



**Office of General Services  
Procurement Services**

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

# Invitation for Bids (Revised July 21, 2022)

## Redline Version; For Information Only; Do not submit with Bid

<b>BID OPENING</b> <b>DATE: August 11, 2022</b> <b>TIME: 11:00 A.M. EST</b> <b>INVITATION FOR BIDS NUMBER: 23254</b>		<b>TITLE: Group 40524 – SCHOOL BUSES (Statewide)</b>  <b>Classification Codes: 25</b>	
<b>CONTRACT PERIOD:</b> 5 Years Plus a One Year Renewal Option			
<b>DESIGNATED CONTACTS:</b> In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.			
Email Address: OGS.sm.SST_auto@ogs.ny.gov			
Seth Johnson Contract Management Specialist Telephone No. (518) 486-1469		Heidi Langley Team Leader Telephone No. (518) 486-6051	

<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>		<b>NYS Vendor Identification Number:</b> <i>(See New York State Vendor File Registration Clause)</i>		
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) <i>(check all that apply)</i>			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE NOT BIDDING AT THIS TIME BECAUSE:
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<b>FOR PROCUREMENT SERVICES USE ONLY</b>			
LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	_____	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 New York State Contracts) 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* (October 2019)
- Appendix B – *General Specifications* (April 2016)
- Appendix C – *Contract Modification Procedure*
- Appendix D – *Federal Funding Agency Mandatory Terms and Conditions* (July 2021)

**ATTACHMENTS**

- Attachment 1 – *Specifications and Pricing*
- Attachment 2 – *NYS Required Certifications*
- Attachment 3 – *Encouraging Use of NYS Businesses*
- 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 – *Supplier/Manufacturer’s Certificate*
- Attachment 10 – *Consortium Bid Form*
- Attachment 11 – *Contractor and Reseller/Distributor Information Sheet*
- Attachment 12 – *EO 16 Certification Form*

## 1. INTRODUCTION

### 1.1 OVERVIEW

This Invitation for Bids (IFB) is issued by the New York State (NYS) Office of General Services (OGS), Procurement Services. This IFB does not constitute an offer. OGS may, at its sole discretion, award Contracts as a result of this solicitation. The commodity Contracts awarded as a result of this IFB for School Buses shall be multiple awards for each Item (see Section 5 *Method of Award*). The centralized Contracts awarded as a result of this solicitation are for use by Authorized Users as defined in Appendix B § 2 *Definitions*, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See also Section 6.29 *Non-State Agencies Participation in Centralized Contracts*.

- A. This IFB contains a total of twenty-eight (28) Items, separated into three (3) 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 or on every Item within a Lot; A Bidder may bid on as few or as many Lots or Items as desired.
- B. Awards shall be made by Item in accordance with Section 5 *Method of Award*. Multiple bidders may receive awards. In the event that a Bidder receives awards for multiple Items under this IFB, a single Contract shall be executed covering all Items awarded.
- C. Award of an Item shall be made only to a Bidder (see Section 1.11 *Definitions*) that has the ability to deliver the applicable Item on a statewide basis to Authorized Users in all sixty-two (62) NYS counties. Bids for an Item can be submitted either by a single vendor or a Consortium (see Section 2.3 *Consortium Bids*).
  1. If submitting as a single vendor, the single vendor is required to have the ability to deliver the applicable Item(s) on a statewide basis to Authorized Users in all sixty-two (62) NYS counties, and the single vendor shall be the resultant Contractor.
  2. If submitting as a Consortium, the NYS County distribution set forth in the Consortium bid must result in the ability of the vendors participating in the resultant Contracts to collectively deliver the applicable Item(s) on a statewide basis to Authorized Users in all sixty-two (62) NYS counties (e.g. Consortium of two (2) vendors: Vendor A responsible for New York, Kings, Richmond, Bronx, Queens, Nassau, and Suffolk counties; and, Vendor B responsible for all other counties in the state). If a Consortium bid is an awardee, each vendor participating in the Consortium shall be a resultant Contractor, and shall be responsible for orders of the applicable Item(s) placed under the Contract for the NYS Counties identified in the Contract, and for fulfilling the requirements of their Contract.
- D. References to the State and its Agencies or Non-State Agencies as Authorized Users under this solicitation and the ensuing Contract(s) encompass and include all such entities within the definition of "Authorized User" set forth in Appendix B § 2 *Definitions*.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. Bidders are strongly encouraged to read the language of this IFB thoroughly and to precisely follow the instructions included in the IFB and all Attachments. Bidders are advised that failure to comply with the specific provisions of Section 4.2 *Format of Bid Submission*, or Section 4.6 *Bid Pricing Submittal*, may result in either a disqualification with respect to specific Items(s) or the entire bid. Bidders are further advised that pursuant to IFB Section 4.14 *NYS Reserved Rights*, the State reserves the right to "Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation."

## 1.2 SCOPE

The purpose of this IFB and the resultant Contracts is to provide Authorized Users with a means of acquiring new Type A, C and D School Buses, and associated Optional Equipment and Additional Options, that can be serviced within New York State. This IFB contains a total of twenty-eight (28) Items, separated into three (3) Lots, which are specified in Table 1 below and described in further detail in Attachment 1 - *Specifications and Pricing*.

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

In addition, the following are **excluded** from the scope of this Contract:

1. Leasing of a School Bus;
2. Electric Vehicle Supply Equipment (EVSE) and related equipment which is external to the bus; and
3. Installation of Electric Vehicle Supply Equipment.

See Section 6.5 *Price* and Section 3 *Specifications* for additional requirements for the School Buses to be provided under the resultant Contracts.

**Table 1: List of Lots and Items**

LOT (Item)	Item Description	Fuel Type	Pupil Capacity
A (Item 1-G)	Type A-1, SRW, Van Body with Roof and Window Conversion, 4 Rows	Gasoline	Min 16, Max 20
A (Item 1-EV)	Type A-1, SRW, Van Body with Roof and Window Conversion, 4 Rows	Electric	Min 16, Max 20
A (Item 2-G)	Type A-1, SRW, Cutaway, 4 Rows	Gasoline	Min 16, Max 20
A (Item 2-EV)	Type A-1, SRW, Cutaway, 4 Rows	Electric	Min 16, Max 20
A (Item 3-G)	Type A-2, DRW, Cutaway, 4 Rows	Gasoline	Min 20, Max 23
A (Item 3-EV)	Type A-2, DRW, Cutaway, 4 Rows	Electric	Min 20, Max 23
A (Item 4-G)	Type A-2, DRW, Cutaway, 4 Rows	Gasoline	Min 24, Max 29
A (Item 4-EV)	Type A-2, DRW, Cutaway, 4 Rows	Electric	Min 24, Max 29
A (Item 5-G)	Type A-2, DRW, Cutaway, 5 Rows	Gasoline	Min 30
A (Item 5-EV)	Type A-2, DRW, Cutaway, 5 Rows	Electric	Min 30
B	N/A. There is no Lot B (i.e., Type B School Buses) in this IFB	N/A	N/A
C (Item 1-D)	Type C, 28 Pupil Conventional Front-Engine Bus	Diesel	Min 28, Max 45
C (Item 1-EV)	Type C, 28 Pupil Conventional Bus	Electric	Min 28, Max 45
C (Item 2-D)	Type C, 46 Pupil Conventional Front-Engine Bus	Diesel	Min 46, Max 57
C (Item 2-EV)	Type C, 46 Pupil Conventional Bus	Electric	Min 46, Max 57
C (Item 3-D)	Type C, 58 Pupil Conventional Front-Engine Bus	Diesel	Min 58, Max 63
C (Item 3-EV)	Type C, 58 Pupil Conventional Bus	Electric	Min 58, Max 63
C (Item 4-D)	Type C, 64 Pupil Conventional Front-Engine Bus	Diesel	Min 64, Max 84
C (Item 4-EV)	Type C, 64 Pupil Conventional Bus	Electric	Min 64, Max 84
D (Item 1-D)	Type D, 53 Pupil Forward Control Transit Style Bus	Diesel	Min 24, Max 64
D (Item 1-EV)	Type D, 53 Pupil Transit Style Bus	Electric	Min 24, Max 64
D (Item 2-D)	Type D, 65 Pupil Forward Control Transit Style Bus	Diesel	Min 65, Max 76
D (Item 2-EV)	Type D, 65 Pupil Transit Style Bus	Electric	Min 65, Max 76
D (Item 3-D)	Type D, 77 Pupil Forward Control Transit Style Bus	Diesel	Min 77, Max 84
D (Item 3-EV)	Type D, 77 Pupil Transit Style Bus	Electric	Min 77, Max 84



D (Item 4-D)	Type D, 65 Pupil Rear Engine (Pusher) Bus	Diesel	Min 24, Max 71
D (Item 4-EV)	Type D, 65 Pupil Rear Engine (Pusher) Bus	Electric	Min 24, Max 71
D (Item 5-D)	Type D, 72 Pupil Rear Engine (Pusher) Bus	Diesel	Min 72, Max 84
D (Item 5-EV)	Type D, 72 Pupil Rear Engine (Pusher) Bus	Electric	Min 72, Max 84

### 1.3 ESTIMATED QUANTITIES

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$162,900,000 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:

1. Such Contracts may be non-exclusive Contracts.
2. 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.
3. The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
4. 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.
5. Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
6. 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	06/06/2022	N/A
Registration Deadline for Pre-Bid Conference	06/14/2022	5:00 PM ET
Pre-Bid Conference	06/15/2022	TBD
Deadline for Submission of Intent to Bid	06/22/2022	5:00 PM ET
Closing Date for Bidder Questions	06/22/2022	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	07/08/2022( <i>tentative</i> )	N/A
Bid Opening / Due date for Bids	08/11/2022	11:00 AM ET
Contract Approval Date / Award Publish Date	<i>Upon OSC Approval</i>	N/A

### 1.5 INTENT TO BID

A Bidder is requested to indicate its intent to bid by sending an e-mail titled "INTENT TO BID-[BIDDER NAME]" to [OGS.sm.SST\\_auto@ogs.ny.gov](mailto:OGS.sm.SST_auto@ogs.ny.gov) on or before the date and time indicated in the Section 1.4 *Key Events/Date*.  
23254i\_r1\_redline\_2022-07-21.docx

The e-mail should include the Bidder's company name and a contact name and contact information. The intent to bid is discretionary.

