location, or other Dealer location chosen by the Authorized User, of any Transit Bus with a warranty claim within ninety (90) calendar days of the date the warranty period begins, for any Transit Buses procured under the Contract. After ninety (90) calendar days, the Authorized User Shall be responsible for all transportation, pick-up and delivery for any Transit Buses procured under the Contract requiring warranty service, unless otherwise agreed upon by the Contractor. Additional payment for delivery and/or pickup by the Contractor is at the discretion of the Contractor(s), and Must be mutually agreed upon prior to service.
- C. The warranty period for all coverage Shall begin on the date the Transit Bus is accepted by the Authorized User or put in service, whichever occurs later. Delayed warranty forms are to be provided with the required motor vehicle paper work. Where Transit Buses develop Chronic Failures during the warranty period, Contractor Shall extend the warranty period following correction of such failures for a period of time equal to the period of time the Transit Bus was out of service.
- D. The Contractor Shall be responsible for all warranty claims related to the Transit Bus as provided by the Contractor at the time of delivery. All components supplied by the Contractor Shall be included and covered by a basic warranty. OEM replacement parts are to be new, not remanufactured, unless the OEM has specified that a replacement part be remanufactured, or prior approval has been granted by the Authorized User. All warranties Shall cover all labor and parts replacement during the warranty period. Normal wear and tear items Shall be warranted in accordance with manufacturer's standard warranty. Parts replaced under this warranty Shall be of OEM quality or higher. Service Shall be at a level to maintain or meet the manufacturer's requirements to sustain the warranty. See Appendix B §54, *Warranties*. The Contractor Shall furnish with each repaired Transit Bus an information sheet that indicates the type of warranty work performed, parts replaced, and number of labor hours involved.
- E. The warranty requirements stated for each Base Item on Attachment 1 - *Specifications and Pricing* are considered minimum. If a minimum warranty requirement is not stated in Attachment 1 - *Specifications and Pricing*, then the Contractor Shall guarantee such equipment against defective materials and workmanship for a period of one (1) year from the in-service date, with no mileage limitation. If the manufacturer's

standard warranty exceeds the warranty stated in Attachment 1 - *Specifications and Pricing*, or the minimum one (1) year warranty stated herein, then the manufacturer's standard warranty Shall apply.

- F. Whenever extended warranty packages are being offered by the OEM or the Contractor at "No Additional Charge," they Shall be extended to all purchases made under Contract during the time period that they are offered to other entities.
- G. All Transit Bus warranties, including extended warranties, Shall be provided in Written or electronic form to the Authorized User.
- H. The Contractor Shall warranty all equipment furnished for a period of one (1) year from in service date as specified on the delayed warranty form, (with no mileage limitation), if such equipment is not included in the OEM's standard warranty. This guarantee Shall include defective materials and workmanship.

3.14 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.

3.15 Post-Delivery Service

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

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

3.16 Recalls

Upon request from OGS or the Authorized User, the Contractor Must assist in determining if the Transit Bus is subject to any open recalls, and Must assist in finding a qualified location to perform the recall service.

4. BID SUBMISSION

4.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, Must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do

business with New York State Agencies and the registration Must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder Must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

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

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

4.3 Format of Bid Submission

The complete Bid package Must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids Shall be handled in accordance with Appendix B §5, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed May be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations susceptible to Disqualification May include:

- E-mail or facsimile Bid submissions are not acceptable;
- Absent Attachment 1 – *Specifications and Pricing*; and
- Alterations or revisions to Attachment 1 – *Specifications and Pricing*.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation May be considered non-responsive and May be rejected.

4.4 Content

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

- A. A complete Bid consists of the following documents. Do not submit any documents not set forth below. A potential Contractor Must submit all documents in the manner and format set forth below (i.e., paper or electronic (USB)). ***Bidders are required to submit the documents in subparagraphs 1, 2 and 3 below in the manner specified (i.e., paper or electronic), by the "Bid Opening / Due date for Bids" time and date specified in Section 1.4 Key Events/Dates. Failure to do so Shall result in the Bid being deemed non-responsive and in the disqualification of the Bid.***

1. IFB Cover Page. A **paper** version of Page #1 of the IFB (the cover page/first page of this document), completed and with original ink signature.
2. IFB Bidder Certification and Affirmation Page. A **paper** version of Page #2 of the IFB (the Bidder Certification and Affirmation Page/second page of this document), completed and with original ink signature;
3. Attachment 1 – Specifications and Pricing. A **paper version AND an electronic (USB)** version of Attachment 1 – *Specifications and Pricing*, completed, in Excel format, (version 2003 or newer). *Do not submit a PDF version of this document. Do not split the individual tabs contained in this attachment into a separate Excel document for each Lot being Bid. Failure to submit the final version of this attachment with the correct revision date as posted on the OGS website and announced via the NYS Contract Reporter, May result in the Bid being deemed non-responsive and in the disqualification of the Bid.*

See Section 4.5 *Bid Pricing Submittal* for additional information regarding the submittal of Bid pricing on Attachment 1 – *Specifications and Pricing*. **Failure to provide a Base Item Unit Price for a Lot Shall render the bid non-responsive for that Lot and Shall result in the disqualification of the bid for the applicable Lot. Failure to provide one (1) or more Optional Equipment Unit Prices for a Lot May render the bid non-responsive for that Lot and May result in the disqualification of the bid for the applicable Lot.**