## 1.6 PRE-BID CONFERENCE

A Pre-Bid Conference will be held by webinar at the time and date indicated in Section 1.4 *Key Events/Dates*. Attendance at the Pre-Bid Conference is not mandatory, but it is recommended that all Bidders attend the Pre-Bid Conference. A Bidder should register for the Pre-Bid Conference by sending an email to [OGS.sm.SST\\_auto@ogs.ny.gov](mailto:OGS.sm.SST_auto@ogs.ny.gov) on or before the "Pre-Bid Conference registration due" date indicated in Section 1.4 *Key Events/Dates*. The email should indicate the Bidder's legal business name, which Lot(s) and Item(s) the Bidder intends to bid (if applicable), and the name and title of Pre-Bid Conference attendees.

A link to the webinar will be provided to registered attendees prior to the Pre-Bid Conference. If technological issues arise during the Pre-Bid Conference, participants shall immediately email or call the agency contact. If the technological issues are attributable to the State and cannot be immediately resolved, the Pre-Bid Conference will be re-scheduled.

The purpose of the Pre-Bid Conference is to review Bid submission procedures and to discuss Bidder questions related to the Solicitation. Questions will be permitted and may be answered verbally at the Pre-Bid Conference. However, answers may be deferred and included in the written and official OGS response to Bidder questions, which will include answers to all submitted questions, and will be posted on the OGS website in accordance with the Bidder Questions section. Answers given at the Pre-Bid Conference are unofficial and not binding.

## 1.7 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.

## 1.8 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 [OGS.sm.SST\\_auto@ogs.ny.gov](mailto:OGS.sm.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 4.10 *Bid Deviations* for additional information.

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

### 1.9 NYS COMPTROLLER APPROVAL

Pursuant to the Memorandum of Understanding (“MOU”) dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo (“Executive”), New York State Comptroller Thomas P. DiNapoli (“OSC”), the State University of New York (“SUNY”), the State University of New York Construction Fund (“SUCF”), the City University of New York (“CUNY”), and the City University of New York Construction Fund (“CUCF”), procurement documents and contracts awarded under this Solicitation shall have no force and effect and the State bears no liability unless such procurement documents and contracts awarded under this Solicitation are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

### 1.10 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/>

### 1.11 DEFINITIONS

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

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

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

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

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

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

“**Bidder**” Shall refer to any business entity, or a Consortium, that submits a response to this IFB. At the time that the Bidder executes a contract with the State for their services, a Bidder shall become a “Contractor.” See also “Contractor.”

**“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 School Bus that carries the pupils, and is an incomplete School Bus that requires the addition of a Chassis to perform its intended functions.

**“Build Sheet”** Shall refer to the document which lists, for the Base Item for the School 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.

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

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

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

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

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

**“Contract Pricelist”** Shall refer to the pricelist which identifies the Make(s), Model(s), Model Code(s), 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.

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

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

**“Dealer(s)”** shall refer to a distribution source for an OEM, authorized and designated by said OEM, subject to approval by New York State.

**“Electric Vehicle Supply Equipment (EVSE)”** shall refer to electric vehicle charging hardware, software, network services, related equipment or infrastructure that is external to the school bus.

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

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

**“Executive Agency(ies)”** Shall mean all State departments, offices or institutions but, for the purposes of this IFB, excludes the State University of New York and excludes City University of New York. Furthermore, such term shall not include the legislature, the judiciary, public benefit corporations, public authorities, or local government entities.

**“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.

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

**“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., Phoenix, Vision, Roadstar) sold by an OEM.

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

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

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

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

**“NYS”** Shall mean New York State.

**“NYS Contract Price(s)”** Shall mean the dollar amount 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 School Bus to the Authorized User (e.g., all OEM fees, customs duties and charges, all School Bus preparation and clean-up charges, NYS DMV and NYS DOT inspection, installation charges, delivery and all other incidentals normally included with providing a School Bus).

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

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

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

**“NYS 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; Juneteenth; 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

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

**“Optional Equipment”** Shall mean additional equipment set forth for an Item in Attachment 1 - *Specifications and Pricing*, that may be added to the applicable Base Item at the request of an Authorized User, and which must be available from the Bidder and under the resultant Contract.

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

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

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

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

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

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

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

“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.”

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

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

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

## 1.12 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 (October 2019)*

Appendix B – *General Specifications (April 2016)*

Appendix C – *Contract Modification Procedure*

Appendix D – *Federal Funding Agency Mandatory Terms and Conditions (July 2021)*

Attachment 1 – *Specifications and Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses*

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 – *Supplier/Manufacturer’s Certificate*

Attachment 10 - *Consortium Bid Form*

Attachment 11 – *Contractor and Reseller/Distributor Information Sheet*

Attachment 12 – *EO 16 Certification Form*

## 1.13 CONFLICT OF TERMS

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation;

## 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. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. **Failure to meet the requirements in Section 2 may render a bid non-responsive and disqualified from receiving an award.** A Bidder shall meet the following qualifications:

## 2.1 BIDDER TYPE AND OEM CERTIFICATION

Bids shall be accepted only from an authorized Dealer of an OEM for School Buses. Any Dealer submitting a bid is required to provide Attachment 9 – *Supplier/Manufacturer's Certificate* certifying that it is an authorized Dealer of the manufacturer of the relevant School Bus, and that the manufacturer has agreed to supply the Dealer with all quantities of School Buses required by the Dealer in fulfillment of its obligations under any resultant Contract with the State.

## 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:

1. Evidence of Bidder's capacity to process and ship the volume of orders required by Authorized Users on a statewide basis, either as a single entity Bidder, or as a Consortium. For a Consortium bid, each vendor participating in the Consortium may be requested to provide evidence of its capacity to process and ship the volume of orders required by Authorized Users in the NYS counties that it has been designated within the Consortium;
2. References that demonstrate the ability of Bidder(s) to provide School Bus(es) similar in scope to the size, nature and complexity of the applicable Item(s);
3. Documentation to demonstrate Bidder(s) are in compliance with Section 3.2 *Standards, Codes, Rules and Regulations*;
4. Documentation to demonstrate Bidder(s) ability to meet the delivery requirements set forth in Section 3.13 *Delivery*; and
5. **Documentation to demonstrate Bidder(s) ability to meet the warranty and service requirements set forth in Sections 3.14 *General Warranty Requirements* and 3.15 *Post-Delivery Service*.**
6. OGS reserves the right to investigate or make any inquiry into the capabilities of Bidder to properly perform under any resultant Contract.

## 2.3 CONSORTIUM BIDS

A Consortium bid shall be considered a single Bidder for the purposes of this IFB and for the evaluation of bids. Therefore, if a determination of non-responsiveness is made by OGS for all or any portion of the bid submitted either collectively (i.e., Attachment 1 - *Specifications and Pricing*), or by any individual vendor participating in the Consortium bid, then the applicable Item(s) bid shall be disqualified for all vendors participating in the Consortium bid. Additionally, if a vendor participating in a Consortium bid is disqualified based on a determination of non-responsibility by OGS (see Section 6.26 *New York State Vendor Responsibility*), then the Consortium bid shall be deemed non-responsive and disqualified for all Items bid. Only vendor(s) found to be non-responsible will be obligated to report the non-responsibility determination in relation to future NYS



procurements. See IFB Section 4.2 *Format of Bid Submission* for additional information on submission of a Consortium bid.

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

In the sole discretion of the Commissioner, any Consortium bid may be rejected on the basis that such bid may unfairly affect competition or may not be able to fulfill the requirements of the Contract. In the event that the Consortium bid receives an award, each vendor participating in a Consortium shall be a resultant Contractor and shall be responsible for orders of the applicable Item(s) placed under the Contract for the NYS Counties identified in the Contract. For a Consortium Contract, if any of the Contractors in the Consortium cannot fulfill the requirements of their individual Contract, then all Contracts in that Consortium award shall be cancelled.

### 3. SPECIFICATIONS

#### 3.1 SCHOOL BUS REQUIREMENTS

The terms and conditions in this Section (i.e., Section 3 *Specifications*) shall be considered minimum requirements for a School Bus. Attachment 1 - *Specifications and Pricing*, includes supplemental required specifications for each Item. School Buses delivered to an Authorized User in a condition that would be considered unacceptable to a reasonable person may be rejected (see also Appendix B § 36 *Rejected Product*). Criteria which determine this acceptance level shall include, but not be limited to, the general appearance of the interior and exterior of the School Bus for completeness and quality of workmanship, lubrication and fluid levels, with any leaks corrected, mechanical operation of the School Bus and all electrical components operational. Equipment specified to be furnished and installed shall conform to all applicable industry standards.