4. Additional Supporting Information. For each Base Item bid an **electronic (USB)** version of the documents listed below. For definitions see Section 1.8 *Definitions*.
 - a. Build Sheet(s). **Failure to provide a Build Sheet for a Base Item Shall render the bid non-responsive for that individual Base Item and Shall result in the disqualification of the bid for the applicable Lot;**
 - b. Certificate of Conformity. A U.S. Environmental Protection Agency Certificate of Conformity;
 - c. FMVSS Documentation. Engineering assessment and test procedure results documentation showing compliance with all stipulated and relevant Federal Motor Vehicle Safety Standards (<http://www.nhtsa.gov/cars/rules/import/FMVSS>); Documentation supporting compliance of the Body with the Base Item Specifications (e.g., OEM brochures and specification sheets, and dimensional drawings, including floor plans). Documentation Shall include current (i.e., not older than five years unless the structure has not been significantly modified as defined by 49 CFR 665) substantiating documentation confirming compliance with FMVSS 214 (applicable only to Lots A, B, and F), and FMVSS 220.
 - d. Buy America Documentation. OEM documentation showing compliance with Buy America requirements as defined in 49 CFR U.S.C. 5323(j). OEM documentation must include sufficient detail that demonstrates at least 70% US material content. The documentation must also include a separate final assembly cost in terms of dollars, the activities associated with final assembly, and the location it occurred.
 - e. STURAA Test Report
 - 1) A STURAA Test Report that is valid for the Transit Bus Bid. OGS reserves the right to request that the Bidder submit a letter from the FTA stating that the STURAA Test Report is valid for the specific Transit Bus Model Bid, that no significant changes have been made to the Model that was tested, and no additional testing is needed at this time. The deadline for submittal of this letter will be given to the Bidder at the time of OGS's request.
OR
 - 2) Certification of exemption of the Transit Bus Bid, as specified under FTA provisions.
OR

- 3) Manufacturer's Certificate of Anticipated Testing. The certification Shall be signed by an authorized OEM representative, be submitted on OEM letterhead, and include a schedule for the test that includes the following information:
 - a. Anticipated date of Transit Bus build completion;
 - b. Date Altoona testing is scheduled to begin;
 - c. Anticipated date of completion of Altoona testing; and
 - d. Anticipated date that the STURAA Test Report Shall be provided to OGS.

Note: All testing Must be completed and the required STURAA test reports Must be submitted prior to an order being placed for such Transit Buses. This Shall not preclude the State from awarding to a responsive Bidder that met testing/reporting requirements at the time of bid opening.

- f. Warranty information. Documentation that shows compliance with the minimum required warranty for the equipment included in the Transit Bus. See Section 3.13 *General Warranty Requirements*;
 - g. Air Conditioner OEM Certification. Certification from the OEM that the performance requirements listed in the Base Item Specifications can be met with the air conditioner(s) offered.
 - h. Rustproofing Certification. If the required rustproofing for the Transit Bus offered (see Section 3.6. *Equipment, Parts and Accessories*, Paragraph M), Shall be provided by the OEM, then the Bidder Must provide a letter from the OEM for the applicable Lot(s) certifying the following:
 1. All components listed in Section 3.6. *Equipment, Parts and Accessories*, Paragraph M, Subparagraphs 1 through 3, Shall be zinc coated, or equivalent, prior to finish coating application.
 2. The entire underside of the Transit Bus, including floor members and chassis fenders, Shall receive a nonflammable rustproof undercoating at the time of manufacture; and
 3. The rustproof undercoating Shall be applied to a uniform thickness with no bare spots.
5. Attachment 2 – NYS Required Certifications. A **paper** version of Attachment 2 – *NYS Required Certifications*, completed and with original ink signature.
 6. Attachment 3 – Intentionally Omitted. There is no Attachment 3 for this Solicitation.
 7. Attachment 4 – Insurance Requirements. **Paper or electronic (USB)** documentation that provides proof of compliance with general, automobile liability, workers' compensation and disability benefits insurance requirements, as specified in Attachment 4 – *Insurance Requirements*;
 8. Attachment 5 – Bidder Information Questionnaire. An **electronic (USB)** version of Attachment 5 – *Bidder Information Questionnaire*, completed;
 9. Attachment 6 – Bidder Submission Checklist. An **electronic (USB)** version of Attachment 6 – *Bidder Submission Checklist*, completed;
 10. Attachment 9 – Manufacturer's Certificate. A **paper** version of Attachment 9 – *Manufacturer's Certificate*, completed and with original ink signature;
 11. Attachment 10 -- Federal Transit Administration Certifications. A **paper** version of Attachment 10 -- *Federal Transit Administration Certifications*, completed and with original ink signature;
 12. Standard Vendor Responsibility Questionnaire (SVRQ). See Section 6.34 *NYS Vendor Responsibility*.
 - a. Online **electronic** completion of the SVRQ through the NYS VendRep System, with a certification date no more than six (6) months prior to the "Bid Opening / Due date for Bids". This can be accessed on the OSC website at https://www.osc.state.ny.us/vendrep/info_vrsystem.htm, by clicking either "Log In" or "create an account".