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

School Buses shall be designed and assembled in accordance with all applicable industry standards, including, but not limited to, those listed below. The School Bus shall comply with all governmental regulations as they apply to the operation of the School Bus described in the Base Item Specifications and Optional Equipment Specifications including, but not limited to, those listed below as they may be updated or amended from time to time. If applicable, the appropriate decals indicating compliance shall be affixed to the School Bus.

Only School Buses approved by NYS DOT Passenger Carrier Safety Bureau for use as 2022 and newer Models, as indicated by a NYS DOT Approval Number, shall be delivered pursuant to the contract. School Buses shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR), New York State Vehicle and Traffic Law (NYSVTL), and New York State Dept. of Motor Vehicles (NYS DMV).

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

School Buses shall comply with Americans 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.

School Buses shall comply with the regulations of the Federal Government and New York State (NYCRR) governing the control of air pollution from new motor vehicles and new motor vehicle engines in effect on the date of manufacture. Please refer to New York Codes, Rules and Regulations (NYCRR), Title 6 Environmental Conservation, Part 218, Emissions Standards for Motor Vehicles and Motor Vehicle Engines.

School Buses shall be manufactured in accordance with any codes, standards and engineering practices as recommended by the following professional organizations, as applicable:

1. American Institute of Steel Construction (AISC)
2. American National Standards Institute (ANSI)
3. American Society of Mechanical Engineers (ASME)
4. American Society for Testing and Materials (ASTM)
5. American Welding Society (AWS)
6. Battery Council International (BCI)
7. Compressed Air and Gas Institute (CAGI)
8. Industrial Fastener Institute (IFI)
9. International Standards Organization (ISO)
10. Joint Industrial Council (JIC)
11. National Fire Protection Association (NFPA)
12. National Truck and Equipment Association (NTEA)
13. Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)
14. Society of Automotive Engineers (SAE)
15. Society of Manufacturing Engineers (SME)
16. Tire and Rim Association (TRA)
17. Rehabilitation Engineering and Assistive Technology Society of North America

### **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 or Additional Options are specified, all components listed in the OEM Data Book, or Contractor-Published Pricelist, if applicable, as being included with the Optional Equipment or Additional Option, shall be furnished.

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

### **3.4 MANUALS**

Simultaneous with delivery, all School Buses and associated Optional Equipment shall be furnished with standard manuals (e.g., maintenance, parts and operational manuals) as would normally accompany the Product. Manuals may be provided printed and bound, on 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 BUILD SHEET

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

### 3.6 COMPATIBLE EQUIVALENT

Whenever an item is specified either in Attachment 1 - *Specifications and Pricing* by trade name of an OEM, the term "compatible equivalent," if not inserted therewith, shall be implied. Any reference to a particular OEM's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, Procurement Services shall consider bids for the referenced Product only. The term "compatible equivalent," is defined as meaning any other Product which, in the sole opinion of Procurement Services, is equal in performance, quality and design in such a way that the Product is directly interchangeable with the referenced Product without modification.

A Bidder quoting on a Product other than the referenced Product shall:

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

### 3.7 OPTIONAL EQUIPMENT AND ADDITIONAL BODY SECTIONS

The Contractor must offer the Optional Equipment as specified for the applicable Item in Attachment 1 - *Specifications and Pricing* and may also offer Additional Body Section(s). An Authorized User may choose to add one (1) or more of the Optional Equipment from the list of Optional Equipment, and/or Additional Body Sections, associated with the Base Item. The Contractor shall be required to honor all such requests, provided that adding the requested combination of Optional Equipment, and/or Additional Body Sections, results in a School Bus that meets the minimum specifications stated herein (see Section 3 *Specifications*).

The Contractor shall only provide the Optional Equipment and Additional Body Sections awarded or approved by OGS and NYS DOT after award (see Section 3.17 *Replacement Product and Product Additions*), under the Contract. See Section 6.5 *Price* for pricing information relative to Optional Equipment and Additional Body Sections.

### 3.8 ADDITIONAL OPTIONS

The following terms and conditions apply to Additional Options provided under the Contract. See Section 6.5.2 *Additional Options Price* for pricing information relative to the addition and deletion of options.

Additional Options to be offered under the Contract are limited to products that are:

1. Listed on the OEM or Contractor-Published Pricelist(s); and
  - A. may be installed on the awarded Base Item by the Contractor, or third-party; or
  - B. have been approved for installation on the School Bus by NYS DOT, if the applicable Additional Option is produced by an OEM other than the School Bus OEM; and
2. Does not result in a change to the fuel type of an awarded Base Item (e.g., changing the gasoline-fueled engine on the Chassis Model awarded for the "Gasoline" Base Item to a diesel-fueled engine).

**Deletions:** It is anticipated that Authorized Users may delete options that have been required by the Base Item specifications for the School Bus awarded. Contractors will be required to honor all such deletions, provided that deletion of such options does not result in a School Bus that does not comply with all governmental regulations as they apply to the operation of the School Bus.

**Additions:** It is anticipated that Authorized Users may add Additional Options above and beyond that which have been required by the Base Item specifications or are available on the associated Optional Equipment list for the applicable Item. Contractor shall be required to honor all such additions, as long as the addition of such options does not result in a School Bus that does not comply with all governmental regulations as they apply to the operation of the School Bus.

### **3.9 REPLACEMENT PARTS**

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

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

### **3.10 ADVERTISING**

No name, trademark, decal or other identification, other than that of the OEM, shall be applied to the School Buses. Identification of the Contractor shall not be attached to the School Bus. Splash guards shall be plain (without lettering). In any instance of violation of these restrictions the cost to the State for removal of such advertising shall be deducted from Contractor's outstanding voucher.

### **3.11 NYS INSPECTIONS**

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

In the event that a School Bus is delivered uninspected, \$250 shall be deducted from the invoice by the Authorized User to cover the cost of the inspection and to compensate for time. The rights under this section do not preclude the State from exercising any other remedies provided for under the Contract.

### **3.12 PILOT MODEL INSPECTION**

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

### **3.13 DELIVERY**

Contractors shall be required to deliver School Buses anywhere within New York State boundaries, or within their assigned NYS counties, if a participant in a Consortium, as designated by the Authorized User on the

Purchase Order. In accordance with Section 6.5.1 *Base Item, Optional Equipment and Additional Body Sections Price*, the Base Item NYS Contract Price shall include the cost of delivery. The following terms and conditions (including Sections 3.13.1 through 3.13.6) apply to delivery:

- A. In accordance with Appendix B § 34 *Title and Risk of Loss for Products Other than Technology Products*, the Contractor agrees to bear the risk of loss, injury, or destruction of the School Bus ordered, prior to acceptance of the School Bus by the Authorized User.
- B. Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. It shall be assumed by the parties that the Contractor received the Purchase Order on the third Business Day following the date of the Purchase Order, unless the Contractor provides credible evidence that the order was received on a later date. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from Procurement Services.
- C. Contractor shall secure a signed receipt from the Authorized User certifying delivery of the School Bus and odometer reading. In the event deficiencies are later noted and a properly signed receipt cannot be found, Contractor shall be responsible for certifying delivery and odometer reading.
- D. Pursuant to Appendix B § 33 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.
- E. An Authorized User may choose to stagger the delivery of School Buses over a period of time, and to multiple delivery locations, as specified on the Purchase Order. For example, order forty (40) School Buses with instructions to deliver four (4) School Buses to each of ten (10) locations over a period of time.
- F. Upon mutual agreement, delivery locations may be expanded per Section 6.29 *Non-State Agencies Participation in Centralized Contracts* and Section 6.30 *Extension of Use*.

### **3.13.1 PRE-DELIVERY INSPECTION**

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

The Contractor shall notify the Authorized User that the School Bus is ready for inspection. Within five (5) Business Days of the Contractor's notification, the Authorized User shall send a team of qualified inspectors to the Contractor's facility, or another mutually agreed upon location convenient to the Authorized User, to accomplish the inspection of the School Bus before delivery. Upon the inspector's arrival at the facility, the Contractor shall assign a mechanic, a runner and a delivery bay to the inspector. It is the Contractor's responsibility to properly itemize, organize and segregate all School Buses. The above areas of responsibility must be accomplished in order to facilitate an expeditious and orderly inspection flow. This shall also allow discrepancies to be corrected while the inspector is located at the Contractor's facility.

Inspected School Buses which do not comply with these or other requirements shall be rejected (see also Appendix B § 36 *Rejected Product*). All rejected School Buses shall be corrected at the expense of the Contractor, and the corrected School Buses shall be presented for re-inspection within ten (10) Business Days from notification of the rejection. The Authorized User may cancel the Purchase Order if the Contractor fails to correct any problem, without incurring any cost or fee.

### **3.13.2 CONDITION ON DELIVERY**

School Buses must be delivered in accordance with the Contract specifications and shall be "ready for use," and/or as requested by the Authorized User. See also Section 3.13.3 *Post Delivery Inspection*.