OR

- b. A **paper** version of the SVRQ, completed and with original ink signature and notarized no more than six (6) months prior to the "Bid Opening / Due date for Bids". The form is available on the OSC website at https://www.osc.state.ny.us/vendrep/info_vrsystem.htm (click on "Forms" and select the "Non-Construction, For-Profit Questionnaire");
 13. **NY State Taxation and Finance forms ST-220-CA and ST-220-TD.** A **paper** version of form ST-220-CA, completed and with original ink signature, and notarized (see Section 6.35 *NYS Tax Law Section 5-a. Note: Form ST-220-TD, completed and with original ink signature, and notarized, Must be submitted directly to the NYS Tax Department.* Forms are available on the Tax Department website here: https://www.tax.ny.gov/forms/form_number_order_st_v.htm
 14. **Form EEO-100.** A **paper** version of form EEO-100 (Equal Employment Opportunity Staffing Plan), completed and with original ink signature (See Section 6.28 *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.* The form is available on the OGS website here: <https://ogs.ny.gov/MWBE/Forms>;
- B. Bidders are requested to submit the documents in paragraphs 4 through 14 of Paragraph A above, by the "Bid Opening / Due date for Bids" time and date specified in Section 1.4 *Key Events/Dates*. If Bidder does not submit any of these documents by "Bid Opening / Due date for Bids" time and date specified in Section 1.4 *Key Events/Dates*, Bidder is requested to submit such documents within five (5) Business Days of Procurement Services' Written request for such document(s). Failure to submit a document within five (5) Business Days of Procurement Services' Written request for such document(s) May render the Bid non-responsive and result in the disqualification of the Bid.
- C. Each Bid Shall include the required documents in the format (paper or electronic) specified above in Paragraph A. In the case of discrepancies between the hard copy and the electronic media submission the electronic media submission Shall take precedence over the hard copy submission.
1. Paper documents Shall include original signatures and notary, where applicable. Documents should be submitted bound in a binder or by some other method (e.g., through the use of a three-hole report cover). Spiral binding is not desired by the State.
 2. Electronic media files Shall be submitted on USB flash drive in a format readable with a Windows operating system (Vista format or later versions). Each USB flash drive Must be labeled on the outside with: (1) Full legal business name of Bidder and (2) Solicitation Number 23170. It is the Bidder's responsibility to ensure that the documents submitted on USB are readable; Bidder is advised to verify that all submitted documents can be opened and viewed from the USB . **If the Attachment 1 – Specifications and Pricing file submitted on the USB is not readable, the Bid May be deemed non-responsive and Shall be disqualified.**
- D. A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.
- E. Documents required at the time of Bid opening (i.e., IFB Cover Page, IFB Bidder Certification and Affirmation Page and Attachment 1 – *Specification and Pricing*) Must be submitted in one (1) sealed package and be received by the "Bid Opening / Due date for Bids" time and date specified in Section 1.4 *Key Events/Dates*.
- F. Bidder is responsible for ensuring that the most recently updated version of all required documents has been submitted. Any updated versions released after the initial Bid release date Shall be posted at <https://ogs.ny.gov/procurement/biddocument/23170BID> and announced via the NYS Contract Reporter. **Failure to submit the final version of Attachment 1 – Specifications and Pricing with the correct revision date as posted on the OGS website and announced via the NYS Contract Reporter May result in the Bid being deemed non-responsive and in the Bid being disqualified.**

4.5 Bid Pricing Submittal

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

- A. **Base Item Unit Price:** Bidder Shall enter a Base Item Unit Price for the Base Item bid for a Lot. **Failure to provide pricing information for a Base Item Shall render the bid non-responsive for that Base Item and Shall result in the disqualification of the bid for the applicable Lot.**
- B. **Optional Equipment Unit Price:** Bidder Shall enter an Optional Equipment Unit Price for each item of Optional Equipment listed for a Lot. The Optional Equipment Unit Price entered by the Bidder is based on adding to or deleting the Optional Equipment from the Base Item and the applicable Base Item Unit Price. If adding or deleting the Optional Equipment results in a credit, Bidder Shall enter a negative number for the Optional Equipment Unit Price. All Optional Equipment listed for a Lot Shall be available from the Bidder. **Failure to provide pricing information for one or more Optional Equipment listed for a Lot Shall render the bid non-responsive for that individual Optional Equipment and Shall result in the disqualification of the bid for the applicable Lot.**
- C. For all dollar amounts that a Bidder May enter, a Bidder May enter as many decimal places as desired and the formulas included in Attachment 1 - *Specifications and Pricing* Shall calculate based on the full number entered. However the number displayed in the cells Shall be rounded to no more than two (2) decimal places (e.g., \$6.246 Shall be rounded to \$6.25 and \$7.232 Shall be rounded to \$7.23).
- D. The bid submitted by the successful Bidder Shall be incorporated into any resulting Contract and the Bidder Shall be required to provide the awarded Base Item(s) and associated Optional Equipment at the prices quoted in its bid.

4.6 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23170)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package May necessitate the opening of the Bid prior to the scheduled Bid opening.

4.7 Bid Delivery

Bids Shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in Section 1.4 *Key Events/Dates*:

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

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids Shall be rejected, except as provided in

Appendix B §5, *Late Bids*. All Bids and accompanying documentation Shall become the property of the State of New York and Shall not be returned.

4.8 Important Building Access Procedures

To access the Corning Tower, all visitors Must check in by presenting photo identification at the information desk. Delays May occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays May occur. Building access procedures May change or be modified at any time.

4.9 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – *NYS Required Certifications*) with its Bid.

4.10 Product Literature to Be Furnished with Bid

If requested by OGS, bidder Shall submit with its Bid detailed specifications, Product literature, and all necessary data on the Product to be furnished (“Product literature”). If the Product offered differs from the Product literature, such differences Must be explained in detail. Failure to submit any of the Product literature May result in rejection of the Bid. The State, however, reserves the right to request any additional information deemed necessary for the proper evaluation of Bids.

4.11 Manufacturer’s Certificate

Bids will be accepted only from Dealers for Transit Buses that comply with Buy America. (See Section 2.1 *Bidder Type and OEM Certification*). Through completion and submission of the Manufacturer’s Certificate, the supplier or manufacturer guarantees that the Bidder is a Dealer, the Transit Buses comply with Buy America, and the Bidder will be supplied with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders Shall use the certificate attached to this Solicitation to document this level of support (see Attachment 9 – *Manufacturer’s Certificate*).

The Manufacturer’s Certificate is to be forwarded by the Bidder to its proposed supplier or manufacturer for completion, and returned to the Bidder for inclusion with its Bid. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B §25, Participation in Centralized Contracts.

4.12 Bid Deviations

Bids Must conform to the terms set forth in the Solicitation. As set forth in Section 1.6, *Bidder Questions*, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they May be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid May render the Bid non-responsive and May result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (*Standard Clauses for NYS Contracts 40523-23170 Buses, Transit (Adult Passenger) (July 2019)*). OGS will also not entertain exceptions to the Solicitation or Appendix B (*General Specifications*) that are of a material and substantive nature.

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

4.13 Electronic Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>.

4.14 Bid Liability

The State of New York Shall not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

4.15 Firm Offer

Bids Must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid Shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.16 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation, or individual Lots, at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- 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 Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;

- S. Reject an obviously unbalanced Bid as determined by the State;
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids May be made on the remaining Products, regions, or lots;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing; and
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method Shall be coterminous with the first Contract awarded as a result of this Solicitation.

4.17 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation Shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

5. METHOD OF AWARD

5.1 Method of Award

This IFB includes thirteen (13) Lots as specified in Section 1.2 *Scope*, and OGS intends to award to one (1) responsive and responsible Bidder, in each Lot with the lowest Grand Total For Lot. OGS reserves the right to make award to either greater or fewer than one (1) responsive and responsible Bidder, if doing so is determined to be in the best interest of the State. Grand Total For Lot is calculated in accordance with Section 5.3 *Grand Total For Lot Calculation*, and is based on a combination of the Base Item Unit Price and Total Optional Equipment Evaluation Price, weighted by the Evaluation Quantity. The examples below in Section 5.2 *Total Optional Equipment Evaluation Price Calculation* and Section 5.3 *Grand Total For Lot Calculation*, indicate the calculations for each Lot. Included with the specifications for each Base Item is an Evaluation Quantity. This value is for evaluation purposes only and is based on historic sales and anticipated future needs. The Evaluation Quantity is NOT a guaranteed purchase under the resultant Contract(s). See also Section 1.3 *Estimated Quantities*.

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5.2 Total Optional Equipment Evaluation Price calculation

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

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

- A. Each Optional Equipment Evaluation Price is calculated by multiplying the Optional Equipment Unit Price by the Optional Equipment Evaluation Quantity as follows:
 1. Additional Wheelchair Restraint System: Optional Equipment Unit Price (\$5,000) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price (\$50,000.00);
 2. Additional Seat: Optional Equipment Unit Price (\$3,000) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price (\$30,000.00).

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

Example Price Calculation for Total Optional Equipment Evaluation Price (all Lots)				
Optional Equipment	Specification	Optional Equipment Unit Price	Optional Equipment Evaluation Quantity	Optional Equipment Evaluation Price
Additional Wheelchair Restraint System	Price one (1) additional wheelchair station above the quantity required in the Base Item. Price is per position to include all belts, floor/shoulder hardware, and storage container.	\$5,000.00	10	\$50,000.00
Additional Seat (3-Step Fold Away; and Forward Facing)	Provide and install one (1) forward facing fold-away flip seat to accommodate two (2) ambulatory passengers, when not in use as a wheelchair station. Seat Shall be of the same type (including grab handles) and color as standard seats.	\$3,000.00	10	\$30,000.00
Total Optional Equipment Evaluation Price				\$80,000.00

5.3 Grand Total For Lot Calculation

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

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

Example Price Calculation for Grand Total For Lot (all Lots)		
Evaluation Quantity	A quantity used in this IFB for evaluation, and to identify the Annual FTA Quantity for the applicable item. It is not a guaranteed purchase quantity under the resultant Contract(s).	10
Base Item Unit Price	Enter the per unit NYS Contract Price (dollar amount) for the Transit Bus described in the Base Item Specifications. The Base Item Unit Price includes any OEM fees, all customs duties and charges, all Transit Bus preparation and clean-up charges, NYS DMV and NYS DOT inspection, installation charges, delivery and all other incidentals normally included with providing a Transit Bus, but excludes Optional Equipment. <i>Note: Failure to enter a Base Item Unit Price shall deem the bid for this Lot non-responsive and shall result in the rejection of the bid for this Lot.</i>	\$40,000.00
Total Optional Equipment Evaluation Price	The sum of the Optional Equipment Evaluation Prices in included Column I of Part 4: <i>Optional Equipment Specifications and Prices</i> . [Automatically calculated: Equal to the value in Column I, Row 161 below]	\$80,000.00
Grand Total For Lot	The dollar amount calculated in this IFB to evaluate award(s) for each Lot. [Automatically calculated: Evaluation Quantity multiplied by the Base Item Unit Price, plus the Total Optional Equipment Evaluation Price]	\$480,000.00

5.4 Procurement Instructions for Authorized Users

The resultant Contracts Shall include the following procurement instructions for Authorized Users. OGS reserves the right to change the instructions set forth in this section in non-material and substantive ways without seeking a Contract amendment.