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

1. At point of acceptance, have an odometer reading that is consistent with the miles, in distance, to the anticipated odometer mileage incurred between the OEM factory, the Contractor's place of business and the point of delivery. Note: In the event that a School Bus is delivered with an odometer reading that the Authorized User considers to be excessive, the Contractor shall be required to provide a reasonable explanation for the odometer reading. School Buses that are delivered with an odometer reading that is considered excessive without a reasonable explanation, as determined in the sole discretion of the Authorized User, may be rejected by the Authorized User.
2. Include the forms required to apply for a NYS title and license. All title papers shall be properly prepared and executed.
3. Be certified to meet or exceed requirements to obtain a NYS license. The GVWR shall be identified in the School Bus as the final complete certification label (minimum rating). The Gross Combined Weight Rating (GCWR) shall be identified by decal in the cab to indicate the approved weight, which can be towed, if applicable.

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

4. Required from Contractors in New York State: MSO (Manufacturer's Statement of Origin), MV50 Retail Certificate of Sale (except for trailers with an unladen weight under 1,000 lb.), and MV82 (Vehicle Registration/Title Application); or
5. 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.)
6. Have a valid NYS DOT inspection sticker, and a valid NYS emissions inspections sticker if applicable. All NYS inspection requirements are the sole responsibility of the Contractor.
7. Have the OEM's recommended pre-delivery service completed.
8. Have the Chassis OEM's model name and model number stated on a decal affixed to the inside of the driver's side door.
9. Have the fuel gauge registered at no less than one half recommended capacity. If Diesel, the Diesel Exhaust Fluid (DEF) tank must be no less than three quarters capacity.
10. Have permanent antifreeze in each vehicle to protect it at a level of -34 °F. Only a low silicate type anti-freeze shall be used for vehicles having diesel engines.
11. Be free from all dealer signs/emoles. See Section 3.10 *Advertising*.

12. 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 paperwork.
13. 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.
14. Include a bill of materials or line-setting ticket. The bill of materials shall list by part number, capacity, size or otherwise, all major components of the School Bus (engine, frame, transmission, drive line, axles, alternator, storage battery, fuel tank, etc.). The bill of materials shall be at least as comprehensive as the OEM's line-set ticket.

### **3.13.3 POST DELIVERY INSPECTION**

After School Buses have been delivered to the location as stated on the Purchase Order, a post-delivery inspection shall be performed by the Authorized User. The report written at the pre-delivery inspection shall be used to verify that any deficiencies have been corrected. If any deficiencies remain it is the responsibility of the Contractor to arrange to have the necessary corrective work completed within five (5) Business Days after receipt of written notification from the Authorized User and/or Procurement Services. If the Contractor cannot arrange to have the necessary work completed within such time period, and the Authorized User cannot agree to an extension of the time period, the Authorized User may either reject the School Bus (see Appendix B § 36 *Rejected Product*), or choose to have the corrections made by an entity of the Authorized User's choosing and the Contractor shall be required to reimburse the Authorized User for this expense within thirty (30) calendar days of the request for reimbursement

### **3.13.4 SHIPPING DATES AND DELIVERY TIME**

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

1. Delivery time shall be expressed in number of calendar days required to make delivery after receipt of a final Purchase Order (After Receipt of Order ("ARO")). All School Buses must be delivered within the number of calendar days previously agreed upon by the Contractor and Authorized User, after receipt of the Purchase Order by the Contractor. Failure to deliver within the previously agreed upon time period shall result in payment of liquidated damages in accordance with Section 3.13.6 *Liquidated Damages*.
2. Contractor shall provide written acknowledgement of orders within five (5) Business Days ARO.
3. Contractor shall provide ordering Authorized User with anticipated shipping date of the completed School Bus with written acknowledgement of the order. If the anticipated shipping date cannot be provided by the Contractor at the time of the acknowledgement of order, then the Contractor shall provide the Authorized User with a reasonable explanation for not providing a date, and shall provide the anticipated shipping date at the time it becomes known to the Contractor.
4. Unless otherwise agreed-upon by the Authorized User, the Contractor shall furnish the Authorized User with written acknowledgement of the shipping date to the Authorized User at least fourteen (14) calendar days prior to shipment.
5. If shipment shall not be made within the delivery time, the Contractor is required to notify the Authorized User in writing within one (1) Business Day of when Contractor knows the shipment shall not be made within the delivery time. This notification must include a reasonable explanation, (e.g., the OEM has a delay in shipment to the Contractor), for the delay and the

latest date the School Bus shall be shipped. Should the explanation for the delay be determined to be unreasonable by the Authorized User, appropriate contract default proceedings shall be initiated under Section 3.13.6 *Liquidated Damages*. Failure to supply timely written notification of delay may be cause for default proceedings.

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

### **3.13.5 DEFAULT ON DELIVERY**

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

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

### **3.13.6 LIQUIDATED DAMAGES**

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

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

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

### **3.14 GENERAL WARRANTY REQUIREMENTS**

In addition to the Appendix B § 54 *Warranties*, the following general warranty requirements (including Section 3.14.1 *Warranty Repair by Authorized Users*) shall apply to all School Buses provided under the Contract.

- A. The Contractor shall warrant the School Bus against parts failure or malfunction due to design, construction or installation errors, defective workmanship, and missing or incorrect parts. Warranty service shall be available within New York State, and shall be honored by all the manufacturer's Dealers.
- B. For buses that are delivered to the Contractor's location for repair, the Contractor shall be responsible for all transportation, pick-up and delivery cost to either the Contractor's location, or other Dealer location chosen by the Authorized User, of any School Bus with a warranty claim within ninety (90)



calendar days of the date the warranty period begins, for any School Buses procured under the Contract. After ninety (90) calendar days, the Authorized User shall be responsible for all transportation, pick-up and delivery for any School Buses procured under the Contract requiring warranty service at the Contractor's location, unless otherwise agreed upon by the Contractor. Additional payment for delivery and/or pickup by the Contractor is at the discretion of the Contractor(s) and must be mutually agreed upon prior to service.

- C. The warranty period for all coverage shall begin on the date the School Bus is accepted by the Authorized User or put in service, whichever occurs later. Delayed warranty forms are to be provided with the required motor vehicle paperwork. Where School Buses develop Chronic Failures during the warranty period, Contractor shall extend the warranty period for an equal period of time following correction of such failures, as indicated in the original warranty.
- D. The Contractor shall be responsible for all warranty claims related to the School Bus as provided by the Contractor at the time of delivery. All components supplied by the Contractor shall be included and covered by a basic warranty. OEM replacement parts (See Section 3.9 *Replacement Parts*) are to be new, not remanufactured, unless the OEM has specified that a replacement part be remanufactured, or prior approval has been granted by the Authorized User. All warranties shall cover all labor and parts replacement during the warranty period. Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty. Parts replaced under this warranty shall be of OEM quality or higher. Service shall be at a level to maintain or meet the manufacturer's requirements to sustain the warranty. See Appendix B § 54 *Warranties*. The Contractor shall furnish with each repaired School Bus an information sheet that indicates the type of warranty work performed, parts replaced, and number of labor hours involved.
- E. Whenever extended warranty packages are being offered by the OEM or the Contractor at "No Additional Charge," they shall be extended to all purchases made under the Contract during the time period that they are offered to other entities.
- F. All School Bus warranties, including extended warranties, shall be provided in written or electronic form to the Authorized User.

### **3.14.1 WARRANTY REPAIR BY AUTHORIZED USERS**

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

### **3.15 POST-DELIVERY SERVICE**

Post-delivery service at businesses authorized by the School Bus and Optional Equipment OEMs must be available within New York State for Product provided under the Contract. Post-delivery service shall be performed in a modern, properly equipped service shop. Repair shops located in New York State must be registered with the New York State Department of Motor Vehicles.

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

### **3.16 TRAINING**

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

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

### **3.17 REPLACEMENT PRODUCT AND PRODUCT ADDITIONS**

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

Requests to offer replacement Product shall be submitted to OGS using Appendix C -*Contract Modification Procedure*) and shall include the following:

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

The State may permit the Contractor to add School Buses additional fuel type Base Items, and Optional Equipment to the Contract Pricelist during the life of the Contract. Such Product additions shall be limited to:

1. Additional fuel types, (e.g., LPG, CNG, hybrid), for an OEM Chassis Model/Body Model combination awarded to the Contractor for an Item;
2. OEM Chassis Model/Body Model combinations that have not previously been awarded for an Item to any Contractor. Product additions must meet the minimum requirements and specifications of IFB #23254; and
3. Optional Equipment not previously awarded to the Contractor for an Item.

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

### **3.18 SERVICE/TECHNICAL BULLETINS AND RECALLS**

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

### **3.19 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION**

Access by Authorized Users to Contract terms and pricing information shall be made available and publicly posted on the OGS website. To that end, OGS shall publicly post the Contract Pricelist, including all subsequent changes in the Contract offerings (adds, deletes, price revisions), Contractor contact information, and the Contract terms and conditions, throughout the Contract term.

## 4. BID SUBMISSION

### 4.1 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](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: <https://osc.state.ny.us/vendors/>

### 4.2 FORMAT OF BID SUBMISSION

- A. 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:

1. E-mail or facsimile Bid submissions are not acceptable;
  2. Absent Price Pages (Attachment 1 – *Specifications and Pricing*) are not acceptable; and
  3. Alterations to Attachment 1 – *Specifications and Pricing* are not acceptable.
- B. 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.
- C. 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.

- D. 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.