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

- A. When utilizing the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
- A statement of need and associated requirements;
 - Obtaining all necessary prior approvals;
 - A summary of the Contract alternatives considered for the purchase; and
 - The reasons supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
- B. Prior to issuing a Purchase Order to the Contractor, the Authorized User Must submit a request for Contract use to NYS DOT at the address below and include the Contractor name, Contract number, Lot and quantity of Transit Buses.

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

If the request for contract use is made by a state or governmental jurisdiction other than NYS, then the request must include a completed Extension of Use Approval Form (see Section 6.38, *Extension of Use*).

- C. Upon NYS DOT approval, Authorized Users Shall issue Purchase Order(s), as described in Appendix B §30, *Purchase Orders*, directly to the Contractor(s), specifying the Transit Bus required and Delivery requirements.
- D. Before proceeding with their purchase, Authorized Users are advised to arrange a pre-production meeting with the Contractor(s) in order to ensure complete and accurate understanding of the Transit Bus specifications, and delivery requirements, that are required by the Authorized User.
- E. Upon Authorized User acceptance of Transit Buses itemized on the Purchase Order, Contractor(s) Shall invoice the Authorized User for the Transit Buses, and accordingly, Authorized User Shall arrange for payment.
- F. The Contractor is advised that Authorized User personnel Shall not be authorized to obligate or bind the respective entity to contractual terms and conditions; therefore, there Shall be no obligation to execute any Contractor documents that are not set forth in the Contract. See also Appendix B §30, *Purchase Orders*.
- G. New York State and Ford Motor Company have reached an understanding regarding Ford's FIN Code requirements. For further information, please contact Ford Motor Company Government Account Manager, Daniel Mazurek by telephone at 313-407-2973 or via email at dmazure1@ford.com.

5.5 Notification of Award

Tentative award of the Contract Shall consist of Written notice to that effect by OGS to a selected Bidder, who Shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible. Non-awardees will also be notified that their Bid was not selected for award.

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

All Contracts awarded under this Solicitation Shall terminate simultaneously two 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 §22, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation Shall have a co-terminus end date. At the State's option, the Contract May be extended for three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are 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. Any extensions provided under this section Shall apply in addition to any rights set forth in Appendix B §23, *Contract Term – Extension*.

The Contract term provided for in this section Shall extend 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 6-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).

6.2 Short term Extension

This section Shall apply in addition to any rights set forth in Appendix B §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.

6.3 Price

Pricing for Transit Buses to be provided under the Contract Shall be subject to the terms and conditions in this Section (i.e., Section 6.3 through Section 6.9). Prices Shall not be increased for the entire Contract period and any extension periods, except for the allowable price adjustments as outlined below. The Contractor May decrease prices at any time without prior approval from OGS. Price adjustments that are approved by OGS Shall be communicated via email to the "Centralized Contract and Sales Contact", at the address specified in the Contract, and be announced to Authorized Users via a Contract Update memo posted on the OGS website for the Contract.

6.4 Base Item Unit Price

The Base Item Unit Price Shall include any OEM fees, all customs duties and charges, all Transit Bus preparation and clean-up charges, NYS DMV and NYS DOT inspection, installation charges, delivery and all other incidentals normally included with providing a Transit Bus under the Contract. Pursuant to Appendix B §33, *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.

6.5 Optional Equipment Unit Price

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

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

6.6 Contract Pricelist

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

Notwithstanding the foregoing, where an Authorized User does not have the capability to access Contract information electronically, it Shall be the Contractor's responsibility, upon Authorized User request, to furnish, without charge, Contract Pricelists pursuant to the Contract, to Authorized Users who request them. Contract Pricelists May be furnished to Authorized Users in either hard-copy or electronic format. If available in both formats, they Shall be furnished in the format preferred by the requesting Authorized User. Upon request, the Contractor Shall assist Authorized Users in the use of Contract Pricelists.

In order to receive approval for additions and deletions of Product from the Contract Pricelist, the Contractor Must submit a completed Contract Modification Form (see Appendix C - *Contract Modification Procedure*) and to the Procurement Services Contract administrator. If approved, Procurement Services Shall notify the Contractor in writing and post the revised Contract Pricelist to the OGS website.

6.7 PPI Price Adjustment

Each September 15th during the Contract term, beginning September 15, 2020, the Base Item Unit Prices and Optional Equipment Unit Prices Shall be updated in accordance with the Producer Price Index (PPI) indicated below in Paragraph A, *PPI*. Contract prices are firm until September 14, 2020.

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

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

Adjustment Date	Latest Finalized Monthly PPI Data
September 15, 2020	Latest Finalized Monthly PPI Data posted by the BLS by August 31, 2020
September 15, 2021	Latest Finalized Monthly PPI Data posted by the BLS by August 31, 2021
September 15, 2022	Latest Finalized Monthly PPI Data posted by the BLS by August 31, 2022
September 15, 2023	Latest Finalized Monthly PPI Data posted by the BLS by August 31, 2023