#### 4.2.1 CONSORTIUM BIDS

A Consortium bid shall be considered a single Bidder for the purposes of this IFB and for the evaluation of bids. Therefore, if a determination of non-responsiveness is made by OGS for all or any portion of the bid submitted either collectively (i.e., Attachment 1 - *Specifications and Pricing*), or by any individual vendor participating in the Consortium bid, then the applicable Item(s) bid shall be disqualified for all vendors participating in the Consortium bid. Additionally, if a vendor participating in a Consortium bid is disqualified based on a determination of non-responsibility by OGS (see Section 6.26 *New York State Vendor Responsibility*), then the Consortium bid shall be deemed non-responsive and disqualified for all Items bid. Only vendor(s) found to be non-responsive will be obligated to report the non-responsibility determination in relation to future NYS procurements.

For a complete Consortium bid (see Section 2.3 *Consortium Bids*, and 4.6 *Bid Pricing Submittal*, Paragraph F), all documents listed in Section 4.3 *Bid Content*, with the exception of Attachment 1 - *Specifications and Pricing*, must be submitted by each vendor participating in the Consortium bid. A Consortium bid should be submitted in one (1) bid package, with separately bound documents for each participating vendor, labeled with its full legal business name, enclosed within. See Section 4.6 *Bid Pricing Submittal* for additional information regarding submitting Consortium bid pricing on Attachment 1 - *Specifications and Pricing*

#### 4.2.2 ATTACHMENT 1 - SPECIFICATIONS AND PRICING

See Section 4.6 *Bid Pricing Submittal* for additional information regarding submitting bid pricing on Attachment 1 - *Specifications and Pricing*. **Failure to provide a Base Item NYS Contract Price, Optional Equipment NYS Contract Price, or Additional Options NYS Discount for an Item may result in the bid being deemed non-responsive for that Item and may result in the disqualification of the bid for the applicable Item.**

#### 4.2.3 NYS DOT APPROVAL NUMBER

NYS DOT Approval. For each Item bid, a NYS DOT Approval Number must either be on file with, or have been applied for with, the NYS DOT Passenger Carrier Safety Bureau must be obtained within 90 days of the start date of the contract. Failure to obtain a NYS DOT Approval Number within 90 days of the start date of the contract may result in the award for that item being suspended in accordance with Appendix B § 42 *Suspension of Work*. If an approval number has not been issued at the time of the bid submittal, enter "Pending" on Attachment 1 - *Specifications and Pricing* and submit with your bid an electronic copy of the "Application for Approval of School Bus Body/Chassis Specifications" that has been submitted to NYS DOT.

#### 4.2.4 ADDITIONAL SUPPORTING DOCUMENTATION

Additional Supporting Information. For each Item bid, an **electronic (on USB flash drive)** version of the documents listed below.

- a) Build Sheet(s). A Build Sheet, as defined in Section 1.11 *Definitions*. **Failure to provide a Build Sheet for a Base Item shall result in the bid being deemed non-responsive for that individual Base Item and shall result in the disqualification of the bid for the applicable Item;**
- b) OEM Data Book(s). OEM Data Book(s), as defined in Section 1.11 *Definitions*, for the Chassis Model offered; and
- c) Bidder-Published Pricelist(s). Bidder-Published Pricelist(s), as defined in Section 1.11 *Definitions* (see "Contractor-Published Pricelist"), for the Body Model offered.

#### 4.2.5 ALTERNATE BIDS

If a Bidder wishes to make more than one bid, such bid(s) are to be submitted separately and are to be listed as "alternate" bids. "Alternate" bids must satisfy and address all requirements stated in this solicitation. An alternate bid shall be considered an individual bid that is a completely different bid than any other bid received from the same vendor, and be subject to the same evaluation process specified in the IFB.

1. An alternate bid is required when a Bidder offers an additional OEM Chassis Model/Body Model combination that is different than what is offered on the Attachment 1 - *Specifications and Pricing* submitted with a bid for an Item. A feature that may be offered as an OEM option on a Model that is bid (e.g., a 6.0 liter gasoline engine that is available in lieu of the standard 4.8 liter engine included with the Chassis Model bid) would not require an alternate bid. The following are examples of situations that would require submittal of an alternate bid:
  - a) Two (2) different OEM Chassis are being offered by a Bidder for the same Item (e.g., one bid is for a Ford Chassis, and the other is for a Chevrolet Chassis).
  - b) Two (2) different OEM Chassis Model/Body Model combinations are being offered by a Bidder for the same fuel type for an Item (e.g. one bid is for a gasoline-fueled Ford E-Series Chassis/Coach & Equipment Body, and the other is for a gasoline-fueled Ford Transit Chassis/Coach & Equipment Body).
2. The following is an example of the bid package assembly for an alternate bid:
  - a) Bid Package #1 (Ford Chassis)  
Include in bid package all documents set forth in Section 4.2 *Format of Bid Submittal*, with the bid package labeled "Company Name, Bid #1, (Ford)." The Attachment 1 - *Specifications and Pricing* that is submitted with this alternate bid would include bid submittal information and pricing entered by the Bidder for the Ford Chassis that is being offered for each Item bid.
  - b) Bid Package #2 (Chevrolet Chassis)  
Include in bid package all documents set forth in Section 4.2 *Format of Bid Submittal*, with the bid package labeled "Company Name, Bid #2, Alternate Bid (Chevrolet)." The Attachment 1 - *Specifications and Pricing* that is submitted with this alternate bid would include bid submittal information and pricing entered by the Bidder for the Chevrolet Chassis that is being offered for each Item bid.

#### 4.3 BID CONTENT

A complete Bid consists of submission of the following completed documents:

1. Pages 1 and 2 of the Solicitation (PDF);
2. Attachment 1 – *Specifications and Pricing* (Excel);

3. Attachment 2 – *NYS Required Certifications* (PDF);
4. Attachment 3 – *Encouraging Use of NYS Businesses* (PDF);
5. Proof of compliance with Attachment 4 – *Insurance Requirements* (PDF);
6. Attachment 5 – *Bidder Information Questionnaire* (Excel);
7. Attachment 6 – *Bidder Submission Checklist* (Excel);
8. Attachment 9 – *Supplier/Manufacturer Certificate* (PDF);
9. Attachment 10 – *Consortium Bid Form* (PDF) (if applicable);
10. Attachment 11 – *Contractor/Reseller/Distributor Information Sheet* (PDF);
11. Attachment 12 – *EO 16 Certification Form*
12. For Items bid that do not have a NYS DOT Approval Number, a copy of the “Application for Approval of School Bus Body/Chassis Specifications” that has been submitted to NYS DOT (See Section 4.2.3 NYS DOT Approval Number (PDF)
13. Additional Supporting Documentation in accordance with Section 4.2.4 *Additional Supporting Documentation*: a) Build Sheets, b) OEM Data-Books c) Bidder Published-Pricelists;
14. Appendix D – *Federal Funding Agency Mandatory Terms and Conditions*, with Section 10 completed (PDF)
15. EEO 100, *Equal Employment Opportunity Staffing Plan* (PDF);
16. Vendor Responsibility Questionnaire (completed online); and
17. ST-220-CA, *Contractor Certification to Covered Agency* (PDF);

All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an eSignature that has been generated by software.

Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. When submitting electronic documents, include a printed copy of page 1 of the Solicitation with the Bid (see 4.4 *Bid Envelopes and Packages*, below).

Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see <https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html>).

Bidder is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically until a determination of award is made. If an award is made to Bidder, the documents with original signatures shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Bidder shall submit such documents with original signatures to OGS upon request.

In the case of discrepancies between paper copies (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper copy.

#### 4.4 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 #23254)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of page 1 of the Solicitation, completed with the Bidder’s information. This printed copy of page 1 should be placed in the envelope with the USB flash drives.

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.

#### 4.5 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, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

#### 4.6 BID PRICING SUBMITTAL

A Bidder shall submit Attachment 1 - *Specifications and Pricing* in accordance with Section 4.2 *Format of Bid Submission*. If submitting a bid for an Item, Bidder is required to select "Yes" for that Item on the Bid Summary worksheet and complete all applicable, yellow-shaded cells as instructed on the applicable Item worksheet in Attachment 1 - *Specifications and Pricing*. The following also applies to bid pricing:

- A. Base Item NYS Contract Price: Bidder shall enter a Base Item NYS Contract Price for the School Bus bid for an Item. ***Failure to provide a Base Item NYS Contract Price for an Item may result in the bid being deemed non-responsive for that Item and in the disqualification of the bid for the applicable Item.***
- B. Additional Options NYS Discount: Bidder shall enter a single discount for all Additional Options to be offered under the Contract for an Item. ***The Additional Options NYS Discount entered by a Bidder must be greater than 0%, or less than or equal to 100%. Providing a 0% Additional Options NYS Discount or failing to provide an Additional Options NYS Discount for an Item, may result in the bid being deemed non-responsive for that Item and may result in the disqualification of the bid for the applicable Item.***
- C. Part 4: Optional Equipment Specifications and Pricing:
  1. Bidder must enter an Optional Equipment NYS Contract Price for each of the Optional Equipment listed in Part 4 for an Item.
  2. The Optional Equipment NYS Contract Price entered by the Bidder is based on adding to or deleting the Optional Equipment from the Base Item and the applicable Base Item NYS Contract Price. If there is no cost for the Optional Equipment, or the Optional Equipment is already included in the School Bus bid for the Base Item, enter "\$0.00." If adding or deleting the Optional Equipment results in a credit, Bidder shall enter a negative number for the Optional Equipment NYS Contract Price.
  3. All Optional Equipment listed in Part 4 for an Item shall be available from the Bidder under the resultant Contracts. ***Failure to provide an Optional Equipment NYS Contract Price for one or more Optional Equipment listed in Part 4 for an Item may result in the bid being deemed non-responsive for that individual Optional Equipment and may result in the disqualification of the bid for the applicable Item.***
- D. Part 5: Non-Mandatory Optional and Base Equipment

The Optional Equipment and Base Equipment listed in Part 5 is included for informational purposes only and is non-mandatory. The pricing for these items will not be included in the calculation of the Optional Equipment NYS Contract Price or Grand Total For Item. A NYS Contract Price must be entered for the

Optional Equipment listed in this section only if the Bidder shall offer that Optional Equipment under the resultant Contract. Enter "Not Available" in the "Comments/Notes" Column, and "0.00" for the Optional Equipment NYS Contract Price, for any of the Optional Equipment listed in this section that is not available or is not being offered.

- E. Pick Up Allowance: Bidder shall enter the dollar amount, per School Bus, that will be deducted from the Base Item NYS Contract Price, if the Authorized User elects to pick up the School Bus at the Contractor's location, for the School Bus bid for an Item.
- F. Consortium Bid. For a Consortium bid (see Section 2.3 *Consortium Bids*), NYS Contract Prices and discounts (i.e., Base Item NYS Contract Price, Optional Equipment NYS Contract Prices, Additional Body Section NYS Contract Price, and Additional Options NYS Discount), for each applicable Item bid, shall be identical for each individual vendor participating in the Consortium. Therefore, a single Attachment 1 - *Specifications and Pricing* shall be submitted for a Consortium bid.
- G. For all dollar amounts and discount percentages that a Bidder may enter, a Bidder may enter as many decimal places as desired and the formulas included in Attachment 1 - *Specifications and 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).
- H. The bid submitted by the successful Bidder shall be incorporated into any resulting Contract and the Bidder shall be required to provide the awarded Item(s) at the prices and discounts quoted in its bid.

#### **4.7 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.

#### **4.8 NYS REQUIRED CERTIFICATIONS**

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

#### **4.9 SUPPLIER/MANUFACTURER'S CERTIFICATE**

Any Dealer submitting a bid is required to provide Attachment 9 *Supplier/Manufacturer's Certificate*. Through completion and submission of the Supplier/Manufacturer's Certificate, the supplier or manufacturer guarantees that the Bidder is an authorized dealer or consortium and has agreed to supply the Bidder 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 – *Supplier/Manufacturer's Certificate*).

The Supplier/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* and § 39 *Employees, Subcontractors, and Agents*.



#### **4.10 BID DEVIATIONS**

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.8 *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 New York State Contracts). 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.

#### **4.11 BID OPENING RESULTS**

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage 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>.

#### **4.12 BID LIABILITY**

The State of New York will 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.

#### **4.13 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.

#### **4.14 NYS RESERVED RIGHTS**

1. New York State reserves the right, in its sole discretion, to:
2. Reject any or all Bids received in response to the Solicitation;
3. Withdraw the Solicitation at any time at the sole discretion of the State;
4. Make an award under the Solicitation in whole or in part;
5. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
6. Seek clarifications and revisions of the Bid;
7. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
8. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
9. Change any of the schedule dates with notification through the NYS Contract Reporter;

10. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
11. Waive any requirements that are not material;
12. Utilize any and all ideas submitted in the Bids received;
13. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
14. 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;
15. 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;
16. 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;
17. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
18. 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;
19. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
20. Reject an obviously unbalanced Bid as determined by the State;
21. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder; and
22. 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.
23. 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.
24. 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.

#### **4.15 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 AWARD OVERVIEW**

Multiple awards will be made by Grand Total for each Item to responsive and responsible Bidders that meet evaluation criteria that has been established by OGS prior to bid opening, with one (1) award made for each different OEM Chassis Model/Body Model combination (e.g., Ford E-Series Chassis/Coach & Equipment Body, Ford Transit Chassis/Coach & Equipment Body, Chevrolet 3500 Chassis/Coach & Equipment Body, and Freightliner M2-106 Chassis/Blue Bird Body). Consortium Bids shall be considered a single Bidder when determining award for each Item.

In the event that two (2) or more Bidders offer the same OEM Chassis Model/Body Model combination, then award for that OEM Chassis Model/Body Model combination for the applicable Item shall be made to the Bidder with the lowest Grand Total For Item.

Grand Total For Item is calculated in accordance with Section 5.3 *Grand Total For Item Calculation*, and is based on the sum of a combination of the Base Item Evaluation Price, the Total Optional Equipment Evaluation Price, and the Additional Options Evaluation Price. The examples below in Section 5.2 *Total Optional Equipment Evaluation Price Calculation* and Section 5.3 *Grand Total For Item Calculation*, indicate the calculations for each Item.

**5.2 TOTAL OPTIONAL EQUIPMENT EVALUATION PRICE CALCULATION**

The Total Optional Equipment Evaluation Price for each Item is the sum of the Optional Equipment Evaluation Prices included in Part 4: *Optional Equipment Specifications and Pricing* in Attachment 1 - *Specifications and Pricing* for an Item. Each Optional Equipment Evaluation Price is calculated by multiplying the Optional Equipment NYS Contract Price entered by the Bidder, by the Optional Equipment Evaluation Quantity. Set forth below is an example of how the Total Optional Equipment Evaluation Price is calculated for each Item in Attachment 1 - *Specifications and 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:

Each Optional Equipment Evaluation Price is calculated by multiplying the Optional Equipment NYS Contract Price by the Optional Equipment Evaluation Quantity as follows:

1. Child Presence Check / Alarm: Optional Equipment NYS Contract Price (\$50) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price (\$500.00).
2. Rear Axle, "No Spin": Optional Equipment NYS Contract Price (\$100) multiplied by Optional Equipment Evaluation Quantity (10) = Optional Equipment Evaluation Price (\$1,000.00).

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

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

**5.3 GRAND TOTAL FOR ITEM CALCULATION**

The Grand Total For Item for each Item is the sum of the Base Item Unit Price and Total Optional Equipment Evaluation Price, weighted by the Evaluation Quantity, and the Additional Options Evaluation Price. Set forth below is an example of how the Grand Total for Item is calculated for each Item 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*).

Example Price Calculation for Items in Lot A-1G. The mathematical calculation illustrated in the table below is as follows: [Base Item Evaluation Amount (25) multiplied by the Base Item NYS Contract Price (\$45,000.00)] plus the Total Optional Equipment Evaluation Price (\$35,000.00) plus [Additional Options Evaluation Amount (\$190,000) minus the Additional Options NYS Discount (5.00)] = Grand Total For Item (\$1,350,000.00).

Example Price Calculation for Grand Total For Item (All Items in Lot A)		
<b>Base Item NYS Contract Price</b>	The per unit NYS Contract Price (dollar amount) for the School Bus described in the Base Item Specifications.	\$45,000.00
<b>Base Item Evaluation Amount</b>	A quantity used in this IFB for evaluation.	25
<b>Base Item Evaluation Price</b>	<i>[Automatically calculated: The Base Item Evaluation Quantity multiplied by the Base Item NYS Contract Price]</i>	\$875,000.00
<b>Total Optional Equipment Evaluation Price</b>	The sum of the Optional Equipment Evaluation Prices in Part 4: <i>Optional Equipment Specifications and Prices. [Automatically calculated]</i>	\$35,000.00
<b>Additional Options Evaluation Amount</b>	A dollar amount used in this IFB for evaluation.	\$8,000.00
<b>Additional Options NYS Discount</b>	The minimum percentage amount that shall be deducted from the MSRP for all Additional Options purchased under the Contract for this Item.	5.00
<b>Additional Options Evaluation Price</b>	<i>[Automatically calculated: The Additional Options Evaluation Amount minus the Additional Options NYS Discount]</i>	\$190,000.00
<b>Grand Total For Item</b>	<i>[Automatically calculated: The Base Item Evaluation Price, plus the Total Optional Equipment Evaluation Price, plus the Additional Options Evaluation Price]</i>	<b>\$1,350,000.00</b>

Example Price Calculation for Items in Lot C-1D. The mathematical calculation illustrated in the table below is as follows: [Base Item Evaluation Amount (40) multiplied by the Base Item NYS Contract Price (\$90,000.00)] plus the Total Optional Equipment Evaluation Price (\$120,000.00) plus [Additional Options Evaluation Amount (\$13,000) minus the Additional Options NYS Discount (3.00)] = Grand Total For Item (\$4,224,400.00).