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

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

- A. PPI
Series ID: WPU141302
Not Seasonally Adjusted
Group: Transportation Equipment
Item: Completed Vehicles on Purchased Chassis
(Web access: <https://data.bls.gov/labjava/outside.jsp?survey=wp>)
- B. Formula to Calculate Price Adjustment Factor
[Latest Finalized Monthly PPI data] divided by [finalized PPI data for the Month/Year in which the bid opening was held (i.e., August 2019)]
- C. Examples
The examples below are strictly for illustration purposes, and May not reflect actual changes in the PPI and any allowable adjustments in price that might occur during the Contract term.
- 1) Price Adjustment calculated on September 15, 2020 for the time period from September 15, 2020 to September 14, 2021:
 - [Latest Finalized Monthly PPI Data (141.0)] divided by [finalized PPI data for the Month/Year in which the bid opening was held (137.4)]
 - $141.0/137.4 = 1.0262008$; rounded to nearest thousandth = 1.026
 - Price Adjustment Factor = 1.026
 - Each originally awarded Base Item Unit Price and Optional Equipment Unit Price awarded would be multiplied by 1.026 to calculate the NYS Contract Price for the time period from September 15, 2020 to September 14, 2021 (e.g., if the original awarded Base Item Unit Price was \$50,000, the adjusted price would be \$50,000.00 multiplied by 1.026, or \$51,300.00)
 - 2) Price Adjustment calculated on September 15, 2021 for the time period from September 15, 2021 to September 14, 2022:
 - [Latest Finalized Monthly PPI Data (134.0)] divided by [finalized PPI data for the Month/Year in which the bid opening was held (137.4)]
 - $134.0/137.4 = .9752547$; rounded to nearest thousandth = .975
 - Price Adjustment Factor = .975
 - Each Base Item Unit Price and Optional Equipment Unit Price awarded would be multiplied by .975 to calculate the NYS Contract Price for the time period from September 15, 2021 to September 14, 2022 (e.g., if the original awarded Base Item Unit Price was \$50,000, the adjusted price would be \$50,000.00 multiplied by .975, or \$48,750.00)

6.8 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, May be reduced to a lower price on a prospective basis at the

discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.9 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it Shall immediately notify the Office of General Services, Procurement Services in writing. Such notification Shall not relieve the Contractor of its responsibilities under the Contract. The State May, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B §44, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State May terminate the Contract upon 10 business days Written notice mailed to the Contractor.

6.10 Transit Bus Pre-Order Worksheet and Finalized Order

Upon contact from an Authorized User, or other entity (see 6.38 *Extension of Use*), initiating a Transit Bus order for any Lot, the Contractor Shall create and provide to the Authorized User a Transit Bus Pre-Order Worksheet that includes all items specified in Attachment 11 – *Transit Bus Pre-Order Worksheet*. The Authorized User will submit a completed Purchase Order and Transit Bus Pre-Order Worksheet to the Contractor for each Transit Bus order. The Contractor Shall review the Purchase Order and Transit Bus Pre-Order Worksheet for completeness and, within five (5) business days of receipt, shall either request revisions, or notify the Authorized User that the order is a Finalized Order. If the order is a Finalized Order, the Contractor Must provide Written confirmation to the Authorized User that an order has been placed with the Manufacturer, and an estimated delivery date (See Section 6.19 *Delivery Time*). If the Contractor fails to provide an estimated delivery date within this timeframe, the Authorized User may, at its sole discretion, cancel the order."

6.11 Ordering

Purchase Orders Shall be made in accordance with the terms set forth in Appendix B §30, *Purchase Orders*. Authorized Users May submit orders over the phone, 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 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). Further, Contractor's issuance of an order confirmation Shall be deemed a representation to the Authorized User that the Contractor has reviewed the Purchase Order for compatibility with the item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order with the manufacturer and that the manufacturer has accepted the order and assigned an order number and anticipated build and delivery dates.

Purchase orders are to include the following information:

- A. Contract number;
- B. Contractor business name;
- C. Lot designation of the Transit Bus;
- D. Make, Model and Model Code of the Transit Bus;
- E. Optional Equipment, if applicable;
- F. Calculation of NYS Contract Price; and

G. Specific designation of special price(s) which May be better than the NYS Contract Price.

6.12 Minimum Order

There is no minimum order for this Contract.

6.13 Invoicing and Payment

Invoicing and payment Shall be made in accordance with the terms set forth in Appendix B §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
- Account 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
- Lot designation of the Transit Bus;
- Make, Model and Model Code of the Transit Bus;
- Optional Equipment, if applicable;
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)
- Breakdown of liquidated damages, if any (see 6.21 *Liquidated Damages*);

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>.

6.14 Build Sheet

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

6.15 Product Delivery

Contractors Shall be required to deliver Transit Buses anywhere within New York State boundaries, as designated by the Authorized User on the Purchase Order. The following terms and conditions (i.e., Section 6.15 through 6.21) also apply to delivery:

- A. The Contractor agrees to bear the risk of loss, injury, or destruction of the Transit Bus ordered, prior to acceptance of the Transit Bus by the Authorized User.
- B. Delivery Shall be made in accordance with instructions on the Purchase Order from each Authorized User. It Shall be presumed that the Contractor received the Purchase Order and completed Attachment 11 -Transit Bus Pre-Order Worksheet by 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 is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from Procurement Services. The Contractor Shall review the Purchase Order and Transit Bus Pre-Order Worksheet for completeness and, within five (5) business days of Finalized Order receipt, shall either request revisions, or notify the Authorized User that the order is a Finalized Order, see Section 6.10 *Transit Bus Pre-Order Worksheet and Finalized Order*. If the order is a Finalized Order, the Contractor Must provide Written confirmation to the Authorized User that an order has been placed with the Manufacturer, and an estimated delivery date (See Section 6.19 *Delivery Time*). At the sole discretion of the Authorized User, failure to provide an estimated delivery date within this timeline May void the order.
- C. Contractor Shall secure a signed receipt from the Authorized User certifying delivery of the Transit Bus and odometer reading. In the event deficiencies are later noted and a properly signed receipt cannot be found, Contractor Shall be responsible for certifying delivery and odometer reading.
- D. Pursuant to Appendix B §33, *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.
- E. An Authorized User May choose to stagger the delivery of Transit Buses over a period of time, and to multiple delivery locations, as specified on the Purchase Order. For example, order forty (40) Transit Buses with instructions to deliver four (4) Transit Buses to each of ten (10) locations over a period of time.
- F. Upon mutual agreement, delivery locations May be expanded per Section 6.37 *Non-State Agencies Participation in Centralized Contracts*, Section 6.38 *Extension of Use*, incorporated herein.