Example Price Calculation for Grand Total For Item (All Items in Lots C and D)		
<b>Base Item NYS Contract Price</b>	The per unit NYS Contract Price (dollar amount) for the School Bus described in the Base Item Specifications.	\$90,000.00
<b>Base Item Evaluation Amount</b>	A quantity used in this IFB for evaluation.	40
<b>Base Item Evaluation Price</b>	<i>[Automatically calculated: The Base Item Evaluation Quantity multiplied by the Base Item NYS Contract Price]</i>	\$3,600,000.00
<b>Total Optional Equipment Evaluation Price</b>	The sum of the Optional Equipment Evaluation Prices in Part 4: <i>Optional Equipment Specifications and Prices. [Automatically calculated]</i>	\$120,000.00
<b>Additional Options Evaluation Amount</b>	A dollar amount used in this IFB for evaluation.	\$13,000.00

<b>Additional Options NYS Discount</b>	The minimum percentage amount that shall be deducted from the MSRP for all Additional Options purchased under the Contract.	3.00
<b>Additional Options Evaluation Price</b>	<i>[Automatically calculated: The Additional Options Evaluation Amount minus the Additional Options NYS Discount]</i>	\$504,400.00
<b>Grand Total For Item</b>	<i>[Automatically calculated: The Base Item Evaluation Price, plus the Total Optional Equipment Evaluation Price, plus the Additional Options Evaluation Price]</i>	<b>\$4,224,400.00</b>

Example Price Calculation for Items in Lot D-1D. The mathematical calculation illustrated in the table below is as follows: [Base Item Evaluation Amount (10) multiplied by the Base Item NYS Contract Price (\$100,000.00)] plus the Total Optional Equipment Evaluation Price (\$50,000.00) plus [Additional Options Evaluation Amount (\$13,000) minus the Additional Options NYS Discount (3.00)] = Grand Total For Item (\$1,292,500.00).

<b>Example Price Calculation for Grand Total For Item (All Items in Lots C and D)</b>		
<b>Base Item NYS Contract Price</b>	The per unit NYS Contract Price (dollar amount) for the School Bus described in the Base Item Specifications.	\$100,000.00
<b>Base Item Evaluation Amount</b>	A quantity used in this IFB for evaluation.	10
<b>Base Item Evaluation Price</b>	<i>[Automatically calculated: The Base Item Evaluation Quantity multiplied by the Base Item NYS Contract Price]</i>	\$1,000,000.00
<b>Total Optional Equipment Evaluation Price</b>	The sum of the Optional Equipment Evaluation Prices in Part 4: <i>Optional Equipment Specifications and Prices. [Automatically calculated]</i>	\$50,000.00
<b>Additional Options Evaluation Amount</b>	A dollar amount used in this IFB for evaluation.	\$13,000.00
<b>Additional Options NYS Discount</b>	The minimum percentage amount that shall be deducted from the MSRP for all Additional Options purchased under the Contract.	3.00
<b>Additional Options Evaluation Price</b>	<i>[Automatically calculated: The Additional Options Evaluation Amount minus the Additional Options NYS Discount]</i>	\$250,000.00
<b>Grand Total For Item</b>	<i>[Automatically calculated: The Base Item Evaluation Price, plus the Total Optional Equipment Evaluation Price, plus the Additional Options Evaluation Price]</i>	<b>\$1,292,500.00</b>

**5.4 PERIODIC RECRUITMENT**

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for any item or any lot covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

## 5.5 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.

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

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

- A. The Contracts under Award #23254 are multiple award for each Item. Authorized Users shall follow their applicable procurement guidelines when making a purchase. OGS strongly recommends that Authorized Users obtain three (3) quotes from separate sources and procure products that best meet their form, function and utility requirements. Awarded Contractors' Product offerings, Contract and pricing information will be posted to the OGS website at <http://ogs.ny.gov/purchase/spg/awards/4052423254CAN.HTM>.
- B. 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).
- C. Authorized Users shall issue Purchase Order(s), as described in Section 6.7 *Purchase Orders and Invoices*, directly to the Contractor(s), specifying the School Bus required and shipping/delivery requirements. Authorized users should follow up with Contractor if they do not receive order acknowledgement within five (5) days.
- D. Upon Authorized User acceptance of School Buses itemized on the Purchase Order, Contractor(s) Shall invoice the Authorized User for the School Buses, and accordingly, Authorized User Shall arrange for payment. Payment shall not be made until a NYS DOT "Regular Certificate of Inspection" (not a short term certificate) has been issued.
- E. The Contractor is advised that Authorized User personnel Shall not be authorized to obligate or bind the respective entity to contractual terms and conditions; therefore, there Shall be no obligation to execute any Contractor documents that are not set forth in the Contract. See also Appendix B §30, *Purchase Orders*.

- F. 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 Northeast Government Sales Manager, Dan Mazurek by telephone at 313-407-2973 or via email at [dmazure1@ford.com](mailto:dmazure1@ford.com).
- G. The Authorized User is responsible for the titling and registration of the purchased School Bus and all associated fees.

## 5.6 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

The Contracts awarded under this Solicitation will be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for one year, 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 the approval of OSC and 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).

#### 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.

### 6.2 APPENDIX A

Appendix A, *Standard Clauses For New York State Contracts*, dated October 2019, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein.

**6.3 APPENDIX B**

Appendix B, *Office of General Services General Specifications*, dated April 2016, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein and shall govern any situations not covered by this bid document or Appendix A.

**6.3.1 APPENDIX B MODIFICATIONS**

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

A. Section 17, *Tie Bids*, is deleted and replaced with the following language:

**17. TIE BIDS** In the event two offers for an Item are found to be substantially equivalent, the lowest Base Item NYS Contract Price shall be the basis for determining the award recipient for the Item. If two or more Bidders submit substantially equivalent bids for an Item as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

B. Section 31, *Product Delivery*, is deleted and replaced in its entirety by Section 3.13 of this IFB, *Delivery*.

**6.4 APPENDIX D**

Appendix D-*Federal Funding Agency Mandatory Terms and Conditions*, dated July 2021, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein. Appendix D, *Federal Funding Agency Mandatory Terms and Conditions* (July 2021) contains mandatory terms and conditions required by federal funding agencies in order for expenditures by Authorized Users to be eligible for federal reimbursement in the event of a State declaration of disaster emergency pursuant to Section 28 of the Executive Law.

**6.5 PRICE**

Pricing for School Buses to be provided under the Contract shall be subject to the terms and conditions in this Section (i.e., 6.5.1 through 6.5.4).

**6.5.1 BASE ITEM, OPTIONAL EQUIPMENT AND ADDITIONAL BODY SECTIONS PRICE**

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

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

Contractors will be required to deliver School Buses in accordance with Section 3.13 *Delivery*, and the Base Item NYS Contract Price shall include the delivery charge. However Authorized Users, at their sole discretion, may pick up School Bus(es) at the Contractor location and shall be given a



Pick Up Allowance equal to or greater than the dollar amount included in the bid for the applicable Item. This Pick Up Allowance shall be included as a separate line item on the Authorized User's invoice.

### 6.5.2 ADDITIONAL OPTIONS PRICE

The following terms and conditions apply to Additional Options pricing:

- A. The Contractor must offer all Additional Options sold under the Contract at either the Additional Options NYS Discount awarded, or a greater discount.
- B. The Additional Options NYS Discount shall be applied to the MSRP on the current OEM Data Book or Contractor-Published Pricelist, as applicable, to yield the NYS Contract Price, as follows:
  1. Chassis. The Additional Options NYS Discount shall be applied to the MSRP included on the OEM Data Book. If the Additional Options offered are not offered directly from the OEM, then the Additional Options NYS Discount shall be applied to the MSRP included on the Contractor-Published Pricelist;
  2. Body. The Additional Options NYS Discount shall be applied to the MSRP included on the Contractor-Published Pricelist;
  3. Credits. The Additional Options NYS Discount shall not apply when either an option is being deleted from the Base Item, or when an Additional Option with an MSRP that is a credit (e.g., -\$20.00), is being added to the Base Item. The credit for such features shall be applied to the Base Item NYS Contract Price before applicable discounts are applied; and
  4. Replacement Parts. The discount for replacement parts shall be equal to or greater than the Additional Options NYS Discount, and shall apply to the MSRP on the OEM Data Book or Contractor-Published Pricelist as applicable. See Section 3.9 *Replacement Parts*.
- B. When an Additional Option is either being added to or deleted from the Base Item specifications, or upon request, Contractors are required to give the Authorized Users a copy of the OEM Data Book or Contractor-Published Pricelist for the applicable Additional Option. Any addition or deletion must be clearly shown on the invoice and clearly show the MSRP, the application of the Additional Options NYS Discount for the Additional Option, and the resultant NYS Contract Price.
- C. The NYS Contract Price for Additional Options offered by the Chassis or Body OEM shall include any and all labor, installation, fittings, connections, etc., that might be needed to attach the Additional Option to the Chassis or Body so that the Additional Option operates to the Additional Option's full design capabilities; there shall be no additional up-charges, fees, etc., for adding Additional Options offered by the Chassis or Body OEM. The Contractor may add normal, published labor rates to install Additional Options that are not offered directly from the OEM, and such labor rates shall not be more than what is charged to the public at large.
- D. If the Contractor sells an Additional Option to the public at large with pricing that is lower than the application of the Additional Options NYS Discount to the MSRP, then the price that is charged to the public at large shall be charged to Authorized Users. This shall be clearly shown on the invoice as a "Special Value" or by some other phrase or identifying designation.

### 6.5.3 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")), NYS Contract Prices (i.e., for the Base Item, Additional Body Section, and

Optional Equipment), Additional Options NYS Discount, and configuration of the Base Item and associated Optional Equipment, which have been approved by Procurement Services for inclusion in the Contract.

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

In order to receive approval for additions and deletions of Product from the Contract Pricelist, the Contractor must submit a completed Contract Modification Form (see 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.