6.16 Pre-Delivery Inspection

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

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

Inspected Transit Buses which are found to not meet the specifications of the Contractor Purchase Order, as applicable, May be rejected (see also Appendix B §36, *Rejected Product*). All rejected Transit Buses Shall be corrected at the expense of the Contractor, and the corrected Transit Buses Shall be presented for re-inspection within ten (10) Business Days from notification of the rejection. The Authorized User May cancel the Purchase Order if the Contractor fails to correct any problem, without incurring any cost or fee.

6.17 Condition on Delivery

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

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

- A. At point of acceptance, have an odometer reading that is consistent with the miles, in distance, to the anticipated odometer mileage incurred between the OEM factory, the Contractor's place of business, other mutually agreed upon location, if applicable, and the point of delivery. *Note: In the event that a Transit Bus is delivered with an odometer reading that the Authorized User considers to be excessive, the Contractor Shall be required to provide a reasonable explanation for the odometer reading. Transit Buses that are delivered with an odometer reading that is considered excessive without a reasonable explanation May be rejected. Chassis Shall only be used for transport of other Chassis (e.g., as "mule" trucks), that are included in the Authorized User's delivery.*
- B. Include the forms required to apply for a NYS title and for obtaining NYS registration and license plates. All title papers Shall be properly prepared and executed.
- C. Be certified to meet or exceed requirements to obtain a NYS registration and license plate. The GVWR Shall be identified in the Transit Bus as the final complete certification label (minimum rating). The Gross Combined Weight Rating (GCWR) Shall be identified by decal in the cab to indicate the approved weight, which can be towed, if applicable.
- D. Include the proper forms to apply for a NYS registration. These forms Shall include, but are not limited to:
 1. Required from Contractors in New York State: MSO (Manufacturer's Statement of Origin), MV50 Retail Certificate of Sale (), (Include lienholder information when required by Authorized User), and MV82 (Vehicle Registration/Title Application); or
 2. Required from Contractors outside New York State: Manufacturer's Certificate or Statement of Origin, and Odometer Disclosure Statement (This is not required if the Manufacturer's Certificate/Statement of Origin includes the odometer disclosure.) 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.
- E. Have a valid NYS Department of Motor Vehicles (DMV) and/or NYS DOT inspection sticker and a valid NYS emissions inspections sticker. All NYS inspection requirements are the sole responsibility of the Contractor.
- F. Have the OEM's recommended pre-delivery service completed.
- G. Have the Chassis OEM's Model name and Model number stated on a decal affixed to the inside of the driver's side door.
- H. Be clean, lubricated, serviced, fuel gauge registering no less than one half recommended capacity, all adjustments completed, all mechanical and electrical motors and components fully functional and operational, and the Transit Bus Shall be "road ready" for immediate use. If Diesel, the Diesel Exhaust Fluid (DEF) tank Must be no less than three quarters capacity.

- I. Have permanent antifreeze in each t to protect it at a level of -34 °F. Only a low silicate type anti-freeze Shall be used for Transit Buses having diesel engines.
- J. Be free from all dealer signs/emblems. See Section 3.8 *Advertising*.
- K. Include a copy of the OEM warranty and service policy with all warranty vouchers, certificates and coupons. Delayed warranty forms are to be provided with the required motor vehicle paper work.
- L. Have each Chassis and Body identified with a metal identification tag, or other standard OEM label, that provides the OEM's name, Model number and individual serial number. Tags Shall be affixed in an accessible and readable position on the item, and Shall be installed in accordance with Federal requirements.
- M. Include a bill of materials or line-setting ticket. The bill of materials Shall list by part number, capacity, size or otherwise, all major components of the Transit Bus (engine, frame, transmission, drive line, axles, alternator, storage battery, fuel tank, etc.). The bill of materials Shall be at least as comprehensive as the OEM's line-set ticket.
- N. If towed to the Authorized User for delivery, the towing device May not be attached in such a way that holes are drilled in the bumper of the Transit Bus being towed. Drilling of holes in the Transit Bus bumpers is not permitted. Any bumper damaged by a towing device Shall be replaced by the Contractor at no charge to the Authorized User. If a Transit Bus is being towed by another vehicle, the Transit Bus being towed Must have the drive shaft disconnected to eliminate unnecessary mileage.

6.18 Post Delivery Inspection

After Transit Buses 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 Transit Bus (see Appendix B §36, *Rejected Product*), or choose to have the corrections made by an entity of the Authorized User's choosing and the Contractor Shall be required to issue a revised invoice if any credits are required by the Authorized User as a result of deficiencies found during the post-delivery inspection.

6.19 Delivery Time

The following provisions for delivery time Shall apply:

- A. Delivery time Shall be expressed in number of calendar days required to make delivery after receipt of a Finalized **Purchase** Order (After Receipt of Order ("ARO")). All Transit Buses Must be delivered within the number of calendar days previously agreed upon by the Contractor and Authorized User, after receipt of the **Finalized Purchase** Order by the Contractor and/or at the pre-production meeting (see Section 3.10 *Pre-Production Meeting*). Failure to deliver within the previously agreed upon time period Shall result in payment of liquidated damages in accordance with Section 6.21 *Liquidated Damages*, unless the delay was not within control of Contractor or the reason for the delay has been determined to be reasonable by the Authorized User (see Paragraph D below).
- B. Contractor Shall provide Written acknowledgement of Finalized Orders within five (5) Business Days ARO.
- C. Contractor Shall provide ordering Authorized User with anticipated shipping date of the completed Transit Bus with Written acknowledgement of the order. If the anticipated shipping date cannot be provided by the Contractor at the time of the acknowledgement of order, or at the pre-production meeting, then the Contractor Shall provide the Authorized User with a reasonable explanation for not providing a date, and Shall provide the anticipated delivery date at the time it becomes known to the Contractor.