**6.5.4 PRICE ADJUSTMENTS**

Prices are firm for the entire Contract period and the extension periods, if any, except for the price changes as outlined below. Price adjustments that are approved by OGS shall be communicated via email to the “Centralized Contract Contact,” at the address specified in Attachment 5 – *Bidder Information Questionnaire*, and be announced to Authorized Users via a Contract Update memo posted on the OGS website at <http://www.ogs.ny.gov/purchase/spg/awards/4052423254can.HTM>.

A. PPI Price Adjustment

On the 15<sup>th</sup> day after the end of each calendar quarter during the Contract term, beginning January 15, 2023, the Base Item, Optional Equipment NYS Contract Prices and non-mandatory Optional and base equipment NYS Contract Prices shall be updated in accordance with the Producer Price Index (PPI) indicated below in Paragraph 1 PPI. Contract prices are firm until January 14, 2023.

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

The “Latest Finalized Monthly PPI Data” as used in the “Formula to Calculate Price Adjustment Factor” means the latest finalized monthly PPI data (i.e., data that does not include a “(P)” next to the posted PPI figure) published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) in the month immediately preceding the quarterly adjustment. See chart below. Historically, BLS publishes finalized monthly PPI data five months after release of the preliminary data.

Adjustment Date	Latest Finalized Monthly PPI Data
January 15	Latest Finalized Monthly PPI Data posted by the BLS by December 31
April 15	Latest Finalized Monthly PPI Data posted by the BLS by March 31
July 15	Latest Finalized Monthly PPI Data posted by the BLS by June 30
October 15	Latest Finalized Monthly PPI Data posted by the BLS by September 31

The Price Adjustment Factor shall be rounded to the nearest thousandth and shall be applied to the originally awarded Base Item, Optional Equipment NYS Contract Prices and non-mandatory Optional and base equipment NYS Contract Prices, to yield the adjusted prices effective for all Purchase Orders issued from the adjustment date and continuing through the day prior to the adjustment date of the following quarter. 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, or to change the schedule of the adjustments in order to either conduct additional or fewer price updates or to increase or decrease the frequency of updates (for example increase to a monthly basis or decrease to a bi-annual or annual basis) should market conditions so warrant.

## 1. PPI

Series ID: WPU1413  
 Not Seasonally Adjusted  
 Group: Transportation Equipment  
 Item: Truck and Bus Bodies  
 (<https://data.bls.gov/cgi-bin/srgate>)

## 2. Formula to Calculate Price Adjustment Factor

[Latest Finalized Monthly PPI data] divided by [finalized PPI data for the Month/Year in which the bid opening was held].

## 3. Examples

The examples below are strictly for illustration purposes, and may not reflect actual changes in the PPI and any allowable adjustments in price that might occur during the Contract term.

a) Price Adjustment calculated on **January 15, 2017** for the time period from **January 15, 2017 to April 14, 2017**:

- [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, **Optional Equipment NYS Contract Prices and non-mandatory Optional and base equipment NYS Contract Prices** would be multiplied by 1.026 to calculate the NYS Contract Price for the time period from **January 15, 2017 to April 14, 2017** (e.g., if the original awarded Base Item NYS Contract Price was \$50,000, the adjusted price would be \$50,000.00 multiplied by 1.026, or \$51,300.00)

b) Price Adjustment calculated on **April 15, 2017** for the time period from **April 15, 2017 to July 14, 2017**:

- [Latest Finalized Monthly PPI Data (134.0)] divided by [finalized PPI data for the Month/Year in which the bid opening was held (137.4)]
- $134.0/137.4 = .9752547$ ; rounded to nearest thousandth = .975
- Price Adjustment Factor = .975
- Each originally awarded Base Item, **Optional Equipment NYS Contract Prices and non-mandatory Optional and base equipment NYS Contract Prices** would be multiplied by .975 to calculate the NYS Contract Price for the time period from **April 15, 2017 to July 14, 2017** (e.g., if the original awarded Base Item NYS Contract Price was \$50,000, the adjusted price would be \$50,000.00 multiplied by .975, or \$48,750.00)

B. Additional Options

The NYS Contract Price for Additional Options offered under the contract in accordance with Section 6.5.2 *Additional Options*, shall be the Additional Options NYS Discount bid, or higher, applied to the MSRP on the current OEM Data Book or Contractor-Published Pricelist, as applicable. See Section 6.5.2 *Additional Options Price*.

C. Lower Pricing

The State reserves the right to negotiate lower pricing, or to advertise for bids, whichever is in the State's best interest as determined by the Commissioner, in the event of a decrease in market price of any Product listed.

Price decreases to the Authorized User are permitted at any time, and do not need prior approval by Procurement Services.

D. Additional Price Adjustments for Consideration

Notwithstanding the allowable PPI Price Adjustment, an adjustment in price may be permitted during the contract period if a government mandated program (e.g., a new standard for emissions) takes effect OR if the OEM supplying the Contractor undergoes a complete change in platform.

Contractor shall be required to provide adequate, suitable documentation to Procurement Services, who shall then determine if the requested price change is verifiable and reasonable. OGS reserves the right to terminate the contract(s) if it deems the price adjustment pursuant to this paragraph is not in the best interests of the state.

E. Limitation

Price adjustments are limited to changes as allowed for in this Section. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs to the Contractor, shall not be allowed during the Contract period.

## 6.6 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.

## 6.7 PURCHASE ORDERS AND INVOICING

All Purchase Orders and invoices/vouchers shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility with the Product currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order with the manufacturer and that the manufacturer has accepted the order and assigned an order number and anticipated build and delivery dates.

### 6.7.1 PURCHASE ORDERS

Purchase orders are to include the following information:

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

### 6.7.2 INVOICES

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

- A. Contract number;
- B. NYS Vendor ID;
- C. Purchase Order number;
- D. Lot and Item designation of the School Bus;
- E. Make, Model and Model Code of the School Bus;
- F. Optional Equipment, Additional Body Sections, and Additional Options, if applicable;
- G. Calculation of NYS Contract Price, including Additional Options NYS Discount; and
- H. Breakdown of liquidated damages, if any (see Section 3.13.6 *Liquidated Damages*);

## 6.8 CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the School Bus been delivered and accepted in accordance with Section 3.13 *Delivery*. Payment shall be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section 6.7 *Purchase Orders and Invoicing*, including description of the School Bus as well as NYS Vendor ID. See also Appendix B § 45 *Contract Invoicing*.

When a School Bus is delivered the Authorized User shall process the invoice immediately for the full amount of the NYS Contract Price if, in its opinion, the School Bus is in compliance with the School Bus specifications in the Contract (see Section 3 *Specifications*), and the Purchase Order. However, if poor workmanship and/or minor deviations exist, the Authorized User may withhold up to 20% of the NYS Contract Price upon delivery and delay payment of the balance until the Contractor has made all necessary corrections. The Authorized User may withhold the full amount of the NYS Contract Price if, in its opinion, the School Bus contains major deviations from the School Bus specifications in the Contract (see Section 3 *Specifications*), and the Purchase Order. However, Contractor must be notified, in writing, of reasons for delay of payment.

## 6.9 POOR PERFORMANCE

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

Office of General Services	Tel: 518-474-6717
Procurement Services	Email: <a href="mailto:customer.services@ogs.ny.gov">customer.services@ogs.ny.gov</a>
Customer Services	
38th Floor Corning Tower	
Empire State Plaza	
Albany, NY 12242	

## 6.10 CONTRACT ADVERTISING

Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance. See also Section 3.10 *Advertising*.

## 6.11 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.

#### **6.12 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 is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State 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/>.

#### **6.13 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY**

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

#### **6.14 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.

#### **6.15 N.Y. STATE FINANCE LAW § 139-L**

Pursuant to N.Y. State Finance Law § 139-l, 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-l, 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.

## **6.16 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*.

**6.17 REPORT OF CONTRACT USAGE**

The Contractor shall furnish a report of all Purchase Orders received for Product under the Contract during each quarterly period, no later than fifteen (15) Business Days following the close of the quarterly period. Quarterly periods shall end on March 31st, June 30th, September 30th and December 31st. If the Contract period begins or ends in a fractional portion of a reporting period only the actual Purchase Orders received during this fractional period should be reported in that quarterly report. Purchase Orders placed by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. A template for such report is included In Attachment 8 - *Report of Contract Usage*. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, quarterly period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.

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.

**6.18 USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS**

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

**6.19 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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. 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 complete the Workforce Audit 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 complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

#### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

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

#### B. Good Faith Efforts

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

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

#### V. Fraud

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

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

## **6.20 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](mailto: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/>

## **6.21 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*.

## **6.22 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/>. 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.

## **6.23 DIESEL EMISSIONS**

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

The Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19 0323, and 6 NYCRR Parts 248 and 249.

## **6.24 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.

## **6.25 OVERLAPPING CONTRACT PRODUCTS**

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.

## **6.26 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://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

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](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.

## **6.27 NYS TAX LAW SECTION 5-A**

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

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

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

**6.28 “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.

**6.29 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.

**6.30 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.

**6.30.1 EXTENSION OF USE COMMITMENT**

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law to participate in this Contract (see Section 6.30 *Extension of Use*), which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

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



**6.31 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.

**6.32 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 – *Contract Modification Procedure* is subject to change at the sole discretion of OGS.
- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B § 26 *Modification of Contract Terms*.

**6.33 DRUG AND ALCOHOL USE PROHIBITED**

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

**6.34 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.

**6.35 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.

**6.36 CONTRACT DOCUMENTS; ELECTRONIC FORMAT**

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.