- D. Unless otherwise agreed-upon by the Authorized User, the Contractor Shall furnish the Authorized User with Written acknowledgement of the delivery date to the Authorized User at least fourteen (14) calendar days prior to shipment.
- E. If delivery Shall not be made within the delivery time, the Contractor is required to notify the Authorized User in writing within one (1) Business Day of when Contractor knows the delivery Shall not be made within the delivery time. This notification Must include a reasonable explanation, (e.g. the OEM has a delay in shipment to the Contractor), for the delay and the latest date the Transit Bus Shall be delivered . Should the explanation for the delay be determined to be unreasonable by the Authorized User, the Authorized User May assess liquidated damages (see Section 6.21 *Liquidated Damages*).
- F. All correspondence on delivery time Shall be directed to the ordering Authorized User's contact person.

6.20 Default on Delivery

If during the Contract period an Authorized User has issued a Purchase Order for a Transit Bus, prior to the Final Order Due Date, and the Base Item or requested Optional Equipment awarded for that Lot becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B §44, *Savings/Force Majeure*), following the issuance of the Purchase Order, a substitute Base Item or Optional Equipment deemed by Procurement Services to be equivalent to the specifications for the Base Item or Optional Equipment in the resultant Contract(s), Must be supplied by Contractor if requested by the Authorized User. The price for substitute Base Items or Optional Equipment Shall be equal to or less than the Base Item or Optional Equipment Unit Price in the Contract.

Alternatively, the Authorized User May, at its sole discretion, cancel the order and purchase the Transit Bus from other sources. In such event the Contractor Shall reimburse the Authorized User for all excess costs over the Contract price for the Base Item or Optional Equipment that is unavailable or cannot be supplied for any reason (except as provided for in Appendix B §44, *Savings/Force Majeure*).

6.21 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:

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

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

6.22 Contract Administration

The Bidder 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. Bidder Shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder 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 5 – *Bidder Information Questionnaire*. Contractor Must notify OGS within five Business Days if it's 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.

6.23 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/>.

6.24 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that May be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

6.25 N.Y. State Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, Shall contain a certification that the bidder has and has implemented a Written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy Shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers May utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above Shall be deemed to have been authorized by the board of directors of such bidder, and such authorization Shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder Shall so state and Shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS May reject the bid or May decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 2 – *NYS Required Certifications*, which Bidder Must submit with its bid.

6.26 Insurance

The Contractor Shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

6.27 Report of Contract Usage

Contractor Shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 15 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. Quarterly periods Shall end on March 31st, June 30th, September 30th and December 31st.

Contractors Shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

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 and Shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases 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.

6.28 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 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: <http://www.ogs.ny.gov/MWBE>

6.29 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, Bidder/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/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

6.30 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 §11, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

6.31 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.

6.32 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.

6.33 Overlapping Contract Products

When not using FTA funding (see Section 1.1 *Overview*) Products available under the resulting 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.

6.34 NYS Vendor Responsibility

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

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

Vendors Must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

The Bidder agrees that if it is awarded a Contract the following Shall apply:

The Contractor Shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, 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.

6.35 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. The ST-220-TD can be found at 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.

6.36 "OGS or Less" Guidelines

Purchases of the Products included in the Solicitation and resulting 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.

6.37 Non-State Agencies Participation in Centralized Contracts

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

6.38 Extension of Use

Any Contract resulting from this Solicitation May be extended to additional States or governmental jurisdictions upon mutual Written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction May also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

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

The Contractor agrees to honor all such extension of use requests for orders which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document. An entity requesting an order under this Extension of Use section Must submit a completed Extension of Use Approval Form, available on the OGS website for Award 23170, to NYS DOT at the address below. Contractor Shall not process an additional State or governmental jurisdiction Transit Bus order under the Contract without Written approval from NYS DOT, Public Transportation Bureau.

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

6.39 New Accounts

Contractor May ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies Shall not be required to provide credit references.

6.40 Centralized Contract Modifications

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

- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and May require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor Shall be processed in accordance with Appendix C - *Contract Modification Procedure*. The Contractor Shall submit all requests 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.
- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, Shall be processed in accordance with the terms of the Centralized Contract and Appendix B §26, *Modification of Contract Terms*.

6.41 Drug and Alcohol Use Prohibited

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

6.42 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 the Contract.

6.43 Drawings

- A. **Drawings Submitted with Bid** - When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans Shall conform to the mandates of the Solicitation and Shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings Shall be considered a part of the drawing.
- B. **Drawings Submitted During the Contract Term**- Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor Shall do so on an ongoing basis at no additional charge, and Must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams Shall be delivered to the Authorized User's representative.
- C. **Accuracy of Drawings Submitted** - All drawings Shall be neat and professional in manner and Shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans Shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, or carrying out any other requirements of the intended scope of work.

6.44 Embedded Software/Firmware; Updates

Contractor Shall provide at no charge all updates to any embedded software or firmware in the Product offered to customers generally.